



Case of the Month

Federal Court Provides Direction on Civil Rights Actions Brought as Facial Challenges to Zoning Ordinances

By Robert W. Gundlach, Jr.

In *Waterfront Renaissance Assocs. v. City of Philadelphia*, 2008 WL 862705 (E.D.Pa. 2008) (Slip Copy), the District Court for the Eastern District of Pennsylvania denied a motion to dismiss a federal civil rights action. The action was filed by a developer against municipal defendants after the City Council adopted a zoning ordinance that frustrated the developer's plans for a major World Trade Center that was 20 years in the making.

In 1987, in response to Philadelphia's adoption of a Comprehensive Plan for the Central Riverfront District aimed at encouraging and stimulating commercial and residential development, the plaintiff, Waterfront Renaissance Associates (WRA), sought to develop a 5.3 acre site along North Columbus Boulevard (the WRA Site) as a "major World Trade Center" (the Project). The Planning Commission gave its approval for the necessary rezoning, and it assisted WRA in brokering a Zoning Covenant with several Civic Associations that was designed to minimize public opposition to the Project. Over the next 20 years, WRA secured various commitments from PennDot and other state and city agencies, as well as a multimillion dollar financing arrangement with the Delaware River Port Authority.

By 2006, all of the important permits for the first residential building had been obtained except for the building permit. In March of that year, the City Council enacted an Overlay Ordinance that extended a 65-foot height restriction to the WRA Site but did not apply it to any other neighboring sites, including a site that belonged to the City. Approximately one month later, the City Council appeared to amend the Overlay Ordinance to exclude the WRA Site, although this was not entirely clear because the online version of the amendment still included the WRA Site (although the maps accompanying the online version did not). WRA alleged that the Overlay Ordinance inconsistencies would expose it to misguided enforcement actions and deter other relevant parties such as investors and tenants from facilitating the Project.

Thereafter, WRA did not seek and was not denied a building permit based on non-conformity with the height restrictions. Instead, WRA filed a 14-count complaint against the City, the City Council and its Planning Commission, three Civic Associations, and several individual defendants. WRA argued, *inter alia*, that the City's actions violated its previous representations of support, the United States Constitution, and principles of fairness and equity. The defendants filed three motions to dismiss, which are the subject of this case.

The defendants argued that WRA's failure to seek and obtain a final decision on the applicability of the Overlay to the WRA Site was fatal to WRA's claims under the finality rule, i.e., "a property owner does not have a ripe constitutional claim until the zoning authorities have had an opportunity to arrive at a final, definitive position regarding how they will apply the regulations at issue to the particular land in question." The court provided an outline of the appropriate analysis for applying the finality rule to constitutional claims in zoning cases. The court stated that ripeness depends on

whether the landowner is raising: (1) an “as-applied” challenge, where the landowner alleges that his rights were violated in the manner by which the ordinance was applied to his property; or (2) a “facial attack,” i.e., a claim that the mere enactment of a regulation constitutes a violation of constitutional rights. The court explained that the finality rule can bar as-applied claims because landowners only can allege concrete injuries once the local decision maker arrives at a definitive position. However, facial attacks do not implicate ripeness concerns because in a facial attack, the landowner is alleging that any application of the regulation is unconstitutional. The court concluded that WRA’s substantive due process and equal protection challenges were ripe for adjudication to the extent that they asserted facial challenges.

The court stated that in order to assert a valid facial challenge based on substantive due process, the plaintiff must assert that the Ordinance “as a whole is arbitrary, capricious and unreasonable.” The court found that it was irrational and arbitrary for the City to reverse two decades of its own efforts to develop the Riverside District as a commercial center, and that WRA’s complaint stated a viable substantive due process challenge to the Overlay Ordinance.

Next, the court stated that in order to assert a valid facial equal protection claim, the landowner must assert that the land use regulations result in the “arbitrary differential treatment of similarly situated property owners.” The court explained that a facial equal protection land use claim is ripe “when it alleges that a municipality knew exactly how the plaintiff intended to use its land and the municipality passed the ordinance specifically tailored to prevent that use.” The court found that WRA’s allegations that the City arbitrarily treated the WRA Site differently from other sites in the same zoning district provided a valid basis for a facial equal protection claim that is ripe for adjudication.

The court then addressed WRA’s procedural due process claim. WRA had alleged that the Overlay Ordinance was void *ab initio*, not because the publication of notice failed to comply with statutory requirements, but because it was insufficient to satisfy the requirements of procedural due process under the circumstances of this case. The court found that WRA’s procedural due process claim was basically a demand for individualized notice of zoning decisions affecting WRA’s property, and that the claim was barred by the finality rule because it was not ripe for adjudication.

Finally, the court addressed WRA’s state law claims. The court granted the Civic Associations’ motions to dismiss the claims of tortious interference, civil conspiracy, and estoppel, but denied its motion to dismiss the breach of contract claim. The court also granted the motions to dismiss the tortious interference and civil conspiracy claims brought against the individual defendants.

In summary, the court granted the defendants’ motions to dismiss all claims against the City Planning Commission and all claims against the Civic Associations except the breach of covenant claim. The court also granted the City’s motion to dismiss WRA’s procedural due process claim and its request for a declaration that the Overlay Ordinance was procedurally invalid. The court gave the City 20 days from the date of the Order to submit additional briefing to the court on its motion to dismiss WRA’s claims of estoppel, detrimental reliance, and unjust enrichment. The court denied the City’s motion to dismiss WRA’s civil rights actions for unconstitutional deprivations of substantive due process and equal protection committed under the color of law by the City.

For more information about this issue, contact Robert Gundlach at 215.918.3636 or rgundlach@foxrothschild.com.



Fox Rothschild LLP
ATTORNEYS AT LAW

© 2008 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.