

Case Law Update
AEDP Meeting August 23, 2013

Wendler v. City of St. Augustine, 108 So. 3d 1141 (Fla. 5th DCA March 15, 2013)

Facts: The Wendlers owned 8 residential properties within the historic district of St. Augustine. The city amended an ordinance in 2005 regarding demolition or relocation requests for certain structures within the historic district. In 2007, the Wendlers submitted applications to demolish their properties and rezone the parcels for commercial use. The Historic Architectural Review Board (“HARB”) denied the requests. The Wendlers timely appealed, but the City Commission affirmed HARB’s denial. In 2010, the Wendlers submitted a Harris Act claim to the city. The Harris Act allows property owners to be compensated by a governmental entity if a government regulation inordinately burdens an existing or vested property right. The city responded with a written offer to settle and a ripeness decision. The Wendlers rejected that offer and filed their action in circuit court. The trial court found the complaint untimely, and the Wendlers appealed.

Holding: The court found that the complaint was timely because a Harris Act claim must be presented within one year from the time the law or regulation is first applied by the governmental entity. Specifically, the court held that the 2005 Ordinance’s impact was not readily ascertainable to the Wendlers in 2005. It was not until 2007 when the applications were denied that the impact was readily ascertainable. The Wendlers properly followed the procedure of presentment, so they had four years plus any tolling time to file their complaint under the Harris Act.

Note: Proper procedure for a Harris Act claim is as follows, at least 180 days before the filing of a lawsuit, the owner must submit a pre-suit notice to the appropriate governmental entity, after which the government has 180 days to consider and decide its best option. If a settlement is not reached, the government must issue a ripeness decision which identifies the allowable uses for the property. After receiving the ripeness decision the property owner may file an action for damages. After this procedure is followed, then the court determines whether an existing or vested use exists and whether the regulation has inordinately burdened the property.

Hillcrest Property, LLP v. Pasco County, Case No. 8:10-cv-819-T-23TBM, 2013 WL 1502627 (M.D. Fla. April 12, 2013):

Facts: A Pasco County ordinance required dedication of property in fee simple within transportation corridors as a precondition for a development permit. The dedication is by “recordation on the face of the plat, deed, grant of easement, or other method acceptable to the County.” Once the owner dedicates the land, the owner may apply for permission to use the land until Pasco County needs it to build the road. If owner disagrees with dedication or considers it excessive, he/she may request a waiver by filing an application which contains specific requirements, including providing a traffic impact study. There is also a variance procedure in the ordinance. In this case, the property submitted a development plan to the County and the County denied the plan because the owner did not provide for the 50 ft dedication. The owner submitted a another site plan which provided for the 50 ft dedication, but the County rejected this proposal because it depicted improvements within an additional 90 ft setback which FDOT wanted since it planned to widen SR 52. The owners submitted a third site plan which provided for 110 ft of dedicated area but reserved their objection to the dedication. The property owners filed §1983 action challenging constitutionality of county’s regulatory regime.

Holding: Judge Merryday found the ordinance to be unconstitutional because it facially violates substantive due process under the United States Constitution, since there is no “rational relation to a legitimate government

purpose.” Finding the ordinance to be “both coercive and confiscatory in nature and constitutionally offensive in both content and operation,” Judge Merryday concluded in his opinion:

“Pasco County has enacted an ordinance that effects what, in more plain-spoken times, an informed observer would call a ‘land grab,’ the manifest purpose of which is to evade the constitutional requirement for ‘just compensation,’ that is, to grab land for free.... [T]his Ordinance is an unmistakable, abusive, and coercive misapplication of governmental power, perpetrated to cynically evade the Constitution. The Ordinance cannot stand, whether for the precise reasons stated here or for a related reason.”

Koontz v. St. Johns River Water Management Dist., 133 S. Ct. 2586 (June 25, 2013)

Facts: Mr. Koontz owned land that was made up of wetlands and uplands. In order to develop the land, Mr. Koontz applied to the District for permits. He proposed mitigation to offset the effects of his proposal by offering to foreclose any possible future development of the southern section of his land by deeding it to the District as a conservation easement. The District found the easement to be inadequate and proposed two alternatives: 1) that Mr. Koontz reduce his development area and create a larger conservation easement or 2) proceed with the development if he also agreed to hire contractors to make improvements to District owned land several miles away. The circuit court concluded that further mitigation in the form of payment for offsite improvements to the District lacked both a nexus and rough proportionality to the environmental impact of the proposed construction and that the District’s actions were unlawful under Nollan and Dolan. The Fifth DCA affirmed. However, the Florida Supreme Court reversed and distinguished Nollan and Dolan on two grounds: 1) this case dealt with the denial of a permit, while Nollan and Dolan had traditionally been applied in cases where the permit was actually issued and 2) Nollan and Dolan involved demands for interests in real property and this case involved a demand for money.

