

Legal Alert

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PARCEL AS A WHOLE

The U.S. Supreme Court has agreed to decide one of the simple issues that has bedeviled land use law for decades. Exactly what parcel of land is considered for purposes of deciding whether a government regulation constitutes an unconstitutional “taking.” For years courts have said that, instead of merely focusing on the land that cannot be used, the court must consider the “parcel as a whole.” Many takings are thus avoided because a private property owner remains free to use the other portions of its parcel. But even defining the “whole parcel” can be difficult.

In January, the Supreme Court decided to review the case of *Murr v. Wisconsin*. A family owns two parcels that are adjacent but platted as distinct lots. They have an existing single family home on one lot. Due to various dimensional restrictions, the city will not allow them to construct anything on the second, vacant lot. After the family sued for “taking” that second lot, the Wisconsin Supreme Court decided that the relevant parcel consisted of both of the family’s lots—including the existing single family home. Because the Murrs are allowed to make some use of both parcels when viewed as one, the Wisconsin court held that no taking had occurred.

The case is expected to be argued in the U.S. Supreme Court later this year.

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