

Bond Case Briefs

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Bottini v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - September 18, 2018 - 27

Cal.App.5th 281 - 238 Cal.Rptr.3d 260 - 18 Cal. Daily Op. Serv. 9490 - 2018 Daily Journal

D.A.R. 9528

Lot owners, who had demolished potentially historic cottage and applied for coastal development permit to construct new house, petitioned for writ of mandamus to challenge city council's decision that project was not exempt from California Environmental Quality Act (CEQA) review, and additionally filed complaint for damages based on violations of takings, due process, and equal protection clauses of the California Constitution.

The Superior Court granted the petition but granted summary judgment for city on lot owners' constitutional claims. Following dismissal of initial appeal for lack of jurisdiction, city appealed, and lot owners cross-appealed.

The Court of Appeal held that:

- Proper CEQA baseline was lot at time of permit application, rather than before demolition of cottage;
- Project was categorically exempt from CEQA review;
- As a matter of first impression, ad hoc regulatory taking test of *Penn Cent. Transp. Co. v. New York City* applies to regulatory takings causes of action arising under the California Constitution;
- Delay arising from city council's erroneous order requiring CEQA review did not constitute a regulatory taking;
- Lot owners were required to identify an interest or benefit of which city deprived them in order to maintain substantive due process claim; and
- Decision to require CEQA review, on grounds potentially statewide historic resource had been destroyed and destruction of 100-year-old beach cottage had evaded environmental review, was rationally related to legitimate interest in protecting environmental resources and thus did not violate equal protection.