Palozzolo v. Rhode Island and Murr v. Wisconsin
• 1959: SGI (wholly owned by Palozzolo) buys 20 acres to develop 80 residential lots
  —SGI’s proposals to fill it tidal marsh areas were not approved
• 1971: most of parcel designated “coastal wetlands”
• 1978: SGI charter revoked, Palozzolo succeeded to title
• 1985: When Palozzolo was denied a permit to fill the parcel (based on its status as coastal wetlands), he filed an inverse condemnation action
• RI Supreme Court held: Palozzolo had no basis to claim a taking, b/c he had acquired title in 1978, after RI adopted the regulation. Rationale?
  – No Penn Central taking, b/c he had no “reasonable” investment-backed expectations given statute
  – No Lucas taking, b/c at time he acquired title, this statute was part of state law “background principles” [p. 277-278]
• Why did U.S. Supreme Court reject this view?

• Kennedy: the fact that you acquired land post-regulation does not by itself preclude a takings claim
  – Some regulations “are unreasonable and do not become less so through the passage of time or title”
  – “Future generations, too, have a right to challenge unreasonable limitations on the use and value of land” [p. 279]
• Is this sort of caution reasonable? Why?
• Kennedy’s observation makes economic sense
  – If I’m the owner of Blackacre, and a government regulation would be a “taking” of Blackacre (under either Lucas or Penn Central), a buyer from me should stand in my shoes and should be able to assert the takings claim
  – Otherwise, the regulation could “take” my property by preventing me from transferring it for its value in my hands (since no buyer would pay me that price if they would be subject to the regulation)

• If acquiring the property post-regulation doesn’t by itself preclude a takings claim, to what extent is it relevant to the question “is there a taking?”
  – O’Connor: it can be relevant under Penn Central
  – Scalia: it can’t be relevant, period
• Problem: neither of them could command a majority, so the answer is not clear!
• Did the RI regulation constitute a categorical taking under *Lucas*?
  – Kennedy: No, the “upland” portion of parcel could still be developed and was worth $200,000 (all agreed)
  – Note: the “denominator” problem still exists, both as to *Penn Central* claims and to *Lucas* claims

• Was there a *Penn Central* taking?
  – RI court didn’t consider that, so remand was necessary. How would you expect court to evaluate this on remand, given:
    • Impact of the regulation?
    • Character of the government action?
    • Palozollo’s investment-backed expectations?
• Court on remand: no *Penn Central* taking
  – Development of salt marsh land would constitute a public nuisance (prevention of serious harm)
  – ½ of land was below mean high water line, and was thus subject to “public trust doctrine” background principle (i.e., public land, not private, so Palazzolo had no investment-backed expectations as to the lowlands)
  – None of lower lots could’ve made a profit anyway due to engineering costs of draining and filling them (i.e., no actual economic impact of regulation itself)

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**Murr v. Wisconsin**

**Lot F**
- Parents buy in 1960
- Parents build cabin
- 1961: transfer of title into family company
- 1976: lot size ordinance
- 1994: transfer title to Murr children

**Lot E**
- Parents buy in 1963
- Nothing built on it
- 1976: minimum lot size ordinance adopted
- 1995: transfer title to Murr children
St. Croix County’s Ordinance

- Minimum lot size = 1 acre (Problem: Lot E is too small)
- “Grandfather clause” in ordinance excepts smaller lots “in separate ownership from abutting lands”
- Merger provision in ordinance: adjacent substandard lots under common ownership may not be developed or sold as separate lots

Mid-2000s: Murr children wanted to relocate cabin to a different location on Lot F, and wanted to sell Lot E to get the needed funds. Problem?
- By giving both lots to the kids, title to the lots “merged,” so kids needed a variance to sell Lot E
- Based on prior material, why do you think the Board denied the variance?
The Murr family cabin, St. Croix River, Troy, WI

The Murr Siblings (and their attorney)
• After the variance was denied, Murrs sued in state court, claiming merger provision resulted in a taking of Lot E
  – State court held there was no taking, because the “denominator” was Lots E and F combined
• If that is right, how should the court apply Lucas and Penn Central test to determine if there is a taking?

• No Lucas taking (because combined parcel retains significant utility and economic value)
• Likely no Penn Central taking
  – Economic impact of merger ordinance is relatively minor ($700K appraised value as one lot vs. $770K appraisal value if each lot could be sold separately)
  – No investment-backed expectations given that children acquired lots already subject to merger ordinance
• Is the proper denominator just Lot E, or is lot Lots E and F together?
• Majority: E and F together, but not JUST b/c of the merger. Factors:
  – Treatment of the land under state law
  – Physical characteristics of the land
  – Prospective value of land
• Would “reasonable expectations about property ownership lead a landowner to anticipate his holdings would be treated as one parcel”? 

Notes:

- **Note 4, p. 284**
- Lots 1-4: Unbuildable due to BMA
- Lots 5-7: Buildable
- Lucas owns Lots 1-3, 6-7
- Oliver owns Lot 4
- Marshall owns Lot 5
What’s the relevant parcel for Lucas? Only Lots 1-3, or all 5 lots together? What does Murr say?
What’s would be the relevant parcel for Oliver?