IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM JACKSON, *et al.,* Plaintiffs, v. VILLAGE OF WINNETKA, Defendant.	Case No. 24 C 3576 Hon. LaShonda A. Hunt

ORDER

For the reasons discussed below, Defendant Village of Winnetka's amended motion to dismiss for failure to state a claim (Dkt. 34) is granted as set forth herein.

STATEMENT

Plaintiffs are residents of, and property owners in Winnetka, Illinois. (Compl. ¶ 1, Dkt. 1). They brought this action after Defendant amended its Zoning Ordinance in February 2024 to add new regulations that restrict Plaintiffs' ability to develop the portions of their private property immediately adjacent to and extending along the Lake Michigan shoreline ("Ordinance"). (Compl. ¶¶ 32, 37-38, 46, 53). Plaintiffs challenge the Ordinance as a regulatory taking of their property without just compensation. Count I alleges a violation of their substantive due process rights under Article I, Section 2 of the Illinois Constitution. Count II, the only federal claim, alleges that the enactment of the Ordinance amounts to an unconstitutional taking of Plaintiffs' properties under the Takings Clause of the Fifth Amendment. Count III alleges the same taking under Article I, Section 15 of the Illinois Constitution. (*See generally id.* ¶¶ 69-146).

Defendant contends that Plaintiffs fail to state a claim for relief under state or federal law. The Court focuses on the arguments raised as to Count II—the sole basis for federal jurisdiction. Defendant argues that dismissal is warranted because: (1) the claim is not ripe insofar as Plaintiffs have failed to seek available administrative relief; (2) Plaintiffs improperly allege a taking based on the diminution of value of only a portion of their properties; and (3) Plaintiffs' allegations are conclusory and ignore the plain and unambiguous provisions of the Ordinance. (*See* Def.'s Mot. at 6-10, Dkt. 34). The Court need only address the first of these arguments because it is clear that Count II, the only claim implicating this Court's original jurisdiction, is not ripe as pled.

It is settled that "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property

at issue." *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 105 S. Ct. 3108, 3116 (1985), *overruled in part on other grounds by Knick v. Townsh'p of Scott, Penn.*, 139 S. Ct. 2162, 2169 (2019). This finality requirement "is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." *Id*. at 3120. "[Supreme Court] cases uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." *MacDonald, Somner & Frates v. Yolo County*, 106 S. Ct. 2561, 2567 (1986). *See also Agins v. City of Tiburon*, 100 S. Ct. 2138, 2141 (1980) ("Because the appellants have not submitted a plan for development of their property as the ordinances permit, there is as yet no concrete controversy regarding the application of the specific zoning provisions.").

Indeed, the "important principle that a landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation" remains good law. *Palazzolo v. Rhode Island*, 121 S. Ct. 2448, 2459 (2001). It is that "interest in informed decisionmaking that underlies [Supreme Court] decisions imposing a strict ripeness requirement on landowners asserting regulatory takings claims." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 122 S. Ct. 1465, 1488 (2002).

Here, the Complaint does not allege that Plaintiffs have (1) submitted any development plans to Defendant since the adoption of the Ordinance for any of their properties, (2) applied for any variations, exceptions, or waivers from the Ordinance's lakefront regulations, or (3) been denied any building permits or zoning approvals to undertake any construction activity on any of their properties, even though those are options afforded under the Ordinance. (Compl. ¶¶ 38-46). As such, Plaintiffs' Fifth Amendment takings claim is not ripe for judicial resolution. *See Palazzolo*, 121 S. Ct. at 2459 ("Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established."); *Hodel v. Virginia Surface Min. & Reclam. Ass'n*, 101 S. Ct. 2352, 2371 (1981) (citing the lack of evidence in the record that plaintiffs had "availed themselves of the opportunities provided for by the [statute] to obtain administrative relief" as to steep-slope provisions by requesting a variance or waiver from the restrictions as grounds for finding the takings claim deficient).

Contrary to Plaintiffs' arguments, the holding in *Lucas v. South Carolina Coastal Council* is consistent with Supreme Court jurisprudence requiring ripened claims. 112 S. Ct. 2886 (1992). The *Lucas* court declined to "insist that [plaintiff] pursue the late-created 'special permit' procedure before his takings claim can be considered ripe" due to the unique circumstances of that case which are not present here. *Id.* at 2891. As the Court has already pointed out and Plaintiffs acknowledge in their Complaint, the process for assessing how far the Ordinance at issue goes already exists. Plaintiffs must utilize it before asking the federal courts to declare that a regulation goes too far and should be deemed a compensable "taking."

Accordingly, Defendant's motion to dismiss is granted as to Count II, which is dismissed without prejudice and with leave to replead. The Court defers consideration of whether Plaintiff's state law claims (Counts I and III) should be dismissed for failure to state a claim. Unless and until Plaintiffs state a viable claim arising under federal law, the Court's supplemental jurisdiction is not implicated. Plaintiffs are granted until 10/30/25 to file an amended complaint consistent with this ruling.

DATED: October 2, 2025

ENTERED:

LaShonda A Hunt

LASHONDA A. HUNT
United States District Judge