Oct 14, 2026

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The Briefing | Commercial Development Industry

Selected Appellate Decisions for the Commercial Development Industry

Click below to read a summary of each case, along with practical takeaways for real estate developers, owners, and investors.

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Fifth Circuit Rejects Takings Challenge to New Orleans Cap on Short-Term Rental Licenses

***Bodin v. New Orleans City*, 185 F.4th 588 (5th Cir. 2026)**

New Orleans has spent a decade trying to rein in short-term rentals. A 2023 ordinance limits short-term rental licenses to one property per residential block, awards them by lottery, and bars anyone from operating more than one rental. Prospective hosts and Airbnb sued, arguing among other things that the cap took their property without just compensation. The district court dismissed the takings claim, and the Fifth Circuit affirmed.

The court first rejected the argument that the ordinance was a per se taking. That category covers only physical appropriation or interference with the owner's right to exclude, and the ability to invite paying guests in is not the same thing. The court then applied the three-factor *Penn Central* test and found no regulatory taking.

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The hosts' losses were slight: the one concrete figure was about $20,000 a year in lost rental revenue, and the loss of a property's most profitable use does not by itself establish a taking. Their expectations were weak as well, because the owners could still rent long term and the city had lifted its outright ban on short-term rentals only in 2017. Finally, the ordinance was a reasonable zoning measure aimed at protecting residents' quality of life, and that factor decided the case.

The court also held that federal law governing online platforms does not preempt a companion ordinance barring platforms from booking unlicensed rentals.

Practical Takeaways

- Owners, developers, investors, and operators should not assume that rental revenue or prior investment will support a claim for compensation if a city caps or restricts short-term rentals. Where long-term leasing or another use remains available, a takings challenge will be difficult even if short-term rental was the most profitable use.
- Before acquiring, financing, or developing property that depends on short-term rental income, confirm the zoning and license eligibility, investigate caps, lotteries, and ownership limits, and weigh the likelihood of further regulation. Underwriting should test whether long-term rental income can carry the investment if a license is unavailable or lost.
- Short-term rental rights are a regulated and changeable part of a property's value, not a guaranteed income stream.

Ohio Courts Back Developer in Gas Station Dispute and Preserve Path to Damages Claim

***Sheetz, Inc. v. Centerville*, ___ N.E.3d ___, 2026-Ohio-3531 (Ohio 2026); *Morse Rd. Dev. LLC v. Centerville*, 2025-Ohio-5066 (2d Dist.)**

Sheetz and its development partners planned to replace a former restaurant on Far Hills Avenue in Centerville, OH, with a gas station,

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convenience store, and drive-through. The property is zoned for general business, and the planned uses were permitted. The planning commission approved the site plan, but a neighboring church, a retirement community, and a resident appealed, and the city council reversed. Its stated reason was that a 24-hour, auto-oriented use was inconsistent with the use and character of the surrounding properties.

Sheetz filed two suits. The first was an administrative appeal of the council's decision. The trial court reversed the council, and the Second District affirmed. Because the area's commercial zoning freely permits round-the-clock operation, the appeals court found no logic in treating Sheetz's 24-hour schedule as inconsistent with its surroundings.

The second suit sought damages and declaratory relief under 42 U.S.C. § 1983 in state court. The city removed it to federal court and argued that the win in the administrative appeal barred the new claims under res judicata, because both cases arose from the same council decision. The federal court asked the Ohio Supreme Court to resolve the question, and the court unanimously rejected the city's position.

Claim preclusion bars only claims that were or could have been litigated in the earlier case. An administrative appeal under R.C. Chapter 2506 permits a court only to affirm, reverse, modify, or remand the decision, so damages and declaratory relief could not have been sought there. The Ohio Supreme Court also held that an administrative appeal cannot be combined with a complaint seeking other relief, and it expressly disagreed with the Sixth Circuit's contrary decision in *Moore v. Hiram Township*.

Practical Takeaways

- A developer that wins an administrative appeal of a land-use denial in Ohio can still pursue damages and declaratory relief in a separate lawsuit.
- Those claims must be filed as a separate action. Ohio law does not allow them to be joined with the administrative appeal.

