

The Burger Court Opinion Writing Database

MacDonald, Sommer & Frates v. Yolo County

477 U.S. 340 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

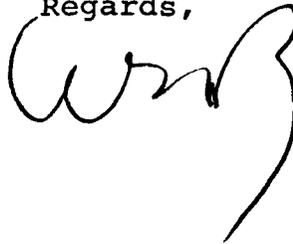
October 16, 1985

RE: 84-2015 - McDonald, Sommer & Frates v.
County of Yolo

Dear Byron:

Reluctantly, but firmly, I join you to make
this a "grant".

Regards,

A handwritten signature in black ink, appearing to be 'W. White', written in a cursive style.

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

June 18, 1986

CHAMBERS OF
THE CHIEF JUSTICE

RE: 84-2015 - MacDonald, Sommer & Frates
v. County of Yolo, et al.

Dear John:

At Conference I was of the view that the case was not ripe but Byron's dissenting opinion has persuaded me to his view and I will join him.

Regards,

A handwritten signature in black ink, appearing to be "Stevens", written in a cursive style.

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 28, 1986

No. 84-2015

MacDonald, Sommer & Frates
v. Yolo County, et al.

Dear John,

I join your fine opinion but make one suggestion. In footnote 8, starting at the middle with the word "indeed," ought not everything be deleted? It reads as if we were going behind the state court opinion to find support for its conclusion.

Sincerely,



Justice Stevens

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

MACDONALD, SOMMER & FRATES *v.* COUNTY OF
 YOLO ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

No. 84-2015. Decided October —, 1985

JUSTICE WHITE, dissenting.

Appellant MacDonald, Sommer & Frates owns a 40-acre parcel of undeveloped land, which is located in Yolo County, California, near the City of Davis. Since 1966, this land has been designated in the County's General Plan and zoning ordinances for single family and multiple residential use. In 1975, appellant applied to the County for approval of a subdivision map for the property. In 1977, approval was denied by the Yolo County Board of Supervisors. This denial was, according to the decision issued by the Board, based largely on the fact that the proposed development was not consistent with the County's General Plan. Specifically, appellant's land had been declared (by the City) to be within an area of prime agricultural land that should be used for that purpose, street access to the property was inadequate, necessary public services (*e. g.*, sewer service) were not adequately provided for, and no need for the subdivision had been shown. See Appendix to Motion to Dismiss.

Following denial of its subdivision application, appellant filed a complaint in California state court, alleging that its property had been taken and seeking damages and declaratory relief for inverse condemnation. In its complaint, appellant alleged that the property was unsuitable for agricultural use due to unfavorable soil conditions. Appellant also alleged that the property was suitable for residential use but that the appellees had, by their several actions, prevented appellant from using the property in that manner: The denial of street and sewer access (which resulted from actions taken

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

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2nd
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

MACDONALD, SOMMER & FRATES v. COUNTY OF YOLO ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

No. 84-2015. Decided October —, 1985 and JUSTICE O'CONNOR

JUSTICE WHITE, with whom JUSTICE REHNQUIST/ joined, dissenting.

Appellant MacDonald, Sommer & Frates owns a 40-acre parcel of undeveloped land, which is located in Yolo County, California, near the City of Davis. Since 1966, this land has been designated in the County's General Plan and zoning ordinances for single family and multiple residential use. In 1975, appellant applied to the County for approval of a subdivision map for the property. In 1977, approval was denied by the Yolo County Board of Supervisors. This denial was, according to the decision issued by the Board, based largely on the fact that the proposed development was not consistent with the County's General Plan. Specifically, appellant's land had been declared (by the City) to be within an area of prime agricultural land that should be used for that purpose, street access to the property was inadequate, necessary public services (*e. g.*, sewer service) were not adequately provided for, and no need for the subdivision had been shown. See Appendix to Motion to Dismiss.

