
August 8, 2013

The United States Supreme Court’s opinion issued on June 25, 2013 in Koontz v. St. Johns River Water Management District, (1) confirms the breadth of the unconstitutional-conditions doctrine in protecting the U.S. Constitution’s Fifth Amendment right to just compensation; and (2) provides direction to local governmental units for their land-use-permitting activities.

Background

In 1972, Coy Koontz, (Koontz) Sr. purchased 14.9 acres of undeveloped Florida wetlands. That year, Florida enacted its Water Resources Act, which divided Florida into five water management districts. The Water Resources Act required, amongst other things, that before construction within a district, a Management and Storage of Surface Water (MSSW) permit be obtained. Florida law allows the permitting district to impose “such reasonable conditions” on the MSSW permit as are “necessary to assure” that construction will “not be harmful to the water resources of the district.” In 1984, Florida then passed the Warren S. Henderson Wetlands Protection Act (Henderson Act), which made it illegal for anyone to “dredge or fill in, on, or over surface waters” without a Wetlands Resource Management (WRM) permit. The Henderson Act requires WRM permit applicants to provide “reasonable assurance” that the proposed wetlands construction is “not contrary to the public interest.” Consistently, the permitting district, i.e., the St. Johns River Management District (District), requires WRM permit applicants to offset the resulting environmental damage by creating, enhancing, or preserving wetlands elsewhere.

In 1994, Koontz sought MSSW and WRM permits to develop a 3.7-acre portion of his 14.9 acres of wetlands. The District rejected Koontz’s application. But the District told Koontz that, if the proposed development was reduced to a single acre, it would approve the application on certain additional conditions. Alternately, the District informed Koontz that, if he did not agree to reduce the proposed development’s acreage, then the District would approve the application so long as Koontz paid for improvements of District-owned land located several miles from Koontz’s tract of wetlands.

The Florida trial court held that the District’s action were unlawful under U.S. Supreme Court precedent (i.e., the Nollan and Dolan holdings) and the Florida appellate court affirmed. But the Florida
Supreme Court reversed. It distinguished that U.S. Supreme Court precedent on two grounds: (1) because, the District denied Koontz’s application, it did not approve the application on the condition that Koontz’s pay money to improve the District’s land; and (2) the District’s demand was for money, not for an interest in real property. A petition for certiorari was granted on whether a denial of a permit or a demand for money gave rise to a claim under Nollan and Dolan. The U.S. Supreme Court reversed in a 5-4 decision.

Discussion

In Nollan v. California Coastal Comm’n, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994), the U.S. Supreme Court held that a unit of government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of real property without there being a “nexus” and “rough proportionality” between the government’s demand and the effects of the owner’s proposed use of its property. These holdings applied the unconstitutional-conditions doctrine to protect the Fifth Amendment’s right to just compensation for property taken by the government when owners apply for land-use permits.

In Koontz, the U.S. Supreme Court recognized that the unconstitutional-conditions doctrine “vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.” Slip Op. at 7. The Court also recognized that “land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional-conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take.” Id. In so holding, the Court nevertheless continued that, “[i]nsisting that landowners internalize the negative externalities of their conduct is a hallmark of responsible land-use policy, and [it] has long sustained such regulations against constitutional attack.” Id. at 8.

The Court explained that “[t]he principles that undergird[ed] [its] decisions in Nollan and Dolan do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so.” Id. at 9. (emphasis in original).

Question 1
Can the Denial of Permit Give Rise to a Nollan and Dolan Claim?

Following Koontz, there can be no mistake: a government’s decision on a conditioned permit must pass constitutional muster under Nollan and Dolan. Indeed, the Court noted that “[a] contrary rule would be especially untenable in this case because it would enable the government to evade the limitations of Nollan and Dolan simply by phrasing its demands for property as conditions precedent to permit approval.” Id. The Court explained that, even though in the “denial” context where no property is taken, the unconstitutional-conditions doctrine was put into play because:

[ex]torionate 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.

Id.

The Court also found a constitutionally-cognizable injury when a land owner “refuses to cede the right [to just compensation] in the face of coercive pressure.” Id. But, the Court realized that, since nothing is taken when a permit is denied, the question as to whether money damages are available to the landowner depends on the cause of action relied upon.
Question 2
Can a Demand for Payment Give Rise to a Nollan and Dolan Claim?

Following Koontz, there can also be no doubt as to whether the demand for payment in lieu of the transfer of an interest in property triggers Nollan and Dolan. It does. The Court explained that, if the argument that a payment should not be scrutinized was accepted, then “it would be very easy for land-use permitting officials to evade the limitations of Nollan and Dolan.” Id. at 15. The Court posited that:

[b]ecause the government need only provide a permit applicant with one alternative that satisfies the nexus and rough proportionality standards, a permitting authority wishing to exact an easement could simply give the owner a choice of either surrendering the easement or making a payment equal to the easement’s value.

Id. The Court added that, “when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property, a ‘per se [takings] approach’ is the proper mode of analysis.” Id. at 17.

Summary
In announcing that Nollan and Dolan apply to denials of conditioned permits and conditions comprising payments in lieu of a transfer of property, Koontz adds clarity to the land-use permitting legal landscape without setting forth any revolutionary principles for lower courts to apply. In explaining the application of the unconstitutional-conditions doctrine, the U.S. Supreme Court has drawn bright lines for local governmental units to abide. But, the Court warned land owners that Koontz does not necessarily provide a path to money damages.

Briggs and Morgan, P.A. has a long-history of working for and with land owners and local government units to develop property and the economies throughout Minnesota. If you have a legal concern that is or may be implicated by the Koontz v. St. Johns River Water Management District opinion, feel free to directly contact Jack Y. Perry at your convenience.