

## ZONING & LAND USE

### Issue Date

## Supreme Court Strives to Protect Zoning Applicants from Unreasonable Government Demands

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Recently the Supreme Court issued a decision that will have a material impact on applicants seeking zoning and land use related permits. In *Koontz v. St. Johns River Water Mgmt Dist.*, 2013 WL 3184628, No. 11-1447 (U.S. June 25, 2013), the Supreme Court clarified prior decisions which held that governmental entities cannot require an applicant to provide payments or other benefits in order to secure a zoning approval, unless there is an “essential nexus” and “rough proportionality” between the approval being sought and the benefits demanded by the entity. The *Koontz* decision may be used as a lynchpin against planning boards, zoning boards and other governmental entities when conditions to an approval of a permit are overly burdensome and expensive.

In the *Koontz* case, the applicant, a property owner in Florida, sought approvals to develop vacant land. Since part of the project area was located in a wetlands area, Mr. Koontz needed to apply for a permit from the local water district to commence the development. In an effort to leverage Koontz’s application with the water district, the district demanded work to be performed at other water district sites and a reduction of the size and scope of the project coupled with a conservation easement for the benefit of the district. The water district threatened denial of the permit if these demands were not met. The Florida Supreme Court held that the water districts conditions were valid and satisfied the tests of “essential nexus” to an interest of the governmental entity, and that the conditions imposed were proportional to the development that Koontz had sought. The Supreme Court disagreed and found that greater scrutiny of the conditions imposed by the water district was needed and remanded the case to the Florida courts.

With *Koontz*, the Supreme Court strived to clarify their prior decisions on the issue of governmental entities imposing conditions for zoning related applications. Prior Supreme Court decisions did not determine whether the denial of the zoning application was a required element for analyzing the claim with regard to burdensome conditions. Also, the Court had to decide what type of conditions would trigger scrutiny of the conditions being imposed. The Court tried to differentiate between the demand for monetary payments as opposed to performing work for the benefit of the governmental entity.

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In *Koontz*, the majority found that the property owner's application should not be denied based on failure to agree to conditions that did not have a "essential nexus" and "rough proportionality" to the application. The Supreme Court also found that all forms of conditions, whether they are monetary or work to be performed for the governmental entity, would fall under the same balancing test with regard to nexus and rough proportionality.

Overall, the decision in *Koontz* has clarified what can be demanded of land use applicants in the form of conditions. The *Koontz* decision will now subject governmental agencies to greater scrutiny in the imposition of conditions for land use related approvals. Zoning boards of appeals and planning boards will have to demonstrate the necessary relationship between the approval sought and the conditions imposed. Overall, the *Koontz* decision could become a powerful ally to those applicants who might be facing an up hill battle against unreasonable demands from local government.