

# Submerged Lands/Zoning: Federal Appellate Court Addresses Whether Taking Claim is for Ripe Review



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10/22/2024

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The United States Court of Appeals for the Eleventh Circuit addressed in an October 16th Opinion whether an alleged taking by a city was ripe for judicial review. *See Fane Lozman v. City of Riviera Beach, Florida*, USCA11 Case: 23-11119 (11th Cir. 2024).

The alleged taking involved the enactment of a comprehensive plan and ordinance that restricted a property owner's ("Lozman") use of submerged land.

Lozman's Complaint was dismissed for lack of subject-matter jurisdiction.

In 1991, the City of Riviera Beach created a "Specialized Preservation Future Land Use" designation that "preclude[d] any development of [s]ubmerged [l]ands . . . to the maximum extent permissible by law."

Lozman bought around eight acres of property in the city in 2014. Most of the property was submerged. The property was zoned to allow "the development of single-family homes" when purchased. This zoning designation was inconsistent with the Specialized Preservation Future Land Use designation until the city corrected the discrepancy in 2020 by adopting "Ordinance 4147 to create a matching special preservation zoning district" that mirrored the plan passed in 1991.

The plan only allowed owners to develop residential fishing or viewing platforms and docks. An exception existed for properties with "judicially determined vested rights to develop or alter submerged lands."

Lozman purchased the land under the impression that it could be developed for single-family residential use. Based on this intended use, which would require "bulkheading and filling the submerged water[,] " the property was appraised at nearly fifty million dollars. However, Lozman has not attempted to obtain federal or state permits to begin this development.

After Lozman "secured a floating home on his property with concrete blocks," he faced both federal and state enforcement actions for violating various development regulations. He then brought a takings claim against the City of Riviera Beach. The Complaint alleged that the land use regulations "deprived him of all economically beneficial or productive use of his parcel."

The United States District Court granted summary judgment in favor of the city. Lozman appealed.

The issue presented before the Eleventh Circuit was "whether a property owner's complaint that a city's comprehensive plan and ordinance caused a taking of his property is ripe for judicial review." In general, claims that rely on "contingent future events" are not ripe. For takings claims in particular, ripeness

depends on whether “the government entity charged . . . has reached a final decision regarding the application of the regulation[] to the property at issue.”

The Eleventh Circuit determined that none of the relevant land regulations constituted a “final decision.” It noted the government had not yet decided how it would apply the “locality-wide” rules to Lozman’s specific property. Therefore, the claim was not ripe. Lozman “has not applied for a permit, variance, or rezoning” and therefore does not know how the regulations “would apply to the development of his parcel[,]” especially since the comprehensive plan outlines several exceptions to the regulation.

The Eleventh Circuit then identified two distinguishable situations in which an individual need not apply for a permit, variance, or rezoning before their claim is ripe for review.

First, a “targeted” zoning ordinance may be considered a final decision. This could include situations in which a city enacts a specific ordinance that only targets one developer’s property.

Second, landowners are not required to seek a final decision if it would be futile for them to do so. This exception applies in situations where a developer’s previous applications for permits were denied, or when a developer’s site plans and building permits were previously revoked and rejected.

Neither of these exemptions applied to Lozman’s situation. As a result, the Eleventh Circuit noted that it could not “know the extent of the economic damage, if any,” suffered by Lozman. His failure to seek permission from the relevant regulatory bodies, therefore, resulted in the dismissal of his claim.

A copy of the Opinion can be downloaded [here](#).