PROPERTY—REGULATORY TAKINGS—DEFINING PROPERTY IN A REGULATORY TAKINGS INQUIRY. *Murr v. Wisconsin*, 137 S. Ct. 1933 (2017).

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In *Murr v. Wisconsin*, the United States Supreme Court discussed how to define the unit of property under consideration in a regulatory takings inquiry.[1] In *Murr*, the petitioners wished to sell one of their two adjacent lots situated along the Lower St. Croix River in Troy, Wisconsin.[2] The petitioners, two brothers and two sisters in the Murr family, inherited two adjacent lots—Lot E and Lot F—from their parents.[3] The lots were located along the St. Croix River,[4] which became federally protected in 1972 under the Wild and Scenic Rivers Act.[5] In order to "guarantee the protection of the wild, scenic and recreational qualities of the river,"[6] Wisconsin's State Department of Natural Resources created rules regulating the development of land in the river area.[7] Lot F and Lot E were originally purchased in 1960 and 1963, respectively, but were held under separate ownership.[8] Thereafter, the lots were transferred to the Murr children in 1994 and 1995, at which time they came under common ownership.[9] A decade later, the Murr children wanted to relocate a cabin on Lot F, which they intended to fund by selling Lot E.[10] However, the common

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[1] Murr v. Wisconsin (*Murr III*), 137 S. Ct. 1933, 1939 (2017).

[2] *Id*. at 1940–41.

[3] *Id*. at 1940.

[4] *Id.* The St. Croix River flows out of Wisconsin for approximately 170 miles until it meets the Mississippi River. For much of its length, the river stands as the boundary between Minnesota and Wisconsin. *Id.* at 1939.

[5] WILD AND SCENIC RIVERS ACT, 82 Stat. 908 (1968); *see also* 16 U.S.C. § 1274(a)(9) (2017) (designating the Upper St. Croix River); LOWER SAINT CROIX RIVER ACT, 86 Stat. 1174 (1972) (adding the Lower St. Croix River).

[6] WIS. STAT. § 30.27(1) (1973).

[7] Lower Saint Croix National Scenic Riverway, 41 Fed. Reg. 26236, 26237 (June 17, 1976). The Wild and Scenic Rivers Act required Wisconsin to develop a "management and development" program for the area, which is why Wisconsin's State Department of Natural Resources developed the regulations.

[8] *Murr III*, 137 S. Ct. at 1940. Petitioners' parents bought Lot F in 1960, but then transferred the title to the family plumbing company in 1961. *Id.* They then bought Lot E in 1963, which they kept under their names. *Id.*

[9] Murr v. St. Croix Cty. Bd. of Adjustment (*Murr I*), 796 N.W.2d 837, 841 (Wis. Ct. App. 2011).

[10] *Murr III*, 137 S. Ct. at 1941.

ownership of the lots effectively unified and merged the adjacent parcels of land and subjected the property to the regulations,[11] barring their separate sale or development.[12]

After the St. Croix County Board of Adjustment denied the Murrs' request for a variance[13] to allow the separate sale or use of the lots, the state courts affirmed the denial.[14] Subsequently, the Murrs brought a separate suit in Wisconsin state court alleging that the regulations constituted a regulatory taking[15] in violation of the Fifth Amendment.[16] The Circuit Court of St. Croix County granted summary judgment for the State, reasoning that there was not a regulatory taking because the petitioners still had other options for the use and enjoyment of their property[17] and because they had not been deprived of the property's entire economic value.[18] On appeal, the Wisconsin Court of Appeals stated that the property at issue must first be defined before the court could determine whether there was a regulatory taking.[19] Petitioners wanted the court to analyze the effects of the regulation on Lot E only, but the court of appeals rejected their request.[20]

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[11] *Id.*; WIS. ADMIN. CODE NR § 118.02(3) (2017). Localities were required to adopt regulations similar to the rules promulgated by the Wisconsin State Department of Natural Resources. *See* St. Croix County, Wis., Ordinance §17.36(I)(4)(a) (2005).

