

Parcel as a Whole, Neighbors and Ownership

Workshop on Unity of Ownership and Related Topics
California Coastal Commission

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Functions of State Agencies

- Agencies further the specific goals for which they were established.
- They act within the context of fundamental elements of state law and policy.

Coastal Commission

- Specific (Chapter 3) goals include:
 - Public Access and Recreation
 - Sensitive Habitats and Marine Resources
 - Scenic and Visual Resources
 - Coastal Agriculture and Rural Character
- “This division shall be liberally construed to accomplish its purposes and objectives.” Coastal Act § 30009

Coastal Commission

- Fundamental State policy includes:
 - “...this division is not intended . . . as authorizing the commission... to grant or deny a permit in a matter which will take or damage private property for public use, without the payment of just compensation therefor.”
 - Coastal Act § 30010, and California Constitution, Art. 1, § 19(a)

Policy in Context

- There is no “Takings Override” of other Commission goals.
- The Takings Clause was “designed to bar Government from forcing some people alone to bear burdens which, in all fairness and justice, should be borne by the public as a whole.”
 - *Armstrong v. United States* (Sup. Ct. 1960)
 - [Full case citations at end of presentation]

Policy in Context

- Taken together, the Act requires that Chapter 3 goals must be liberally construed, within a fair reading of constitutional protections for property
- Within the context of “fair reading,” should the Commission attempt to redefine corporation and partnership law concepts vis-à-vis the Legislature and other agencies?

Property Rights in Context

- Property is anchored by “background principles of the State’s law of property and nuisance”
 - [Lucas v. S. Car. Coastal Council \(Sup. Ct. 1992\)](#)
- More broadly, “background principles” includes the Rule of Law, respect for separate parcels, and for established ownership entities (e.g., partnerships)

Background of Takings Law

- A “regulation [that] denies all economically beneficial or productive use of land” is a taking. Lucas
- BUT, under a multifactor test stressing economic impact, expectations, and character of government action, a partial taking may be compensable
 - Penn Central (Sup. Ct. 1978)

Regulatory Takings Happen

- Regulations that go “too far” result in compensable regulatory takings.
 - Pennsylvania Coal (Sup. Ct. 1922, Holmes).
- California localities have lost big, expensive, regulatory takings cases:
 - City of Monterey v. Del Monte Dunes (Sup. Ct. 1999)
 - Herrington v. Cty of Sonoma (9th Cir. 1988)
 - Yamagiwa v. Half Moon Bay (U.S.D.C. 2007)

“Parcel as a Whole”

- Takings tests focus on extent of owner’s loss, so we must determine the owner’s pre-regulation parcel.
- We look to “the nature and extent of the interference with rights in the parcel as a whole” Penn Central
- BUT, “parcel as a whole” is not self-defining

What is the “Relevant Parcel”?

- Some commentators will say that the parcel is the piece of land regulators have in mind, and any reduction is “conceptual severance.”
- The case law provides no magic definition, and regulators could engage in “conceptual agglomeration.”
- The legal parcel is the norm.

The Relevant Parcel is Not Too Small

- “a taking can appear to emerge if the property is viewed too narrowly.”
 - Ciampitti v. U.S., 22 Cl.Ct. 310, 319 (1991).

But, the Relevant Parcel is Not Too Large, Either

- “The effect of a taking can obviously be disguised if the property at issue is too broadly defined. Conversely, a taking can appear to emerge if the property is viewed too narrowly.”
 - Ciampitti, 22 Cl.Ct. at 318-19.

The Relevant Parcel Might be Larger than the Original Parcel

- Noncontiguous parcels treated as one where the owner did so “for purposes of purchase and finance” in one consolidated operation
 - *Ciampitti v. United States* (Claims Ct. 1991)
- Parcels, used together, bought with “a mere five-month separation in time.”
 - *Forest Properties* (Ct. Fed. Cl. 1997)

The Relevant Parcel Might be Smaller than the Original Parcel

- “There may be no rigid rule that the parcel as a whole must include all land originally owned by plaintiffs.”
 - Broadwater Farms (Ct. of Fed. Claims 1996)
- The key is that there was that the early sale of some of the land was commercially reasonable and not an attempt to circumvent the CWA.

