

Second DCA Holds Local Government Wetland Buffer Requirements Are Not Illegal Exactions or Unconstitutional Physical Takings

Appellants TR Investor, LLC, North River Land LV, LLC, and Cargor Partners VI – Buckeye 928, LC (collectively, the “Landowners”), brought suit against Manatee County (the “County”) challenging wetland buffers required as part of the Manatee County Land Development Code (the “Code”) as illegal exaction or a permanent physical occupation on their land.

Manatee County requires a minimum 30-foot wetland buffer to protect wetlands from land development activities. Property owners can request a variance from the wetland buffer requirements, and thereby impact the area, provided they satisfy the requirements of the Comprehensive Plan and the Code. Between 2016 and 2018, the Landowners each applied for and received a “Final Site Plan/Preliminary Plat” approval from the County to develop residential subdivisions on land that contained noncontiguous wetlands. The approval required the Landowners to comply with the 30-foot wetland buffer requirement. The Landowners did not request approval to impact the wetlands or wetland buffer area, thus foregoing the opportunity for the County to review what, if any, impact its development would have on the wetlands. Instead, the Landowners submitted a variance request to reduce the 30-foot buffer to a five-foot buffer. The County denied the request because the Code prohibits the County from granting a variance that is inconsistent with the Comprehensive Plan, which contains a wetlands protection policy requiring a minimum 30-foot buffer.

Thereafter, the Landowners filed a complaint alleging that (1) the County’s wetland buffer regulations constituted an illegal exaction and (2) “the wetland buffer dedication to the community association via plat and declaration constituted a de facto taking of a conservation easement interest without the payment of full compensation from the County.” The trial court dismissed Appellants’ complaint for failure to state a cause of action as to both counts. TR Investor alone filed its first amended complaint, which the trial court again dismissed, and TR Investor filed a timely appeal. On appeal, the Second DCA evaluated whether the County’s wetland buffer regulations amount to an illegal exaction and whether the wetland buffer regulations created a taking by physical invasion because the Code divested the Landowners of ownership of the wetland buffers by requiring them to dedicate the wetland buffer to the community association.

The Second DCA began its analysis by describing the four main categories of regulatory takings challenges. For the purposes of this case, the Second DCA focused on the first and fourth category—land use exactions and *Loretto* physical takings. The first category is where a government regulation “requires an owner to suffer a permanent physical invasion of her property (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)). In these cases, the government must provide just compensation. The fourth category of regulatory takings involves land use exactions and the applicable standard of review is whether the “government have a legitimate purpose in demanding the exaction.” If a legitimate public purpose exists, then the Court must decide the required degree of connection between the exaction and the projected impact of the proposed development. Until now, the Supreme Court has only applied this test to dedications of private land for a public purpose and monetary exactions.

The Second DCA rejected the Landowners' claim that the County's wetland buffers requirement amounted to an illegal exaction. The Landowners still had ownership of the wetland buffer area and they had the right to exclude others from their property. The County did not require an easement, a dedication, or a monetary payment, unlike other cases where a court held the government violated the illegal exaction standard.

The Second DCA also rejected TR Investor's argument that the County's wetland buffers amounted to a physical taking. TR Investor alleged that the wetland buffer requirement created a de facto easement to the County and eliminated the Landowners' ability to exclude third parties from their property. The Second DCA explained that the County's regulations requiring wetland buffers and requiring the common areas to be dedicated to a maintenance entity created a right allowing strangers to pass over the Landowners' property. Despite the wetland buffer regulations, the Landowners still had a practical use of their property and value in their land. Consequently, the Second DCA affirmed the circuit court and held that the County's wetland buffer regulations were not an illegal exaction or a permanent physical occupation of land by the government.