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Court Update

GLOBAL TOWER ASSETS, LLC V. TOWN OF ROME

Planning Board's Decision not "Final Action" for TCA Purposes

United States Court of Appeals, First Circuit Case No. 15-1140, 1/8/2016

This case is worth noting because it provides insight into the meaning of "final action" under the Telecommunications Act (TCA).

In Rome, Maine, applicants are required to obtain permission from the planning board before constructing a wireless site. After many months of meetings, the Rome Planning Board voted to deny the applicant's application, issuing a written opinion 28 days after the initial decision was made. The applicant filed suit in the Maine federal court the next day, alleging, among others, claims under the TCA that the planning board's denial unreasonably discriminated between providers of functionally equivalent services, effectively prohibited the provision of wireless services, and was not in writing or supported by substantial evidence on a written record. The federal district dismissed the TCA claims, determining that the planning board's decision did not constitute "final action," a requirement for an appeal to federal court under the TCA.

The term "final action" is not defined by the TCA. The court looked to the definition of "final" under the Administrative Procedure Act (APA). Key factors to look at under the APA are whether the decision at issue "mark[s] the 'consummation' of the agency's decisionmaking process" as opposed to being "of a merely tentative or interlocutory nature." The town's local ordinance required further administrative review of a planning board decision by the local board of appeals. Furthermore, under Maine state law, local land use decision are appealable to state court only after the decision has been reviewed by a local board of appeals, if one exists. The court held that because the planning board's denial was subject to review by the local board of appeals, the applicant could not yet seek state court review—there had not yet been any "final action." Furthermore, the applicant's claim regarding the planning board's delay in issuing its written decision also failed because the planning board's decision was not final: the "written decision" requirement applies to final decisions only, not interim decisions.

Click Here to View Court's Decision. (<http://www.nhmunicipal.org/Resources/ViewDocument/618>)

Practice Pointer: Keep in mind that the decision is based upon the fact that, in Rome, Maine, a local ordinance required further administrative review of a planning board decision by a local board of appeals—that is why the planning board's decision was not "final."

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