Following denial of its subdivision application, appellant filed a complaint in California state court, alleging that its property had been taken and seeking damages and declaratory relief for inverse condemnation. In its complaint, appellant alleged that the property was unsuitable for agricultural use due to unfavorable soil conditions. Appellant also alleged that the property was suitable for residential use but that the appellees had, by their several actions, prevented appellant from using the property in that manner: The denial

B

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1986

84-2015 -

MacDonald, Sommer & Frates v. Yolo County

Dear John,

It is quite likely that I shall dissent
in this case.

Sincerely yours,



Justice Stevens

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice White
 JUN 12 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
 YOLO COUNTY ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

[June —, 1986]

JUSTICE WHITE, dissenting.

The Court acknowledges that we noted probable jurisdiction in this case “[b]ecause of the importance of the question whether a monetary remedy in inverse condemnation is constitutionally required in appropriate cases involving regulatory takings,” *ante*, at 7, but avoids this issue by holding that the antecedent question—whether appellant adequately stated a takings claim—should be answered in the negative. I disagree. The factual allegations that we must consider, when the opinion below is correctly read, do state a takings claim and therefore present the remedial question that we have thrice before sought to resolve. See *Williamson County Regional Planning Commission v. Hamilton Bank*, — U. S. — (1985); *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621 (1981); *Agins v. Tiburon*, 447 U. S. 255 (1980).

I

The Court recognizes that “the complaint alleged that appellant was deprived of all beneficial use of its property,” *ante*, at 11 n. 8, but concludes:

“The California Court of Appeal, whose opinion on matters of local law and local pleading we must respect, cf. *Agins v. Tiburon*, 447 U. S. 255, 259–260, n. 5 (1980), apparently rejected what the Superior Court labeled a

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
 YOLO COUNTY ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

[June —, 1986]

JUSTICE WHITE, with whom JUSTICE REHNQUIST joins as
 to Parts I, II, and III, dissenting.

The Court acknowledges that we noted probable jurisdiction in this case “[b]ecause of the importance of the question whether a monetary remedy in inverse condemnation is constitutionally required in appropriate cases involving regulatory takings,” *ante*, at 7, but avoids this issue by holding that the antecedent question—whether appellant adequately stated a takings claim—should be answered in the negative. I disagree. The factual allegations that we must consider, when the opinion below is correctly read, do state a takings claim and therefore present the remedial question that we have thrice before sought to resolve. See *Williamson County Regional Planning Commission v. Hamilton Bank*, — U. S. — (1985); *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621 (1981); *Agins v. Tiburon*, 447 U. S. 255 (1980).

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To: The Chief Justice

Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

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SYMBOLIC CHANGES THROUGHOUT.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
YOLO COUNTY ET AL.ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
THIRD APPELLATE DISTRICT

[June —, 1986]

JUSTICE WHITE, with whom THE CHIEF JUSTICE joins and with whom JUSTICE POWELL and JUSTICE REHNQUIST join as to Parts I, II, and III, dissenting.

The Court acknowledges that we noted probable jurisdiction in this case “[b]ecause of the importance of the question whether a monetary remedy in inverse condemnation is constitutionally required in appropriate cases involving regulatory takings,” *ante*, at 7, but avoids this issue by holding that the antecedent question—whether appellant adequately stated a takings claim—should be answered in the negative. I disagree. The factual allegations that we must consider, when the opinion below is correctly read, do state a takings claim and therefore present the remedial question that we have thrice before sought to resolve. See *Williamson County Regional Planning Comm’n v. Hamilton Bank*, 473 U. S. — (1985); *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621 (1981); *Agins v. Tiburon*, 447 U. S. 255 (1980).

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“The California Court of Appeal, whose opinion on matters of local law and local pleading we must respect, cf.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1986

Re: No. 84-2015-MacDonald, Sommer & Frates v. Yolo
County, et al.

Dear John:

Please join me.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

W

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1986

Re: No. 84-2015, MacDonald, Sommer & Frates
v. County of Yolo

Dear John:

Please join me.

Sincerely,


Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 19, 1986

84-2015 MacDonald, Sommer & Frates v. Yolo County

Dear Bill:

Please add my name to your dissenting opinion.

This means also that I will be joining Parts I, II
and III of Byron's dissent.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: Justice White and the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 11, 1985

Re: 84-2015 - MacDonald, Sommer & Frates v.
v. County of Yolo

Dear Byron:

Please join me in your dissent.

