



SC Municipal Attorneys Association
Annual Meeting and Continuing Legal Education
Seminar

**Fail to Plan, Plan to Fail: Zoning
and Land Use Case Review**

Koontz v. St. Johns River Water Mgmt. Dist., (2013)

- 5-4 Decision In Favor of Landowner
- Easily one of the most significant Supreme Court decisions on land use law in recent years.
- Clarifies the now decades old *Nollan v. California Coastal Commission* (1987)/*Dolan v. City of Tigard* (1994) "nexus" and "rough proportionality" test.



Takings Background

- 5th Amendment
- Categories
 - Eminent Domain
 - Inverse Condemnation (Regulatory Takings)
 - Total Take (*Lucas*)
 - Physical Occupation (*Loretto*)
 - Ad Hoc Test (*Penn Central*)
 - Exactions (*Nollan/Dolan*)



Exactions...

- Open Questions:
 - What if the permit is denied?
 - Does *Nollan/Dolan* only apply to physical exactions?
- *Koontz v. St. Johns River Water Mgmt. Dist.* addresses both of these questions.



Koontz v. St. Johns River Water Mgmt. Dist.

- **Facts**
 - Koontz owned land east of Orlando that consisted, in part, of wetlands.
 - He proposed a conservation easement to the St. Johns River Water Management District with his development permit application.
 - The District rejected his proposal, informing him that his permit would be denied *unless* he agreed to do one of two things: (1) scale back his planned development and give the District a larger conservation easement; or (2) maintain the proposal, but also hire contractors to make improvements to separate land owned by the District.
 - Option #2 called for payment of money.
 - The District offered to consider alternative approaches as well.



Koontz v. St. Johns River Water Mgmt. Dist.

- **Facts (continued)**
 - Koontz found the District's demands unreasonable, and he sued under a state law governing the water districts that permits property owners to recover money damages based on an alleged unconstitutional taking.
 - State Law Claim → Fla. Stat. § 373.617(2)
 - After a trial and appeal, the Florida Supreme Court held that the suit must be dismissed because a takings claim was not an appropriate response to the District's conduct. Specifically, the court held that *Nollan/Dolan* does not apply in this case for two reasons:
 1. Those cases dealt with conditions on land use accompanying a permit that was approved, while in this case, the permit was denied.
 2. This case did not involve a taking of a particular property interest – for example, a piece of land – but instead only a demand for money (to pay the contractors).
 - The Supreme Court reversed on both points.



Koontz v. St. Johns River Water Mgmt. Dist.

• **Issues**

- Does *Nollan/Dolan* apply only to cases where government approves a permit and actually gets the demanded exactions?
- Does *Nollan/Dolan* apply only to physical exactions?



Koontz v. St. Johns River Water Mgmt. Dist.

• **Holding (First Question)**

- Unanimously held *Nollan/Dolan* equally applies to situations where government denies a permit.
- A contrary result would “draw a map to circumvent *Nollan* and *Dolan*.”
- NOTE: No takings claim with permit denial. Why?



Koontz v. St. Johns River Water Mgmt. Dist.

• **Holding (Second Question)**

- *Nollan/Dolan* extended to requirements that the property owner pay money as a condition for permit approval.
- This is the aspect of the decision that has potentially far reaching implications.
- Where to draw the line?



Koontz v. St. Johns River Water Mgmt. Dist.

• **Holding (Second Question)**

- The Court observed that “the ‘fulcrum this case turns on is the direct link between the government’s demand and a specific parcel of real property.’”
- But, still, no clear test.
- Chilling Effect?



Koontz v. St. Johns River Water Mgmt. Dist.

• **Applicability to South Carolina Practice**

- Additional Scrutiny Over Development Review and “Negotiations”
- Legal Claims:
 - Equal protection
 - Substantive Due Process
 - Gross Negligence Under Tort Claims Act
 - S.C. Code 15-78-60(12)





End.
