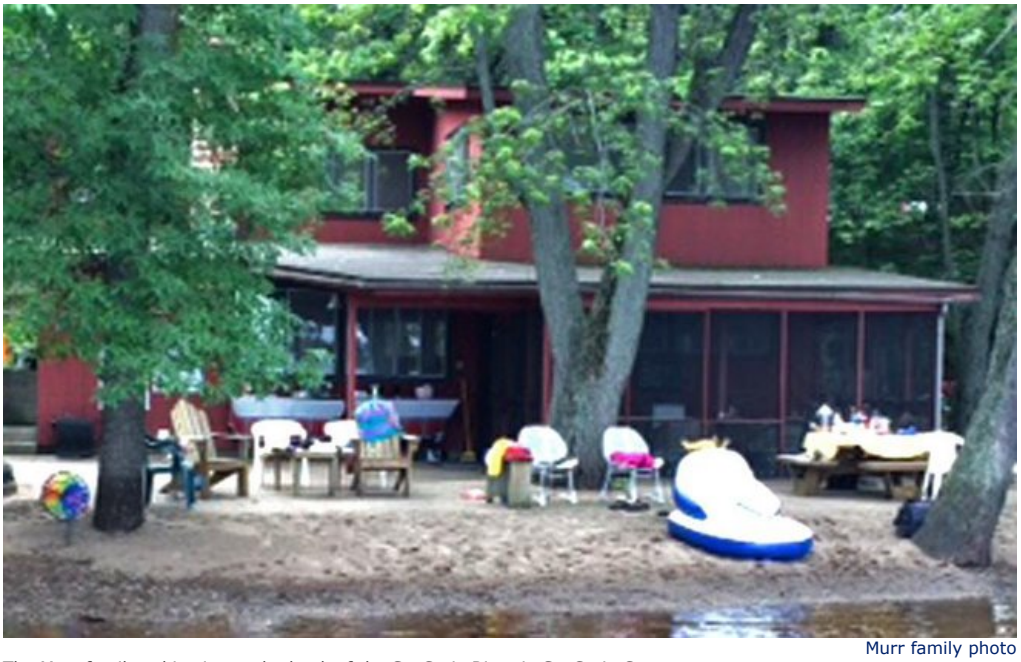
Family's fight over vacation land goes to U.S. Supreme Court



Murr family photo

The Murr family cabin sits on the bank of the St. Croix River in St. Croix County.

By Bruce Vielmetti of the Journal Sentinel Jan. 24, 2016

Wisconsin is full of stories about cabin owners at odds with shoreland conservation and development rules.

But only one has made it to the U.S. Supreme Court. Earlier this month, the justices agreed to hear the Murr family's claim that St. Croix County effectively took its property without compensation.

The case started 11 years ago when regulations from the 1970s derailed four siblings' plans to finance improvements to the cabin their parents built on Lake St. Croix in 1960 by selling their vacant lot next door.

Donna Murr said she already feels like the family has won, just getting to the U.S. Supreme Court.

"We felt so strongly about this for so long and look where we are," she said. "I guess we were right!"

Murr, the youngest of her siblings at 52, said they almost had to give up their fight after the state Supreme Court last year declined to review a Court of Appeals decision against them, and their longtime Hudson attorney was appointed a circuit judge.

But searching the Internet, they found the Pacific Legal Foundation, a California nonprofit that advocates for property rights. It said the Murrs' case was perfect to get clarification of how courts should value distinct but adjacent parcels owned by the same people when they claim the government has taken value without compensation. And the foundation would represent the Murrs for free.

John Groen, who wrote the brief that persuaded the court to take the case, said it's unusual to get review of a dispute not heard by a state's highest court, or a federal court.

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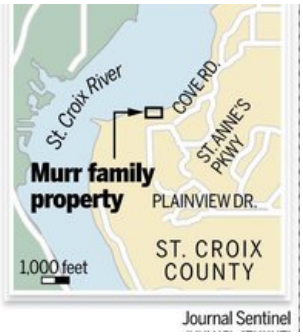

Murr family photo
Members of the Murr family pose for a photo last summer at their cabin on the St. Croix River. Each year, the family chooses a state theme for its big gathering and last year it was Kentucky. The U.S. Supreme Court has agreed to take the family's case in which it argues St. Croix County and the state are wrongly preventing it from selling a vacant lot adjacent to the summer home.

"Obviously, that's a very small door to get through," he said. "It shows the court recognizes these are very important issues."

