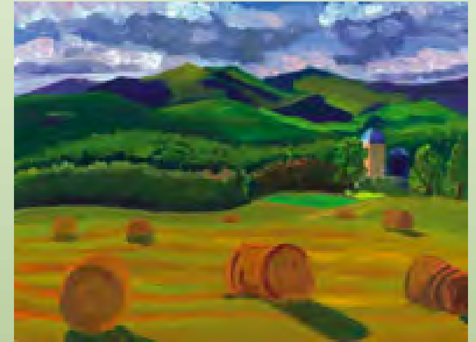

The "Parcel as a Whole" Rule in Regulatory Takings Law

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Two Objectives

- Explain the common sense foundation of the common sense “parcel as a whole” rule.
- Provide three illustrations of the common sense application of the common sense “parcel as a whole” rule.

Original Understanding of the Takings Clause

"IT WAS [ORIGINALLY] THOUGHT THAT THE TAKINGS CLAUSE REACHED ONLY A 'DIRECT APPROPRIATION' OF PROPERTY, OR THE FUNCTIONAL EQUIVALENT OF A 'PRACTICAL OUSTER OF [THE OWNER'S] POSSESSION.'"

JUSTICE ANTONIN SCALIA, LUCAS V. SOUTH CAROLINA COASTAL COUNCIL

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), recognized that a regulatory restriction on the use of property can constitute a "taking" of private property

"IF REGULATION **GOES TOO FAR** IT WILL BE RECOGNIZED AS A TAKING."

"GOVERNMENT **HARDLY COULD GO ON** IF TO SOME EXTENT VALUES INCIDENT TO PROPERTY COULD NOT BE DIMINISHED WITHOUT PAYING FOR EVERY SUCH CHANGE IN THE GENERAL LAW."

How Draw A Line?

Use the "Parcel as a Whole" Rule

A CLAIMANT'S PARCEL OF PROPERTY [CANNOT] FIRST BE DIVIDED INTO WHAT WAS TAKEN AND WHAT WAS LEFT FOR THE PURPOSE OF DEMONSTRATING THE TAKING OF THE FORMER TO BE COMPLETE AND HENCE COMPENSABLE. TO THE EXTENT THAT <u>ANY PORTION</u> OF PROPERTY IS TAKEN, THAT PORTION IS <u>ALWAYS TAKEN</u> IN <u>ITS ENTIRETY</u>; <u>THE RELEVANT QUESTION, HOWEVER, IS WHETHER THE PROPERTY TAKEN IS ALL, OR ONLY A PORTION OF, THE PARCEL IN QUESTION</u>.

– CONCRETE PIPE & PRODUCTS, 1993

For Example . . .

An Approach Based on “Realism and Fairness”

“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. THE EFFORT SHOULD BE TO IDENTIFY THE PARCEL AS REALISTICALLY AND FAIRLY AS POSSIBLE, GIVEN THE ENTIRE FACTUAL AND REGULATORY ENVIRONMENT.

– CIAMPITTI, 1991

Three Illustrative Cases

DISTRICT INTOWN V. DISTRICT OF COLUMBIA (D.C. CIR. 1999)

CIAMPITTI V. UNITED STATES (CT. CL.1991)

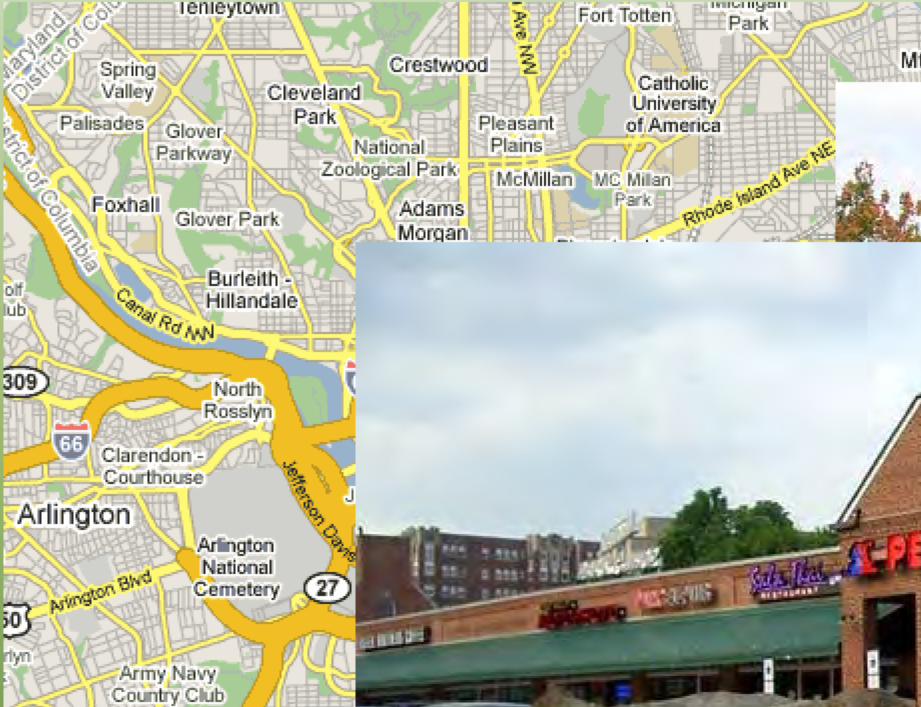
CITY OF COEUR D'ALENE V. SIMPSON (IDAHO 2006)

District Intown

SHOULD LEGALLY DISTINCT LOTS SLATED FOR TOWNHOUSE DEVELOPMENT, SUBDIVIDED FROM A LARGE APARTMENT COMPLEX PROPERTY, BE TREATED AS SEPARATE PARCELS FOR TAKINGS PURPOSE?

