Florida Supreme Court Decision in Koontz is Bad News for Florida Land Developers and Real Estate Investment - Will It Go Up to the U.S. Supreme Court? Maybe.

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The Florida Supreme Court made national news as well as in Florida land development and real estate investment circles this week as it released its opinion in ***Koontz IV*** (read the full text here), ruling that it is not a "taking" by the government, for which payment must be made, when a government agency denies a development permit for private property.

What the Koontz Fight Was All About: Developing a Small Patch of Land Near a Florida Roadway

Specifically, Florida property owner Coy Koontz asked his local Florida water management district for commercial development permits for 3.7 of acres of his 15 acre patch of land on State Road 50, near the East-West Expressway. The majority of Koontz's land tract has been classified as wetlands.

Negotiations began, and the water management district responded with a request that the property owner reduce his development plan to 1 acre, cutting back 2.7 acres off the development project, as well as turning the rest of his 15 acre tract into a conservation area, restricted by language in the deed, in return for the requested development permit.

Not surprisingly, the property owner didn't agree with this proposal by the water management district, and litigation began. This, with many developers wondering how the water management district could have thought any other response to their proposal would be a reasonable reaction.

Mr. Loontz won at the Florida appeals court (read the Florida Fifth Court of Appeals decision here). Now, the tide has changed, and the state water management district is the victor after the Fifth Court of Appeals certified the issue to the Supreme Court as a question of great public importance.

From the Florida Supreme Court opinion (emphasis added):

Based on the above analysis, we conclude that the Fifth District in Koontz IV erroneously applied the Nollan/Dolan exactions test to the offsite mitigation proposed by St. Johns. Since St. Johns did not condition approval of the permits on Mr. Koontz dedicating any portion of his interest in real property in any way to public use, this analysis does not apply. Further, even if we were to conclude that the Nollan/Dolan test applied to non-real property exactions -- which we do not -- Mr. Koontz would nonetheless fail in his exactions challenge ***because St. Johns did not issue permits, Mr. Koontz never expended any funds towards the performance of offsite mitigation, and nothing was ever taken from Mr. Koontz.*** *As noted by the United States Supreme Court, Nollan and Dolan were not designed to address the situation where a landowner‟s challenge is based not on excessive exactions but on a denial of development.*

See Del Monte Dunes, 526 U.S. at 703. ***Here, all that occurred was that St. Johns did not issue permits for Mr. Koontz to develop his property based on existing regulations and, therefore, an exactions analysis does not apply.*** *See id. ("[T]he rough-proportionality test of Dolan is inapposite to a case such as this one.").*

What Does Koontz v. St. John's River Water Management District mean to Florida?

First, it's reversing two existing decisions, already in place as rendered by lower Florida courts, finding that this type of negotiation failure would constitute a taking worthy of compensation.

The St. Johns River Water Management District had been ordered to compensate a land owner in Orange County for the temporary taking of his land because of permit negotiations to the tune of $376,155.00. Now, with the Florida Supreme Court ruling, that land owner may be waiting a very long time to see a dime of that money.

According to the Florida Supreme Court, to rule otherwise would be cost-prohibitive to Florida land development:

"*Governmental entities must have the authority and flexibility to independently evaluate permit applications and negotiate a permit award that will benefit a landowner without causing undue harm to the community or the environment."*

However, the argument remains that by demanding that a property owner cut back his proposed development along with turning the rest of his track into conservation lands -- or alternatively, get no development permit at all -- the water management district has essentially taken that land from the land owner.

This is how land developers and real estate investors both in Florida and in other parts of the country as well as the world will interpret this case.

Will the case be taken to the United States Supreme Court for review? Maybe. Koontz has been fighting this since 1994, cost-wise it seems like a worthwhile investment at this point. Assuming that he does so, there's still the big question: will the United States Supreme Court agree to hear his case? Who knows -- but it's an open issue before the High Court, so there's the chance that they might do so.

FYI -- interestingly, Justice Polston agreed with the result, but not the reasoning: Polston believes that failure to exhaust administrative remedies before filing suit was sufficient to reverse the lower court's decision. Chief Justice Charles Canady concurred with this position. Easy way out for the majority would have been to follow Polston's analysis and kick the case out because Koontz hadn't gone through agency channels before entering the courtroom.