

New Jersey Supreme Court Sustains Municipal Downzoning Ordinances and Requires Property Owners to Seek a Variance Before Claiming *de facto* Taking

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In *Gripenburg v. Township of Ocean*, decided by the New Jersey Supreme Court on January 22, 2015, the plaintiffs challenged the validity of municipal ordinances which downzoned a large area of the municipality, including most of plaintiffs' property, into an Environmental Conservation (EC) district. When the plaintiffs purchased the 34 acres in 1985, their property was mixed-zoned permitting commercial use on one acre minimum lots and residential use on two acre minimum lots. The EC zoning requires a minimum of 20 acres per residential unit.

The trial court dismissed plaintiffs' challenge to the ordinances in 2012 as applied to their property, a decision reversed by the Appellate Division in 2013. The Supreme Court has now reversed and reinstated the trial court's dismissal of the plaintiffs' complaint.

In sustaining the validity of the ordinances, the Supreme Court concluded that the ordinances were the result of a comprehensive municipal planning process, and were adopted pursuant to the municipal Master Plan which implemented the State Plan and smart growth principles. The Court also concluded that plaintiffs' property itself did not have to contain specific environmental conditions or endangered species habitat, as the municipal goal was to create a large contiguous EC district to preserve coastal habitat and ecosystem and to promote a low density peripheral buffer outside the municipal town center.

As had the trial court, the Court stated that the plaintiffs should first have sought administrative relief by way of a zoning variance application before challenging that the ordinances, as applied to their property, constituted a taking without just compensation. The Court rejected plaintiffs' argument that such administrative effort would have been futile. The Court indicated that, if the owners' variance application is denied, they can then pursue their inverse condemnation claim.

Gripenburg sustained the downzoning ordinances as a valid exercise of municipal zoning power. This decision is not good news for property owners who contend that a rezoning ordinance as applied has effected a regulatory taking of their private property without just compensation. Unless an exception is applicable, which the Court did not find present in *Gripenburg*, a property owner must first exhaust administrative remedies and seek variance relief from the ordinance before being able to pursue the claim that the regulation as applied has effected a taking.

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