NO.

District Intown



District Intown

District Intown

INTERSECTION OF CONNECTICUT AND CATHEDRAL AVENUES, WASHINGTON, D.C.
HTTP://MAPS.GOOGLE.COM/MAPS?F=Q&SOURCE=S_Q&HL=EN&GEOCODE=&Q=INTERSECTION+OF+CONNECTICUT+AND+CATHEDRAL+AVENUES,+WASHINGTON,+D.C.&AQ=&SLL=37.0625,-95.677068&SSPN=30.323858,56.162109&IE=UTF8&HQ=&HNEAR=CONNECTICUT+AVE+NW+%26+CATHEDRAL+AVE+NW,+WASHINGTON+D.C.,+

Ciampitti

CAN A GROUP OF NONCONTIGUOUS PROPERTIES HELD AS PART OF A SINGLE INVESTMENT VENTURE BE CONSIDERD A SINGLE PARCEL FOR THE PURPOSE OF TAKINGS ANALYSIS?

YES

CAN AN INDIVIDUAL PROPERTY OWNER, A CORPORATION WHOLLY OWNED BY THE INDIVIDUAL, AND "FICTIONAL" OWNERS SERVING AS STRAWMEN FOR THE INDIVIDUAL OWNER, ALL BE TREATED AS THE SINGLE OWNER OF AN INVENTORY OF NONCONTIGUOUS LOTS ?

YES

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Ciampitti

LOWER TOWNSHIP, NEW JERSEY

City of Coeur D’Alene

IF PROPERTY OWNERS CONVEY A PART OF THEIR PROPERTY TO A LEGALLY DISTINCT CORPORATION SHOULD THE PROPERTY HELD BY THE CORPORATION NECESSARILY BE TREATED AS A SEPARATE PARCEL FROM THE PROPERTY THE OWNERS HAVE RETAINED?

NO

City of Coeur D'Alene

City of Coeur D’Alene

1301 EAST LAKESHORE DRIVE, COEUR D’ALENE IDAHO
HTTP://MAPS.GOOGLE.COM/MAPS?F=Q&SOURCE=S_Q&HL=EN&GEOCODE=&Q=1301+EAST+LAKESHORE+DRIVE,+COEUR+D%E2%80%99ALENE+IDAHO&AQ=&SLL=38.984264,-74.909185&SSPN=0.116089,0.219383&IE=UTF8&HQ=&HNEAR=1301+E+LAKESHORE+DR,+COEUR+D'ALENE,+IDAHO+83814&Z=16

City of Coeur D'Alene

WE CANNOT SAY . . . THAT THE TRANSFER AND FACT OF SEPARATE OWNERSHIP BY THEMSELVES NECESSARILY END THE INQUIRY. INDEED, THE CITY HAS QUESTIONED THE PURPOSE OF THE TRANSFER AND WE BELIEVE THE CIRCUMSTANCES OF THE TRANSFER MAY BE ENTIRELY RELEVANT TO THE DENOMINATOR INQUIRY. TO EXPLAIN: A RULE THAT SEPARATE OWNERSHIP IS ALWAYS CONCLUSIVE AGAINST THE GOVERNMENT WOULD BE POWERLESS TO PREVENT LANDOWNERS FROM MERELY DIVIDING UP OWNERSHIP OF THEIR PROPERTY SO AS TO DEFINITIVELY INFLUENCE THE DENOMINATOR ANALYSIS. IT IS NOT PURE FANTASY TO IMAGINE A SCENARIO WHEREIN HALFWAY THROUGH A TAKINGS SUIT, LANDOWNER AGREES WITH A COMPANY TO TRANSFER A PARCEL OF BEACHACRE -WHICH APPEARS, AS THE WATERWARD PARCEL DOES

City of Coeur D’Alene

HERE, TO BE SEPARATE FROM LANDOWNER'S OTHER PARCEL-WITH A WINK-AND-A-NOD AGREEMENT TO TRANSFER BACK AFTER THE SUIT OR TO JOINTLY MANAGE, USE, AND DEVELOP THE PROPERTY. AS THE COURT OF CLAIMS EXPLAINED IN *CIAMPITTI, SUPRA,* THE PURPOSE OF THE DENOMINATOR INQUIRY IS TO DEFINE THE PROPERTY AS REALISTICALLY AND FAIRLY AS POSSIBLE IN LIGHT OF THE FACTUAL CIRCUMSTANCES. WE CANNOT ENDORSE A RULE THAT TURNS A BLIND EYE TO ALL THE RELEVANT FACTUAL CIRCUMSTANCES, INCLUDING THE PURPOSE, CHARACTER AND TIMING OF ANY TRANSFER, ESPECIALLY ONE MADE DURING THE COURSE OF A TAKINGS CASE.

IF IT LOOKS LIKE OKLAHOMA

It’s Not OK!!