

June 25, 2013—Supreme Court Decision in KOONTZ v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

For years, local governments have pursued arrangements with developers to extract certain concessions in exchange for the opportunity to develop. For example, a locality may ask a developer to improve the street in anticipation of the increased traffic that a development may bring. In some cases, this is a fair request. However, some local governments seem all too willing to stretch the boundaries to the limit.

In a victory for NAHB membership and property rights advocates, the U.S. Supreme Court on June 25 issued an opinion that directly affects the law that applies to such conditions, called “exactions”. The case is *Koontz v. St. James River Water Management District*, and the opinion is available at: http://www.supremecourt.gov/opinions/12pdf/11-1447_6j37.pdf. NAHB led a coalition of 16 associations which together filed an amicus brief that among other things explained to the Court that governments will not collapse if they cannot extort money from property owners who wish to use their land.

Koontz Case Facts

Mr. Coy A. Koontz owned 14.2 acres of vacant land and sought to improve 3.7 acres of the property. Koontz applied to the St. John’s River Water Management District (District) for permits to dredge and fill 3.25 acres of wetlands. In exchange, Koontz offered to dedicate the remainder of his property (approx. 11 acres) to the State for conservation, but the District rejected the proposal and pressed Koontz for more. The District demanded that Koontz pay to enhance 50 off-site acres of wetlands on the District’s property located between 4 - 7.5 miles away, by replacing culverts and plugging some ditches. Koontz refused the District’s unreasonable demand. The District then denied outright his permit applications, and would not issue permits unless and until Koontz submitted to its conditions. Koontz brought a lawsuit against the District.

The Legal Background

Since the late 1980s, the Supreme Court has held that a permit condition (also called an “exaction”) is not constitutional unless it has a “nexus” to a governmental purpose and it is “roughly proportion” to the impacts of the project. This is known as the *Nollan/Dolan* test, named after two Supreme Court cases. The test protects property owners from over-zealous land use permitting officials. Until today, there were two unanswered questions:

- 1) Is there a difference between scenarios when the government simply denies as permit because the land owner would not accede to an onerous condition, as opposed to when

it grants a permit with conditions attached?

- 2) Is the *Nollan/Dolan* test limited to exactions of land (e.g., government asks for 10% of land to be set aside for park), or does it also apply to monetary actions (e.g., government asks for \$10,000 to go towards building an off-site park).

These two questions are quite important—if the Court had decided that *Nollan/Dolan* did not apply in either scenario described above, then it would give the government expanded power to force unreasonable exactions upon developers by providing an easy work around to the *Nollan/Dolan* test.

Today's Decision in Koontz

Thankfully, the Supreme Court decided in favor of Mr. Koontz. Specifically, it ruled that *Nollan/Dolan* applies equally to situations where the government denies a permit and where the government grants a permit with conditions. In other words, if a property owner refuses to agree to outrageous conditions in a permit, and the government denies that permit, the government cannot later argue that there was no constitutional violation because the permit was never granted. In its analysis, the Court used a form of the word “extortion” five times to describe the manner in which governments demand property from developers before granting approvals. Thus, the Court may be starting to understand the realities of the land use permitting process. The Court also ruled that monetary exactions are subject to the same *Nollan/Dolan* analysis as land exactions. Thus, it makes no difference if the government demands that the land owner give up real property or money as a condition to obtaining a permit. This is a huge victory. The decision gives land owners ammunition to fight permitting officials that attempt to hold up approvals until the land owner surrenders to their extortion.