

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2004-CA-379-M

THOMAS F. COLLINS, *et al.*,

Plaintiffs,

vs

MONROE COUNTY,

Defendant,

vs

STATE OF FLORIDA,

Third Party Defendant.

**ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT
MONROE COUNTY AND THIRD-PARTY DEFENDANT STATE OF FLORIDA**

This cause came on to be heard upon the Motion of Third Party Defendant, State of Florida, and Defendant Monroe County's Motion for Summary Judgment. The Court having reviewed the motions, memoranda, supporting documentation and having heard argument of counsel, finds and Orders as follows:

Plaintiffs assert that the Resolutions of the Board of County Commissioners granting them beneficial use determinations constitute final determinations by the Board as to what the Plaintiffs could do with their property. They also assert that the Resolutions constitute as-applied takings without full compensation.

The Court however, specifically finds that the BUD resolutions do not constitute

the meaningful applications necessary to ripen an as-applied takings claim. In *Glisson v. Alachua County*, 558 So. 2d 1030, 1036 (Fla. 1st DCA 1990), the court held:

The record in this case reflects that since adoption of CPA-5-87 and Ordinance 88-11, no individual appellant-landowner has applied for or been denied a development proposal, rezoning request, or variance from the development regulations. Therefore, appellants' challenge to the current land use regulations is a facial challenge.

The court therefore must treat the claims in this case as facial takings. Ripeness is not an issue in facial takings claims. In *Lost Tree Vill. Corp. v. City of Vero Beach*, 838 So. 2d 561, 571 (Fla. 4th DCA 2002), the court held:

The ripeness requirement, however, does not apply to facial takings, as the mere enactment of the regulation constitutes the taking of all economic value to the land. See *Glisson v. Alachua County*, 558 So. 2d 1030, 1036 (Fla. 1st DCA 1990).

As the federal courts have also held, a facial taking is a single harm, measurable and compensable when the statute is passed. *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993); *Carson Harbor Village Ltd. v. City of Carson*, 37 F.3d 468, 476 (9th Cir. 1994)

In the case at bar, the alleged taking was accomplished by the enactment of the County's Rate of Growth Ordinance. That means that if a taking occurred, it occurred in 1996. The four year statute of limitations found in § 95.11(3)(p), Fla. Stat., therefore applies in this case and it ran in 2000. Therefore, Plaintiffs' claims in these lawsuits, which were all filed after the expiration of the statute of limitations, are barred.

The Court therefore Orders and Adjudges that this cause is hereby DISMISSED WITH PREJUDICE.

All other pending motions are hereby denied as moot.

DONE and ORDERED in chambers in Key West, Monroe County, Florida this

1st day of June, 2007.

David J. Audlin, Jr.

DAVID J. AUDLIN, JR.
CIRCUIT JUDGE

cc: James S. Mattson, Esq.
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