GOLDWATER INSTITUTE

Property Ownership Fairness Act: Regulatory Takings

AN ACT relating to regulatory takings and just compensation.

Section 1. Diminution in value; just compensation

(A) If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

(B) This section does not apply to a land use law that:

1. Limits or prohibits a use or division of real property if it is narrowly tailored to protect the public health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;
2. Limits or prohibits the use or division of real property commonly and historically recognized as a public nuisance under common law;
3. Is required by federal law;
4. Limits or prohibits the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitutions of this state and the United States;
5. Establishes locations for utility facilities;
6. Does not directly regulate an owner's land; or
7. Was enacted before the effective date of this section.

(C) The owner shall not be required to submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to this section.

(D) If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner may file suit for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel. This written demand for just compensation supersedes any other statutory notice or demand requirements.

(E) Any demand for landowner relief or any waiver that is granted in lieu of compensation runs with the land.

(F) An action for just compensation based on diminution in value must be made or forever barred within three years of the effective date of the land use law, or of the first date the reduction of the existing rights to use, divide, sell or possess property applies to the owner's parcel, whichever is later. A written demand for just compensation made by the owner of the property pursuant to subsection E of this section is an exhaustion requirement that tolls the three-year time period for ninety days or the length of time that it takes of this state or the political subdivision of the state that enacted the land use law to deny the written demand, whichever is less.

(G) The remedy created by this section is in addition to any other remedy that is provided by the laws and constitution of this state or the United States and is not intended to modify or replace any other remedy.

(H) Nothing in this section prohibits this state or any political subdivision of this state from reaching an agreement with a private property owner to waive the owner's claim for diminution in value only if such claim directly results from a government action requested by the property owner.

Section 2. Burden of proof

In any action for just compensation or a diminution in value, the question whether a land use law shall be exempted under Section 1(B) shall be a judicial question, and determined without regard to any legislative assertion that the land use law is exempted. The state or political subdivision of this state that enacted the land use law shall establish by clear and convincing evidence that the land use law is exempt pursuant to Section 1(B).

Section 3. Attorney fees and costs

(A) A property owner is not liable to this state or any political subdivision of this state for attorney fees or costs in any action for diminution in value.

(B) A prevailing plaintiff in an action for just compensation that is based on diminution in value pursuant to Section 1 may be awarded costs, expenses and reasonable attorney fees.

Section 4. Definitions

In this article, unless the context otherwise requires:

(A) "Fair market value" means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.

(B) "Just compensation" for purposes of an action for diminution in value means the sum of money that is equal to the reduction in fair market value of the property resulting from the enactment of the land use law as of the date of enactment of the land use law.

(C) "Land use law" means any statute, rule, ordinance, resolution or law enacted by this state or a political subdivision of this state that regulates the use or division of land or any interest in land or that regulates accepted farming or forestry practices.

(D) "Owner" means the holder of fee title to the subject real property.

Section 5. Applicability

If a conflict between this article and any other law arises, this article controls.

Section 6. Severability

If any provision of this act or its application to any person or circumstance is held invalid that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.