Murr v. Wisconsin [1]
582 US ___ (2017)

JUSTICE KENNEDY delivered the opinion of the Court.

The classic example of a property taking by the government is when the property has been occupied or otherwise seized. In the case now before the Court, petition-ers contend that governmental entities took their real property—an undeveloped residential lot—not by some physical occupation but instead by enacting burdensome regulations that forbid its improvement or separate sale because it is classified as substandard in size. The relevant governmental entities are the respondents.

Against the background justifications for the challenged restrictions, respondents contend there is no regulatory taking because petitioners own an adjacent lot. The regulations, in effecting a merger of the property, permit the continued residential use of the property including for a single improvement to extend over both lots. [...]

I

A

[…] The law required the States of Wisconsin and Minnesota to develop "a management and development program" for the river area. [...]

Petitioners are two sisters and two brothers in the Murr family. [...] The lots are adjacent, but the parents purchased them separately, put the title of one in the name of the family business, and later arranged for transfer of the two lots, on different dates, to petitioners. The lots, which are referred to in this litigation as Lots E and F, are described in more detail below.

For the area where petitioners' property is located, the Wisconsin rules prevent the use of lots as separate building sites unless they have at least one acre of land suitable for development. Wis. Admin. Code §§ NR 118.04(4), 118.03(27), 118.06(1)(a)(2)(a), 118.06(1)(b) (2017). A grand-father clause relaxes this restriction for substandardlots which were "in separate ownership from abutting lands" on January 1, 1976, the effective date of the regulation. § NR 118.08(4)(a)(1). The clause permits the use of qualifying lots as separate building sites. The rules also include a merger provision, however, which provides that adjacent lots under common ownership may not be "sold or developed as separate lots" if they do not meet the size requirement. [...].

B

Petitioners' parents purchased Lot F in 1960 and built a small recreational cabin on it. In 1961, they transferred title to Lot F to the family plumbing company. In 1963, they purchased neighboring Lot E, which they held in their own names.

The lots have the same topography. A steep bluff cuts through the middle of each, with level land suitable for development above the bluff and next to the water below it. The line dividing

[1] Note: This majority opinion has been edited from the original text by Travis Braidwood for classroom use. The full case text can be found here: < https://supreme.justia.com/cases/federal/us/582/15-214/opinion3.html >. Also, the footnote numbers in this abridgment are the same as those that appear in the slip opinion.

Lot E from Lot F runs from the riverfront to the far end of the property, crossing the blufftop along the way. Lot E has approximately 60 feet of river frontage, and Lot F has approximately 100 feet. Though each lot is approximately 1.25 acres in size, because of the waterline and the steep bank they each have less than one acre of land suitable for development. Even when combined, the lots' buildable land area is only 0.98 acres due to the steep terrain.

The lots remained under separate ownership, with Lot F owned by the plumbing company and Lot E owned by petitioners' parents, until transfers to petitioners. Lot F was conveyed to them in 1994, and Lot E was conveyed to them in 1995. [...]

A decade later, petitioners became interested in moving the cabin on Lot F to a different portion of the lot and selling Lot E to fund the project. The unification of the lots under common ownership, however, had implicated the state and local rules barring their separate sale or development. Petitioners then sought variances from the St. Croix County Board of Adjustment[.] The Board denied the requests, and the state courts affirmed[.]

Petitioners filed the present action in state court[.] The parties each submitted appraisal numbers to the trial court. [...] Petitioners' appraisal included an unrebutted, estimated value of $40,000 for Lot E as an undevelopable lot[.]

The Circuit Court of St. Croix County granted summary judgment to the State, explaining that petitioners retained "several available options for the use and enjoyment of their property." [...] The court also found petitioners had not been deprived of all economic value of their property.

The Wisconsin Court of Appeals affirmed. [...]