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- Local bodies must ground site-plan denials in the standards of the code. Objections to a use the zoning already permits, such as 24-hour operation, are unlikely to survive review.

Sixth Circuit Rules an Indefinite Development Hold Is a Final Decision for Ripeness Purposes

***SW Nashville EB Owner, LLC v. Metropolitan Government of Nashville & Davidson County*, 187 F.4th 807 (6th Cir. 2026)**

In 2022, SW Nashville bought a vacant building in Nashville's East Bank district, on land zoned for multifamily residential development by right. It applied that June for site-plan approval for a multifamily project. Before the application could be reviewed, the city's planning commission placed an indefinite hold on the property while the city and the Tennessee Department of Transportation studied routes for a planned major roadway nearby. The developer alleged that its application complied with the zoning code, that the hold left the property undevelopable and unsellable, and that it was paying about $200,000 a month in carrying costs. The developer sued for a taking and for due process violations. The district court dismissed the case as unripe because the city had never granted or denied the permit.

The Sixth Circuit reversed. The hold itself was a final decision. The city had committed to a position in June 2022: no construction or development of any kind, with no avenue short of litigation to change it. That made the developer's permitted uses clear, which is all the finality requirement demands. The court described the hold as "a property-use decision made, not a decision delayed." The city's counsel conceded at oral argument that the hold satisfied the finality requirement.

The ruling does not decide whether a taking occurred. It gets the developer into court and nothing more. On remand, the district court must still address the city's statute-of-limitations defense and the planning director's qualified-immunity defense. If the claims survive those defenses, the developer will still have to prove a regulatory taking. That inquiry is highly fact-dependent and turns in part on how far the hold interfered with the developer's

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investment-backed expectations and property values.

Practical Takeaways

- A developer facing an open-ended moratorium or hold on its property need not wait for a formal permit denial before suing if the government has clearly committed to blocking development.
- The decision is narrower for ordinary permitting delays. The court distinguished a hold imposed outside the permitting process from slow review within it, and slow review becomes actionable only if the delay is extraordinary.
- Developers should document the government's position, their efforts to resolve the hold, and their carrying costs. That record matters for the ripeness question and for the merits.

New Jersey Supreme Court Brings *Sica* Test in Line with 1997 Amendment to the Municipal Land Use Law

***Monarch Communities, LLC v. Township of Montville*, 264 N.J. 452, 359 A.3d 373 (2026)**

A developer applied for a use variance to build a 165-unit senior housing community, with assisted living and memory care units, on an eight-acre farm property in Montville Township zoned for single-family homes. All parties agreed the project was an "inherently beneficial use" under the Municipal Land Use Law. The township, however, had recently declined to include the site in its new Senior Housing Overlay. The zoning board denied the application, finding that the project would substantially harm a zone plan built around single-family homes. The trial court reversed the board, and the Appellate Division affirmed.

The New Jersey Supreme Court reversed and revised the fourth step of the *Sica* test, which governs variances for inherently beneficial uses. A board must now decide, as a threshold matter, whether the applicant has shown that the variance will not substantially impair the intent and purpose of the zone plan and

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zoning ordinance. If the applicant has not made that showing, the variance cannot be granted. If it has, the board then weighs the project's benefits against its detriment to the public good. The New Jersey Supreme Court sent the case back to the Appellate Division to apply the revised test to the existing record and expressed no view on the result.

Press coverage has treated the decision as a major change in the law. Its practical effect is more limited. The legislature added this requirement to N.J.S.A. 40:55D-70 in 1997, five years after *Sica* was decided, but the *Sica* test was never updated to reflect it. The New Jersey Supreme Court also confirmed that the heightened burden of proof from *Medici* still does not apply to inherently beneficial uses.

Practical Takeaways

- Applicants should present affirmative evidence that the project will not substantially impair the zone plan. The beneficial nature of the use will not carry that burden on its own.
- Developers should review a site's planning history before filing. A prior variance denial for the same property can weigh heavily, and a detailed master plan record may signal that a particular site will face resistance.

The appellate advocates at FBT Gibbons have a proven track record of success in appeals involving questions of first impression, bet-the-company judgments, and decisions that shape the rules under which our clients will operate well into the future. For more information, please contact the author or any attorney with the firm's Appellate team.

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