

GRS&D Represents Amicus Curiae The Land Use Institute in Major Property Rights Victory in U.S. Supreme Court

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Greenbaum, Rowe, Smith & Davis LLP Client Alert

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In a major property rights decision this week, the U.S. Supreme Court held that the Takings Clause of the United States Constitution protects property owners against “coercive monetary exactions” by government agencies as a condition of obtaining land use development permits and approvals.

The Court’s 5-4 decision in *Koontz v. St. Johns River Water Management District* (11-1447) reverses an earlier Florida Supreme Court ruling that the property owner could be denied a development permit because he refused to expend significant funds to improve 50 acres of government-owned property located miles away from his land, government property which bore no relationship to the proposed development project.

The *Koontz* decision is important in that it establishes two significant legal principles:

- The opinion recognizes that there is no constitutional difference between a government agency imposing a monetary exaction on a property owner, and a government agency requiring a land dedication as a condition to obtaining a permit. To be valid, both types of exactions must have a nexus to and be roughly proportional to any negative impacts resulting from the proposed project, as required by the landmark Supreme Court cases *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Without this nexus and rough proportionality, the exaction stands in violation of the Fifth Amendment's Takings Clause.
- The opinion also recognizes that there is no constitutional difference between a government agency approving a permit subject to a property owner agreeing to an exaction, and a government agency denying a permit because a property owner refused to agree to the exaction. The Court held that the two are legally identical and have the same constitutional implications under *Nollan* and *Dolan*.

Greenbaum litigation partner **Daniel L. Schmutter** led a team of the firm’s lawyers, including partners **John J. Reilly** and **John H. Hague**, in representing The Land Use Institute, a New York based think tank, as Amicus Curiae in support of petitioner *Koontz* in this case.