

STATE LEGISLATION

Goleta Rent Control Ordinance Causes a Taking



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In 2002, the residents of Goleta, then an unincorporated area of Santa Barbara County, voted to incorporate the City of Goleta. During the campaign, the City Council candidates, elected to run the newly formed City of Goleta, courted the residents of the mobilehome parks in the unincorporated city with promises that rent control would be protected. This political "promise" is what led to the lawsuit and the subsequent decision of the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals held that the City of Goleta's mobilehome rent control ordinance caused a compensable taking in the *Guggenheim v. City of Goleta* case. The decision breaks new ground and helps define what causes takings and expands access to the federal courts for property owners stuck in unfriendly state courts. The decision was announced on Monday, September 28, 2009.

Judge Jay S. Bybee, who authored the decision, concluded with a strong affirmation that "we will not, therefore, throw these property owners back out and slam the courthouse door shut behind them. Today, our eyes are open. We have weighed the *Penn Central* factors, and we find that the RCO has affected a regulatory taking. Just compensation is due."

The court found that the ordinance caused a "wealth transfer" from one identifiable class to another and was therefore more like a "classic taking" than a mere shifting of regulatory burdens.

The Court also found that mobilehome park owners had been singled out to disproportionately bear the burden of

providing affordable housing, a burden that should be borne by the community as a whole. This aspect of the decision may be one of the most important.

The three-judge panel found that Goleta's mobilehome rent control ordinance was a facial taking, applying a three prong balancing test based on the Supreme Court decision in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, (1978). This test balances (1) the "investment backed expectations" of the property owner, (2) the economic impact of the regulation, and (3) the nature of the governmental regulation. Although the *Penn Central* test has been around since 1978, it has rarely been applied by federal courts because of a variety of procedural hurdles to federal court access. In those decisions where *Penn Central* has been applied, it was the very rare case in which a court has found a taking. *Guggenheim* was the first time an Appellate Court has applied *Penn Central* to find rent control caused a taking.

The *Guggenheim* court found a taking despite the fact that the park owner had purchased a property subject to rent control, a fact that is potentially important to the "investment backed expectations" of the property owner under *Penn Central*.

The Ninth Circuit nevertheless found a taking on the strength of the other two factors. The finding is buttressed by the fact that the City, when it decided what laws to enact within 90 days after it became a City, was free to amend or repeal the pre-existing rent control scheme. In other words, the City, had it listened to

the park owners in 2002, could have amended and changed rent control and that would have foreclosed the lawsuit that Guggenheim filed.

The Ninth Circuit concluded the rent control program improperly imposed the burden of an affordable housing program on a single property owner, which is in violation of the U.S. Constitution's Takings Clause. The result was that residents could "sell" homes for many times their intrinsic worth. The Court

noted that the park's rents had been frozen at 20 percent of fair market levels and the "premiums" on sales made up 90 percent of the sale price of homes. Judge Bybee described it as a "wealth transfer from the park owners to their tenants" accomplished by the adoption of rent control. The Court recognized that the purpose of providing affordable housing was a legitimate governmental purpose, but that the Fifth Amendment did not allow the local government to

impose that burden on only mobilehome park owners. This is the first appellate decision in which a court has found that the confiscatory application of rent control has resulted in a taking.

Much of the lengthy decision addresses the procedural barriers faced by property owners seeking their day in federal court. The Ninth Circuit explained at length how the Supreme Court decision in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1983) has had the effect of denying property owners access to federal courts for federal takings claims. Under *Williamson County*, taking claims are not "ripe" in federal court (i.e. ready to be heard) until property owners first have sought and been denied "state compensation" in the form of an inverse condemnation lawsuit in state court. California's state courts are notoriously hostile to takings claims. Those property owners who initiate a federal court action after an adverse state court decision, have found that such lawsuits are barred under laws barring plaintiffs from a second trial over the same issues. In *Guggenheim*, the Court found that this "ripeness" requirement was not a strict requirement, but rather that the federal courts have the ability to hear takings claims even though a property owner has not first filed suit in state court.

The ruling will undoubtedly have far reaching effects as local governments should now actually consider that the city (or county) may face a viable claim for damages when they adopt overly stringent land use or price controls such as rent control. The decision may also impact jurisdictions which already have rent control. Local rent boards may be more likely to grant substantial rent increases to avoid the risk of liability for takings. The park owner was represented by Rob Coldren, Mark Alpert and Bill Dahlin of Hart, King & Coldren. ■



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