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Mayfield Hts. must pay developer

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Mayfield Heights

- In a ruling that could affect every community in the state, the Ohio Supreme Court has ordered the city to compensate developers for not allowing them to build a shopping center on their land.

Two years ago, the state's highest court ruled that the city's single-family zoning for the 22-acre site near Mayfield Road and Interstate 271 was unconstitutional. The zoning had landed in court because Mayfield Heights officials had rejected requests to rezone the land.

The developers - Michael A. Shemo and Larry Goldberg - then demanded compensation, arguing that the zoning restriction and procedural delays constituted a temporary seizure of the property, banning owners from retail development and resulting in financial loss.

The high court unanimously agreed this month and sent the case back to Cuyahoga County Common Pleas Court to set damages. The award could be substantial, because the period of dispute ran from March 1992 to April 2001.

The case stems from guarantees in the U.S. and Ohio constitutions that private property cannot be taken by a public entity without just compensation. In this case, the argument was that the city effectively took the land by refusing to change the zoning.

"This is a landmark decision that will dramatically change zoning cases," said lawyer Stephen O'Bryan, who has represented municipalities and developers in Supreme Court zoning cases over the last 30 years.

He said the city held up the developer for more than nine years, even though the city lost several interim court cases, including one in which the property was deemed uninhabitable because of its proximity to Interstate 271, high-tension wires and freeway lights.

O'Bryan is unsure whether routine delays would create situations in which damages could be awarded. "But cities will be more at risk now in dealing with zoning decisions," O'Bryan said. "There will be more of a financial risk."

"In the past, you basically had to pay your attorney's fees. It certainly ups the ante for communities in zoning cases."

Mayfield Heights officials said this month's ruling threatens their ability to plan and guide development without fear of being sued by developers who don't get their way. "We are devastated by the ruling," said Mayor Margaret Egensperger.

"These developers are among the richest people I know, and they are asking taxpayers for money for their inconvenience."

Cleveland Heights Mayor Edward Kelley said the ruling is dangerous because it "puts the developer in the driver's seat. That's simply not good planning. If that ever comes up in Cleveland Heights, we'll fight it all the way to the U.S. Supreme Court."

Lyndhurst Mayor Barry Jacobson was sympathetic, but he said, "If you understand what your rights are and what the developer's rights are, then you really should not run into these issues."

"It's unfortunate that we are under attack on our home-rule policies," said Sally Broome, mayor of Gates Mills. "I don't know what the sum might be in Mayfield Heights, but 10 years of recompense could be a bank-breaker. I don't know how taxpayers could afford that. It's a bit frightening."

Shemo and Goldberg, who plan a Costco wholesale store on the site, are pleased, said their attorney, Sheldon Berns. "This is a very important decision with regard to property owners in this state," he said.

"It recognizes the right of a property owner to hold a city accountable for the property owner's loss if the city enforces an unconstitutional zoning ordinance or regulation against the property," Berns said.

Bart Wolstein, chairman of Heritage Development Corp., which has fought several communities over zoning, said the ruling is a victory for all developers. "The case says that cities have to follow the law, just like developers," he said. "If they don't, they are going to have to pay for it."

During the dispute, Mayfield Heights officials and residents opposed retail and higher-density residential use of the property, claiming that it would draw more traffic, decrease property values and damage the serenity of an adjacent residential neighborhood. The site was originally zoned for single-family homes.

In 1992, the developers went to court to get an order to allow the land to be zoned for midrise multifamily housing units. Three years later, they changed their minds and requested that the property be zoned retail and wholesale. The city again balked, and a new round of court actions began in 1995.

In 2000 the Supreme Court concluded that the site - between I-271 and Bonnie Lane/Golden Gate Boulevard, north of a Best Buy store - was not suitable for residential use and that the city could not justify residential zoning. Therefore, the court said, that zoning was unconstitutional and the proposed retail use was reasonable. The court ordered the city to change the zoning to retail, which the city did not do until April 2001 after other disputes over roads and access to the site.

"We don't believe they lost any amount of money," said Brian Carr, Mayfield Heights' assistant law director. "The Supreme Court has created a mess with this ruling, and it sets a very dangerous precedent."

A city's best defense against unwanted development is good lawyers and reasonable zoning laws that do not impinge upon a developer's constitutional rights, said John Gotherman, an attorney for the Columbus-based Ohio Municipal League.

"I don't think it's time to panic, but if a city gets hit with one of these, it can be very troublesome," said Gotherman.

Mayfield Heights will decide at Monday's City Council meeting what action to take next. "We are definitely going to take a stand," Egensperger said.

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