[12] *See* WIS. ADMIN. CODE NR § 118.06(1)(a)(2)(a) (2017) (preventing the use of lots as separate building sites unless they have one acre of land suitable for development); *Id*. at NR § 118.08(4)(a)(2) (2017) (providing that adjacent lots under common ownership may not be sold or developed as separate lots if they do not meet the size requirement).

[13] Local zoning authorities could grant variances from the regulations where enforcement would create "unnecessary hardship." WIS. ADMIN. CODE NR § 118.09(4)(b) (2004); ST. CROIX COUNTY, WIS., ORDINANCES § 17.09.232 (2003).

[14] *Murr I*, 796 N.W.2d at 840–46.

[15] *Murr III*, 137 S. Ct. at 1941.

[16] *Id.* The Fifth Amendment provides the Takings Clause, which protects private property from being "taken for public use, without just compensation." U.S. CONST. amend. V. While originally thought to only apply to physical takings, the Supreme Court extended the principles to regulatory takings, declaring that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Pa. Coal Co. v. Mahon, 260 U.S. 393, 415 (1922).

[17] *Murr III*, 137 S. Ct. at 1941. The Court offered other options, such as keeping the original cabin, relocating the cabin, or building a new residence across both lots. *Id.*

[18] *Id.* ("The parties each submitted appraisal numbers to the trial court. Respondents' appraisal included values of $698,300 for the lots together as regulated; $771,000 for the lots as two distinct buildable properties; and $373,000 for Lot F as a single lot with improvements . . . Petitioners' appraisal included an unrebutted, estimated value of $40,000 for Lot E as an undevelopable lot, based on the counterfactual assumption that it could be sold as a separate property.").

[19] Murr v. State (*Murr II*), No. 2013AP2828, 2014 WL 7271581, *4 (Wis. Ct. App. 2014).

[20] *Id.* (relying on Wisconsin precedent in Zealy v. Waukesha, 548 N.W.2d 528 (Wis. 1996)).

Instead, the court held that the takings analysis must consider the effect of the regulation on the property as a whole.[21] The court of appeals affirmed the trial court's decision, explaining that the petitioners could not have reasonably expected to use the lots separately because they knew about the merger laws when they acquired both lots.[22] The Supreme Court of Wisconsin denied discretionary review, but the Supreme Court of the United States granted certiorari to determine whether the takings analysis can be confined to the lot in question—Lot E—without considering the petitioners' ownership of the adjacent lot.[23]

The Supreme Court ultimately held that determining whether a regulating taking occurred required evaluating Lots E and F together as a single piece of property.[24] The Court reasoned that the "proper unit of property" for the takings analysis should be Lots E and F as a single parcel because "reasonable expectations about property ownership" would lead a landowner to anticipate that the lots would be considered together.[25] The Court explained that, in order to objectively determine what a landowner would anticipate, courts must consider the reasonable expectations of property ownership by looking at: (1) the treatment of the land under state and local law;[26] (2) the physical characteristics of the land;[27] and (3) the prospective value of the regulated land.[28]

In analyzing the first factor, the Court held that the state and local regulations, specifically the merger provision, created a reasonable

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[21] *Murr II*, No. 2013AP2828 at *5.

[22] *Id.* at *8. The court charged petitioners with the knowledge of the merger, stating that "even if [petitioners] did intend to separately develop or sell Lot E, that expectation of separate treatment became unreasonable when they chose to acquire Lot E in 1995, after their having acquired Lot F in 1994." *Id.* at *8.

[23] *Murr III*, 137 S. Ct. at 1942.

[24] *Id.* at 1948.

