



Supreme Court Ruling Admonishes Local Government: Monetary Exactions Must Have Essential “Nexus” and “Rough Proportionality” to the Impacts of Proposed Development

Sue Carter
Miller, Miller & Canby
200-B Monroe Street
Rockville, MD 20850

On June 25, 2013, the Supreme Court issued a decision in the case of *Koontz v. St. Johns River Water Management District* that will help to protect private landowners against excessive demands made by government regulators during the land use approval process. In its decision, the court held that the government’s demand from a land-use applicant must satisfy the “nexus” and “rough proportionality” requirements that were previously addressed in the *Nollan v. California Coastal Comm’n* (1987) and *Dolan v. City of Tigard* (1994) decisions even when the demand is for money, not for land. The principles of *Nollan* and *Dolan* apply whether the permit is approved with a condition requiring the applicant to give up certain property interests or whether the permit is denied because the applicant is unwilling to do so. “Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation.”

This case began in Florida when a property owner (Koontz) sought approval from the local Water Management District for a permit to develop a 3.7 acre section of an undeveloped 14.9 acre tract of land located in a wetlands area. The balance of the land area – approximately

11 acres – would be placed in a conservation easement. The District considered the 11 acre conservation easement area to be inadequate and informed Koontz that he had two options: (a) either reduce the buildable area to 1 acre and deed the District a conservation easement over the remaining 13.9 acres; *or* (b) go forward with his plans to develop the 3.7 acres (placing 11 acres in a conservation easement) and hire contractors to make improvements to enhance approximately 50 acres of District-owned wetlands located several miles away. Koontz, believing the demands excessive in light of the environmental effects of his proposed project, brought suit in state court. The trial court concluded that any further mitigation in the form of payment for offsite improvements to District property lacked both a nexus and rough proportionality to the environmental impact of the proposed development and the Florida District Court affirmed this decision. The Florida State Supreme Court, however, reversed that decision, distinguishing it from *Nollan* and *Dolan* on two grounds: first, that the District *denied* the permit because the applicant failed to make concessions (unlike *Nollan* and *Dolan* where the permit was *issued conditioned upon* the applicant acceding to the District's demands) and, second, that a demand for money was different than a demand for an interest in real property and, therefore, could not give rise to a claim under *Nollan* and *Dolan*. In its ruling in the *Koontz* case, the U. S. Supreme Court reversed the Florida State Supreme Court and remanded the case, holding that “the government’s demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money.”

The Supreme Court, in its decision in *Koontz*, has sent a strong message to local government involved in establishing fees and other exactions that it needs to carefully consider whether these measures bear a legitimate “nexus” to the development for which approval is

sought and whether there is “rough proportionality” between the amount demanded and the impact that the particular project will have on the public.