
ZONING & PLANNING - PENNSYLVANIA

In re Charlestown Outdoor, LLC

Supreme Court of Pennsylvania - August 16, 2022 - A.3d - 2022 WL 3364248

Property owner appealed decision of township zoning board, which denied property owner's challenge to validity of township's zoning ordinance that permitted construction of billboards in zoning district.

The Court of Common Pleas affirmed the zoning board's decision finding that the ordinance was not de facto exclusionary. Property owner appealed. The Commonwealth Court affirmed. Property owner's petition for allowance of appeal was granted.

The Supreme Court held that:

- Zoning ordinance was not the source of the exclusion, and thus ordinance was not de facto exclusionary, and
- Municipalities have no duty to review and revise zoning ordinances or to rezone for a particular use where a property owner's use is limited by third parties, including through governmental regulations beyond the municipality's control.

Ordinance that permitted billboards in zoning district did not impose conditions that rendered use impossible, rather, following construction of turnpike ramp subsequent to enactment of ordinance, it was Department of Transportation (PennDOT) regulation that precluded billboards in zoning district, and thus because zoning ordinance was not the source of the exclusion, ordinance was not de facto exclusionary in property owner's challenge to ordinance; ordinance permitted use on land that was rendered unusable for that purpose by intervening actions of a third party, other than setback provision, nothing in ordinance restricted placement of billboards in zoning district, and neither severing ordinance restrictions nor allowing property owner to erect a billboard were available as remedies.

Municipalities have no duty to review and revise their zoning ordinances or to rezone for a particular use where a property owner's use is limited by third parties, including through governmental regulations beyond the municipality's control.

To the extent that a de facto exclusion challenger to a zoning ordinance is successful, that success is limited to obtaining the opportunity to acquire and develop property in the zone where the use is permitted; if the defect asserted cannot be cured by severing restrictive provisions of ordinance, then the case stands in the same posture as one involving de jure exclusion, and the sole remedy is to allow use somewhere, and a successful litigant must receive that benefit in form of at least partial approval of a proposal.

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