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Delays in Obtaining Permits Leading to Property Foreclosure Not a Regulatory Taking - New Jersey

Federal Court Judge Cheryl Ann Kraus was 'riding the Circuit' and decided a regulatory takings case while sitting in the District Court, District of New Jersey captioned *James v. Vornlocker*. Full opinion here [2022-8-31 Vornlocker](#).

The case was decided on motions for summary judgment, and it appears that Plaintiff admitted most of the facts and failed to genuinely contest the remaining facts set forth in the motions.

In 2007, Plaintiff purchased two adjacent lots in Franklin Township intending to subdivide them into three residential building lots. "Although she had no direct experience with construction or home-building, she declined to hire a construction company or general contractor for the construction of her home. Instead, Plaintiff opted to serve as her own general contractor ... and had family members do "a lot of the work" to keep the cost of construction down." Plaintiff's plan was to live in the house while she obtained approvals and then construct the two additional houses and sell at a profit. "But for myriad reasons, Plaintiff's plan to complete the construction herself quickly ran into trouble. For one, there were wetlands on her property, and she faced repeated delays, stop work orders, and violations arising out of her improper dumping and failure to comply with other wetlands-related requirements of the NJDEP."

To make a long story short, Plaintiff was not adequately capitalized for the project and intended on borrowing money to finance the project. Serial and complex real estate transactions were effectuated over the years in a "strategy of robbing Peter to pay Paul" which "eventually caught up with Plaintiff, and she was unable to make payments on her various loans" and, in 2014, the lender foreclosed on the unimproved land, and in 2018 another lender foreclosed on her residence. Plaintiff lost the properties and sued the municipality and various officials, alleging that the delay in obtaining a Certificate of Occupancy was a "taking" and further that the delay itself was caused by unlawful discrimination by municipal officials.

The Court found that there was not a "per se" taking or a regulatory taking arising from the undisputed facts presented on the motion for summary judgment. The court further found that there was no unequal treatment or discrimination to be found within the alleged facts.

The Court quickly dispatched the takings claim simply because there was no 'state action.' ("Fatal to her takings claim, however, Plaintiff does not establish any connection between the alleged "taking"-i.e., the foreclosures-and Defendants' actions. The "purely private" foreclosure by third-party banks on Plaintiff's property is not state action, much less government action for public use.") Even so, the Court went on to analyze whether Plaintiff's claim established a taking under the familiar (and complicated) Penn Central analysis, and found, "in fact, none of the Penn Central factors weigh in favor of Plaintiff."

I will leave you to read the entirety of the opinion, but add the following as perhaps a cautionary reminder -

“In advancing her takings and due process claims, Plaintiff points only to the straightforward application of garden variety local and state land use regulations as violative of her Constitutional rights. The Court declines Plaintiff’s invitation to “convert[] federal courts into super zoning tribunals” and will therefore grant summary judgment to Defendants on Counts 1 and 4.”

McKirby, Riskin, Olson & DellaPelle, P.C. - Anthony F. Della Pelle, Joseph W. Grather, Allan Zhang, Michael Realbuto, Thomas M. Olson, Matthew Erickson and John H. Buonocore, Jr.

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