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The Lucas Case

Supreme Court Decision

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Environmentalists and land use planners should be relieved by the U.S. Supreme Court's recent opinion in the case of Lucas v. South Carolina Coastal Council. Property rights groups, opposed to environmental laws and land use controls, had predicted that the Rehnquist court would use the Lucas case to redefine "takings" law in a manner that would place new limits on environmental regulations. Instead, the Court issued a narrow decision which does not change the rules for the vast majority of takings claims. Nevertheless, the Court's opinion is flawed and rife with hints of future problems.

BACKGROUND

David Lucas was one of the developers of Wild Dunes, a resort residential real estate development at the north end of the Isle of Palms. The inlet at the Isle's north end is unstable and has moved hundreds of feet over the past 40 years. In laying out the Wild Dunes development, Lucas and his partners put some single family residential lots within an unstable inlet zone, an area that had been under water for about half of the past 40 years. At least two houses were built within these lots by Wild Dunes purchasers. In 1986 Lucas sold his interest in Wild Dunes, using part of the proceeds from that sale to purchase two lots within the unstable inlet area for $975,000.

In 1988 the S.C. General Assembly passed the Beachfront Management Act, which tries to protect the state's beaches for the public and restricts building in the beach zone. The new law prohibited Lucas from building any sort of house on the lots.

In January, 1989, Lucas sued the Coastal Council, claiming that the Beachfront Management Act had in effect "taken" his property for public use. He asked for damages for the lost value of his lots. On behalf of Sierra Club, Jimmy Chandler filed a "friend of the court" brief supporting the Coastal Council position. A state court judge agreed with Lucas and awarded $1.2 million.

The Coastal Council appealed, and the S.C. Supreme Court reversed, in a 3-2 decision written by Justice Jean H. Toal. The Supreme Court ruled that the law prohibiting building was a reasonable exercise of the state's police power, in that the state was acting to protect life and property and to prevent a public nuisance. Citing US Supreme Court cases, the Court ruled that actions to prevent a public nuisance are not takings which must be compensated.

Lucas then appealed to the U.S. Supreme Court.

In 1987, the U. S. Supreme Court issued a series of opinions in "takings" cases which were widely interpreted as signs of a rightward shift, in favor of property owners versus government regulation. When the Supreme Court agreed to hear the Lucas case, lawyers and regulators all over the country took note. With two Bush appointees having joined the Court since 1987, everyone expected the Lucas case to result in another move to strengthen private property rights at the expense of environmental and land use regulators.

THE US SUPREME COURT

The Supreme Court's decision in Lucas, however, was far from the bombshell some had predicted. Although the Court reversed the South Carolina Supreme Court's decision, it did not rule that Lucas' property had been taken by the State. Instead, it sent the case back to the state courts for a new trial.

The opinion of the Court was written by Justice Scalia. He ruled that the S.C. Court had erred by relying solely on the legislative findings of the S.C. General Assembly in passing the Beachfront Management Act. The S.C. Court had ruled that because Lucas had not contested the basic validity of the Act, it was bound to accept the Act's findings. Those findings included statements that the Act's building restrictions were necessary to protect life and property. Because of this important public purpose, the S. C. Court ruled that no taking had occurred. Justice Scalia's opinion held that South Carolina needed more than just the legislature's findings to support the building restrictions. It must also show that the restrictions go no further than allowed by "background principles of nuisance and property law." The Court concluded that on re-trial, the South Carolina courts must examine whether common law nuisance law could have been used to prohibit building on the Lucas lots.

This new rule will not apply to most "takings" claims, however. The Court limited the rule to cases in which a land use regulation has resulted in a total loss of use and value of property. It left intact

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the existing rule that a regulation is not considered a taking merely because it causes a loss of value, so long as some residual use and value remains.

Lucas claims that the Coastal Council's building restriction caused his lots to be totally valueless, and the Judge who awarded him $1.2 million in 1989 agreed. The issue will have to be re-tried, however, and it is likely that this time, the courts will rule that the lots retain some value. If so, the rule created by Scalia's opinion will not apply.

Four of the US Supreme Court Justices wrote opinions separate from Scalia's majority opinion. All of them doubted that Lucas lost all uses and value of his lots. Even Justice Kennedy, who concurred in the result reached by the majority, found the finding of no value to be "curious" and essentially invited the South Carolina court to re-examine this issue.

The opinions total about 80 pages. The dissents filed by Justices Blackmun and Stevens are very critical of Justice Scalia's opinion, with both expressing fears that the "Court's new policies will spread beyond the narrow confines of –

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the present case" and "greatly hamper the efforts of local officials and planners who must deal with increasingly complex problems in land-use and environmental regulation." There is no question but that the majority opinion does not bode well for future cases.

WHAT HAPPENS NOW?

In this case, however, Lucas will probably never collect a nickel. His lots may not be worth a million dollars anymore, but they can be used for parking and beach access. These uses have some value. If on remand the court accepts this conclusion, Justice Scalia's new rule will not apply, and the rules used by the SC Supreme Court will apply again, to the same conclusion: no taking. Even if the land is held to have no value, it is certainly conceivable that the Coastal Council can convince the S. C. court that "background principles of nuisance and property law" support building prohibitions in high-risk beach areas.

More likely, however, is that Lucas will be forced to apply for a special permit under the 1990 amendments to the Beachfront Management Act. After the $1.2 million award, the General Assembly amended the law to repeal the absolute building ban which applied to Lucas' property when his case was first tried. Now, the Coastal Council can grant him a permit to build a house on his lots. Under well-established rules, a property owner must exhaust all administrative remedies before claiming a taking. So far, the Coastal Council has granted every application for special permits under the 1990 amendments. There is no reason to expect that it would not issue a permit to Lucas. Once a permit is issued, Lucas no longer has a taking claim.

Lucas probably does not want a permit, however. Building a house on unstable land, documented to have been underwater for 20 of the past 40 years, is not a prudent investment. Paying $975,000 for unstable inlet lots was not a smart thing for Lucas to have done, and he would much rather have the state's taxpayers bail him out than add to his risky investment.

Shed no tears for David Lucas. He is no innocent and deserves none of the sympathy he has drummed up. He gambled his money on a sandbar, and the Beachfront Management Act imposes merely the prudence that should always be exercised when assessing a property's true value. These unstable inlet lots are only worth a million dollars to someone who doesn't know, or doesn't care, that they will surely be under water within the time of a typical 30 year mortgage. David Lucas unwisely developed these lots despite knowing their history, encouraged others to build on them, and then unwisely invested a large sum of money in them. Development of unstable coastal property has caused many problems for the citizens and taxpayers, and the public has a right to restrict development which causes public harm.