

Bond Case Briefs

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Smyth v. Conservation Commission of Falmouth

Appeals Court of Massachusetts, Barnstable - February 19, 2019 - N.E.3d - 94 Mass.App.Ct. 790 - 2019 WL 660964

Landowner brought action against local land commission, claiming that denial of her residential construction variance, pursuant to wetlands protection bylaw, effected an uncompensated taking of her property.

Commission filed a motion to bifurcate the trial, so that only the question of damages would be tried before a jury.

The Superior Court denied the motion. After a jury trial, the jury found in favor of landowner and awarded damages. The Superior Court then denied commission's motion for judgment notwithstanding the verdict (JNOV). Both parties appealed.

The Appeals Court, Green held that:

- As a matter of first impression, landowner was not entitled to a jury trial;
- Reduction in property's appraised value did not in itself constitute a regulatory taking; and
- Landowner was not entitled to compensation.

Landowner was not entitled to a jury trial in her action challenging a wetlands protection bylaw as a regulatory taking, based on denial of her application for a residential construction variance; landowner's claim did not sufficiently resemble an action in tort, in that she did not allege any physical invasion of her property and her claim did not concern whether a wrongful act occurred, but rather requested compensation for a lawful inverse condemnation.

Reduction in appraised value of landowner's property from \$700,00 to \$60,000, due to denial of landowner's application for residential construction variance, did not in itself constitute a regulatory taking; even in unbuildable condition, the property's value was still \$11,000 higher than the amount which landowner's predecessor originally paid for the property and the zoning bylaw allowed other uses for this property, such as a park, playground, or privacy for abutting owners.

Landowner was not entitled to compensation for a purported regulatory taking of her property, based on denial of her application for a residential construction variance; evidence showed a lack of any financial investment by owner or her predecessor toward development of the property, including a substantial period in which the property could have been freely built upon, and, even with the variance denial, landowner's property was worth more than its original purchase price, such that any compensation could have constituted a windfall.