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Barley v. S. Fla. Water Mgmt. Dist., 766 So. 2d 433 (Fla. Dist. Ct. App. 2000)

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statute. The court held the 100-foot buffer zone was reasonable in view of the statute's purposes. The court also held the regulatory powers that the Amendments granted the Commission were within the broad powers case law bestowed on inland wetlands agencies. The court rejected Queach's argument that the 100-foot buffer zone was not supported by evidence in the record.

Queach contended the Connecticut Legislature's 1995 enactment of state statutes that provided municipal agency regulations shall "apply only to those activities which are likely to impact or affect an inland wetlands area" limited the case law cited. The court disagreed, stating legislative history indicated the statutes simply codified relevant case law.

Queach also challenged the portion of the Amendments that identified as a "significant activity" "any activity which causes a substantial diminution of flow of a natural watercourse, or groundwater levels of the regulated area." The court reasoned that an activity causing a substantial diminution of flow of a natural watercourse or of groundwater levels could plainly have an adverse effect on the health of affected wetlands. Accordingly, the court held this portion of the Amendments was also consistent with the supreme court's broad construction of the Act.

Finally, Queach argued several other provisions of the Amendments effectively required an applicant to submit alternatives to the Commission, even if the proposed use of the property did not have any effect or impact upon wetlands and watercourses. The court stated the provisions applied only to applications to undertake regulated activities. The court stated, under the purposes and policies of the Act, the Commission may consider all relevant facts and circumstances, including feasible and prudent alternatives to the proposed regulated activity that would cause less or no environmental impact to wetlands or watercourses. Thus, the court concluded the required listing of alternatives was reasonable and consistent with the Commission's broad legislative mandate. Therefore, the court held the Amendments were facially valid.

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Barley v. S. Fla. Water Mgmt. Dist., 766 So. 2d 433 (Fla. Dist. Ct. App. 2000) (holding a constitutional amendment ("Amendment 5"), which required polluters to pay for water pollution abatement, did not make it unconstitutional to tax non-polluter property owners under the Everglades Forever Act because Amendment 5 lacked enabling legislation, and thus could not be implemented).

The 1994 Everglades Forever Act ("Act") authorized the South Florida Water Management District ("District") to levy a tax on property owners within the district for pollution abatement purposes. Non-polluter property owners within the taxation district claimed they could not be taxed under the Act because Amendment 5, adopted in 1996, prohibited this taxation. Amendment 5 made property owners within the district who caused pollution primarily responsible for paying the abatement cost of their pollution. Thus, non-polluter property owners argued they could not be taxed under the Act because Amendment 5 superceded the general provisions of the Act. The non-polluter property owners unsuccessfully challenged the District's statutory basis to tax under the Act in the Circuit Court for Orange County and appealed to the Court of Appeals of Florida, Fifth District.

In affirming the circuit court, the appellate court based its holding on a Supreme Court of Florida advisory opinion that stated Amendment 5 was not a self-executing amendment. This advisory opinion elaborated by stating the Act was not the enabling legislation for Amendment 5. Because the Act was not Amendment 5's enabling legislation and Amendment 5 had no enabling legislation, the Act would be effective until the legislature expressly repealed it.

The appellate court held it could not tell the legislature when to enact legislation nor dictate the substance of legislation. As a result, the appellate court lacked the power to override the will of the people who adopted Amendment 5, which required supplemental legislation prior to enactment. Thus, the appellate court affirmed the circuit court by holding Amendment 5 lacked enabling legislation, the Act was still good law, and property owners within the district could be taxed under the Act regardless of whether they were polluters or non-polluters.

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VLX Props., Inc. v. S. States Utils., Inc., No. 5D99-3314, 2000 Fla. App. LEXIS 9251 (Fla. Dist. Ct. App. July 21, 2000) (holding that, in the case of flooding due to release of treated wastewater from a wastewater treatment plant with the power of eminent domain, the legal standard for inverse condemnation is the standard of physical invasion and not the deprivation of all reasonable use of the property).

VLX Properties, Inc. ("VLX") owned part of James Pond ("Pond") which was inadvertently included in an agreement between a golf course owner and a wastewater facility ("SSU") for disposal of treated wastewater. VLX planned to use the area around the Pond to develop homes. However, flooding from the Pond due to the release of the wastewater made those plans impossible. VLX filed a petition for inverse condemnation. The trial court ruled VLX did not meet the