REGULATORY TAKING: “DENOMINATOR ISSUE” — PRINCIPLE OF NONSEGMENTATION APPLIED TO DEVELOPMENT OF CONTIGUOUS PARCELS


[The decision of the Michigan Appellate Court in this case was reported in last year’s cases materials as a victory for the landowner.]

The Supreme Court of Michigan in K&K Constr. Inc. et al. v. Department of Natural Resources1 examined the “denominator” issue discussed in Footnote 7 of Lucas, insofar as it applied to three inter-related family business entities on four contiguous parcels of land totaling 82 acres. One of the parcels had already been developed, and multi-family housing was planned to be constructed on two of the other parcels. When the State Department of Natural Resources refused to approve permits to fill a wetland to facilitate construction of a restaurant and sports complex on a portion of a fourth parcel comprising 55 acres, known as Parcel One, the developer sued, contending that its property had been taken without just compensation.

In reversing the lower courts’ holdings in favor of the developer and an award of $4 million, the Michigan Supreme Court held that before the lower courts could decide whether application of the agency regulations to the property amounted to a taking, they must first consider which parcel or parcels are relevant. Determination of the “denominator” parcel is important because it affects the analysis of what economically viable uses remain for the property after the regulations are imposed. The court ruled that the principle of “non-segmentation” holds that when evaluating the effect of regulations on property, the effect must be reviewed with respect to the parcel as a whole. The denominator parcel is not limited to each individual parcel of property. Four important factors considered by the court were (1) contiguity, (2) unity of ownership, (3) the developer’s proposed comprehensive development plan, and (4) treatment of the parcels as a single unit by the developer. The lower courts were held to have erred in limiting their takings analysis to only Parcel One and should have at least included two other parcels since they were bound together through their contiguity, unity of ownership interest and the developer’s proposed comprehensive scheme.

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