[25] *Id.* According to the Court, determining the proper unit of property requires considering how a landowner would anticipate his property be considered in a takings inquiry based on "reasonable expectations about property ownership." *Id*. at 1943–45

[26] *Id*. at 1945 (*citing* Ballard v. Hunter, 204 U.S. 241, 262 (1907) (in particular, how the land is bounded or divided under the law is important to the determination because "[t]he reasonable expectations of an acquirer of land must acknowledge legitimate restrictions affecting his or her subsequent use and dispensation of the property.")).

[27] *Murr III*, 137 S. Ct. at 1945–46 (distinguishing physical characters of the land and the particular geographical area should be considered because those would be subject to, or likely become subject to, regulations).

[28] *Id*. (the regulation's effect on the value of the property should be evaluated, but courts should also take into consideration any mitigating factors that adds alternative value, such as increased privacy, recreational space, or preservation of "surrounding natural beauty.").

expectation that the lots would be treated as a single piece of property, especially because they were only enacted when the Murrs voluntarily assumed common ownership of the two lots.[29] Next, the Court addressed the second factor and found that the location of the lots along the river could lead landowners to anticipate public regulations affecting their use of the land because the area around the river was protected by a reasonable and valid law.[30] Lastly, the court held that the effects of the regulations in restricting the development or separate sale of the lots are mitigated by the valuable benefits that come from considering the parcel as a whole.[31] Ultimately, the Court concluded that the lots should be treated as a single parcel in the takings inquiry, and that the Wisconsin state courts were correct in finding that there was not a "compensable taking" that resulted from the regulations.[32] In establishing this objective test for determining the proper parcel in a takings inquiry, the Court clarified the method for analyzing government takings without forcing a rigid, binding formula on lower courts.[33]

Years before *Murr* was decided, the Court introduced an early test for regulatory takings in *Penn Central Transportation Company v. City of New York*.[34] In *Penn Central*, the petitioner alleged that the city "took" his property when his applications to build on existing landmarks were denied because of the 1965 Landmarks Preservation Law.[35] In 1967, the Grand Central Terminal[36] in New York—owned by Penn Central—was designated as a "landmark" under the Landmark Preservation Law.[37] Penn Central entered into an agreement with Union General Properties ("UGP") to develop a multistory office building above the Terminal, which would increase Penn Central's

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[29] *Murr III*, 137 S. Ct. at 1948.

[30] *Id*.

[31] *Id.* at 1948–49. The combined value of the lots valued around $698,300, whereas valued separately at $4373,000 (Lot F) and $40,000 (Lot E). *Id*. at 1948–49. The Court reasoned that the "value added by the lots" combination shows their complementarity and supports their treatment as one parcel." *Id*. at 1949.

[32] *Id*. at 1948–49.

[33] *Id*. at 1950.

[34] Penn Cent. Transp. Co. v. City of New York (*Penn Central III*), 438 U.S. 104, 138 (1978).

[35] *Id*. at 119; *See* N.Y. CITY ADMIN. CODE LANDMARKS PRES. AND HISTORIC DIST. LAW § 25-301(b) (2006) (enacting legislation for "the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value.")

[36] *Penn Central III*, 438 U.S. at 115 (originally opened in 1913, the Terminal is an eight-story building in midtown Manhattan primarily used as a railroad station).

[37] *Id*. at 115–16.

income through leasing agreements.[38] After the corporations' applications[39] for permission to construct the office building were denied,[40] they filed suit in the New York Supreme Court, Trial Term, alleging that the Landmarks Preservation Law resulted in a regulatory taking that required compensation.[41] The trial court granted injunctive and declaratory relief, but did not award damages for the temporary taking.[42] The New York Supreme Court, Appellate Division, reversed, holding that the regulations limiting the development of the landmark were a necessary and legitimate public purpose and that Penn Central failed to show that they had been unconstitutionally deprived of all economical use of their property.[43] The New York Court of Appeals affirmed, holding that Penn Central was not denied their property in violation of the Due Process Clause of the Fourteenth Amendment.[44] On appeal, the Supreme Court addressed the issue of whether the restrictions were a compensable taking. It held that the regulation did not constitute a taking because the law was a reasonable and permissible exercise of state power with a public purpose, and because Penn Central was not deprived of all economic use.[45]

The Court first laid out significant factors in a takings analysis, including the economic impact of the regulation on the claimant, economic expectations, and the "character of the governmental action."[46] The Court explained that land-use regulations are permissible when they reasonably promote "health, safety, morals, or general welfare,"

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[38] *Id*. at 116.

