Community Development Department

South Dayton Building
Moratorium Discussion

Board of County Commissioners
Item 18b. September 1, 2022
Background

• At the June 29th, 2022 special BOCC meeting in Dayton, a citizen asked about the possibility of a building moratorium until the second bridge is built and the improvements in the South Dayton Area Drainage Master Plan are implemented.

• Commissioner Gray asked that the item be researched and agenized for a later meeting.
Types of Building Moratoriums

• Broad Moratorium
  • Prohibits all building in a large area such as an entire town or county

• Indefinite Moratorium
  • In place for an undefined amount of time

• Targeted Moratorium
  • Covers a specific area for a specific purpose
  • Has a specific time limit
Broad and Indefinite Moratoriums

• Broad or Indefinite building moratoriums are considered a regulatory taking and are illegal without proper compensation to the property owners
  • Strip property owners of all economically viable use of their land
  • Violate the takings clauses of the 5th and 14th amendments of the U.S. Constitution

• LUCAS v. SOUTH CAROLINA COASTAL COUNCIL
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• In 1986, Lucas bought two residential lots on a South Carolina barrier island to build single-family homes.

• In 1988, the state legislature enacted the Beachfront Management Act, which prohibited Lucas from building permanent structures on his parcels.

• In 1992 the US Supreme Court ruled that the moratorium deprived him of all "economically viable use" of his property and therefore effected a "taking" under the Fifth and Fourteenth Amendments that required the payment of just compensation.

• “We think, in short, that there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.”
Targeted Moratorium

• Targeted Moratoriums can be allowed but they must:
  • Have justification
    • “[T]he Fifth Amendment is violated when land-use regulation "does not substantially advance legitimate state interests or denies an owner economically viable use of his land."
  • Specific actions must be taken to remedy the situation
  • Be limited in time
  • Must be limited in scope

• Depending on how it is structured and the justification a targeted moratorium may still require compensation.
  • FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, CALIFORNIA.
In 1957, appellant church purchased land on which it operated a campground, known as "Lutherglen,“

The land is located in a canyon along the banks of a creek that is the natural drainage channel for a watershed area. In 1978, a flood destroyed Lutherglen's buildings.

In response to the flood, Los Angeles County, in 1979, adopted an temporary ordinance prohibiting the construction or reconstruction of any building or structure in an interim flood protection area that included the land on which Lutherglen had stood.

“"Temporary" regulatory takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings for which the Constitution clearly requires compensation.”
Is there Justification for A Moratorium in Dayton?

At this time there is not enough justification for a moratorium on the south side of the Carson River due to the need for a second bridge based on:

• Fire Risk
  • Mostly classified as IR -3

• Flooding risk
  • 1% chance annually of a 100 year flood event
  • 0.2% chance annually of a 500 year flood event

• Bridge Capacity
  • Average daily trips of about 6,000
Fiscal Impacts of a Moratorium

• Loss of building permit fees - $1.132M fiscal year ended 2022 (not all fees are from new construction)
• Loss of Road Construction Tax - $603,939.36 fiscal year ended 2022
• Loss of Park Construction Tax - $298,176.19 fiscal year ended 2022
• Loss of Sewer Connection Fees (Dayton) - $2.2M 2021 calendar year
• Loss of Water Connection Fees (Dayton) - $1M 2021 calendar year
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Questions?