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North Mill Street, LLC v. City of Aspen

United States Court of Appeals, Tenth Circuit - July 27, 2021 - F.4th - 2021 WL 3163952

Property owner, whose property was located within area of city zoned for industrial use, brought action against city after council adopted ordinance that removed free-market residential units as permitted conditional use within such zoning district and refused to rezone property to mixed use zoning district, seeking declaratory judgment that ordinance was invalid and unenforceable and injunction against enforcing ordinance, and alleging, inter alia, a § 1983 regulatory takings claim under the Fifth Amendment.

The United States District Court granted defendants' motion to dismiss. Property owner appealed.

The Court of Appeals held that:

- Finality rule, under which a regulatory takings claim is not ripe until plaintiff has received final decision, is prudential, and not jurisdictional;
- Owner's claims were constitutionally ripe for review;
- City retained discretion to approve free-market residential unit development, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review; and
- It was not reasonably certain that city would deny application for variance, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review.

Finality rule, under which a regulatory takings claim is not ripe until the plaintiff has received a final decision regarding the application of the challenged regulations to the property at issue from the government entity charged with implementing the regulations, is prudential, and not jurisdictional.

Property owner, whose property was located within industrial zone, adequately alleged that it suffered economic injury that was fairly traceable to city's adoption of ordinance that removed free-market residential (FMR) units as permitted conditional use within property's zoning district and denial of owner's rezoning application, so as to satisfy injury-in-fact requirement for Article III standing, and thus owner's claims were constitutionally ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; owner alleged that ordinance made it more difficult to find suitable tenants, and that it was not able to build FMR units unless it pursued planned development application for a variance.

City retained discretion to approve free-market residential unit (FMR) development on property owner's property, which was zoned for industrial use, through the planned development application process, supporting determination that city's decision was not final, so as for claims to not be prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; city retained discretion to approve a use variation from the zoning regulations through the planned development application process, and city was merely required to consider earlier findings made in course of rezoning application in considering such a

variance.

It was not reasonably certain that city would deny property owner’s application for variance from zoning regulations through the planned development application process, in order to permit free-market residential unit (FMR) development on property zoned for industrial use, supporting determination that city’s decision was not final, and thus claims were not prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; relevant zoning ordinance did not definitively determine type of development permitted on property specifically, and owner had only submitted an application for re-zoning as opposed to variance.

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