



La Plata County
Colorado

LA PLATA COUNTY 2011 COMP PLAN
LEGAL ISSUES MEMORANDUM

Memo No. 1
Date: July 9, 2011
From: La Plata County Attorney's Office (MTB)
Subject: Takings Law regarding allegations of decreased property value

I. STATEMENT OF THE ISSUE PRESENTED

The question has arisen whether reductions in property value allegedly caused by land use regulations can constitute a "taking" of private property.

II. CONCLUSIONS/RECOMMENDATION

Although property owners are able to claim the devaluation of their property caused by land use regulations constitutes a "regulatory taking", the law is clear that government land use regulations will be upheld, and will not be considered "takings", unless they deny a landowner all, or virtually all, economic use of the property. Governments must go a long way toward reducing the economic use of property before the regulations will be considered a compensable taking.

III. ANALYSIS

Colorado's enabling statutes clearly grant counties broad authority to regulate the use of land, and both the U.S. and Colorado Supreme Courts have clearly held that zoning is a constitutional

and valid regulation of real property.¹ Such authority is of course limited, however, particularly by the federal and Colorado constitutions. Both the federal and the Colorado constitutions include “takings” clauses. The federal takings clause provides “nor shall private property be taken for public use, without just compensation”.² This provision is applicable to the states through the Fourteenth Amendment.³ The Colorado takings clause provides, in relevant part, “[p]rivate property shall not be taken or damaged, for public or private use, without just compensation”.⁴

Property owners frustrated by land use regulations have challenged them with claims that the regulations go too far and therefore constitute a “regulatory taking” of their property. Both the United States Supreme Court and the Colorado Supreme Court have recognized that there can be instances when government land use regulations may affect and limit the use of private land to such an extent that a regulatory taking occurs.⁵ For example, a land use regulation may result in a regulatory taking if it denies an owner “economically viable use of his land”.⁶

A review of case law regarding regulatory taking claims based on alleged decreased value in property value shows it has proven difficult for private property owners to establish such claims against the government.⁷ The courts have consistently held that a landowner is not entitled to the most beneficial use of his or her land, and a decrease in value resulting from a land use regulation, standing alone, does not constitute a “taking”.⁸ The decline in economic value of a property “must be very great” in order for a taking to be found.⁹ The U.S. Supreme Court has a long history of decisions in which it has been determined that very significant reductions in the value of land did *not* amount to takings: In Agins v. City of Tiburon, 447 U.S. 255 (1980), there was no taking with an eighty-five percent reduction in value; In Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) there was no taking with a seventy-five percent reduction in value; In

¹ Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926); Colby v. Board of Adjustment, 81 Colo. 344, 255 P. 443 (Colo. 1927); Animas Valley Sand and Gravel v. Board of County Commissioners of the County of La Plata, 38 P.3d 59 (Colo. 2001).

² U.S. Const. Amend. V.

³ Animas Valley Sand and Gravel, 38 P.3d at 63 (Colo. 2001).

⁴ Colo. Const. Art. II, § 15. For purposes of takings claims based on land use regulation, the Colorado Supreme Court has interpreted the Colorado takings clause as consistent with the federal clause. Animas Valley Sand and Gravel, 38 P.3d at 63 (2001); Cent. Colo. Water Conservancy Dist. v. Simpson, 877 P.2d 335, 346 (Colo.1994).

⁵ Palazzolo v. Rhode Island, 533 U.S. 606 (2001); Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992); Penn Central Transp. Co. v. City of York, 438 U.S. 104 (1978); Pennsylvania Coal Co. v. Mahon, 260 U.S. 399 (1922); Animas Valley Sand and Gravel v. Board of County Commissioners of the County of La Plata, 38 P.3d at 63 (2001).

⁶ Nollan v. California Coastal Commission, 483 U.S. 825,834 (1987); Agins v. Tiburon, 447 U.S. 255,260 (1980); Animas Valley Sand and Gravel, 38 P.3d at 63 (Colo. 2001). See also Penn Central Transp. Co., 438 U.S. at 127 (1978).

⁷ CRS § 29-20,201 *et seq.*, entitled “Regulatory Impairment of Property Rights”, “is not a comprehensive takings bill” and “does not address loss of economically viable use”. CRS § 29-20,201 *et seq.*; Colorado Lawyer, November, 1999, Specialty Law Column, “Recent Developments in Regulatory Takings” by Greg Clifton.

⁸ Penn Central Transp. Co., 438 U.S. at 131 (1978); Euclid, 272 U.S. 365 (1926) (75% diminution in value caused by zoning law); Hadacheck v. Sebastian, 239 U.S. 394 (1915) (87 1/2 % diminution in value).

⁹ Colorado Lawyer, April, 2002, Specialty Law Column, “Animus over Animas? – Changes in Regulatory Takings Law in Colorado” by Alexis M. Strachan.

July 9, 2011
Page 3 of 3

Hadacheck v. Sebastian, 239 U.S. 394 (1915) there was no taking with a 92.5% diminution in value.¹⁰

¹⁰ Animas Valley Sand and Gravel, 38 P.3d at 63 (2001).