

SUPREME COURT OF GEORGIA

Jervey v. City of Marietta

274 Ga. 754 (Ga. 2002) · Decided February 4, 2002

SUMMARY

The Georgia Supreme Court reviewed a challenge to the City of Marietta’s denial of rezoning for property proposed for development as a Walgreens store. Applying the balancing test for unconstitutional takings in zoning cases, the court held that the existing office and institutional classification served the substantial public interest of buffering an adjoining residential area and affirmed the trial court’s judgment for the City.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice
JURISDICTION	Georgia
DECIDED	February 4, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jervey appealed by discretionary appeal from a trial-court judgment for the City in his action alleging that the City's denial of rezoning constituted an unconstitutional taking.
STANDARD OF REVIEW	The appellate court does not weigh the evidence; it reviews the trial record and will not disturb the trial court's findings unless they are clearly erroneous.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Richard Jervey v. City of Marietta

TOPICS

- zoning
- takings clause
- municipal law
- constitutional law
- real estate

PRACTICE AREAS

- zoning and land-use regulation
- constitutional takings
- municipal law
- real estate

QUESTIONS PRESENTED

1. Whether the trial court applied the correct legal standard in determining whether the City's denial of rezoning and existing OI classification constituted an unconstitutional taking.
2. Whether the evidence required a finding that the City's zoning classification caused a significant detriment to Jervey without a substantial relation to the public health, safety, morality, and welfare.

HOLDINGS

1. The relevant inquiry is whether the current zoning classification causes the property owner a significant detriment having no substantial relation to the public health, safety, morality, and welfare, rather than simply whether the denial of the requested rezoning was an unconstitutional taking.
2. The OI classification did not constitute an unconstitutional taking because the City demonstrated a substantial public benefit in protecting surrounding residential neighborhoods and Jervey did not present clear and convincing evidence requiring a contrary result.

KEY QUOTATIONS

“The actual standard for determining the existence of an unconstitutional taking is whether the current OI zoning classification causes the property owner a significant detriment having no substantial relation to the public health, safety, morality, and welfare.” (274 Ga. 754)

“This state uses a balancing test to determine whether the police power has been properly exercised. The test weighs the benefit to the public against the detriment to the individual.” (274 Ga. 755)

“On appeal, it is not the function of the appellate court to weigh the evidence, but to look instead to the trial record. Unless the findings are clearly erroneous, they should not be disturbed on appeal.” (274 Ga. 755)

FACTUAL BACKGROUND

Richard Jervey owned 2.278 acres in Marietta at a major intersection and sought rezoning from office and institutional use to neighborhood retail commercial use for a Walgreens store. The City denied the application and retained the OI classification, in part to provide a buffer for an adjoining residential area. The trial court concluded that the zoning classification did not constitute an unconstitutional taking.

PROCEDURAL HISTORY

Jervey applied to rezone property from office and institutional (OI) to neighborhood retail commercial (NRC) to permit development of a Walgreens store. The City denied the application, and Jervey filed an unconstitutional-takings action. The trial court found no unconstitutional taking, and the Supreme Court of Georgia granted discretionary review and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Guhl v. Holcomb Bridge Road Corp.*, 238 Ga. 322, 323 (232 S.E.2d 830) (1977)

- Maree v. Phillips, 272 Ga. 52, 55 (5) (525 S.E.2d 94) (2000)
- Holy Cross Lutheran Church v. Clayton County, 257 Ga. 21, 23 (2) (354 S.E.2d 151) (1987)
- City of Roswell v. Heavy Machines Co., 256 Ga. 472, 474 (349 S.E.2d 743) (1986)
- Jehco Ventures v. City of Smyrna, 259 Ga. 599, 602 (2) (385 S.E.2d 397) (1989)
- Flournoy v. City of Brunswick, 248 Ga. 573, 574 (285 S.E.2d 16) (1981)
- Jones v. City of Atlanta, 257 Ga. 727, 729 (363 S.E.2d 254) (1988)

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