Holding: The U.S. Supreme Court heard the case and decided that Nollan and Dolan apply in situations when 1) the government either approves or denies a permit and 2) that money exactions, i.e. demands for money, must satisfy the nexus and rough proportionality requirements of Nollan and Dolan. Nollan and Dolan established that a government may condition approval of a permit on the dedication of property to the public so long as there is a nexus and rough proportionality between the proposed permit condition and the impacts of that proposed development.

Fla. Dept. of Agriculture v. Lopez-Brignoni, 114 So.3d 1135 (Fla. 3rd DCA June 26, 2013)

Facts: The owner’s appraiser had the task of determining the value of each citrus tree owned by members in a class action suit against the Florida Department of Agriculture and Consumer Services as part of the Citrus Canker Eradication Program. The appraiser used a method of valuation that relied upon three factors: (1) height, (2) condition, and (3) location. The appraiser had information regarding each tree’s height and condition, but not its location. For location, the appraiser used a generic factor of .75 to adjust for the value attributable to location. When asked to explain the .75 factor, the appraiser could not explain it other than to say that an appraisal is “subjective art and I felt it was a reasonable discount.”

Holding: Court concluded that appraisal methodology was defective as a matter of law in that it was subjective, conclusory, speculative, and conjectural. Also, concluded that there were problems with using a “one-size-fits-all” adjustment.

Collins v. Monroe County, et.al., -- So. 3d --, 2013 WL 3455608 (Fla. 3d DCA July 10, 2013)

Facts: The landowners different properties in Monroe County. Pursuant to the Monroe County Year 2010 Comprehensive Plan, the landowners filed petitions for a Beneficial Use Determination (“BUD”). A BUD petition requires an applicant to demonstrate that the comprehensive plan and land development regulations in effect at the time of the BUD application deprive the applicant of “all reasonable economic use of the property.”

The trial court entered judgment in favor of one landowner and against all of the remaining landowners. Those remaining landowners appealed.

Holding: The appellate court held that (a) the issuance of post-BUD building permits, etc. demonstrates that the Plan had not deprived Landowners of all reasonable economic use of their properties, and (b) that only that landowner who had obtained building permits prior to the BUD petition was entitled to bring a taking claim.

Judkins v. Walton County, 2013 WL 3491163 (Fla. 1st DCA July 15, 2013)

Facts: The plaintiff, Judkins, owned a piece of unimproved residential property. In 2002, the County improved the road in front of the Judkins' property. After the work was completed in 2002, Judkins noticed that the property flooded frequently, making it unusable. Judkins alleged that the County promised to remedy the flooding. However, the flooding never improved, and in 2009 Judkins filed suit for inverse condemnation. The County asserted the four-year statute of limitations as an affirmative defense, and the judge found for the County on summary judgment.

Judkins appealed citing U.S. v. Dickinson, 331 U.S. 745, 67 S.Ct. 1382, 91 L.Ed. 1789 (1947) and the "stabilization doctrine." Judkins argued that because the county promised to remedy the flooding that the statute of limitations did not begin to run until the taking becomes "stabilized."

Holding: The court rejected the "stabilization doctrine" by holding that no court has applied the stabilization doctrine in a situation where the extent of the injury is known and the cause of action accrued, and here the extent of the flooding was known in 2002 so the cause of action accrued at that time.

Note: Court stated that Judkins may have been able to avoid statute of limitations by pleading equitable estoppel.

State v. Basford, 2013 WL 3814317 (Fla. 1st DCA July 24, 2013)

Facts: In 2002, the voters of Florida adopted the "pregnant pig" amendment to the state's constitution, which became effective in 2008. The amendment makes it unlawful for "any person in such a way that she is prevented from turning around freely." Basford's pig farm used "gestation crates," and he was forced out of business by the amendment. After shutting down his business, he began raising perennial peanut hay on the tillable portion of the property. In 2010 he filed an inverse condemnation claim and a Bert Harris Act claim, arguing that the pig amendment deprived him of all economically viable use of his farm. The trial court dismissed the Bert Harris claim, but after a trial, held that Basford was entitled to \$505,000 in compensation for the state's taking of his property. The state appealed, arguing that (1) the trial court erred in finding that the inverse condemnation claim was not time barred by the statute of limitations, and (2) the trial court erred in finding a taking where Basford was not deprived of all reasonable and beneficial use of his property (the pig farm only made up part of Basford's property).

Holding: The 1st DCA agreed with the trial court on both issues, holding first that the inverse condemnation claim was not time barred, because it only accrued when the amendment took effect in 2008. As to the second issue, the court found that that a takings analysis under Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), has to look at the totality of the circumstances, and that the trial court had been aware of and properly weighed all of the facts and circumstances. The court accepted the trial court's determinations of all of the facts, and rejected the state's argument.