

United States Supreme Court Announces New Standard and Upholds a Lot Merger in a Regulatory Takings Case

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In *Murr v. Wisconsin*, the Wisconsin regulation at issue required the merger of adjacent substandard-sized lots under common ownership along a state-designated scenic river. Under this merger provision, the owner could not sell or develop the lots separately. When the Murr family became common owners of two such lots, they sought to sell one lot to fund development of the other. Because the merger provision prohibited the sale, the Murrs challenged the provision as a regulatory taking and argued that its impact should be measured against each individual lot.

The U.S. Supreme Court established the following three-factor standard to determine when two lots under common ownership should be treated as one parcel for purposes of analyzing a regulatory taking:

- a. how the property is treated under state and local law, including whether the owners had a reasonable expectation that their lots would be treated together;
- b. the property's physical characteristics, including the physical relationship of the lots, the topography, and the surrounding human and ecological environment; and
- c. the property's prospective value under the challenged regulations, including whether the regulation increases the value of the property as a whole.

A regulatory taking occurs if a municipality imposes land use restrictions that either: (a) deny all economically beneficial or productive use of the land or (b) go too far in burdening the owner's property rights and investment-backed expectations. When applying this test, the U.S. Supreme Court has traditionally looked at the regulation's effect on the "parcel as whole." But this general rule did not address situations where the parcel itself is in dispute.

Applying its new standard, the Court held that the two merged lots should be treated as one "parcel" because the merger provision was effective before the Murrs obtained the lots, the topography of the lots limited the range of possible uses, and the economic effect of the merger was mitigated by the privacy and recreational benefits of using the property as a whole. The required merger was not a regulatory taking because the Murr family could continue to use the integrated parcel for residential and recreational purposes.

In California, application of this new test may arise when a city seeks to merge adjacent lots involuntarily under Government Code Sections 66451.10 to 66451.24 or when a city disputes the validity of lots created by a subdivision recorded before enactment of the Subdivision Map Act.

For further information about this decision or any other concerns regarding regulatory takings, please contact **Andrew R. Contreiras**.