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TR Investor, LLC v. Manatee County

District Court of Appeal of Florida, Second District - February 3, 2023 - So.3d - 2023 WL 1483829 - 48 Fla. L. Weekly D249

Landowners who obtained a permit to develop a subdivision in county brought a regulatory takings action against county, claiming that requiring 30-foot wetland buffers was tantamount to an unconstitutional taking without just compensation.

The Circuit Court granted county's motion to dismiss, concluding that landowners could not state a cause of action for an unlawful exaction or a permanent physical occupation upon their land. Landowners appealed.

The District Court of Appeal held that:

- County's wetland buffers did not amount to an illegal exaction, and
- County's wetland buffer regulations did not operate as a per se taking in the form of a permanent physical occupation.

County's wetland buffers, which it required from landowners who obtained a permit to develop a subdivision in county, did not amount to an illegal exaction, in landowners' regulatory takings action against county; county did not require any property rights, easement, dedication of land, or monetary payment as a condition of approval of landowners' permit, but instead, landowners retained complete ownership of wetland buffer area, and landowners did not submit applications or wetland impact studies to county in conjunction with development approval proposal in order to request a reduction of buffer areas, pursuant to procedures county had in place, but instead claimed they submitted a request to and received approval from a separate agency with no authority to approve such reductions.

County's wetland buffer regulations did not operate as a per se taking in the form of a permanent physical occupation by government, its agents, or the public at large, in regulatory takings action against county by landowners who obtained a permit to develop a subdivision in county; regulations did not require that strangers be allowed to pass over property, there was no required acquiescence as necessary for landowners to state a facially sufficient per se takings claim, regulations did not leave landowners without any practical use or value in land, and landowners retained complete ownership of wetland buffers and all property rights, including right to exclude others.