In *Murr v. Wisconsin* [2] the Supreme Court will decide whether merger provisions in state law and local ordinances, where nonconforming, adjacent lots under common ownership are combined for zoning purposes, may result in the unconstitutional taking of property. The State and Local Legal Center (SLLC) filed an *amicus brief* [3] arguing that these very common provisions are constitutional.

The Murrs owned contiguous lots E and F which together are .98 acres. Lot F contained a cabin and lot E was undeveloped. A St. Croix County merger ordinance prohibits the individual development or sale of adjacent lots under common ownership that are less than one acre total. But the ordinance treats commonly owned adjacent lots of less than an acre as a single, buildable lot.

The Murrs sought and were denied a variance to separately use or sell lots E and F. They claim the ordinance resulted in an unconstitutional uncompensated taking.

The Wisconsin Court of Appeals ruled there was no taking in this case. It looked at the value of lots E and F in combination and determined that the Murrs’ property retained significant value despite being merged. A year-round residence could be located on lot E or F or could straddle both lots. And state court precedent indicated that the lots should be considered in combination for purposes of takings analysis.

The SLLC brief argues that mergers provisions have been common for over half a century and their constitutionality has never been in doubt. The brief points out that minimum lot size requirements are a common way of avoiding congestion. When a lot is nonconforming (too small now that a minimum lot size has been adopted) merger (where the owner of a nonconforming lot also owns another contiguous lot the two lots are viewed as one for zoning purposes) is the solution.

“Merger provisions became common because local governments and state courts recognized that they represent an appropriate middle ground between two unattractive extremes—prohibiting the development of substandard lots, which would be a hardship to their owners, and allowing the development of all substandard lots, which would be a hardship to neighbors and the community.”

Stuart Banner [4] of the UCLA School of Law Supreme Court Clinic [5] wrote the SLLC *amicus* brief which was joined by the Council of State Governments [6], National Association of Counties [7], National League of Cities [8], United States Conference of Mayors [9], International City/County Management Association [10], and the International Municipal Lawyers Association [11].

By:
Friday, June 17, 2016 at 01:22 PM
Tags: