

## **Court hands developer property rights win**

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In June, the U.S. Supreme Court issued a landmark decision about property rights. *Koontz v. St. Johns River Water Management District* expanded the protections under the Fifth Amendment's Just Compensation Clause for property owners who refuse to accept a development permit with coercive land use conditions proposed by a government agency. While the *Koontz* decision certainly is a win for property owners, questions remain about the decision's implications.

The facts are simple. During the 1990s, Koontz, a Florida land owner, sought a permit from the St. Johns River Water Management District to develop 3.7 acres of his 14.9-acre tract of land. The district decided to approve the permit as long as Koontz met one of two conditions: Develop only one acre of the land and deed a conservation easement to the district for the remaining land or fund enhancements for nearby wetlands not on Koontz's property. Koontz refused both options and the district denied the permit.

Koontz then brought suit in state court under a Florida law that permitted a claim for damages resulting from an unconstitutional exercise of the state's power to regulate land use.

As the case wound its way through Florida's courts, consideration of the U.S. Supreme Court decisions in *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994) were of central importance. In *Nollan* and *Dolan*, the court had held that when a government agency conditions approval of a land use permit on the taking of a property interest, the condition must have an "essential nexus" and "rough proportionality" with the negative impact of the proposed development. For instance, if a development would moderately increase the need for parking in a certain area, an acceptable condition would have a nexus to that need (e.g., extra parking spaces, but not a new sidewalk) and be proportional to the impact of the development (e.g., a small parking lot, but not a large parking garage).

At issue in *Koontz* was whether the *Nollan/Dolan* test applies when the government denies a land owner's permit application and the government's condition is for payment of money instead of a property interest. In its 5-4 decision, the court answered "yes" to both.

The *Koontz* decision allows the land owner to challenge not only conditions attached to an approved permit, but to challenge a denied permit with conditions that the land

owner refused to accept. Further, a condition requiring payment or spending of money now may be the basis of a claim for damages. The court left to the Florida courts the question whether the conditions were unconstitutional.

While the Koontz decision is pro-developer, it left questions unanswered. For instance, because Koontz's permit was denied, no property was actually taken from him. Therefore, his claim was not for an uncompensated taking, but for damages ensuing from an unconstitutional condition. The remedy for such damages is likely still money, but not "just compensation." In Koontz, the court remanded to the Florida courts the question of the proper remedy.

The Koontz decision also stated that a government agency cannot withhold a permit because the land owner refuses to accept unconstitutional conditions. However, the court acknowledged that a government agency can simply say "no" to a permit application and perhaps avoid a court challenge. This could have a chilling effect on negotiation and issuance of permits.

Finally, although the majority in Koontz affirmed that taxes and user fees are not the type of monetary demands implicated in this decision, it is unclear whether certain fees (i.e., for traffic and pollution impacts, for the provision of sewer and water, etc.) might be conditions that are unconstitutional under Nollan/Dolan.

The Koontz decision is a reaction by the Supreme Court to land use regulation that was perceived to be overreaching and coercive. The court's decision expands the "essential nexus" and "rough proportionality" standards of Nollan and Dolan to apply to rejected permits and to "demands" for money.

For these reasons alone, developers and property owners should welcome the Koontz decision.

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