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COURT REPORTS

FEDERAL COURTS

UNITED STATES SUPREME COURT

Palazzolo v. Rhode Island, 533 U.S. 606 (2001) (holding Palazzolo's claims asserting the application of Rhode Island's wetlands regulations took his property without compensation were ripe; the acquisition of title did not bar the claims; and Palazzolo failed to establish a deprivation of all economic value).

Palazzolo owned land in Rhode Island and Rhode Island law designated most of his property as coastal wetlands. In 1983, Palazzolo applied to the Rhode Island Coastal Resources Management Council ("Council") for permission to construct a wooden bulkhead and fill his entire marshland area. The Council rejected the application, concluding it would conflict with the Coastal Resource Management Program ("CRMP"). In 1985, Palazzolo applied to the Council for permission to fill part of the property's wetlands in order to build a private beach club. The Council rejected this application as well, ruling that the proposal did not satisfy the standards for obtaining a "special exception" to fill salt marsh, whereby the proposed activity must serve a compelling public purpose.

In response, Palazzolo filed an inverse condemnation action asserting that the state's wetlands regulation, as applied by the Council to his parcel, had taken the property without compensation in violation of the Takings Clause of the Constitution. Palazzolo sought review by the United States Supreme Court, contending the Supreme Court of Rhode Island erred in rejecting his takings claims.

A takings claim challenging application of land-use regulations is not ripe unless the agency charged with implementing the regulations has reached a final decision regarding their application to the property as issue. A final decision does not occur until the acting agency determines the extent of permitted development on the land. The Supreme Court held that the Council made a final decision when it denied Palazzolo's 1983 and 1985 applications. Thus, the Rhode Island Supreme Court erred in ruling that, notwithstanding those denials, doubt remained as to the extent of development the Council would allow on Palazzolo's parcel due to his failure to explore other uses for the property that would involve filling substantially less wetlands.

A landowner may not establish a taking before the land-use authority has the opportunity to decide and explain the reach of a challenged regulation. Yet, once it becomes clear that the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened. Here, the Council's decisions make plain that it interpreted its regulations to bar petitioner from engaging in any filling or development on the wetlands.

Contrary to the state supreme court's ruling, Palazzolo's claim could not fail under the government's ripeness claim by virtue of his failure to seek permission for a use of the property that would involve development only of its upland portion. The Supreme Court's ripeness jurisprudence required Palazzolo to explore development opportunities on his upland parcel only if there was uncertainty as to the land's permitted use. There was no genuine ambiguity in the record as to the extent of permitted development on Palazzolo's property, either on the wetlands or the uplands and the record stated that the uplands were worth \$200,000. Thus, Rhode Island could not contest ripeness by stating that the value of the non-wetland parcels was unknown.

Further, Palazzolo's takings claim was not rendered unripe by his failure to apply for permission to develop the seventy-four lot subdivision, which was the basis for the damages sought in his inverse condemnation suit. The Council informed Palazzolo that he could not fill and then build seventy-four single-family dwellings there. Palazzolo's submission of this proposal would not have clarified the extent of development permitted by the wetlands regulations, which was the inquiry required under the Supreme Court's ripeness decisions. When a taking has occurred, under accepted condemnation principles, the owner's damages are based upon the property's fair market value.

Next, Palazzolo's acquisition of title after the regulations' effective date did not bar his takings claims. The Supreme Court rejected the state court's sweeping rule that a purchaser or a successive title holder like Palazzolo is deemed to have notice of an earlier-enacted restriction and is therefore barred from claiming that it effects a taking. Were the Court to accept that rule, the post-enactment transfer of title would absolve the state of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. The state supreme court's rule was furthermore capricious in effect.

Finally, the state supreme court did not err in finding that Palazzolo failed to establish a deprivation of all economic use because it was undisputed that his parcel retains significant value. Thus, the Supreme Court remanded this case for further consideration of the claim under the principles set forth in *Penn Central Transportation Co. v. New York City*.

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