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Used-Car Dealership's Case Stalls in Supreme Court

Attorneys say ruling signals change in 'practical confiscation' zoning cases

By AMARIS ELLIOTT-ENGEL

An eight-year legal battle over a used-car dealership has resulted in a state Supreme Court ruling that could affect future cases where a landowner argues that zoning rules have resulted in property being "practically confiscated."

The unusual case pitted various Meriden city officials against each other and, attorneys say, illustrated that the courts are becoming less deferential to decisions made by local zoning officials.

The Supreme Court ruled late last month that Mark Development LLC was not entitled to develop a used-car lot on a 48-acre parcel zoned for, among other uses, conference center hotels, research and development facilities, executive offices, and college campuses.

Mark Development had applied for a zoning variance allowing the car dealership. Zoning variances are allowed only when land use regulations impose an unusual hardship on property owners because of some unique characteristic of their properties. Property owners can try to show they are entitled to a "use" variance by arguing their property was practically confiscated by zoning regulations, or deprived of all reasonable use and value.

In this case, Mark Development, which bought the parcel for $1 million in 2003, argued that the city's zoning rules resulted in its property being "practically confiscated" with the land losing all "reasonable use and value." In 2008, the Meriden Zoning Board of Appeals, in a 4-1 vote, sided with the dealership and granted the variance. But Dominick Caruso, Meriden's former city planner, and James Anderson, the city's zoning enforcement officer, appealed the decision.

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Attorney Joseph Williams said the ruling indicates that landowners will have to present more evidence before courts rule that zoning laws have led to 'practical confiscation' of property.

Amy Souchuns, an attorney with Hurwitz, Sagarin, Slossberg & Knuff and chairwoman of the Connecticut Bar Association's Planning & Zoning Section, said the case was unusual because it was city officials,

and not residents or businesses near the disputed property, who decided to fight the ZBA.

The ZBA ruling approving the variance was upheld in Superior Court. But the Connecticut Appellate Court, followed by the Supreme Court, agreed with the city planner and the zoning enforcement officer. Justice Richard Robinson, writing for the unanimous Supreme Court, said Mark Development had not demonstrated "that the property has been deprived of all reasonable use and value under the regulations."

Robinson noted that Mark Development did not present evidence of any change in the property's value since it was bought for $1 million in 2003 or any evidence that it couldn't be used for any of the other approved uses allowed in the development district.

Mark Development had submitted an appraiser's report and a letter from its attorney to the ZBA. The attorney and the appraiser opined that the site couldn't be used for executive offices or research and development facilities. But they did not rule out that the property could be used for other allowable zoning uses.

"The Appellate Court properly determined that, without evidence that the property could not reasonably be used as contemplated in the development district, the defendant's lack of evidence of the property's diminution in value required the defeat of the practical confiscation claim," Robinson wrote.

Market Data

Souchuns said the Supreme Court's ruling leaves open questions about how property owners can show their properties have been practically confiscated because of zoning regulations. Do property owners need to have more market data? Do they need to show what other applications for variances have been considered and denied? Do they need to provide information about property valuations?

Joseph Williams, a Shipman & Goodwin partner who represented the Meriden officials who appealed the ZBA decision, said the Supreme Court has affirmed that developers and their attorneys need to present the same kind of evidence to prove practical confiscation of property value as they would need to prove that the government has taken their property unconstitutionally. This ruling "presents a clear confluence of constitutional and zoning law with regard to takings on one hand and a variance as practical confiscation on the other hand," Williams said.

Daniel Krisch, a partner at Halloran & Sage and attorney for Mark Development, said the Supreme Court's ruling is unusual because courts are typically deferential to zoning officials because they know the facts on the ground.

He also said Mark Development's point of view was that it had enough evidence to show that the zoning laws had resulted in practical confiscation of the property, including the opinion of an expert appraiser. Krisch said the Supreme Court decision resulted in an overturned precedent regarding practical confiscation.

"The Supreme Court moved away some of its older precedent about when a piece of property is deprived of all reasonable use under zoning regulations," Krisch said. "The cases we thought were controlling and most similar to my client's case were from the 1950s and the 1960s. [Those cases] took a deferential view of a local zoning board's power to decide if there is evidence of a variance because you can't make any use of one's property."

Williams agreed that courts will show less deference to zoning boards in practical confiscation cases, saying that future ZBA decisions will receive an "exacting level of scrutiny." ■