

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-03-049

ME-03-12/7/05

EDWARD TRUESDALE,

Plaintiff

v.

**ORDER
AND
DECISION**

TOWN OF NORTH BERWICK,

Defendant

Mr. Truesdale is the owner of a 1.3 acre undeveloped lot with frontage on the Great Works River in North Berwick. The lot is in the Village Residential B zone and is entirely within the Resource Protection District. There is a substantial history that relates to this lot most of which is not relevant to the central remaining issue.

In early 2003 Mr. Truesdale applied for a building permit which was denied. An appeal was taken to the North Berwick Board of Appeals which affirmed the denial of the requested building permit. A three-count lawsuit was filed in this court. Counts I and III were combined, briefed and argued, and decided in favor of the defendant by order dated October 6, 2004. Count II is a takings claim. The parties are proceeding on a joint statement of stipulated facts in lieu of trial on Count II, have submitted briefs and have waived oral argument.

While the inability to build is undoubtedly frustrating and costly to Mr. Truesdale, a taking has not occurred. As there has been no direct appropriation or physical invasion of the property by the government, the question is whether the zoning regulations, which make the property unbuildable, have denied Mr. Truesdale

"all economically beneficial or productive use of land." See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992).

In this case while the value of the land has been reduced and the permissible uses curtailed the land still has value as recognized in the market value of \$5,000 to \$7,500 found by the defendant's appraisers and permissible uses remain. The plaintiff also fails on any claim that he is entitled to compensation under the "investment-backed expectations" doctrine found at note 8 of *Lucas* citing *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978) since he acquired the property with the zoning restrictions already in place.

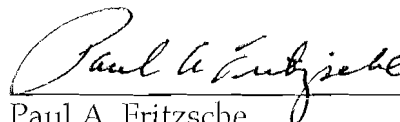
The entry is:

Judgment for the defendant on Count II of the complaint.

Dated: December 7, 2005

PLAINTIFF:

Edward T. Clancy, Esq.
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Dover, NH 03820



Paul A. Fritzsche
Justice, Superior Court

DEFENDANT:

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