Theorizing Unification Where Ownership is Separate?

- As noted, in some situations, common ownership may lead to unified treatment of separate parcels.
- BUT, should some degree of cooperation among separate owners of separate parcels lead to unified treatment of the owners and parcels?

Kalway v. City of Berkeley

60 Cal.Rptr.3d 477 (Cal. Ct. of App. 2007)

- “[T]he evidence fully supports the City’s determination that irrespective of the grant deed, the [two lots] were in substance under common ownership.”
- BUT, the Kalways “agree” that the “last-minute deed” was given “in order to prevent the City from merging the City from merging the parcels . . .” The Kalways never claimed any substance to the transfer.

Chapman v. Hughes

Cal. Supreme Court, 104 Cal. 302 (1894)

- “[P]arcels of land . . . were contributed by the respective partners, and thereby became partnership property. . . . not affected by the agreement that each partner should retain his title.”
- BUT, the parties had previously “created an association . . . for the purpose of carrying on together the business of selling the lands, and dividing the profits”

Zanetti v. Zanetti

77 Cal.App.2d 553 (Cal. Ct. of App. 1947)

- “[A] partner’s separate real property may become partnership property if he or she devotes that property to partnership purposes.” [Staff explanation of case.]
- BUT, “[i]t is not disputed . . . that all of the expenses in connection with the development and obtaining of the patents in controversy were paid out of the common partnership account.”

Neighbors Cooperate

- Parcel boundaries “are generally efficient only if one assumes a societal norm that, broadly described, [favors] limited cooperation and interdependence between neighboring landowners.”
 - Stewart E. Sterk, “Neighbors in American Land Law,” 87 Columbia Law Rev. 55, 58-59 (1987).

Types of Cooperation

- Easements (e.g., for driveway)
- Covenants (e.g., promise to locate disamenities away from neighbors)
- Joint maintenance of common benefits (e.g., roads, sewer lines)
- Harmonious development
- Neighborliness and affinity
- All benefit, but as individual landowners, and not as partners

Single Economic Parcel Theory Has Very Broad Implications

- Equating neighborly cooperation with unity of ownership could lead to:
 - Refusal to cooperate
 - Premature development
 - Costly legal fixes (e.g., suits against neighbors planning development, title insurance endorsements for right to build)
- Effects would extend far beyond environmental and takings concerns

“Relevant Parcel” Inquiry

- General rule: each legal parcel is a separate parcel for takings analysis
- Where same owner, parcel may be segmented or parcels combined if needed for just result. *E.g., Ciampitti*
- Where different legal owners, other attribution only under corporate law standards and “clear and convincing proof.” *E.g., Evidence Code § 662*

Conclusions

- Reattribution of ownership is severely limited under California corporate law
- The “Single Economic Parcel” Theory likely will produce unintended harm
- Reattribution inquiries should be limited to isolated cases
- The threshold for inquiries: activities clearly not normal for neighbors

Full Citations to Cases (1)

- *Armstrong v. United States*, 364 U.S. 40 (1960)
- *Broadwater Farms Joint Venture v. U.S.*, 35 Fed. Cl. 232 (1996), *vacated on other grounds*, 121 F.3d 727 (1997) (unpubl.)
- *Chapman v. Hughes*, 104 Cal. 302 (1894)
- *Ciampitti v. U.S.*, 22 Cl. Ct. (1991)
- *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999)
- *Forest Properties, Inc. v. U.S.*, 39 Fed. Cl. 56 (1997)
- *Herrington v. County of Sonoma*, 834 F.2d 1488 (9th Cir. 1988)

Full Citations to Cases (2)

- *Kalway v. City of Berkeley*, 60 Cal.Rptr.3d 477 (Cal. Ct. of App. 2007)
- *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992)
- *Penn Central Transp. Co. v. City of N.Y.* 438 U.S. 104, 124 (1978)
- *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).
- *Yamagiwa v. City of Half Moon Bay*, 523 F.Supp.2d 1036 (N. D. Cal. 2007)
- *Zanetti v. Zanetti*, 77 Cal.App.2d 553 (Cal. Ct. of App. 1947)

The End

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