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Newsroom

Burger on Land Use Decision

Professor Michael Burger weighs in on a U.S. Supreme Court ruling that greatly reduces the leverage municipalities can wield in granting developers permits.

From RHODE ISLAND LAWYERS WEEKLY: "[Supreme Court ruling levels playing field for developers, Gov't loses leverage](#)" by David Frank



July 25, 2013 [July 29, 2013, issue] - Land use attorneys

across the state are hailing a U.S. Supreme Court ruling that greatly reduces the amount of leverage municipalities can wield in granting developers permits.

A 5-4 majority in *Koontz v. St. Johns River Water Management District* held that the U.S. Constitution's takings clause not only applies to cases in which a project is approved with "extortionate" conditions, but also to those denied when a developer refuses to agree to the coercive demands of the government.

The court granted certiorari because *Koontz* raised questions of constitutional law, on which the lower courts were split. [...]



Meanwhile, **Roger Williams University School of Law Professor**

Michael Burger said *Koontz* has been the subject of debate among his environmental law colleagues.

But the notion that the ruling will severely restrict the ability of municipalities to exact fees, require mitigation and fund public projects through the permitting process is "probably overblown," **he said**.

"The decision is not, as some have implied, a takings decision that limits governments' regulatory authority," **he said**. "It is an exactions decision, which requires that monetary exactions, like real property exactions, relate to the impacts of the project and be roughly proportionate to them."

Burger pointed out that the court did not find the exaction in the case was unconstitutional, and that the main impact of the ruling seems to be that parties can sue in federal court to test whether a monetary exaction satisfies the nexus and proportionality standard. That said, it is unlikely the average developer would file a complaint in federal court against the local government with which it works, he added.

"For one thing, the remedy they can achieve is an elimination of the exaction; the courts cannot order approval of whatever permits they are seeking. In addition, what developer wants to alienate the local government and try to win permits through the courts?" **he said**. [...]

For full story, click [here](http://rilawyersweekly.com/blog/2013/07/25/supreme-court-ruling-levels-playing-field-for-developers/). [http://rilawyersweekly.com/blog/2013/07/25/supreme-court-ruling-levels-playing-field-for-developers/]