[39] Two separate plans—Breuer I and Breuer II Revised—were submitted for approval. *Penn Central III*, 438 U.S. at 116. Breuer I was designed as a 55-story building added to the top of the Terminal. *Id*. Breuer II Revised planned for tearing and stripping down parts of the Terminal's façade, then building a 53-story building. *Id*. at 116–17.

[40] While both plans seemingly satisfied the applicable zoning ordinance, they were denied by the Commission: "Landmarks cannot be divorced from their settings—particularly when the setting is a dramatic and integral part of the original concept. The Terminal, in its setting, is a great example of urban design. Such examples are not so plentiful in New York City that we can afford to lose any of the few we have. And we must preserve them in a meaningful way—with alterations and additions of such character, scale, materials and mass as will protect, enhance and perpetuate the original design rather than overwhelm it." *Penn. Central III*, 438 U.S. at 118.

[41] *Id*. at 119.

[42] *Id*.

[43] *Id*. at 119–20 (citing Penn Central Transp. Co. v. City of New York (*Penn Central I*), 377 N.Y.S.2d 20 (1975)).

[44] *Penn Central III*, 438 U.S. at 120–21 (citing Penn Central Transp. Co. v. City of New York, 366 N.E.2d 1271 (1977)).

[45] *Penn Central III*, 438 U.S. at 138.

[46] *Id*. at 124.

even if they prohibit the most beneficial use of the property.[47] Implicit in the case is the difference between "all" beneficial use and "the most" beneficial use of property, designating the deprivation of the former as compensable and the latter as not compensable.[48] The Court determined that Penn Central was not denied all economically beneficial and productive use of the property because the analysis must consider the effect of the regulation on the parcel of property as a whole rather than just the targeted portion of the property.[49]

Penn Central's argument that the airspace above the terminal was a separate, valuable property interest of which they were deprived was unsuccessful, for the Supreme Court specified that the analysis "does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated."[50] The Court's reasoning for its holding focused on the validity of the regulation based on its purpose, the reasonableness of the effects on the property, and the opportunities for economically beneficial uses of the property.[51] While the Court did not lay out a specific formula for determining what constitutes a taking, it established an important foundation consisting of various factors to evaluate in a takings analysis.

A few years later, the Supreme Court again reviewed regulatory takings in *Lucas v. South Carolina Coastal Council*.[52] In the case, the petitioner—Lucas—bought two beachfront lots in 1968 with the intention of building a home on each lot.[53] Two years later, the Beachfront Management Act was enacted by the South Carolina legislature in an attempt to manage development in "coastal zones."[54] As a re-

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[47] *Id*. at 125 (quoting Nectow v. Cambridge, 277 U.S. 183, 188 (1928)).

[48] *See id.* (asserting that "this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests. Zoning laws are, of course the classic example, which have been viewed as permissible governmental action even when prohibiting the most beneficial use of the property.") (citations omitted).

[49] *Id*. at 130–31.

[50] *Id*. at 130.

[51] *Penn Central III*, 438 U.S. at 136–38.

[52] See Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1007 (1992).

[53] *Id*. at 1006–07.

