

**THE COURT OF FIRST INSTANCE OF THE REGION TOSCANA
(FIRST SECTION)**

has pronounced the following

JUDGEMENT

on the appeal number 311 of 2006, filed by World Wide Fund For Nature (WWF) Onlus, (...)

against

the Municipality of Grosseto, (...); the Region of Toscana and the Province of Grosseto;

in the regards of

the Company Riva di Marina (S.r.l.) (...)

for the annulment

of the decision of the City Council of Grosseto n. 111 of the 30th November 2005 concerning the approval of the recovery plan of the ex summer camp of Marina di Grosseto as well as the decision n. 4/2005 of the 13th of January 2005, of the decision n.5/2005 of the 31st of March 2003 and of all the futher implementing measures, even if unknown.

- seen the appeal and the related annexes;
- seen the act through which the Municipality of Grosseto has joined the proceedings;
- seen the act through which the Company Riva di Marina (s.r.l.) has joined the proceedings;
- seen the defense briefs;
- seen all the acts of the proceeding;

The reporting judge of the public hearing of the 25/03/2009 is (...)

FACT:

With the appeal WWF Onlus has challenged four distinct city council's decisions, concerning the part of the recovery plan of the ex summer camp of Marina di Grosseto for the establishment of a habitable settlement in that area.

The alleged acts, that have followed in time in relation to the same issue, concern:

- a) the decision n. 42/2003 of the 31st of March 2003 which includes the first version of the Recovery Plan and at the same time the related zoning variant
- b) the decision n. 4/2005 of the 13th of January 2005 confirming only the zoning variant of the former decision 42/2003 but not the Recovery Plan, since in the meantime another distinct project had been submitted.
- c) the decision n. 5/2005 of the 13th of January 2005 including the new Recovery Plan of the former colony of Marina di Grosseto, in conformity with the confirmed zoning variant.

d) Finally, the decision n. 111/2005 of the 30.11.05 that confirms the Recovery Plan adopted with the decision n. 5/2005.

In the regards of the challenged decisions, WWF alleges the following violations:

- 1) “ violation and misapplication of the regional law 3.1.2005 n. 1 and in particular of articles 15, 16, 17, 18, 65, 69, and 73. The violation and misapplication of the general principles regarding zoning variants, public participation to the procedure, and the form of administrative acts. Abuse of power due to incorrect and lack of motivation; lack of investigation, lack of preconditions; inconsistency; illogicity “. The approved recovery plan would be illegitimate for violation of construction limitations rules as provided by art. 96 of the technical implementation rules since the project involves the construction of six floors above the ground level, plus two underground floors and a partial basement, whilst art. 96 states the possibility of constructing maximum four floors above the ground level and the partial basement; moreover it exceeds the maximum volumetric dimensions permitted;
- 2) “ violation and misapplication of the regional law 3.1.2005 n.1 and in particular of articles 15, 16, 17, 18, 65, 69 and 73 under a different and further aspect. Violation and misapplication of the general principles regarding zoning variants; public participation to the procedure; and the form of administrative acts. Abuse of power for lack and incorrect motivation; lack of investigation; lack of preconditions; inconsistency; illogicity”. Article 8 of the technical implementation rules of the recovery plan, whilst maintaining firm the maximum volumetric dimensions of 65,000 cubic meters in conformity with article 96 of the technical implementation rules of the urban plan, modifies the calculation method, stating that the volumetric dimensions of the partial basement (including the part above the ground floor) are not to be counted as well as the attic rooms. Moreover, this zoning variant also did not follow the procedure provided by the regional law n . 1 of 2005;
- 3) “violation and misapplication of article 40 of the regional law n. 5 of 2005 and of the general principles concerning participation to the administrative procedure also in reference to the law n. 241 of 1990; abuse of power for lack and incorrect motivation, lack of investigation, lack of preconditions, inconsistency; illogicity”. With this reason the appealing party alleges the violation of the procedure through which the zoning variant has been approved according with deliberation n. 5 of 2005 which has an innovative content.
- 4) “violation and misapplication of article 40 of l. r. n. 5 of 2005 under the grounds of a different and further argument; abuse of power for incorrect and lack of motivation; lack of investigation; lack of preconditions; inconsistency; illogicity”. The zoning variant of art. 96 technical implementation rules in question, would have be made following the procedure laid down in article 40, paragraphs 8- 20 of the regional law n. 5 of 1995 and not the simplified one under paragraphs 2-7 of the said article.
- 5) “Abuse of power for incorrect and lack of motivation. Incorrect and lack of investigation; misrepresentation of facts; lack of preconditions; illogicity; unfairness”. The appellant alleges the lack of a geological report with reference to the second project subsequently approved;
- 6) “violation and misapplication of article 16, paragraph 3 of regional law n. 1. of 2005. Abuse of power for lack of power and misapplication. Incorrect and lack of investigation. Misrepresentation of facts. Lack of preconditions. Illogicity. Unfairness.” The striking difference between the second project of the recovery plan and the first required the renewal of the acquisition of opinions and authorisation which did not

happen, whereas those acquired later can not be considered valid and neither could the conference of services of 2.12.04 fulfill this purpose.

- 7) "Abuse of power due to incorrect and lack of motivation. Error and lack of investigation. Misrepresentation of facts. Lack of preconditions. Illegitimacy. Unfairness." We are in presence of a specific kind of zoning variant which required an adequate motivation.
- 8) "Abuse of power due to incorrect and lack of motivation. Incorrect and lack of investigation. Misrepresentation of facts. Lack of preconditions. Illegitimacy. Unfairness. Violation and misapplication of the L. 36/1994." The project at stake will have a significant environmental impact.
- 9) "Violation and misapplication of article 32 of regional law n. 5/1995; of the regional law 56/2000; of the regional law 52/1979; of the Presidential Decree 357/1997 and of the Presidential Decree 357/1997 and of the Presidential Decree 120/2003. Abuse of power due to incorrect and lack of motivation. Incorrect and lack of investigation. Misrepresentation of facts. Lack of preconditions. Illegitimacy. Unfairness." Here is alleged the lack of environmental assessment.

The Municipality of Grosseto and the respondent company have joined the proceeding resisting the appeal, and have also advanced objections to admissibility of the appeal for its lateness and inadmissibility due to lack of the right to appeal.

The case has been brought to the public hearing of the 25th March 2009. The reporting judge is (...) After having heard the defendants that appeared in court, the judges have decided.

(...)

The appeal is in part irreceivable, in part inadmissible, in part unfounded and the appellant is sentenced to refund the respondent Administration and counterparty for the beared judicial fees.

for these reasons

The Administrative Court of the Region of Tuscany, 1st Section, has definitively decided, and has dismissed the appeal because it was in part irreceivable, in part inadmissible and in part unfounded as it has been motivated.

The Court sentences the appellant organization to the payment of the judicial fees liquidated in the sum of 2.000,00 euro (two thousand) plus IVA and cap in favor of each one of the respondent parties (Municipality of Grosseto and Riva di Marina s.r.l. company.)

The Court orders the present judgement to be enforced by the administrative authority.

This has been decided in Firenze on the 25/03/2009 with the intervention of the following judges:

(...)

DEPOSIT OF THE DECISION AT THE SECRETARY

ON THE 15/04/2009

THE SECRETARY