

From: Bob Blythe
Sent: Monday, February 13, 2017 5:26 PM
To: Bradley Priest
Cc: Jack Simoneau
Subject: Potential road alignment in rezoning

Brad,

This is in reference to the question of a potential thoroughfare alignment affecting a proposed rezoning of property which would be affected by the thoroughfare. There seems to be a thought that there is a state law, either by statute or by court ruling, that the location of the road cannot be considered by the decision makers in a rezoning case. I believe that the genesis of this opinion is the fairly recent North Carolina Supreme Court case of Kirby, et.al. v. North Carolina Department of Transportation. Although you can never say with certainty how a court might rule in a different case, I do not believe that *Kirby* stands for this proposition at all. This case arose out of the so-called Map Act, a North Carolina statute that permits NCDOT to establish a thoroughfare alignment after public hearing, etc., and then to record that corridor in the county Register of Deeds. At that point certain restrictions become placed on the use of the property within the corridor including (with certain exceptions) the right to obtain a building permit. The court in essence held that the imposition of these restrictions had the effect of affecting the value of the property, and therefore constituted a taking for which the landowner was entitled to compensation. The court did not find the MAP Act unconstitutional. (The legislature did adopt legislation in the 2016 session cancelling all outstanding Map Act corridors, and placing a moratorium on new corridors until July 1, 2017). Note that the possible thoroughfare here is not a corridor under the MAP Act. In any event, I don't see that the proposed alignment constitutes a legal restriction on the use of the property. From a zoning standpoint, it can still be used for whatever is presently permitted. And I see nothing that precludes the Board from taking the existence of the possible alignment into consideration in their deliberations in their legislative capacity.

Bob

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