II

A

The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." The Clause is made applicable to the States through the Fourteenth Amendment. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226 (1897) . As this Court has recognized, the plain language of the Takings Clause "requires the payment of compensation whenever the government acquires private property for a public purpose," see *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302, 321 (2002) , but it does not address in specific terms the imposition of regulatory burdens on private property. Indeed, "[p]rior to Justice Holmes's exposition in *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393 (1922) , it was generally 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," like the permanent flooding of property. Lucas v. South Carolina Coastal Council, 505 U. S. 1003, 1014 (1992) (citation, brackets, and internal quotation marks omitted); accord, *Horne v. Department of Agriculture*, 576 U. S. ___, ___ (2015) (slip op., at 7); see also *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U. S. 419, 427 (1982) . *Mahon*, however, initiated this Court's regulatory takings jurisprudence, declaring that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." 260 U. S., at 415. A regulation, then, can be so burdensome as to become a taking, yet the *Mahon* Court did not formulate more detailed guidance for determining when this limit is reached.

In the near century since *Mahon*, the Court for the most part has refrained from elaborating this principle through definitive rules. This area of the law has been characterized by "ad hoc, factual

inquiries, designed to allow careful examination and weighing of all the relevant circumstances." *Tahoe-Sierra*, supra, at 322 (citation and internal quotation marks omitted). The Court has, however, stated two guidelines relevant here for determining when government regulation is so onerous that it constitutes a taking. First, "with certain qualifications . . . a regulation which 'denies all economically beneficial or productive use of land' will require compensation under the Takings Clause." *Palazzolo v. Rhode Island*, 533 U. S. 606, 617 (2001) (quoting Lucas, supra, at 1015). Second, when a regulation impedes the use of property without depriving the owner of all economically beneficial use, a taking still may be found based on "a complex of factors," including (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action. *Palazzolo*, supra, at 617 (citing *Penn Central Transp. Co. v. New York City*, 438 U. S. 104, 124 (1978)).

By declaring that the denial of all economically beneficial use of land constitutes a regulatory taking, Lucas stated what it called a "categorical" rule. See 505 U. S., at 1015. Even in Lucas, however, the Court included a caveat recognizing the relevance of state law and land-use customs: The complete deprivation of use will not re-quire compensation if the challenged limitations "inhere . . . in the restrictions that background principles of the State's law of property and nuisance already placed upon land ownership." Id., at 1029; see also id., at 1030–1031 (listing factors for courts to consider in making thisdetermination).

A central dynamic of the Court's regulatory takings jurisprudence, then, is its flexibility. [...]

The other persisting interest is the government's well-established power to "adjus[t] rights for the public good." *Andrus v. Allard*, 444 U. S. 51, 65 (1979) . […] In adjudicating regulatory takings cases a proper balancing of these principles requires a careful inquiry[.]

B

This case presents a question that is linked to the ultimate determination whether a regulatory taking has occurred: What is the proper unit of property against which to assess the effect of the challenged governmental action? Put another way, "[b]ecause our test for regulatory taking requires us to compare the value that has been taken from the property with the value that remains in the property, one of the critical questions is determining how to define the unit of property 'whose value is to furnish the denominator of the fraction.' " *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U. S. 470, 497 (1987) (quoting Michelman, Property, Utility, and Fairness, 80 Harv. L. Rev. 1165, 1992 (1967)). [...]

Defining the property at the outset, however, should not necessarily preordain the outcome in every case. In some, though not all, cases the effect of the challenged regulation must be assessed and understood by the effect on the entire property held by the owner, rather than just some part of the property that, considered just on its own, has been diminished in value. This demonstrates the contrast between regulatory takings, where the goal is usually to determine how the challenged regulation affects the property's value to the owner, and physical takings, where the impact of physical appropriation or occupation of the property will be evident.

While the Court has not set forth specific guidance on how to identify the relevant parcel for the regulatory taking inquiry, there are two concepts which the Court has indicated can be unduly narrow.