"This litigation asks whether government can get away with telling property owners, in essence, 'The more land you own, the less we'll allow you to use,'" Groen said.

Family roots

William Murr ran a plumbing business in South St. Paul when he and his wife, Margaret, bought a 11/4-acre lot in 1960 and built a three-bedroom cottage along the St. Croix River. In 1963, they bought an adjacent lot "for investment purposes."

The Murrs and their seven children, and later grandchildren and great-grandchildren, enjoyed the property for years. In 1994 and 1995, the Murrs gifted the two parcels to their children.

In 2004, the four children began exploring a plan to sell the extra lot and use the proceeds to upgrade the old cabin.

Donna Murr explained that the cabin had flooded five times over the years. They wanted to raise it and move it back toward the bluff.

None of her siblings is rich, she said, so they decided to sell the long vacant lot to finance the fix-up.

That's when they ran afoul of 1976 regulations that require any lot have an acre of developable area. Each of the Murrs' lots are 1.25 acres, but the vacant lot's net buildable area is only 0.5 acre, after deductions for slope preservation, floodplain, right of way and wetlands.

The Murrs were denied the special exceptions and variances needed for their planned project by the county and the state Department of Natural Resources. That stretch of the St. Croix is protected under the National Wild and Scenic Rivers Act.

Here's what irks the Murrs and their lawyers: The 1976 law grandfathered prior owners, allowing them to build on just 0.5 acre of usable land — unless they owned abutting property as the Murrs do. In that case, the lots would "merge" into a larger parcel for sale or development purposes.

They sued, saying the regulations effectively take the value of their vacant lot without compensation.

Lengthy legal battle

Wisconsin courts sided with St. Croix County, finding that for purposes of determining whether a taking occurred, the two lots must be considered as one parcel.

The combined 2.5 acres can easily support construction of a modern new home on either parcel or straddling them both, officials say. An appraiser set the 2006 value of the single parcel at $698,000, and the combined value of separate lots at $771,000. The difference is less than 10%, which courts have ruled does not amount to a taking. The year 2006 was when zoning officials denied the Murrs' plans.

The Pacific Legal Foundation says the determination of which lot is affected — the individual lot or the combined plot — is critical to deciding takings claims under the Fifth Amendment, and that the "parcel as a whole" concept has been inadequately developed, leading to inconsistent U.S. Supreme Court rulings and state court interpretations.

The county points out that when the Murr children got the land from their parents in 1994, they knew "it was highly protected by federal, state, county and local (i.e., town) regulations intended to preserve the area's beauty and significance."

The family could have deeded the lots in such a way that they were not owned by the same parties, and therefore preserved the right to develop the vacant one under the grandfathering clause of the 1976 ordinance.

The county also says the Murrs could have modified their "grandiose" plan to redevelop the cabin in a way to win regulatory approval. For instance, they could build a new home on the bluff without a variance, or flood-proof the existing cabin in ways that would not require filling and grading in the slope.

State also a defendant

Donna Murr laughs at the "grandiose" description. She said the biggest home allowed, even atop the bluff, would be 1,500 square feet. But she says the family never considered building away from the beach, where the cottage has been for 45 years, noting the bluff site is 13 stories of steps above the water.

In the county's brief opposing Supreme Court review, Milwaukee attorney Remzy Bitar argued that the courts have already clearly held that anyone who claims a government taking must show a significant loss in value to the whole parcel.

Bitar concedes there is no categorical rule for a case like the Murrs, involving residential lots, but argues that is for the best because fairness requires consideration of the peculiarities of each case, not application of a formula.

The state is also a defendant, and though it didn't file an initial brief opposing the petition for Supreme Court review, it plans to have Wisconsin Solicitor General Misha Tseytlin do the oral argument in the case.

Donna Murr said the dozens of family members who use the cottage really have no Plan B, and would

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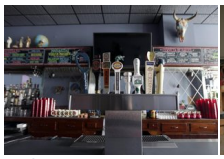

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probably just stick with the status quo if they can't sell the empty lot or get compensated by the county.

A resident of Eau Claire, she lives the farthest from the cottage, and most of her other relatives live in the Twin Cities area, less than 30 minutes away. Her parents died more than 15 years ago.

Each summer, the siblings, their children and some grandchildren gather for a group photo on the beach. She said the cottage has helped keep the family close.

"We're all paying our share, six families," she said. "That all helps. If it was just myself, I'd have given up a long time ago."

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