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The Wisconsin Supreme Court Bolsters Prior "Takings" Decisions

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Regulatory takings are a major public policy issue. Legislation has been introduced in Wisconsin and in many other states which would statutorily define when governmental actions impacting the value of private property would require compensation by the public. Recent decisions by the United States Supreme Court have also raised the visibility of the takings issue.

The Wisconsin Supreme Court has long been a national leader in the development of regulatory takings law. In a June 4, 1996, opinion the Wisconsin Supreme Court reaffirmed that zoning a portion of a parcel of property in order to protect wetlands did not constitute a regulatory taking of that property requiring compensation under the United States and Wisconsin Constitutions. The case, entitled *Zealy v. City of Waukesha*, is significant because it clarified some issues with respect to the applicability of the Wisconsin Supreme Court's 1972 decision in *Just v. Marinette County*, in light of the 1992 decision by the United States Supreme Court in *Lucas v. South Carolina Coastal Council*. The Court in *Just* held that a county shoreland zoning ordinance which prevented development within a certain distance from lakes and rivers did not constitute a taking of property requiring compensation. The United States Supreme Court's decision in *Lucas* raised certain issues regarding how to measure the impact of environmental regulations on private property as part of the takings analysis.

The regulatory takings issue is a complex area of the law. While the courts have recognized the right of the public to regulate private property, the courts also recognize that overly burdensome regulations may constitute "regulatory takings" which require that the public compensate private property owners for the loss of value to their property as a result of the regulations. As noted by the Court in *Zealy*, rather than develop a set formula for determining regulatory takings, the courts have developed a general framework within which to balance the two competing principles which are at the heart of the takings issue: respect for the property rights of individuals

and the public's ability to further the interests of all citizens by regulating an individual owner's potential uses of land.

The Background of the *Zealy* Case

The case involved a parcel of land consisting of approximately 10.4 acres. The land was originally zoned for agricultural use by the Town of Waukesha. The parcel, along with approximately 240 acres was annexed to the City of Waukesha in 1967. The City initially zoned the parcel for residential uses. In 1985, the City rezoned 8.2 acres of the parcel as part of a conservancy district. The remaining acreage in the parcel was zoned for residential and commercial uses. The conservancy district allows for agricultural uses of the property. After the rezoning, the City reduced the assessed value of the 10.4 acre parcel from \$81,000 to \$57,000.

Zealy brought an inverse condemnation action against the City claiming that the rezoning of the property constituted a regulatory taking. Focusing on only the 8.2 acre parcel zoned for conservancy uses, *Zealy* claimed that the 8.2 acres was only worth approximately \$4,000. *Zealy* claimed that if it could be developed for residential use, the 8.2 acres would be worth approximately \$200,000. The circuit court considered the 10.4 acre parcel as a whole and dismissed the claim. The court of appeals held that the circuit court erred when it considered the parcel as a whole and reversed the circuit court. The case was then appealed to the Wisconsin Supreme Court. The Supreme Court reversed the decision of the court of appeals.

The Supreme Court had the opportunity to dismiss the case as not ripe for adjudication. According to the Court, a regulatory takings claim is not ripe "until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." In the *Zealy* case, the property owner had never applied for a rezoning of the property; never submitted an application for a building permit; never submitted plans to the City for