[54] Congress passed the federal Coastal Zone Management Act of 1972, and South Carolina subsequently initiated a similar act of its own in 1977. *Id.* at 1007. South Carolina's Coastal Zone Management Act created the South Carolina Coastal Council and required owners of "critical area" coastal zone land to get a permit before using the land for something other than "the use the critical area was devoted to on [September 28, 1977]." *Id.* at 1007–08 (citing S.C. CODE ANN. § 48-39-10 (1987)). Critical zones included beaches and immediately adjacent sand dunes. *Lucas*, 505 U.S. at 1007–08 (1992) (citing S.C. CODE ANN. § 48-39-10(J) (1987)).

sult of the Beachfront Management Act, Lucas was prohibited from developing any permanent habitable structures on either lot.[55] Lucas filed suit, contending that the Act constituted a taking of his property "without just compensation."[56] The South Carolina Court of Common Pleas held that the Beachfront Management Act effectively "took" the properties because it "deprive[d] Lucas of any reasonable economic use of the lots, . . . eliminated the unrestricted right of use, and render[ed] them valueless."[57] The Supreme Court of South Carolina reversed, holding that: (1) no compensation is required when the relevant law or regulation is designed to "prevent serious public harm;"[58] and (2) that Lucas conceded that the Beachfront Management Act met that purpose when acknowledging that it was "properly and validly designed to preserve . . . South Carolina's beaches."[59] The U.S. Supreme Court granted certiorari to give insight as to when, and under what circumstances, a regulation requires a landowner to be compensated for a "taking."[60]

The Court reversed and remanded the decision, asserting that the Supreme Court of South Carolina applied an improper analysis to the circumstances.[61] In reviewing the lower court's justification for denying compensation based on the "police power"[62] and "harmful or noxious use"[63] analyses, the Supreme Court rejected those tests, asserting that they were an "early attempt to describe in theoretical terms why government may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to compensate . . . ."[64]

After rejecting the older approaches, the Court explained the ap-

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[55] *Lucas*, 505 U.S. at 1007.

[56] *Id*. at 1009.

[57] *Id.*

[58] *Id*. at 1010 (*quoting* Mugler v. Kansas, 123 U.S. 623 (1887)).

[59] *Lucas*, 505 U.S. at 1010 (*quoting* Lucas v. South Carolina Coastal Council, 404 S.E.2d 895, 896 (1991)).

[60] *Id*. at 1007.

[61] *Id*. at 1022.

[62] Regulations that restrict the use of property to prevent serious public harm do not require compensation. *Mugler*, 123 U.S. at 669. The Supreme Court of South Carolina contended that the Beachfront Management Act was an example of such "police power" because it prevented construction on a coastal zone, which the court assumed to be a threat to a public resource that equated to "serious public harm." *Lucas*, 505 U.S. at 1010.

[63] *Lucas*, 505 U.S. at 1022. The "harmful or noxious use" analysis stems from a line of cases recognizing that the exercise of government power to prevent uses of property that create public nuisances does not require compensation. *See generally Mugler*, 123 U.S. 623 (1887).

[64] *Lucas*, 505 U.S. at 1022–23.

propriate contemporary standard, which is that "the Fifth Amendment Takings Clause is violated when the land-use regulation 'does not substantially advance legitimate state interests or denies an owner economically viable use of his land.'"[65] The Court went on to assert that a regulation denies all beneficial or productive use of land when it limits the use of the land more than the existing limitations on the landowner's title under state property and nuisance laws.[66] If the regulation creates that effect, then it qualifies as a "total taking" and requires compensation to the landowner.[67] To determine whether the regulation goes to that extent, courts must consider the degree of harm to public lands and resources, or adjacent private property, posed by the landowner's use of the property, the social value of the use and the suitability of the use to the locality in question, and the "relative ease with which the alleged harm can be avoided through measures taken by the claimant and government (or adjacent private landowners) alike."[68]

