

MAP Spring Institute

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Purpose

- ✓ Review latest U.S. Supreme Court case in context with other landmark zoning decisions
- ✓ What it means to your daily practice and decision-making

“If a police officer must know the constitution, why shouldn’t a planner?”
– U. S. Supreme Court

Koontz v St. John's River Water Management District

- ✓ Does Koontz change (or have no effect on) how we handle planning and development issues at the municipal level?
- ✓ But first, some background...

Municipal Land Use decisions based on...

- ✓ Planning and Zoning Acts
- ✓ Zoning ordinance and other local regulations
- ✓ Michigan case law
- ✓ Other states case law
- ✓ U.S. Constitution/laws
- ✓ U.S. case law

U.S. Supreme Court Tests:

- ✓ Reasonable Use
- ✓ Rational Nexus
- ✓ Rough Proportionality
- ✓ Just Compensation

Reasonable Use

Lucas v. South Carolina Coastal Council

- ✓ Use of property was denied
- ✓ What is means:
 - Regulation can not deny a reasonable use of a property



“Exaction”

- ✓ An “Exaction” is a condition for development imposed on a parcel of land that requires the developer to mitigate anticipated negative impacts of the development and that advances “a legitimate state interest”

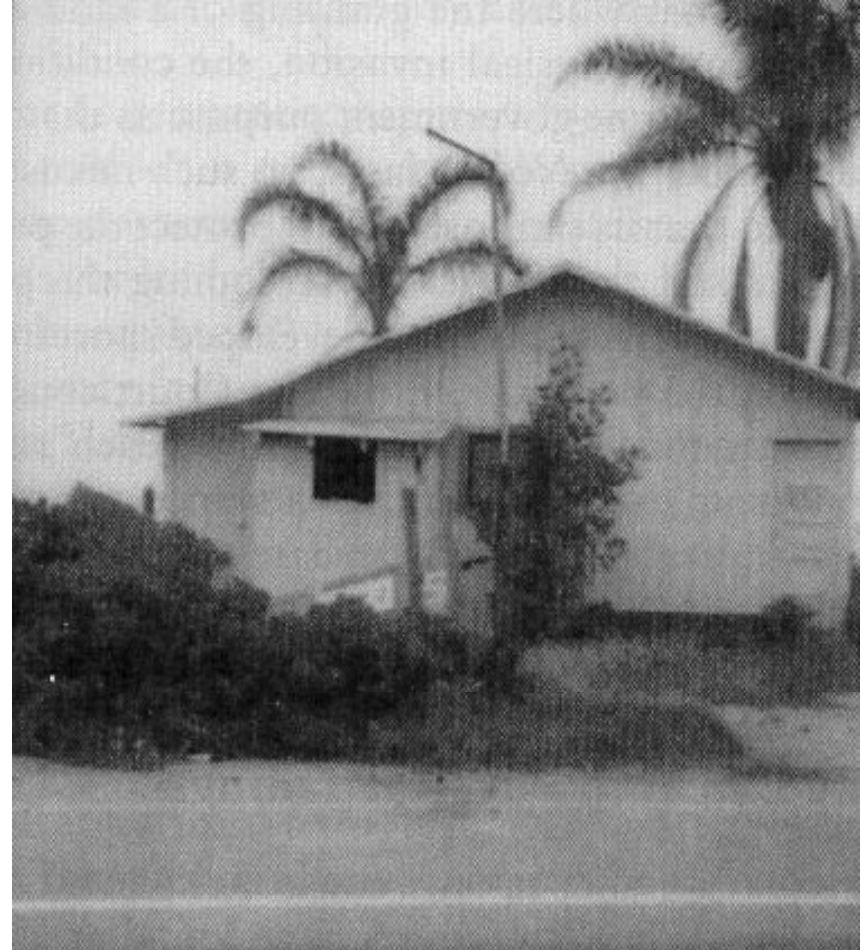
“Going too Far”

- ✓ The prohibition against taking private property without just compensation can be violated by a municipality’s land-use regulation or by application of a regulation in a way that “goes too far.”

