The Burger Court Opinion Writing Database

Eastlake v. Forest City Enterprises, Inc.

426 U.S. 668 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 20 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1563

City of Eastlake et al., Petitioners, *v.* Forest City Enterprises, Inc. | On Writ of Certiorari to the Supreme Court of Ohio.

[May —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question in this case is whether a city charter provision requiring proposed land use changes to be ratified by 55% of the voters violates the due process rights of a landowner who applies for a zoning change.

The city of Eastlake, Ohio, a suburb of Cleveland, has a comprehensive zoning plan codified in a municipal ordinance. Respondent, a real estate developer, acquired an eight-acre parcel of real estate in Eastlake zoned for "light industrial" uses at the time of purchase.

In May 1971, respondent applied to the City Planning Commission for a zoning change to permit construction of a multi-family, high-rise apartment building. The Planning Commission recommended the proposed change to the City Council, which under Eastlake's procedures could either accept or reject the Planning Commission's recommendation. Meanwhile, by popular vote, the voters of Eastlake amended the City Charter to require that any changes in land use agreed to by the Council

pp. 5-6

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 26 1976

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1563

City of Eastlake et al., Petitioners, v. Forest City Enterprises, Inc. | On Writ of Certiorari to the Supreme Court of Ohio.

[May —, 1976]

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 1, 1976

PERSONAL

Re: 74-1563 - City of Eastlake v. Forest City Enterprises

Dear Harry:

I have your personal memorandum of May 31 and I accept all, one, number 3 having been a Cornio typo which we had already caught.

1. As to the Ninth Circuit cite, we had refered to that case up front and then dropped it. The full case title will now go in.

2. "Under our constitutional assumptions . . ." is an acceptable substitute and is adopted.

I must fault you on your history -- unless, Heaven forbid, mine is at fault. It was Mao, not Lenin, who said "political power flows from the barrell* of a gun."

Regards,

Mr. Justice Blackmun

*and barrel has only one "L"!

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 1, 1976

Re: 74-1563 - City of Eastlake v. Forest City Enterprises

Dear Harry:

Thank you for the note on the above.

Your proposed substitute footnote 10 is acceptable to me down to the final three lines, which seem to hint at "things to come" in a way you likely do not intend.

Will it satisfy you if we put a period after the word amendment, which ends on line 8 of your proposal?

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1976

Re: 74-1563 - City of Eastlake v. Forest City Enterprises, Inc.

MEMORANDUM TO THE CONFERENCE:

I propose to make a few minor footnote additions to the opinion previously circulated.

First, on page 5, I propose to add the following footnote (new footnote 8), at the end of the sentence on line 9 ending with the words "unnecessary hardship."

> __/ By its nature, zoning "interferes" significantly with owners' uses of property. It is hornbook law that "[m]ere diminution of market value or interference with the property owner's personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance or to entitle him to a variance or rezoning." 8 McQuillan, Municipal Corporations § 25.44, at 111. There is, of course, no contention in this case that the existing zoning classification renders respondent's property valueless or otherwise diminishes its value below the value when respondent acquired it.

Second, on page 5, I propose to replace present footnote 8 with new footnote 9, which will read:

> __/ The power of initiative or referendum may be reserved or conferred "with respect to any matter, legislative or administrative, within the realm of local affairs . . . ." 5 McQuillan, Municipal Corporations, § 16.54, at 208. However, the Ohio Supreme Court concluded that only land use changes granted by the City Council when acting in a legislative capacity were subject to the referendum

process. Under the court's binding interpretation of state law, a property owner seeking relief from unnecessary hardship occasioned by zoning restrictions would not be subject to Eastlake's referendum procedure. For example, if unforeseeable future changes give rise to hardship on the owner, the holding of the Ohio court provides avenues of administrative relief not subject to the referendum process.

Finally, on page 10, I intend to add a new footnote at the end of the sentence on line 3 ending with the words "rezoning ordinance."

__/ The fears expressed by the dissent rest on the proposition that the procedure at issue here is "fundamentally unfair" to landowners; this fails to take into account the mechanisms for relief potentially available to property owners whose desired land use changes are rejected by the voters. First, if hardship is occasioned by zoning restrictions, administrative relief is potentially available. Indeed, the very purpose of "variances" allowed by zoning officials is to avoid "practical difficulties and unnecessary hardship." 8 McQuillan, Municipal Corporations § 25.159, at 511. As we noted, ante, at 7, remedies remain available under the Ohio Supreme Court's holding and provide a means to challenge unreasonable or arbitrary action. Euclid v. Ambler, supra.