In reversing and remanding the case, the Supreme Court instructed South Carolina courts to follow the contemporary takings analysis, but implied that the Beachfront Management Act's prohibition on habitable improvements constituted a compensable taking because it is unlikely that South Carolina's common-law principles of nuisance and property law would prohibit such uses.[69] The Court's holding updated the analysis for determining when a regulation is a "taking" that requires compensation and emphasized that a landowner must be compensated when the regulation denies all economically beneficial or productive use of the land.[70] The Court, however, continued to allow flexibility in the analysis by permitting state courts to compare the limitations of the regulations with limitations inherent in state property and nuisance law principles.[71]

Subsequently, in *Palazzolo v. Rhode Island*, the Supreme Court began to consider the takings analysis and the onerousness of the regulations with more focus on the concepts of reasonableness and expectations.[72] The petitioner, Anthony Palazzolo, owned three unde-

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[65] *Id*. at 1016 (*quoting* Agins v. City of Tiburon, 447 U.S. 255, 260 (1980) (emphasis omitted)).

[66] *Id*. at 1029.

[67] *Id*. at 1029–30.

[68] *Id.* at 1030–31 (*citing* RESTATEMENT (SECOND) OF TORTS §§ 826-28(a)–(c), 831 (Am. Law Inst.1972)).

[69] *See Id*. at 1031–32.

[70] *Lucas*, 505 U.S. at 1030

[71] *Id.* at 1029.

[72] *See* Palazzolo v. Rhode Island, 533 U.S. 606, 627 (2001).

veloped, adjacent parcels of property along Misquamicut State Beach in Westerly, Rhode Island.[73] Petitioner's corporation—Shore Gardens, Inc. ("SGI")—bought the lots in 1959 with the intention of developing the land.[74] SGI made several unsuccessful attempts to develop the land,[75] as state agencies repeatedly denied them permission.[76] In 1971, the Rhode Island Coastal Resources Management Council was created to protect the State's coastal properties in various ways, such as limiting development of designated "coastal wetlands."[77] When SGI's corporate charter was revoked in 1978, Palazzolo acquired the title.[78] Petitioner then requested permission to develop the property along the water, which was protected as a "coastal wetland."[79] The Council denied both petitioner's 1983 request and 1985 request, explaining that an exception to the regulation only applies if the proposed use serves "a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests."[80]

After Rhode Island state courts affirmed the Council's decision, the petitioner brought an inverse condemnation action[81] in Rhode Island Superior Court, asserting that the regulations constituted a compensable total taking.[82] The court ruled against the petitioner,[83] and the Rhode Island Supreme Court affirmed on several grounds, including the argument that the petitioner could not challenge the regulations because they predated his acquisition of title.[84] The court also held that there was no taking because there was evidence of $200,000 worth of development value in the upland portion of the property not directly on the water, contradicting the petitioner's argument that the regulation deprived him of all economically beneficial use of the

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[73] *Id*. at 611–13.

[74] *Id*. at 613.

[75] Many of the applications were for different plans to fill in the salt marsh portions of the property in order to construct buildings on the land. *Id.* at 613–14.

[76] *Id*. at 613–15.

[77] *Id*. at 614 (*citing* 1971 R.I. Pub. Laws, ch. 279, § 1; 46 R.I. Gen. Laws Ann. § 46-23-1 (West 1971)).

[78] *Palazzolo*, 533 U.S. at 614.

[79] *Id*.

[80] *Id*. at 615 (quoting 16-2 R.I. Code R. §1:130(A)(1)).

[81] An inverse condemnation action is "an action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings." BLACK'S LAW DICTIONARY (10th ed. 2014).

[82] *Palazzolo*, 533 U.S. at 615–16.

[83] *Id*. at 616.

