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Clarity in the area of exactions: Life after Supreme Court's Koontz decision

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In a 5-4 decision, the Supreme Court in *Koontz v. St. Johns River Water Management District* handed landowners and developers across the country a major victory by strengthening (and extending) the constitutional protections afforded from governmental authorities placing unreasonable impact fees and improper conditions on development rights.

Prior to *Koontz*, the seminal cases in the area of exactions were *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, wherein the high court ruled that governmental authorities are prohibited from conditioning land use approvals on landowners relinquishing certain property rights (by grant or otherwise) unless there is an "essential nexus" and "rough proportionality" between the agency's demand and the specific effects of the contemplated land use. Both decisions stemmed from government authorities overreaching and demanding concessions which were not adequately tied to specific project effects, but instead, served the governmental agency's broader public objectives. In both cases, the Supreme Court held that such agencies' actions diminished the landowner's property without proper justification and therefore resulted in violations of the Takings Clause of the 5th Amendment.

Following *Nollan* (1987) and *Dolan* (1994), government agencies began to invent ways to circumvent these rulings. For example, governmental agencies started conditioning permits on things other than land and/or real property interests and began imposing monetary obligations on landowners (i.e., off-site mitigation). Such was the case in *Koontz*.

In 1994, Coy Koontz, Sr. sought a special permit from the St. Johns River Water Management District (the "District") to develop 3.7 acres of an approximately 14.9-acre parcel in Orange County, Florida. With his initial application to the District, Koontz offered to mitigate the impacts of his proposal by limiting the development to 3.7 acres and granting a conservation easement over the balance of his property. The District rejected this proposal and provided Koontz with the following two (2) options: (i) first, he could reduce the scope of the project to 1 acre and grant a conservation easement over the balance; or (ii) he could maintain the original size of the project and grant a conservation easement over the balance, however he must also fund certain unrelated off-site public infrastructure work (totaling approximately \$150,000). Koontz rejected both proposals and the District denied the special permit.

Koontz filed suit in the Florida courts arguing, among other theories, *Nollan* and *Dolan*. The case made its way all the way up to the Supreme Court wherein the Court concluded that the District could not avoid the "essential nexus" and "rough proportionality" test between the special permit and the requested relief, despite the special permit having been denied by the District and despite the exaction being monetary (versus an exaction affecting a real property interest).

In summary, the *Koontz* decision provides much needed clarity in the area of exactions (namely

monetary exactions) and solidifies that all exactions must satisfy the Nollan test. While the Koontz decision does not prohibit governmental authorities from proposing or conditioning approvals on monetary exactions, such exactions must have a proportional connection to impacts of the proposed development.

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