First, the Court has declined to limit the parcel in an artificial manner to the portion of property targeted by the challenged regulation. In *Penn Central*, for example, the Court rejected a challenge to the denial of a permit to build an office tower above Grand Central Terminal. The Court refused to measure the effect of the denial only against the "air rights" above the terminal, cautioning that " '[t]aking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." 438 U. S., at 130.

In a similar way, in *Tahoe-Sierra*, the Court refused to "effectively sever" the 32 months during which petitioners' property was restricted by temporary moratoria on development "and then ask whether that segment ha[d] been taken in its entirety." 535 U. S., at 331. [...]

The second concept about which the Court has expressed caution is the view that property rights under the Takings Clause should be coextensive with those under state law. […] The Court explained that States do not have the unfettered authority to "shape and define property rights and reasonable investment-backed expectations," leaving landowners without recourse against unreasonable regulations. Id., at 626.

By the same measure, defining the parcel by reference to state law could defeat a challenge even to a state enactment that alters permitted uses of property in ways inconsistent with reasonable investment-backed expectations. For example, a State might enact a law that consolidates nonadjacent property owned by a single person or entity in different parts of the State and then imposes development limits on the aggregate set. If a court defined the parcel according to the state law requiring consolidation, this improperly would fortify the state law against a takings claim, because the court would look to the retained value in the property as a whole rather than considering whether individual holdings had lost all value.

III
A

As the foregoing discussion makes clear, no single consideration can supply the exclusive test for determining the denominator. Instead, courts must consider a number of factors. These include the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land. The endeavor should determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel, or, instead, as separate tracts. The inquiry is objective, and the reasonable expectations at issue derive from background customs and the whole of our legal tradition. Cf. Lucas, 505 U. S., at 1035 [...]

First, courts should give substantial weight to the treatment of the land, in particular how it is bounded or divided, under state and local law. The reasonable expectations of an acquirer of land must acknowledge legitimate restrictions affecting his or her subsequent use and dispensation of the property. [...] A valid takings claim will not evaporate just because a purchaser took title after the law was enacted. See *Palazzolo*, 533 U. S., at 627 (some "enactments are unreasonable and do not become less so through passage of time or title"). A reasonable restriction that predates a landowner's acquisition, however, can be one of the objective factors that most landowners would reasonably consider in forming fair expectations about their property. See *ibid.* ("[A] prospective enactment, such as a new zoning ordinance, can limit the value of land without effecting a taking because it can be understood as reasonable by all concerned"). Ina similar manner, a use restriction which is triggered only after, or because of, a change in ownership

should also guide a court's assessment of reasonable private expectations.

Second, courts must look to the physical characteristics of the landowner's property. These include the physical relationship of any distinguishable tracts, the parcel's topography, and the surrounding human and ecological environment. In particular, it may be relevant that the property is located in an area that is subject to, or likely to become subject to, environmental or other regulation. [...]

Third, courts should assess the value of the property under the challenged regulation, with special attention to the effect of burdened land on the value of other holdings. Though a use restriction may decrease the market value of the property, the effect may be tempered if the regulated land adds value to the remaining property, such as by increasing privacy, expanding recreational space, or preserving surrounding natural beauty. [...]

B

The State of Wisconsin and petitioners each ask this Court to adopt a formalistic rule to guide the parcel inquiry. Neither proposal suffices to capture the central legal and factual principles that inform reasonable expectations about property interests.

Wisconsin would tie the definition of the parcel to state law, considering the two lots here as a single whole due to their merger under the challenged regulations. That approach, as already noted, simply assumes the answer to the question: May the State define the relevant parcel in a way that permits it to escape its responsibility to justify regulation in light of legitimate property expectations? [...]

