

SUPREME COURT UPDATE: Koontz v. St. John's River Water Management District

The Supreme Court recently issued the decision, *Koontz v. St. John's River Water Management District* which will likely impact how municipalities interact with developers.

The case focused on two (2) keys issues related to the issuance of permits by municipal bodies:

1) Whether the *Nollan/Dolan* standards (i.e. Is there a "nexus" and "rough proportionality" between the government's conditions on a land use permit and the effects of the proposed use?) should be applied to the denial of a permit and

2) Whether a condition causing the permit requester to spend money for a public benefit was subject to the *Nollan/Dolan* standards.

Background

In *Koontz*, the Developer sought to develop a portion of his property, most of which were wetlands. Under Florida law, if wetlands are to be developed, the developer can do so with a permit and must agree to offset the damage caused to the wetlands by creating, enhancing or preserving wetlands elsewhere in the state. While applying for a permit, the Developer advised the District that he would grant the District a wetlands easement on most of his property in exchange for a permit to develop a few acres of it. The District proposed that the Developer develop less of his property and either give the District a larger wetlands easement or hire a contractor to improve District owned wetlands. The District also indicated that it would be open to counterproposals from the Developer. The Developer instead sued the District for taking his property without just compensation.

Question 1: Should the *Nollan/Dolan* standards be applied to permit denials?

The Court held that the *Nollan/Dolan* standards should be applied to permit denials as there is no Fifth Amendment difference between the government requiring a party to give up a constitutional right prior to receiving a permit or conditioning the issuance of a permit on waiving such a right.

Question 2: Is the governmental requirement that a permit applicant spend money as a condition of receiving a permit subject to the *Nollan/Dolan* standards?

The majority opinion takes the position that by requiring a permit applicant to spend money on a public works project violates the unconstitutional conditions doctrine. In essence, the Court took the position that the District was asking the Developer to either

donate property to the District (i.e. the wetlands easement) or pay to preserve District property to avoid the taking.

In contrast to the majority opinion, the dissent viewed the District's requests as part of a negotiation process in which the District was making suggestions to the Developer as to how to comply with state law. The dissent goes on to state that the majority's position may prevent municipalities from providing suggestions or negotiating with applicants. The majority however takes the position that such discussions will not be chilled if the municipality provides the applicant with at least one alternative, which satisfies *Nollan/Dolan* standards.