Regards,

WEB

pp. 3, 5, 6, 8, 10

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Chief Justice

Circulated: _____

Recirculated: JUN 18 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1563

City of Eastlake et al., Petitioners, *v.* Forest City Enterprises, Inc. | On Writ of Certiorari to the Supreme Court of Ohio.

[June —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

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The city of Eastlake, Ohio, a suburb of Cleveland, has a comprehensive zoning plan codified in a municipal ordinance. Respondent, a real estate developer, acquired an eight-acre parcel of real estate in Eastlake zoned for "light industrial" uses at the time of purchase.

In May 1971, respondent applied to the City Planning Commission for a zoning change to permit construction of a multi-family, high-rise apartment building. The Planning Commission recommended the proposed change to the City Council, which under Eastlake's procedures could either accept or reject the Planning Commission's recommendation. Meanwhile, by popular vote, the voters of Eastlake amended the City Charter to require that any changes in land use agreed to by the Council

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1976

Re: 74-1459 - San Diego Bldg. Contractors Assn. v. City Council of City of San Diego
75-111 - Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court of California
(Held for 74-1563 - City of Eastlake v. Forest City Enterprises, Inc.)

MEMORANDUM TO THE CONFERENCE:

Two cases are being held for City of Eastlake.

(1) 74-1459 - San Diego Bldg. Contractors Assn. v. City Council of City of San Diego.

This is an appeal from the California Supreme Court. Appellants are organizations of property owners, developers and contractors. They filed suit in state court, challenging the constitutionality of a San Diego zoning ordinance adopted by the initiative process. The ordinance, which limits the height of buildings thereafter constructed in a prescribed "Coastal Zone" to a maximum of 30 feet, was adopted by the San Diego voters in the 1972 general election. Appellants contended that the ordinan violated the Due Process Clause, because no hearings were conducted pri to enactment of the ordinance.

The state trial court invalidated the ordinance on several grounds, including procedural due process. The Court of Appeals reversed, holding that federal due process requirements were satisfied by the election itself. The California Supreme Court affirmed, holding that, since the ordinance was one of general application, no notice and hearing were required by the Fourteenth Amendment. Such safeguards, the court concluded, were applicable only in quasi-judicial or adjudicatory settings. The court expressly rejected the contention that zoning legislation, by virtue of its impact upon affected property owners, required procedural safeguards inapplicable to other forms of legislation.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 16, 1976

RE: No. 74-1563 City of Eastlake, et al. v. Forest City Enterprises, Inc.

Dear John:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 27, 1976

Re: No. 74-1563, Eastlake v. Forest City Enterprises, Inc.

Dear Chief,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1976

Re: No. 74-1563 - City of Eastlake v. Forest City Enterprises Inc.

Dear Chief:

Please join me.

Sincerely,

BRW

The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1976

Re: No. 74-1563 - City of Eastlake v. Forest City Enterprises, Inc.

Dear Chief:

Please join me.

Sincerely,

T. M.

The Chief Justice

cc: The Conference

May 31, 1976

Re: No. 74-1563 - City of Eastlake v. Forest City Enterprises

Dear Chief:

I feel that my proposed revision of your footnote 10, set forth in the accompanying letter which is being circulated to the Conference, will be the answer to those who are possibly in dissent. In addition, I have the following two suggestions which I make to you privately:

1. Does not the Ninth Circuit quotation, set forth on page 9 of the opinion, deserve to have the case's title inserted?

2. I would be much happier if the last full sentence on page 3 began: "Under our constitutional assumptions, all power derives from the people . . . ." I recall that Lenin said that "by its nature" power often derives from the barrel of a gun.

3. There is something sadly wrong with the Northwestern citation to the Frank case as it appears on the last line in the body of the opinion on page 5.

Sincerely,

HAB

The Chief Justice

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1976

Re: No. 74-1563 - City of Eastlake v. Forest City Enterprises

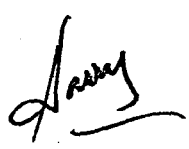
Dear Chief:

I am glad to join your opinion which holds that there was no due process violation in the "delegation" of the zoning decision here at issue to popular referendum. I have, however, one suggestion.

In footnote 10, on page 8, you set aside the problem of discrimination to the extent of observing that there is no claim here of racial discrimination in "the immediate design and intent of the charter amendment." As one of those in dissent in James v. Valtierra, 402 U.S. 137, 143 (1971), I am concerned, of course, with the problem of discrimination relating to wealth as well as to race. I therefore wonder whether the reservation of questions of this kind in your footnote 10 could not be made more clear, inasmuch as the case is in the posture that it is. The holding of the Supreme Court of Ohio, as evidenced by its syllabus, was that the challenged charter amendment was an unlawful delegation under the Due Process Clause. No other ground was relied on. No issue other than Due Process was presented in the petition for certiorari. Under these circumstances, no other question need be resolved in this opinion. For these reasons, I venture to suggest the following as a substitute for your present footnote 10.

