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MUNICIPAL ORDINANCE - MISSOURI

Duffner v. City of St. Peters

Missouri Court of Appeals, Eastern District, Division Two - January 12, 2016 - S.W.3d - 2016 WL 145556

Property owners filed suit against city challenging constitutionality and validity of city ordinance requiring owners to maintain turf grass on at least 50% of residential yard. The Circuit Court granted city's motion to dismiss for lack of jurisdiction, and owners appealed.

The Court of Appeals held that:

- Circuit court had general plenary jurisdiction over owners claims challenging validity of ordinance on grounds that it violated due process and amounted to regulatory taking;
- Claim that ordinance violated equal protection was collateral attack of decision of board of adjustment on application for variance, and thus, petition for writ of certiorari review to circuit was owners' exclusive remedy for that claim;
- Owners did not waive due process and takings claims, so as to deprive circuit court of subject matter jurisdiction, by applying for variance and failing to raise claims with board of adjustment;
- Owners' allegations failed to state claim that ordinance violated their substantive due process right to control their property;
- Owners stated claim for regulatory taking without just compensation; and
- Owners' allegations stated claim that city's enactment of ordinance impermissibly exceeded scope of powers granted by statute.

Allegation that city ordinance requiring owners to maintain turf grass on at least 50% of their residential yards inhibited property owners' use and enjoyment of their yard, regardless of whether city's intention was to benefit public generally or to benefit private owners through subsidizing residential property values, stated claim against city for regulatory taking without just compensation, under Missouri Constitution.

Property owners stated claim that city's enactment of zoning ordinance requiring owners to maintain turf grass on at least 50% of their residential yard impermissibly exceeded scope of powers granted by statute. Owners alleged that requirement of specific amount of land devoted to specific type of plant was not included in general police powers to "promote health, safety, morals or general welfare," and that ordinance did not fall within scope of statutory authority to regulate and restrict height, number of stories, and size of buildings and other structures, to regulate percentage of lot that could be occupied, size of yards, courts, and other open spaces, to regulate density of population, to preserve features of historical significance, and to regulate location and use of buildings, structures and land for trade, industry, residence or other purposes.