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## Borough of Carlstadt v. U.S. Army Corp of Eng'rs, No. 05-2771 (JAP), 2006 WL 305314 (D.N.J. Feb. 8, 2006)

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fraud, bad faith, or committed an abuse of discretion because evidence from both the City and the Ranch indicated an increase in the City's population.

Next, the court analyzed the validity of the City's proposed taking under the Fifth Amendment of the U.S. Constitution. The Constitution only allows a taking when the action satisfies the following two requirements: (1) the taking involves a legitimate public use, and (2) the means are rationally related to this use. The Ranch argued that the taking served a private purpose rather than a public purpose, because the City's real interest was in subsidizing a privately owned company, Seaboard Farms of Oklahoma, Inc. ("Seaboard"). However, the court found a municipality's efforts to attract private enterprise in order to create jobs, provide infrastructure, and stimulate the local economy constituted a valid public purpose. The Ranch also argued that it was Seaboard and not the City that needed more water. The court rejected this argument based on the City Engineer's report stating the City had an increased demand for water.

The court held that the City's finding that its population had increased while its water supply had decreased was a *prima facie* showing of public purpose and did not violate the state or the federal constitution. As such, the court rejected the Ranch's summary judgment motion.

*Kathryn Lane Garner*

**Borough of Carlstadt v. U.S. Army Corps of Eng'rs, No. 05-2771 (JAP), 2006 WL 305314 (D.N.J. Feb. 8, 2006)** (holding that purely financial interests that are only nominally connected to water use are outside the zones of interests protected by section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act).

The Borough of Carlstadt ("Carlstadt") brought charges against the United States Army Corps of Engineers ("Corps") and Meadowland Mills/Mack-Cali Limited Partnership ("Developer") seeking nullification of a permit allowing 7.69 acres of federal wetlands and open waters in East Rutherford, NJ to be filled for the construction of a megamall called Xanadu. Among other claims, Carlstadt argued that in granting the permit, the Corps violated section 404 of the Clean Water Act ("CWA") and section 10 of the Rivers and Harbors Act ("RHA"). The United States District Court for the District of New Jersey held that Carlstadt failed to establish that it had prudential standing to maintain its cause of actions and dismissed the complaint with prejudice.

The Xanadu project is a mixed-use redevelopment of the Continental Airlines Arena site located in the New Jersey Meadowlands, an environmentally sensitive area protected by the New Jersey legislature. The Developer applied for a permit to fill 7.69 acres of federal wetlands and open waters for the project. The Corps issued the permit

after concluding that the proposed filling would not significantly affect the quality of the human environment. As a special condition for the permit, the developer agreed to permanently preserve a 557 acre part of the Meadowlands located in Carlstadt, the neighboring borough. Carlstadt claimed injury resulting from the loss of taxable property and the increase in expenditures projected from the traffic and emergency services Xanadu will require.

The district court held that Carlstadt's alleged injuries do not fall within the zone of interests of section 404 of the CWA. The court stated that the purpose of section 404 is to control the degradation of aquatic resources that results from any replacement of water with fill materials. The court reasoned that since Carlstadt's interests in the litigation have nothing to do with water at all, but rather are concerned with the negative financial side effects of the mega-mall on Carlstadt's budget, the CWA claim must be dismissed.

The district court stressed that Congress enacted the CWA to protect the public interest in the waters of the United States; therefore, although the CWA and its regulations indicate that economic values, safety, the needs and welfare of the people, and tax revenues are among the factors that the Corps may consider, the agency is not required to exercise such a far reaching decision process when water is not the principle concern.

The district court applied the same rational in holding that Carlstadt's alleged injuries do not fall within the zone of interests of section 10 of the RHA. The purpose of section 10 is to prohibit obstructions in navigable waters. Since Carlstadt did not argue that the permit adversely impacts navigable waters, the district court held that the claim was outside of the RHA's zone of interest.

Based on these findings, the district court dismissed Carlstadt's CWA and RHA claims with prejudice.

*Roman Ginzburg*

**Envtl. Conservation Org. v. Bagwell, No. 4:03-CV-807-Y, 2005 US Dist. LEXIS 21669 (N.D. Tex., Sept. 28, 2005)** (holding summary judgment was proper where developers violated the terms of their Clean Water Act and state permit by failing to remove accumulations of sediment from storm water discharges in a timely manner).

The Environmental Conservation Organization ("ECO") brought a citizens suit under section 505(a) of the Clean Water Act ("CWA"), seeking declaratory judgment, an injunction, and civil penalties against the developers of the Broughton residential subdivision in Colleyville, Texas. The ECO contended that the developers failed to adequately manage storm-water runoff from the commencement of construction in December 2001, through the date of the hearing in 2005. The ECO