

## Legal Alert

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### REGULATORY TAKINGS – MURR V. WISCONSIN

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The U.S. Supreme Court has decided an important regulatory takings case called *Murr v. Wisconsin*. Typically, the key question in these cases is when a regulation goes “too far” and thus constitutes a taking, but *Murr* raised the interesting prior question of how courts should determine the property that counts for purposes of deciding whether a taking has occurred. This particular question was the importance of lot lines under local law. The Murrs owned two adjacent lots that, separately, were substandard under local zoning regulations. They had built a residence on one lot, but were precluded from building anything on the other contiguous-but-separate parcel.

The Murrs argued that local lot lines always counted, and thus there had been a taking of the substandard lot that they could not use. In contrast, local authorities argued that local lot lines should never count when land is in common ownership, and thus the Murrs’ ability to use their aggregate parcel as a residence meant that there was no taking.

The Supreme Court rejected the clear rules that were advocated by both sides. Instead, it held that the relevant parcel must be determined on a case by case basis under a three factor test. Sometimes local lot lines count; sometimes they do not. Under the new test, courts must consider: (1) how the land is treated under state and local law (i.e., the importance of lot lines); (2) the physical characteristics of the land (e.g., topography and environmental issues); and (3) the prospective value of the regulated land (i.e., the impact that the restriction on one lot might have on the value of the adjacent lot). Applying

these standards to the Murrs, the Court held that the relevant parcel for purposes of the takings analysis was the two lots combined, and not each considered separately.