Wisconsin bases its position on a footnote in Lucas, which suggests the answer to the denominator question "may lie in how the owner's reasonable expectations have been shaped by the State's law of property—i.e., whether and to what degree the State's law has accorded legal recognition and protection to the particular interest in land with respect to which the takings claimant alleges a diminution in (or elimination of) value." 505 U. S., at 1017, n. 7. As an initial matter, Lucas referenced the parcel problem only in dicta, unnecessary to the announcement or application of the rule it established. See ibid. ("[W]e avoid th[e] difficulty" of determining the relevant parcel "in the present case"). In any event, the test the Court adopts today is consistent with the respect for state law described in Lucas. The test considers state law but in addition weighs whether the state enactments at issue accord with other indicia of reasonable expectations about property.

Petitioners propose a different test that is also flawed. They urge the Court to adopt a presumption that lot lines define the relevant parcel in every instance, making Lot E the necessary denominator. Petitioners' argument, however, ignores the fact that lot lines are themselves creatures of state law, which can be overridden by the State in the reasonable exercise of its power. In effect, petitioners ask this Court to credit the aspect of state law that favors their preferred result (lot lines) and ignore that which does not (merger provision).

This approach contravenes the Court's case law, which recognizes that reasonable land-use regulations do not work a taking. [...]

When States or localities first set a minimum lot size, there often are existing lots that do not meet the new requirements, and so local governments will strive to reduce substandard lots in a

gradual manner. The regulations here represent a classic way of doing this: by implementing a merger provision, which combines contiguous substandard lots under common ownership, alongside a grandfather clause, which preserves adjacent substandard lots that are in separate ownership. Also, as here, the harshness of a merger provision may be ameliorated by the availability of a variance from the local zoning authority for landowners in special circumstances. [...]

Petitioners' insistence that lot lines define the relevant parcel ignores the well-settled reliance on the merger provision as a common means of balancing the legitimate goals of regulation with the reasonable expectations of landowners. Petitioners' rule would frustrate municipalities' ability to implement minimum lot size regulations by casting doubt on the many merger provisions that exist nationwide today.[...]

Petitioners' reliance on lot lines also is problematic for another reason. Lot lines have varying degrees of formality across the States, so it is difficult to make them a standard measure[.] The ease of modifying lot lines also creates the risk of gamesmanship by landowners, who might seek to alter the lines in anticipation of regulation that seems likely to affect only part of their property.

IV

Under the appropriate multifactor standard, it follows that for purposes of determining whether a regulatory taking has occurred here, petitioners' property should be evaluated as a single parcel consisting of Lots E and F together.

First, the treatment of the property under state and local law indicates petitioners' property should be treated as one when considering the effects of the restrictions. [...] The decision to adopt the merger provision at issue here was for a specific and legitimate purpose, consistent with the widespread understanding that lot lines are not dominant or controlling in every case. [...]

Second, the physical characteristics of the property support its treatment as a unified parcel. The lots are contiguous along their longest edge. Their rough terrain and narrow shape make it reasonable to expect their range of potential uses might be limited. [..] The land's location along the river is also significant. Petitioners could have anticipated public regulation might affect their enjoyment of their property, as the Lower St. Croix was a regulated area under federal, state, and local law long before petitioners possessed the land.

Third, the prospective value that Lot E brings to Lot F supports considering the two as one parcel for purposes of determining if there is a regulatory taking. Petitioners are prohibited from selling Lots E and F separately or from building separate residential structures on each. Yet this restriction is mitigated by the benefits of using the property as an integrated whole, allowing increased privacy and recreational space, plus the optimal location of any improvements. [...]

Petitioners have not suffered a taking under Lucas, as they have not been deprived of all economically beneficial use of their property. See 505 U. S., at 1019. They can use the property for residential purposes, including an enhanced, larger residential improvement. [...] The property has not lost all economic value, as its value has decreased by less than 10 percent. [...]

Petitioners furthermore have not suffered a taking under the more general test of *Penn Central.* […] Finally, the governmental action was a reasonable land-use regulation, enacted as part of a coordinated federal, state, and local effort to preserve the river and surrounding land.

* * *

The judgment of the Wisconsin Court of Appeals is affirmed.

It is so ordered.

Justice Gorsuch took no part in the consideration or decision of this case.