Essential (Rational) Nexus

Nollan v. CA Coastal Commission

- ✓ Agency required easement to the waterfront for public access
- ✓ What it means:
 - Must be a relationship (nexus) between condition and impact



Rough Proportionality

Dolan v. Tigard

- ✓ Town required easement for construction of a bike path for hardware store expansion
- ✓ What it means:
 - A condition or requirement must be “roughly proportional” to the scale of the impact



Just Compensation

Lingle v. Chevron

✓ The Unconstitutional Conditions Doctrine...

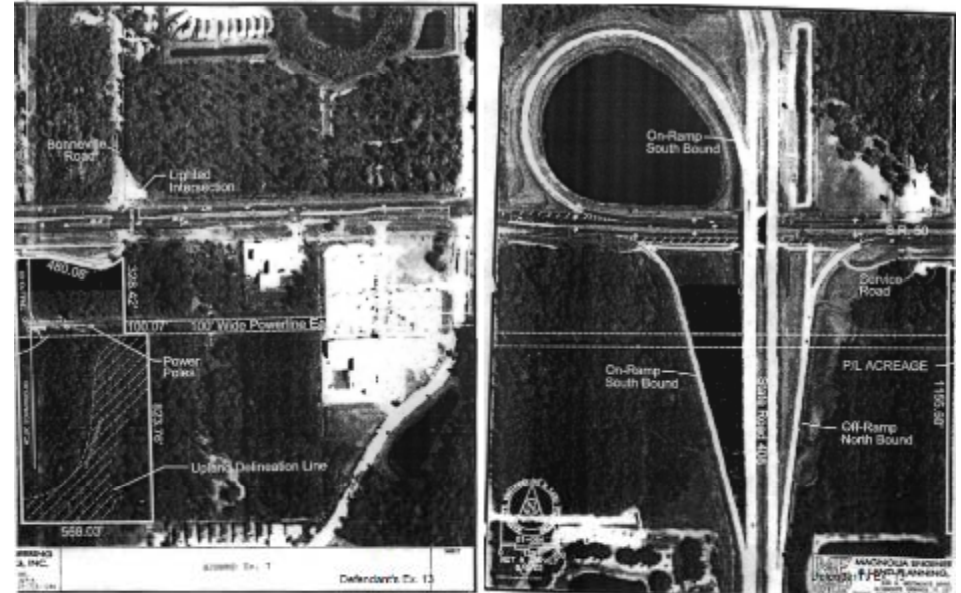
- Government cannot require a person to give up a constitutional right (i.e. just compensation for a taking) in exchange for a discretionary benefit that bears little or no relationship to the property

Koontz – Explained

- ✓ Decided in June 2013
- ✓ Expanded definitions of exactions to include payment of money
- ✓ Previously money was treated differently
- ✓ Expanded Nollan/Dolan to not only include dedication of property but also conditions that require a developer to spend money for public benefit or pay money to the government

Koontz – Background

- ✓ Petitioner sought to develop 3.7 acres of a 14.9 acre parcel
- ✓ Parcel consisted of mostly wetlands
- ✓ Much negotiation with district authority
- ✓ Two alternatives offered:
 - Reduce development to 1 acre and deed the rest to the district, or
 - Hire contractors to make improvements to 50 acres offsite, District owned wetlands
- ✓ Environmental permits for wetland conservation issued through “district authorities”



- ✓ Decision took 20 years
- ✓ Mr. Koontz died 13 years before decision

Litigation Process

- ✓ Koontz refused
- ✓ Went through Florida Circuit Court – Court agreed offsite mitigation lacked an “essential nexus” to the development restrictions already in place and was not “roughly proportionate” to the relief requested.
- ✓ Florida Court of Appeals – Affirmed Circuit Court
- ✓ Florida Supreme Court – reversed lower courts

At Issue – Does the “Nollan and Dolan” Rule Extend to Monetary Exactions?

