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EMINENT DOMAIN - SOUTH CAROLINA

Braden's Folly, LLC v. City of Folly Beach

Supreme Court of South Carolina - April 5, 2023 - S.E.2d - 2023 WL 2778717

Owner of two small, contiguous, developed coastal lots brought action for regulatory taking against city, alleging that city amended ordinance to require certain contiguous properties under common ownership, including owner's properties, to be merged into a single, larger property, and that merger ordinance interfered with owner's investment-backed expectation.

Parties filed cross-motions for summary judgment. The Circuit Court, Charleston County, Roger M. Young, J., granted owner's motion. City appealed.

The Supreme Court held that:

- Treatment-of-the-land factor weighed in favor of identifying relevant parcel as both lots combined;
- Physical-characteristics factor weighed in favor of identifying relevant parcel as both lots combined;
- Value-of-the-property factor weighed in favor of identifying relevant parcel as both lots combined;
- Economic impact of ordinance weighed heavily in favor of finding that ordinance did not amount to regulatory taking;
- Extent to which ordinance interfered with owner's investment-backed expectations did not weigh in favor of either party; and
- Character of ordinance weighed in favor of finding that ordinance did not amount to regulatory taking.

Treatment-of-the-land factor for defining relevant parcel for purposes of regulatory-taking claim brought by owner of two contiguous, beachfront lots, who challenged city ordinance requiring lots to be merged, weighed in favor of identifying relevant parcel as both lots combined, where lots were currently merged under state and local law, there were no physical or topographical boundaries that would have limited joint treatment or development of lots, lots had always been owned and sold as single unit and were even redeveloped by owner at same time, and due to city's zoning ordinances and dune-management ordinances, owner was prohibited from selling lots separately or from building separate homes on each should one of the existing homes be more than 50% destroyed.

Physical-characteristics factor for defining relevant parcel for purposes of regulatory-taking claim brought by owner of two contiguous lots, who challenged city ordinance requiring lots to be merged, weighed in favor of identifying relevant parcel as both lots combined, where lots were located on beach, which was quintessential example of area that was heavily regulated and likely to become subject to additional environmental regulations.

Value-of-the-property factor for defining relevant parcel for purposes of regulatory-taking claim brought by owner of two contiguous lots, who challenged city ordinance requiring lots to be merged, weighed in favor of identifying relevant parcel as both lots combined; any economic impact resulting from merger ordinance was mitigated by benefits of using property as integrated whole since, regardless of merger ordinance, one lot contained beachfront property that was restricted by city's

dune-management ordinances, which prevented any redevelopment on lot if existing house was destroyed by 50% or more, and thus merger of lots would allow owner to maintain beach house on other lot while simultaneously enjoying beach access from beachfront lot.

Economic impact of city ordinance requiring merger of property owner's two contiguous, beachfront lots weighed heavily in favor of finding that ordinance did not amount to regulatory taking, although owner claimed that if lots were sold separately, they were worth $508,000 more than if they were sold as single, merged lot, where $508,000 difference amounted to 23% reduction in value, which, while not insignificant, was far less than other reductions in value found constitutional by United States Supreme Court, owner remained able to rent out houses on each lot separately, with average gross receipts amounting to approximately $117,000 per year, and during pendency of lawsuit, buyer offered owner its full asking price of $2.55 million for both lots.

Extent to which city ordinance requiring merger of property owner's two contiguous, beachfront lots interfered with owner's investment-backed expectations did not weigh in favor of either party, for purposes of owner's regulatory-takings claim, although ordinance was enacted after owner redeveloped house on first lot and built new house on second lot, with plans to sell lots separately, where owner used lots for family vacations and as rental properties for several decades, owner delayed selling lots after redevelopment and made little to no effort to actually sell once lots were placed on market, lots were located in coastal area with dynamic, fragile environment, and size, shape, and orientation of lots provided objective indicia that owner's expectation of selling second lot was unreasonable.

Character of city ordinance requiring merger of property owner's two contiguous, beachfront lots weighed in favor of finding that ordinance did not amount to regulatory taking, where ordinance did not unfairly single out owner's lots, ordinance was reasonable land-use regulation enacted as part of coordinated effort to protect beach and surrounding land by preserving federal funding for beach renourishment, and although owner was slightly burdened by ordinance, it in turn would benefit greatly from the restrictions that were placed on others.

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