

LEGAL UPDATES

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U.S. Supreme Court Significantly Expands Reach of Constitutional Concerns in State and Local Land-Use Decisions

On June 25, 2013, the U.S. Supreme Court decided *Koontz v. St. Johns River Water Management District*, in which the court limited the power of government agencies when demanding monetary exactions from property owners in exchange for granting or denying a permit for land development. The 5-4 decision expanded the rights of developers and other property owners to challenge governmental land-use regulations.

In *Koontz*, appellant bought 14.9 acres of Florida wetlands and decided to develop 3.7 of those acres. To allay the potentially negative environmental effects associated with his proposed development, appellant offered to provide the St. Johns River Water Management District (a governmental entity) a conservation easement on the remaining 11 acres of his property, ensuring that this land would never be developed.

The district refused his offer and countered with two suggested options for permit approval: (1) reduce the size of the proposed development to 1 acre and grant a conservation easement to the district for the remaining 13.9 acres; or (2) proceed with the original plan, so long as appellant hired contractors to make wetlands-related improvements to district-owned land 7 miles away from the subject property. Appellant stood by his proposal and rejected the district's suggested concessions. As a result, the district rejected the application.

Appellant thereafter filed a lawsuit claiming that the state's requirements constituted "an unreasonable exercise of the state's police power constituting a taking [of his property] without just compensation."

The Supreme Court held that a required monetary contribution from a governmental body is to be treated in the same fashion as a required land or easement dedication. Hence, when a government proposes a monetary pledge from a property owner for permit approval, there must be a “nexus” and “rough proportionality” between the dollars requested by the government and the potential negative impact of the applicant’s proposal.

The court also held that when a government or agency is denying a land-use permit for failure to accept proposed project-related conditions, the denial can constitute a governmental abuse of power.

What This Means to You

As a result of the *Koontz* decision, governments and agencies may now feel compelled to meet a higher standard when restricting land use. Local governments may need to follow “essential nexus” and “rough proportionality” tests when denying a permit for failing to concede to a permitting proposal as well as when granting a permit with concurrent obligations. State and local governments, which may have felt compelled previously to justify a required “title exaction” (dedication of land or granting of easement), now face the same high standard for a monetary exaction. It may be more difficult for governments and agencies to demand rigorous land-use restrictions without serious concern over constitutional challenge.

The temptation to simply deny an application without suggesting any mitigating conditions may become a preferred government alternative.

As a developer or other land use owner on the one hand or a government body on the other, you should know that the previous judicial deference of both state and federal courts to the presumed validity of local land use decisions may have finally evaporated in the post-*Koontz* era. New opportunities and increased legal challenges will be part of the permitting process as various developments seek approval in the future.

Contact Information

For additional information, concerning this or other issues affecting real estate regulations, please contact your Husch Blackwell attorney or one of our Real Estate & Development attorneys.