> 10/ The Supreme Court of Ohio rested its decision solely on the Due Process Clause of the Fourteenth Amendment. See 41 Ohio St. 2d 187, ___; 324 N.E. 2d 740, 741-742 (1975). The only questions presented to this Court in the petition for certiorari concern the validity of that Due Process holding. Pet. for Cert. 2. Accordingly, we confine ourselves to considering whether due process is denied by the challenged charter amendment, not reaching any claims of discrimination that conceivably might be raised under the Equal Protection Clause of the Fourteenth Amendment.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 27, 1976

No. 74-1563 City of Eastlake v. Forest City Enterprises, Inc.

Dear Chief:

Your excellent opinion reflects the vote of the Conference, including my own vote, and I may very well join you.

I do have some second thoughts, however, about a holding that opens the way for the decision by referenda of virtually any issue public or private. In this case the respondent's request for a zoning change with respect to a specific piece of property (in effect, a variance) normally and traditionally would be resolved through the local legislative or administrative process, affording full opportunity for a hearing and probably some sort of judicial review. It seems a bit too facile to say (as, indeed, I did at the Conference) that zoning essentially is a legislative determination, that the legislature derives its authority from the people and therefore the people themselves - as the ultimate source of authority - may make an individualized as well as a generalized zoning decision. I am a little wary of leaving the decision of individual rights to popular vote.

It is difficult to see the limits of this doctrine or its impact upon the rule of law.

I will, therefore, await John Stevens' dissent hoping that he can identify a rationale that supports my basic instinct that we are about to step off the edge of a cliff.

Sincerely,

Lewis

The Chief Justice

cc: The Conference

lfp/ss

lfp/ss 6/17/76

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 17 1976

Recirculated: _____

No. 74-1563 CITY OF EASTLAKE v. FOREST CITY ENTERPRISES

MR. JUSTICE POWELL, dissenting.

There can be no doubt as to the propriety and legality of submitting generally applicable legislative questions, including zoning provisions, to a popular referendum. But here the only issue concerned the status of a single small parcel owned by a single "person".* This procedure, affording no realistic opportunity for the affected person to be heard, even by the electorate, is fundamentally unfair. If valid, this extraordinary procedure opens virtually unlimited opportunities for local legislative bodies to discriminate against individual citizens.

*In addition, until the provision was invalidated, the ordinance provided that the affected landowner should bear the cost of the referendum.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT Recirculated: JUN 1 8 1976

SUPREME COURT OF THE UNITED STATES

No. 74-1563

City of Eastlake et al., Petitioners, *v.* Forest City Enterprises, Inc. | On Writ of Certiorari to the Supreme Court of Ohio.

[June —, 1976]

MR. JUSTICE POWELL, dissenting.

There can be no doubt as to the propriety and legality of submitting generally applicable legislative questions, including zoning provisions, to a popular referendum. But here the only issue concerned the status of a single small parcel owned by a single "person." This procedure, affording no realistic opportunity for the affected person to be heard, even by the electorate, is fundamentally unfair. The "spot" referendum technique appears to open disquieting opportunities for local government bodies to by-pass normal protective procedures for resolving issues affecting individual rights.

— footnote omitted

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1976

Re: No. 74-1563 - Eastlake v. Forest City Enterprises

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1976

Re: 74-1563 - Eastlake v. Forest City Enterprises, Inc.

Dear Chief:

Although I still have doubts about the case and want to study it more closely before I finally decide which way to go, I presently believe that I will prepare a dissent in due course.

Respectfully,

John

The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 6/15/76

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-1563

City of Eastlake et al., Petitioners, v. Forest City Enterprises, Inc.) On Writ of Certiorari to the Supreme Court of Ohio.

[June 1976]

MR. JUSTICE STEVENS, dissenting.

The City's quaint reliance on the town meeting process of decisionmaking tends to obfuscate the two critical issues in this case. These issues are (1) whether the procedure which a city employs in deciding to grant or to deny a property owner's request for a change in the zoning of his property must comply with the Due Process Clause of the Fourteenth Amendment; and (2) if so, is the procedure employed by the City of Eastlake fundamentally fair.

I

We might rule in favor of the City on the theory that the referendum requirement did not deprive respondent of any interest in property and therefore the Due Process Clause is wholly inapplicable.[1/] After all, when respondent bought this parcel, it was zoned for light industrial use and it still retains that classification. The Court does not adopt any such rationale; nor, indeed, does the City even advance that argument. On the contrary

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 16, 1976

Re: 75-1563 - City of Eastlake v. Forest City Enterprises, Inc.

