

Federal Circuit Defines Relevant Parcel for Penn Central Takings Analysis

Earlier this year, the Federal Circuit held that a single parcel owned by the plaintiff was the relevant parcel against which the impact of the Corps of Engineers' denial of a § 404 wetlands dredge and fill permit is to be measured for regulatory takings analysis. In *Lost Tree Village Corp. v. United States* (January 10, 2013), the appellate court overturned a U.S. Court of Federal Claims decision that concluded the relevant parcel was that single plot plus an additional nearby lot and "scattered wetlands in the vicinity" also owned by the same owner. The CFC had rejected the Corps' even broader argument which asserted that the relevant parcel was the entirety of the 1,300-acre gated community which the plaintiff had started to build in 1968, part of its ownership of 2,750 acres on islands near Vero Beach, Florida.

The Government argued that the relevant parcel for takings analysis was far larger than just the land that the landowner contended had been taken. (For a picture of the parcels, see the map embedded on page 4 of the [Federal Circuit's opinion](#).) The CFC found that the denial of the permit resulted in a 59% loss of value of the "relevant parcel," which if concluded was not enough to support a *Penn Central* takings claim.

But in discussing how to determine the relevant parcel, the Federal Circuit noted:

[W]hen contiguous land is purchased in a single transaction, the relevant parcel may be a subset of the original purchase where the owner develops distinct parcels at different times and treats the parcels as distinct economic units.

* * *

[T]he mere fact that the properties are commonly owned and located in the same vicinity is an insufficient basis on which to find they constitute a single parcel for purposes of the takings analysis.

The Federal Circuit further explained:

[T]he definition of the relevant parcel of land is a crucial antecedent that determines the extent of the economic impact wrought by the regulation. Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 496 (1987) ("Because our test for regulatory taking requires us to compare the value that has been taken from the property with the value that remains in the property, one of the critical questions is determining how to define the unit of property 'whose value is to furnish the denominator of the fraction.'") (quoting Frank I. Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law, 80 Harv. L. Rev. 1165, 1192 (1967)). . . .

Applying this standard, the court reversed the CFC because "Lost Tree had distinct economic expectations for each of Plat 57, Plat 55, and its scattered wetland holdings in the vicinity."

The case is now back before the trial court on remand for a liability determination for the single parcel.

The information and materials on this web site are provided for general informational purposes only and are not intended to be legal advice. The law changes frequently and varies from jurisdiction to jurisdiction. Being general in nature, the information and materials provided may not apply to any specific factual or legal set of circumstances or both.