

SUPREME COURT RULES ON LAND USE

By Joseph R. Boyd, Boyd & Branch, P.A.

Government that regulates land use may be doing so at its peril. That was the apparent affect of the Lucas decision rendered June 29, 1992, by the Supreme Court (David H. Lucas, Petitioner vs. South Carolina Coastal Council, Defendant, U.S.S.C., No. 91-453). As always, though, the effect of the Supreme Court's decision will not be known for some time.

In what has come to be known as the Lucas decision, the Court placed a higher burden on governments that regulate land use than it had before. Specifically, the traditional test has been whether the law seeks to protect the general public interest. To prove this, regulators needed only to show the legislation's declaration that property owners' desires are inconsistent with the public interests. These include matters related to public health, safety, and welfare.

In 1986, David Lucas paid \$900,000 for two residential lots on an island off the coast of South Carolina. He intended to build single family homes on the lots, with the idea of selling one and retaining the other. Other homes were already built along the coast surrounding him. He intended to use his lots exactly the same way as the owners on the adjacent parcels had used theirs, erecting single family residences. Lucas had plans drawn and planned to move forward with obtaining the necessary permits.

In 1988, the South Carolina Beachfront Management Act was enacted, stopping Lucas from any reasonable economic use of his lots. Lucas sued and was given a judgment of one million two hundred and thirty two thousand dollars (\$1,232,000.00).

The South Carolina Supreme Court, however, overturned the decision, determining that when a regulation respecting the use of property is designed to prevent serious public harm, no compensation is owed to the affected owners.

The U.S. Supreme Court appeal followed. The June 29, 1992 opinion provides that if regulators cannot specifically demonstrate the problem and the land use solution, they will, as a minimum, have to allow at least some economically viable use of the owners' land.

What effect may this decision have in Florida? First, judgments against governments that regulate land use excessively will increase. This may not be a significant number since suits should not follow if reasonable uses are permitted, even if it is not the use the owner intended. Secondly, the cost to defend those suits will increase and the courts may expect additional burdens.

Thirdly, and possibly the best solution, will be for regulators to exercise a little more reasonableness when dealing with land owners. Some of the extreme difficulties caused by obstructive government policies that have been reported in the past should give way to a little more give and take between the parties. When each side recognizes the law, a solution to permitting questions should be a little easier to obtain. Property owners are entitled, according to the U.S. Supreme Court, to reasonable economic use of their land, absent some very extreme circumstances.

Regulators are entitled to protect the public health, safety and welfare. When regulators are over broad in implementing their authority and the property owner is denied any reasonable economic use of the land unjustly, the dollars paid by taxpayers to the land owner could be substantial.



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