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Ninth Circuit Finds That Local Rent Control Constitutes a Regulatory Taking

The vexing issue of "regulatory takings" has bubbled up again in a provocative ruling by the Ninth Circuit. In *Guggenheim v. City of Goleta*, 2009 DJDAR 14205 (September 28, 2009), the Ninth Circuit reversed the District Court and struck down the City of Goleta's Rent Control Ordinance ("RCO") as an improper regulatory taking under the Fifth and Fourteenth Amendments of the U.S. Constitution. The RCO imposed limitations on the rent increases mobile home park owners could charge for mobile home spaces. The Court based its decision on an earlier regulatory takings case, *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

A Rare Pro-Landowner Takings Case that Covers Several Key Issues Critical to Landowners, Local Governments and Attorneys

In *Penn Central*, the U.S. Supreme Court denied a takings claim brought by the owner of Grand Central Terminal following the refusal of the New York City Landmarks Preservation Commission to approve plans for the construction of a 50-story office building over Grand Central. The Supreme Court held that the property owners could not establish a "taking" merely by showing that they had been denied the right to exploit the adjacent airspace, that the denial did not interfere with the owners' present use of Grand Central nor prevent them from realizing a reasonable rate of return on their investment (the preexisting air rights were transferable to other parcels in the vicinity); the fact that the landmarks law affected some owners more severely than others did not itself result in a taking.

The *Penn Central* decision resulted in a three-part test to determine whether a regulatory taking has occurred: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with the property owner's investment-backed expectations; and (3) the character of the governmental action. While each factor is considered individually, ultimately the three must be weighed together.

In *Guggenheim*, the City of Goleta's RCO restricted rental increases in mobile home parks to 75 percent of the Consumer Price Index on an annual basis. The rent also could be increased to pass through increased operating costs, capital expenses, and capital improvements. The RCO originated in the Santa Barbara County Code in 1979, and was amended in 1987. The plaintiffs purchased their mobile home park in 1997, when the property was part of the unincorporated County and was subject to the RCO. The property became part of the City of Goleta when the City incorporated in 2002, at which time the City adopted most of the County Code, including the RCO.

The Court held that a plaintiff may raise a facial challenge under *Penn*

Central, and applied the three factors to plaintiff's claim. As to the first factor, the economic impact of the regulation on the claimant, the Court found that this factor weighed heavily in favor of the park owners. Evidence produced in the District Court showed that the value of a mobile home in the park had increased approximately 225 percent over a period of seven years, and that the effect of the RCO was to give that entire increase in value to the renter. Although the park owners' investment increased by approximately 10 percent annually, the Court concluded that the effect of the RCO was a "significant economic transfer" from the park owners to the tenants, and a significant loss for the park owners.

As to the second *Penn Central* factor, the extent to which the regulation has interfered with investment-backed expectations, the Court concluded that this factor was not determinative for either party. On one hand, the park owners purchased the property knowing it was subject to the RCO. On the other hand, according to the Court, they purchased the property with the hope that they would be able to challenge the legality of the RCO. In dissent, Judge Kleinfeld found that the majority had no authority to make the latter conclusion, and would have ruled in favor of the City because the park owners "got what they bargained for" – a mobile home park subject to the RCO.

As to the third *Penn Central* factor, the character of the governmental action, the Court concluded that this factor weighed strongly in favor of the claimants. The Court concluded that the RCO inordinately burdened mobile home park owners with the costs of the City's community-wide interest in providing affordable housing.

Based on its analysis of the three *Penn Central* factors taken together, the Court concluded that the RCO went too far and constituted a regulatory taking under the Fifth and Fourteenth Amendments.

The *Guggenheim* decision also contains important discussions regarding key issues such as standing, ripeness, and the evidence that may be considered in a facial takings challenge. The Court also addressed, and rejected, plaintiff's due process and equal protection claims. [A copy of the full opinion can be found here.](#)

Please contact the authors directly if you have any questions about this important case or with any other land use assistance you may need.