

Bond Case Briefs

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ZONING & PLANNING - OHIO

Burnett Road Associates, LLC v. Franklin Township

Court of Appeals of Ohio, Eleventh District, Portage County - September 24, 2018 - N.E.3d - 2018 WL 4593501 - 2018 -Ohio- 3842

Developer and property owner filed action against township challenging a denial of a rezoning application.

The Court of Common Pleas granted summary judgment in favor township, and plaintiffs appealed.

The Court of Appeals held that:

- Property owner's administrative appeal was unripe;
- Court was not required to give property owner an opportunity to cure complaint;
- Township's regulations, requiring unanimity in a vote was not enforceable; and
- Denial of rezoning application was not unreasonable or arbitrary.

Even if trial court made a ruling on property owner's standing on challenge to township's denial of a rezoning application filed by developer and property owner, property owner's administrative appeal was unripe; owner's complaint purported to "appeal" the decision of board of zoning appeals, however, zoning appeal board's "ruling" was that it would continue until a zoning plan was confirmed by a governing jurisdiction, and thus board of zoning appeal did not issue a dispositive ruling.

Trial court was not required to give property owner an opportunity to cure complaint on issue of standing in action against township challenging a denial of a rezoning application filed by owner and developer; it was undisputed that property owner was the owner of the parcels in question when an underlying declaratory judgment action was filed, and that owner had a stake in the outcome of the dispute, and trial court never made a dispositive ruling on property owner's standing.

Township's regulations, requiring unanimity in a vote of the Board of Zoning Appeals to deny a recommendation of the zoning commission, was not enforceable, and thus only a majority vote denying developer's and property owner's rezoning application was required in action brought by developer and property owner against township challenging the denial of their application; state code provision governing procedure for zoning resolutions, which specified only a majority vote was required to adopt or deny the recommendations of a township zoning commission, was mandatory.

Denial of developer and property owner's rezoning application by a township Board of Zoning appeals was not unreasonable or arbitrary in as applied constitutional challenge brought by owner and developer against township; although developer's proposed rezoning might not have undermined the health, safety, or morals of township by proposing to build a student-housing complex, township's current zoning conformed with existing uses in the neighboring vicinity, including the use of an adjoining parcel for a church and was consistent with township's desire to direct future business and commercial development.

