

COMMENTARY

At Last, Property Owner Relief From Coercion in Takings Cases

By Daniel Schmutter

On June 25, the U.S. Supreme Court decided *Koontz v. St. Johns River Water Management District*, a case that represents an essential development in the constitutional protection of property rights.

The court extended important Fifth Amendment Takings Clause protections to constrain the nature and extent of monetary conditions that land-use agencies may impose on the approval of development permits.

Coy Koontz Jr. sought to develop a parcel of land encumbered by wetlands. Florida law provides for “water management districts” that are empowered, in their discretion, to grant permits to develop wetlands. Koontz applied to the St. Johns River Water Management District for a permit to develop 3.7 acres of his property, offering a conservation easement as to the remaining 11.2 acres to mitigate environmental impacts.

The district found Koontz’s proposed dedication insufficient. In addition to the dedication of the conservation easement, the district required that Koontz reduce the size of the project to one acre or hire

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contractors to improve 50 acres of district-owned property several miles away. Koontz rejected the conditions and sued, alleging that the conditions constituted a taking without just compensation.

At issue was the application of two seminal Supreme Court cases: *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). These stand for the proposition that the Takings Clause requires that any condition imposed by government on a discretionary development permit must have an “essential nexus” and be “roughly proportional” to the impacts of the proposed project. Thus, even where an agency may deny a permit outright, if it chooses to impose conditions on approval, it may only do so consistent with *Nollan* and *Dolan*.

The trial court found in favor of Koontz and awarded damages, but the Florida Supreme Court reversed. Because *Nollan* and *Dolan* only involved conditions requiring the dedication of easements and not the expenditure of money, the court held that the requirements of *Nollan* and *Dolan* do not apply to monetary exactions.

The court further attempted to draw a distinction between a condition of approval and a condition refused, resulting in a denial. Since Koontz’s application was never approved, because he would not accede to the required conditions, merely denying a permit could not constitute a

taking, the court argued, since nothing was taken.

In a 5-4 decision, the U.S. Supreme Court reversed. The court held that there is no principled reason to distinguish between exactions of land and exactions of money for the purposes of the Takings Clause. Similarly, the court found no material difference between an exaction imposed as a condition of approval and an exaction demanded which, when refused, results in a permit denial.

The court explained that the purpose of the *Nollan* and *Dolan* rules is to prevent land-use agencies from using their discretionary permitting power to coerce what are essentially arbitrary exactions of value from property owners — exactions that would otherwise require the payment of “just compensation” under the Fifth Amendment.

The court explained that the *Nollan* and *Dolan* rules are simply special instances of the unconstitutional conditions doctrine, which prohibits the government from requiring a person to relinquish a constitutional right to obtain a government benefit, even if that person does not have a right to the benefit in the first instance.

Thus, since Koontz would be entitled to just compensation if the district merely compelled him to hire a contractor to improve its 50 acres of wetlands, the district may not obtain the same result for free by making it a condition of permit approval.

Importantly, this does not depend on the nature of the exaction. Whether coercing the dedication of land or coercing the expenditure of money, the Takings Clause is designed to prevent government from

coercing value from property owners.

A contrary rule would render *Nollan* and *Dolan* precious little protection for property owners, since any exaction can readily be cast as a requirement to expend money.

This decision represents a critical step in closing the loopholes that existed in the aftermath of *Nollan* and *Dolan*. Until *Koontz*, protection for property owners against such coercive behavior existed

entirely at the mercy of the creativity of land-use agencies. The *Koontz decision* ends those loopholes and ensures that property owners have broad protection against such coercion. ■