MEMORANDUM TO THE CONFERENCE

Attached is a revised draft of my dissenting opinion which was circulated yesterday. This revision includes changes on pages 12 and 13.

Sincerely,

John

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: 6/16/76

SUPREME COURT OF THE UNITED STATES

No. 74-1563

City of Eastlake et al.,)
)
Petitioners,) On Writ of Certiorari to the
) Supreme Court of Ohio.
v.)
)
Forest City Enterprises, Inc.)

[June 1976]

MR. JUSTICE STEVENS, dissenting.

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I

We might rule in favor of the City on the theory that the referendum requirement did not deprive respondent of any interest in property and therefore the Due Process Clause is wholly inapplicable.[1/] After all, when respondent bought this parcel, it was zoned for light industrial use and it still retains that classification. The Court does not adopt any such rationale; nor,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 16, 1976

Re: 74-1563 - City of Eastlake v. Forest City Enterprises, Inc.

Dear Chief:

Responding to the additions to your opinion, I propose to add the following footnote at the end of the first full paragraph on page 13 of my typewritten draft.

15/ The final footnote in the Court's opinion identifies two reasons why the referendum procedure is not fundamentally unfair. Both reasons are consistent with my assumption that there is virtually no possibility that an individual property owner could be expected to have his application for a proposed land use change decided on the merits.

The first of the Court's reasons is that if "hardship" is shown, "administrative relief is potentially available"; that "potential" relief, however, applies only to some undefined class of claims that does not include this respondent's. A procedure in one case does not become constitutionally sufficient because some other procedure might be available in some other case.

The second of the Court's reasons is that there is a judicial remedy available if the zoning ordinance is so arbitrary that it is invalid on substantive due process grounds. This reason is also inapplicable to this case. There is no claim that the city's zoning plan is arbitrary or unconstitutional, even as applied to respondent's parcel. But if there is a constitutional right to fundamental fairness in the procedure applicable to an ordinary request for an amendment to the

zoning applicable to an individual parcel, that right is not vindicated by the opportunity to make a substantive due process attack on the ordinance itself.

Respectfully,

JH

The Chief Justice

Copies to the Conference

3, 4, 5, 11, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 18 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1563

City of Eastlake et al., Petitioners, *v.* Forest City Enterprises, Inc. } On Writ of Certiorari to the Supreme Court of Ohio.

[June —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN joins, dissenting.

The city's ~~quaint~~ reliance on the town meeting process of decisionmaking tends to obfuscate the two critical issues in this case. These issues are (1) whether the procedure which a city employs in deciding to grant or to deny a property owner's request for a change in the zoning of his property must comply with the Due Process Clause of the Fourteenth Amendment; and (2) if so, whether the procedure employed by the city of Eastlake is fundamentally fair.

I

We might rule in favor of the city on the theory that the referendum requirement did not deprive respondent of any interest in property and therefore the Due Process Clause is wholly inapplicable.[1] After all, when respondent bought this parcel, it was zoned for light industrial use and it still retains that classification. The Court does not adopt any such rationale; nor, indeed, does the city even advance that argument. On the contrary, throughout this litigation everyone has assumed, with-

[1] The Fourteenth Amendment provides: "No State shall . . . deprive any person of . . . property, without due process of law . . . ." U. S. Const., Amend. XIV, § 1.

Re: 74-1563 - City of Eastlake v. Forest City Enterprises, Inc.

Substitute for first full paragraph on page 3:

A zoning code is unlike other legislation affecting the use of property. The deprivation caused by a zoning code is customarily qualified by recognizing the property owner's right to apply for an amendment or variance to accommodate his individual needs. The expectancy that particular changes consistent with the basic zoning plan will be allowed frequently and on their merits is a normal incident of property ownership. When the governing body offers the owner the opportunity to seek such a change--whether that opportunity is denominated a privilege or a right--it is affording protection to the owner's interest in making legitimate use of his property.

The fact that an individual owner (like any other petitioner or plaintiff) may not have a legal right to the relief he seeks does not mean that he has no right to fair procedure in the consideration of the merits of his application. The fact that codes regularly provide a procedure for granting individual exceptions or changes, the fact that such changes are granted in individual cases with great frequency, and the fact that the particular code in the record before us contemplates that changes consistent with the basic plan will be allowed, all support my opinion that the opportunity to apply for an amendment is an aspect of property ownership protected by the Due Process Clause of the Fourteenth Amendment.