It has been a number of years since states and local governments have won a property rights case. But in *Murr v. Wisconsin* [2] the Supreme Court concluded 5-3 that no taking occurred where state law and local ordinance “merged” nonconforming, adjacent lots under common ownership, meaning the property owners could not sell one of the lots by itself. The State and Local Legal Center (SLLC), filed an *amicus brief* [3], which the Court cited two times, 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. State law and a St. Croix County merger ordinance prohibit the individual development or sale of adjacent lots under common ownership that are less than one acre total. A grandfather clause allows for the sale and development of separately owned substandard lots purchased before the statute and ordinance went into effect.

The Murrs sought and were denied a variance to sell Lot E to finance moving the cabin on Lot F. They claimed the ordinance resulted in an unconstitutional uncompensated taking.

The Takings Clause of the Fifth Amendments prohibits the government from “taking” private property for public use without “just compensation.”

According to Justice Kennedy, writing for the majority, the question in this case was whether the lots should be viewed as a single parcel when concluding whether a taking took place. The Court applied a three-factor test which lead it to conclude that the lots should viewed as one parcel.

First, state law and local ordinance treat the property as one for a “specific and legitimate purpose.” As the Court noted, citing the SLLC’s brief: “The merger provision here is . . . a legitimate exercise of government power, as reflected by its consistency with a long history of state and local merger regulations that originated nearly a century ago.” Again citing the SLLC’s brief, the Court further noted that focusing only on lot lines would “frustrate municipalities’ ability to implement minimum lot size regulations by casting doubt on the many merger provisions that exist nationwide today.”

Second, the physical characteristics of the property in this case indicate the parcels should be combined for purposes of takings analysis. The lots were contiguous along their longest edge, are covered with rough terrain which limits use, and are located on a highly regulated river.

Third, the “special relationship of the lots is further shown by their combined valuation.” Lot E appraised at $40,000; lot F at $373,000; but the combined lots appraise at $689,300.

Looking at the parcels as a whole the Court concluded no compensable taking occurred in this case. The Murrs could still build a bigger house on the combined lots, and they cannot claim they “reasonably expected to sell or develop their lots separately given the regulations which predated their acquisition of both lots. Finally, the governmental action was a reasonable land-use regulation, enacted as part of a coordinated federal, state, and local effort to preserve the river and surrounding land.”
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].

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