- ✓ The Rule: There must be a relationship, or “essential nexus” between exaction and the justifications for the outright government ban. (Nollan)
- ✓ Further, there must also be a “rough proportionality” between the development’s impact and the exaction’s burden on the developer. (Dolan)

U.S. Supreme Court

- ✓ Held: standards established in Nollan and Dolan for determining whether permit exactions constitute takings also apply when the government denies a permit based on the owner's rejection of a government demand in the form of an exaction – (unanimous decision)

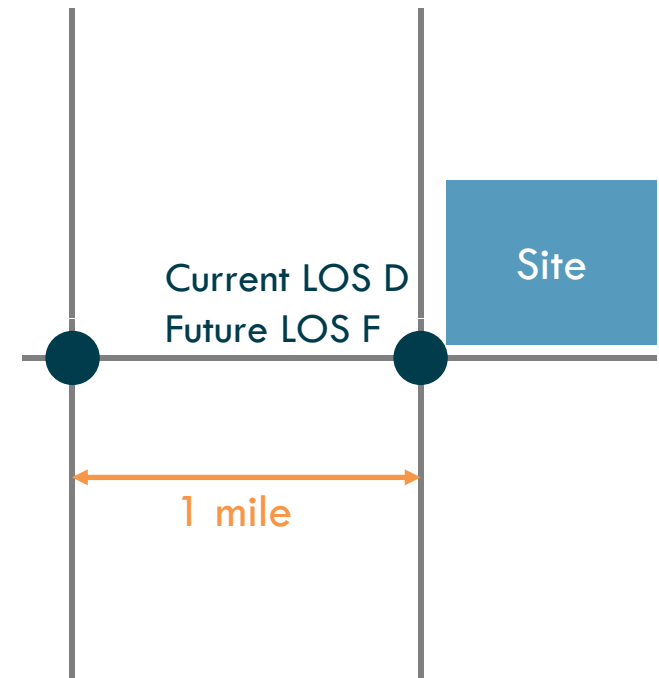
U.S. Supreme Court

- ✓ Held: that the Nollan and Dolan standards apply not only to exactions involving dedication of interest in land to the public, but also to permit conditions requiring applicants to spend money for public benefit or pay money to the government.

So how might Koontz impact planning and zoning decisions?

Scenario #1: Mitigate Traffic Impacts

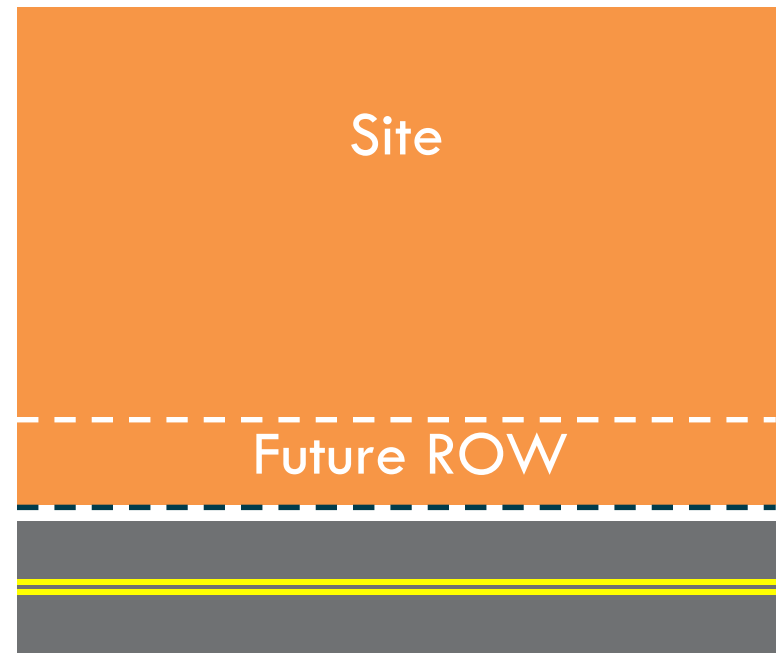
- ✓ Adjacent intersection currently Level of Service D, with development would be E/F: improvements are needed
 - What if it is already F?
 - What if the intersection is a mile away? (insert graphic)