[84] Palazzolo v. State ex re. Tavares, 746 A.2d 707, 716 (2000).

land.[85]

The Supreme Court of the United States granted certiorari to evaluate the Rhode Island Supreme Court's holding.[86] The Court disagreed with the lower court's ruling that the petitioner's claim was precluded because he was on notice of the predated regulation, and instead turned the discussion and focus to reasonable expectations.[87] The Court started with the basic principle that the right to improve property is not unlimited, for it is subject to the reasonable exercise of state authority.[88] As the Court explained, however, landowners have the right to challenge a regulation that they find unreasonable or onerous, implying that the reasonableness of regulations and state authority actions should be considered from the perspective of the landowners.[89] In accordance with this principle, the Court asserted that a landowner cannot be precluded from challenging a regulation by asserting that they had notice because all landowners have "a right to challenge unreasonable limitations on the use and value of land."[90]

Also under review was the holding that the petitioner was not denied all economically beneficial use. The Supreme Court affirmed that decision, agreeing that the land retained a $200,000 development value.[91] The retained value was, according to the Court, sufficient to mitigate the economic diminution resulting from the regulations, despite the fact that the development value was based on the upland area of the property.[92] The regulations affecting the property were considered as a whole, including the ones affecting the property along the water.[93] This essentially meant that the value of the unaffected portion of the land excused the unfavorable effects of the regulation on the rest of the property. The Supreme Court's holding added analytical factors to a takings inquiry, leading the way to a stronger focus on the reasonable expectations of a landowner and the applicability of the takings analysis to the whole property rather than the targeted portion. However, the Court did not give a comprehensive approach to identifying what unit of property should be considered in a takings analysis, leaving an opportunity to consider the issue in more depth in the future.

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[85] *Id*. at 715.

[86] Palazzolo v. Rhode Island, 531 U.S. 923 (2000).

[87] *Palazzolo*, 533 U.S. at 626–27.

[88] *Id*. at 627.

[89] *Id*.

[90] *Id*.

[91] *Id*. at 630–31.

[92] *Id.* at 630-31.

[93] *Palazzolo*, at 631–32.

The Supreme Court took that opportunity in *Murr*, where the applicability of the takings inquiry to the affected portion of the property or to the property as a whole was the core issue of the case.[94] In *Murr*, the outcome of the takings inquiry was dependent on the unit of property considered.[95] *Murr* presented a unique issue in that there were two separate lots before the regulation, whereas *Penn Central*, *Lucas*, and *Palazzolo* involved single parcels of property that the landowners claimed should be separately analyzed, based on the portion of the property that was directly affected by the regulation. Despite the slight factual difference, the Court's opinions on the issue echoed similar reasoning, considering the effect of the takings analysis on the property as a whole. The Court in *Murr* provided a more in-depth explanation, but used principles of those previous cases in doing so.[96] The Court incorporated the factors traditionally used in the takings analysis and applied them to the unit of property inquiry in a specific manner, asserting that the unit of property is defined based on the validity of the regulation and its purpose,[97] the expectations of the landowner based on "background customs and the whole of our legal tradition,"[98] and the value of the property.[99] By using these factors in the sub-issue, the Court provided an approach that was consistent with previous rulings, while still maintaining flexibility for factual variances.

Although the Court's test appears to promote a fair and objective analysis, the implications of the approach can alternatively be seen as ambiguous and even unfavorable to landowners, for it allows regulations to render completely useless and valueless a portion of a landowner's property if it can be shown that the regulation does not have that effect when considering the property as a whole. Because the unit of property can be outcome-determinative of a takings analysis,[100] landowners should be conscious of the property they acquire and consider what "reasonable expectations" they should have based on the geographical location of the land, the physical make-up of the property, and the likelihood that regulations might affect the property.

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[94] *See* Murr v. Wisconsin (*Murr III*), 137 S. Ct. 1933, 1943–44 (2017).

[95] If Lot E was considered separately, it would more likely be considered a taking. *Id.* at 1947–49. When considered together with Lot F, the courts determined that it was not a taking. *Id*. at 1949.

[96] *See id.* at 1944.

[97] *Murr III*, 137 S. Ct. at 1948.

[98] *Id*. at 1945.

[99] *Id*. at 1945–46.

[100] *Id*. at 1944.