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**LAND USE AND REAL ESTATE
LITIGATION ALERT**

Supreme Court Refuses to Consider Florida Zoning Case

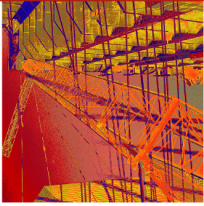
The U.S. Supreme Court on January 11, 2010 refused to hear the case of Florida property owners who claimed their Everglades property was purposefully devalued by zoning regulations in anticipation of the federal government taking the property by eminent domain.¹ In refusing to hear the property owners' case, the Supreme Court left intact a ruling by the Eleventh Circuit Court of Appeals in *United States v. 480.00 Acres of Land*, 557 F.3d 1297 (11th Cir. February 2009) that affirmed a federal circuit court's decision setting the just compensation due to the property owners for the land taken at a lower value than they believed it was worth.

THE FINAL RESULT RULE

The federal district trial court in *U.S. v. 480.00 Acres of Land* agreed with the property owners that "the government 'may not misuse its zoning powers to reduce the expense of a subsequent condemnation.'" In considering whether the government misused its power, the district court used a standard already supported by several other federal circuits including the Second, Third and Fifth Circuits. Under the "primary purpose" or "intent" standard, a court considers two issues: whether the primary purpose or intent of a government restriction or regulation on property was a "tool" to depress the value of the land and whether the governmental body that imposed the restriction or regulation is either the same government body involved in the condemnation or has acted in concert or agreement with that entity.

The Florida case involved local zoning regulations enacted by Dade County in the 1970s to protect against development in the Everglades that culminated in a plan that allowed only one dwelling per 40 acres of Everglades property with no agriculture allowed. In 1989, Congress authorized the expansion of the boundaries of Everglades National Park but did not provide the requisite funding for the private land acquisition necessary for expansion until 1999. Once the funding was approved, the U.S. Department of the Interior filed 2,700 condemnation cases in the U.S. District Court for the Southern District of Florida, and the court appointed a land commission to determine the just compensation for the takings. Several property owners objected to the compensation determined and argued that the U.S. government improperly influenced Dade County to pass the local zoning regulations in anticipation for a land taking.

As recognized by the Eleventh Circuit, every condemnation matter begins with the protection of the Fifth Amendment, which provides that "no person ... shall be deprived of ... property without due process of law; nor shall private property be taken for public use, without just compensation." *U.S. Const. Amend. V*. The measure for determining "just compensation" is generally the value of the property at the date of taking. *United States v. 320 Acres*, 605 F.2d 762, 781 (5th Cir. 1979).

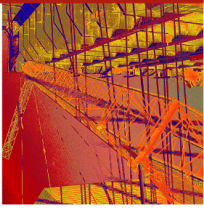


The value of a property is generally its “market value” or the price that a reasonable and willing buyer would pay a reasonable and willing seller given market conditions. *Id.*

In determining what a hypothetical willing buyer would give for property, courts often look to actual, comparable sales on the open market between other willing buyers and sellers. Generally, the more comparable a sale is, the more probative it will be of the fair market value of the condemned property. Just compensation, however, is not limited to the value of the property as it is presently used but also includes any additional market value it may command because of the prospects for developing it to the “highest and best use” for which it is suitable. *Id.* In determining a property’s “highest and best” use, a court may consider existing zoning restrictions; if a zoning restriction precludes a certain use, the court will generally not consider that use in its evaluation. *Id.* (quoting *United States v. Meadow Brook Club*, 259 F.2d 41, 45 (2d Cir.), cert denied, 358 U.S. 921, 79 S. Ct. 290, 3 L. Ed. 2d 239 (1958)).

Courts recognize and are concerned that in some cases strict adherence to market value and comparable sales will result in manifest injustice to the owner or to the public. In such cases, courts apply special rules and standards to arrive at just compensation. One such rule is the “scope of the project” doctrine, which seeks to ensure that when deciding the market value of the property the fact-finding body does not consider the positive or the negative impact of any decision the government makes within the scope of the project that prompted the taking. As a part of this doctrine, a fact finder may disregard the impact of a zoning restriction or regulation on a piece of property in determining just compensation when the government passed the restriction for the purpose of depressing the property’s value in an impending eminent domain proceeding.

After the district court found in favor of the federal government and against the property owners on their opinion of value, the property owners appealed to the Eleventh Circuit. On appeal, the appeals court noted that the Eleventh Circuit has never addressed the appropriate standard for determining whether the government has implemented a restriction in order to depress value prior to a taking by eminent domain but that the “primary purpose” or “intent” standard used by the district court below was the standard to be employed. In upholding the trial court’s determination of “just compensation” and endorsing the standard used by the district court, the Eleventh Circuit stated that the “scope of the project rule” is a narrow exception from the general rule that regulations are to be considered in determining a property’s highest and best use. The court also refused to look at whether there was a nexus between Dade County’s and the federal government’s regulations and restrictions stating that once the District Court decided that the scope of the project rule did not apply there was no reason to look further into any nexus between the regulatory actions of Dade County and the federal government. Since the U.S. Supreme Court refused to hear this case, it is likely that this is the gold standard that other circuits, including the Sixth Circuit, will employ in similar cases.



FOR MORE INFORMATION

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¹ *480.00 Acres of Land v. United States*, 2010 U.S. LEXIS 272 (Jan. 11, 2010).