- ✓ Reasonable Use
- ✓ Rational Nexus
- ✓ Rough Proportionality
- ✓ Just Compensation

Scenario #2: City needs ROW for future widening

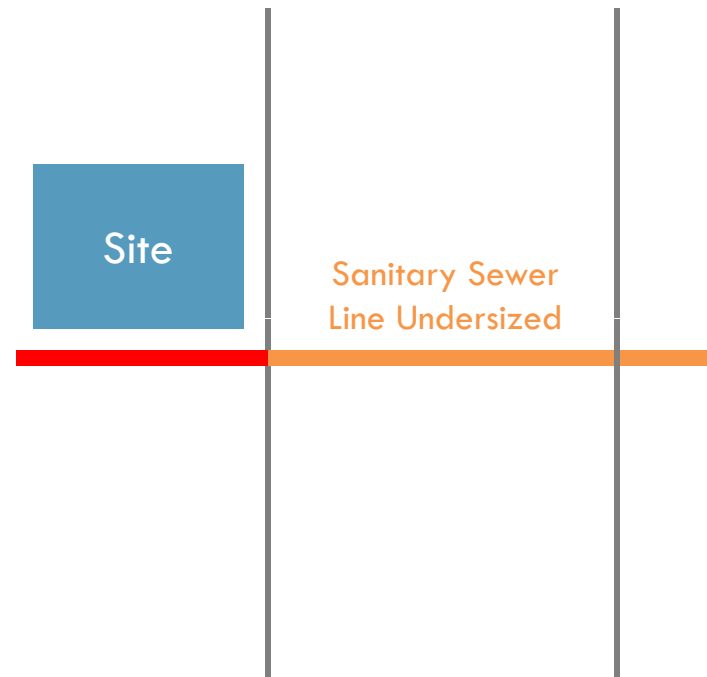
- ✓ Can the city require future ROW as a condition of approval?
- ✓ Is there a difference if the ROW is “planned”?
- ✓ Needed to accommodate project traffic?
- ✓ What if the request is for the developer to provide ROW offsite?



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Scenario #3: Off-site Infrastructure

- ✓ Sanitary sewer is undersized
- ✓ Community wants developer to pay to upgrade to meet project needs
- ✓ What if the developer is asked to size the sanitary sewer line to also accommodate needs of current development



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Scenario #4: Woodlands

- ✓ Woodland ordinance
- ✓ Must replace removed trees, no room on site
 - Community wants 200 trees in park one mile away or
 - Instead community wants developer to pay replacement cost into tree fund



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Scenario #5: Parking Fund

- ✓ Developer wants approval for a mixed-use building (hotel, condos, retail, restaurant)
- ✓ City wants developer to “payment in lieu” fee toward construction of a municipal parking garage



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Scenario #6

- ✓ Developer seeks PUD approval...
- ✓ City ordinance requires a “community benefit”
- ✓ City officials suggest the benefit could be
 - Dedication of a park onsite
 - Construction of a sidewalk along the frontage
 - Construction of an expensive pedestrian walkway along an off-site bridge
 - Donation toward a fire truck purchase

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In Conclusion

- ✓ No “bright line”
- ✓ Any “exactions” must meet the “tests” of rational nexus and rough proportionality
- ✓ Avoid “excessive” demands
- ✓ Monetary exactions really need to be highly scrutinized to ensure the Nolan/Dolan tests are met
- ✓ Avoid phrases like
 - “What can you do for us?”
 - “We are gonna put the squeeze on this developer”

Conclusion continued...

- ✓ If you go to litigation, in addition to time and expense, when you do finally get a decision you might not actually resolve your case and you might get answers to questions you did not ask (and did not want to ask)
- ✓ And you might not live to see the final decision...

