

Supreme Court Holds That Acquisition of Land After Restrictions Are Enacted Does Not Preclude A Takings Claim

The United States Supreme Court (Court) has held that the acquisition of land with notice of a prior regulation does not, in itself, bar the buyer from claiming that the regulation constitutes a taking. The Court also reversed the Rhode Island Supreme Court's holding that a landowner's takings claim, arising from the state coastal protection agency's denial of the landowner's permit to develop coastal wetlands, was not ripe, but it affirmed the state Supreme Court's holding that the landowner failed to establish a deprivation of all economic value of his wetlands property.

In 1959, Anthony Palazzolo (Palazzolo) and several associates formed Shore Gardens, Inc. (SGI) to purchase an 18-acre waterfront parcel of land (Property) in Westerly, Rhode Island. Most of the Property was salt marsh designated as coastal wetlands under Rhode Island law. Over the next seven years, SGI made several attempts to develop the Property and submitted intermittent applications to state agencies to fill extensive portions of the Property. All applications were denied.

In 1978, ownership of the Property passed from SGI to Palazzolo, who continued efforts to develop the Property. In 1983, Palazzolo submitted a new application to develop the Property as a beach club, which included a request for permission to fill the entire marsh area on the Property. The Rhode Island Coastal Resources Management Council (Council) rejected the application, citing concerns about the waters and wetlands of the area. In 1985, Palazzolo submitted a more limited beach club proposal, which included a request for permission to fill 11 acres of the Property.

The Council also denied this request, stating that, under its regulations, a landowner wishing to fill salt marsh in the affected area needed a "special exception" from the Council. The Council determined that the beach club proposal conflicted with the regulatory standard for a special exception. To secure a special exception under the Council's regulations, the proposed activity must serve a "compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests."

Palazzolo sued in state court, asserting that the Council's application of its wetlands regulations constituted a regulatory taking without compensation in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. He alleged that the Council's action deprived him of "all economically beneficial

use” of his property, resulting in a complete taking of his property requiring compensation, and sought damages in the amount of \$3,150,000.

After an adverse ruling by the lower court, the Rhode Island Supreme Court affirmed. The state Supreme Court held that Palazzolo’s takings claim was not ripe for a review by a court; that Palazzolo had no right to challenge regulations predating 1978, when he became the owner of the Property; and that his claim of deprivation of all economically beneficial use of the Property was contradicted by evidence that \$200,000 in development value remained on an upland (non-wetland) parcel of the Property. Palazzolo appealed to the United States Supreme Court (Court).

The Court reversed the state Supreme Court’s holding that Palazzolo’s takings claim was premature and its holding that Palazzolo was barred from challenging regulations that predated his ownership of the Property, but affirmed the state Supreme Court’s holding that Palazzolo failed to establish a deprivation of all economic value of the Property.

The state Supreme Court had held that Palazzolo’s takings claim was premature because he had not received a final decision from the Council. The state Supreme Court reasoned that, although the Council had rejected Palazzolo’s effort to fill in all of the wetlands, and then rejected his proposal to fill 11 of the wetland acres, perhaps an application to fill (for example) five acres would have been approved. Thus, the court reasoned, doubt remained as to the extent of development the Council would allow on the Property due to Palazzolo’s failure to explore other uses for the Property that would involve filling substantially less wetlands. According to the state Supreme Court’s ruling, it apparently was Palazzolo’s duty to keep applying until he either found that point or exhausted all possibilities.

The Court, however, noted that “the unequivocal nature of the wetland regulations at issue” and “the Council’s application of the regulations to the subject property” precluded permission to fill any wetlands on the Property. The Court observed that the Council’s regulations allow for a special exception to fill wetlands only when a compelling public purpose is served. However, the Council had concluded that Palazzolo’s proposals did not meet the compelling public purpose standard and did not indicate that it would have allowed filling of a smaller area. Thus, the Council’s decisions “make plain that the agency interpreted its regulations to bar petitioner from engaging in any filling or development activity on the wetlands.... Further permit applications were not necessary to establish this point.”

The state Supreme Court had found Palazzolo's claim to be premature also because he had failed to seek permission for a use of the Property that would involve development only of its upland, non-wetlands portion. The Court responded that, in determining the question of ripeness, "it is important to bear in mind the purpose that the final decision requirement serves. Our ripeness jurisprudence imposes obligations on landowners because '[a] court cannot determine whether a regulation goes "too far" unless it knows how far the regulation goes.' Ripeness doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted use." The Court found that the record revealed no real dispute as to the extent of development that the state would have permitted on Palazzolo's upland parcel.

Further, Palazzolo's failure to apply for permission to develop the subdivision that was the basis for the damages sought in his inverse condemnation suit did not render his claim unripe. By virtue of the Council informing Palazzolo that he could not fill the wetlands, it logically follows that they would not allow him to fill and then build a subdivision on the Property.

The state asserted yet a third ripeness issue. The state claimed that, because Palazzolo had never applied for permission to develop the 74-lot subdivision that was the basis for the damages claimed in his takings suit, he could not now be heard to claim that permission for such a use had been denied. The state argued that the subdivision proposal may have been unapprovable by other agencies for reasons other than wetlands, such as zoning or sewage disposal considerations. The state accused Palazzolo of a hide-the-ball strategy of submitting applications for more modest uses to the Council, only to assert later a takings action based on the purported inability to build a much larger project.

The Court rejected the state's argument, reasoning that its inquiry was limited to whether the challenged agency action makes clear the extent of development permitted. In such a case, it held, "federal ripeness rules do not require the submission of further and futile applications with other agencies."

The Court then turned its attention to the state Supreme Court's holding that Palazzolo could not claim to be deprived of all economic use of the Property because the wetlands regulations were in force when he took title to the Property. The state Supreme Court had reasoned, in part, that Palazzolo had no reasonable investment-backed expectation to develop the whole Property because a purchaser is deemed to have notice of an existing restriction and, therefore, is barred from claiming that it effects a taking.

The Court disagreed, holding that if the Court accepted the state's argument, the transfer of title after enactment of a law affecting property would absolve the state of its obligation to defend its action and would, in effect, put an expiration date on the Constitution's prohibition against the taking of private property by government without just compensation.

Having held that the case is ripe and that the date of transfer of title did not bar Palazzolo's takings claim, the Court then turned to the merits of the takings claim. The state Supreme Court had held that, even if Palazzolo's claim was ripe and allowable, he did not have a meritorious takings claim because a taking requires that the government action has taken essentially all economically beneficial use of the land. The Court agreed. The Court noted that even Palazzolo agreed that the Property retained \$200,000 in development value under the state's wetland regulations. The Court acknowledged that a state may not evade a takings claim on the premise that the landowner was left with a token interest. That was not the case here, however: "A regulation permitting a landowner to build a substantial residence on an 18-acre parcel does not leave the land 'economically idle.'"

Palazzolo pressed his argument further, arguing, for the first time in the case, that "the upland parcel is distinct from the wetlands portions, so he should be permitted to assert a deprivation limited to the latter." The Court noted that "[t]his contention asks us to examine the difficult, persisting question of what is the proper denominator in the takings fraction. ... Some of our cases indicate that the extent of deprivation effected by a regulatory action is measured against the value of the parcel as a whole ... , but we have at times expressed discomfort with the logic of this rule." To its obvious relief, the Court found a basis on which to decline to review the issue, because Palazzolo "did not press the argument in the state courts, and the issue was not presented in the petition" to the Court. Therefore the Court sent the case back to the Rhode Island court for further proceedings.

Palazzolo v. Rhode Island, 121 S. Ct. 2448, June 28, 2001

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