Sincerely,
WM

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1986

Re: 84-2015 - MacDonald, Sommer & Frates v.
Yolo County

Dear Byron:

Please join me in Parts I, II, and III of your
dissenting opinion.

Sincerely,



Justice White

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JUN 17 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

**MACDONALD, SOMMER & FRATES, APPELLANT v.
YOLO COUNTY ET AL.**

**ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
THIRD APPELLATE DISTRICT**

[June —, 1986]

JUSTICE REHNQUIST, dissenting.

I agree with JUSTICE WHITE that the Court of Appeal's opinion is best read as rejecting appellant's allegations as a matter of substantive takings law; that appellant sufficiently alleged a final decision denying it all beneficial use of its property; that a land use regulation restricting the use of property may amount to a taking; and that the allegations here are sufficient to state a takings claim. Accordingly, I join Parts I, II, and III of his dissenting opinion. As JUSTICE WHITE recognizes in Part IV of his opinion, the questions surrounding what compensation, if any, is due a property owner in the context of "interim" takings are multifaceted and difficult. I would not reach these questions without first permitting the courts below to address them in light of the fact that appellant has sufficiently alleged a taking.

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

From: Justice Rehnquist

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SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
 YOLO COUNTY ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

[June 24, 1986]

JUSTICE REHNQUIST, with whom JUSTICE POWELL joins,
 dissenting.

I agree with JUSTICE WHITE that the Court of Appeal's opinion is best read as rejecting appellant's allegations as a matter of substantive takings law; that appellant sufficiently alleged a final decision denying it all beneficial use of its property; that a land use regulation restricting the use of property may amount to a taking; and that the allegations here are sufficient to state a takings claim. Accordingly, I join Parts I, II, and III of his dissenting opinion. As JUSTICE WHITE recognizes in Part IV of his opinion, the questions surrounding what compensation, if any, is due a property owner in the context of "interim" takings are multifaceted and difficult. I would not reach these questions without first permitting the courts below to address them in light of the fact that appellant has sufficiently alleged a taking.

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

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Handwritten notes:
 LRS
 10-10-86
 M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
 YOLO COUNTY ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

[May —, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether rejection of a subdivision proposal deprived appellant of its property without just compensation contrary to the Fifth and Fourteenth Amendments to the United States Constitution.¹

I

This appeal is taken from a judgment sustaining a demurrer to a property owner's complaint for money damages for an alleged "taking" of its property. In 1975, appellant submitted a tentative subdivision map to the Yolo County Planning Commission. Under appellant's proposal, the subject property, at least part of which was planted with corn, would be subdivided into 159 single and multi-family residential lots.

The Yolo County Planning Commission rejected the subdivision plan, however, and the Board of Supervisors of the County affirmed that determination. The Board found nu-

¹The Fifth Amendment provides "nor shall private property be taken for public use, without just compensation." The Fifth Amendment prohibition applies against the States through the Fourteenth Amendment. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 236, 239, 241 (1897). See also *Williamson Planning Comm'n v. Hamilton Bank*, — U. S. —, —, n. 1 (1985) (slip op. 1, n. 1); *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621, 623, n. 1 (1980).

- To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

2p. 5, 6, 11, 12

From: **Justice Stevens**

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Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
 YOLO COUNTY ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

[June —, 1986]

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The Yolo County Planning Commission rejected the subdivision plan, however, and the Board of Supervisors of the County affirmed that determination. The Board found nu-

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To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

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Recirculated: JUN 17 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-2015

MACDONALD, SOMMER & FRATES, APPELLANT *v.*
 YOLO COUNTY ET AL.

ON APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
 THIRD APPELLATE DISTRICT

[June —, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether rejection of a subdivision proposal deprived appellant of its property without just compensation contrary to the Fifth and Fourteenth Amendments to the United States Constitution.¹

I

This appeal is taken from a judgment sustaining a demurrer to a property owner's complaint for money damages for an alleged "taking" of its property. In 1975, appellant submitted a tentative subdivision map to the Yolo County Planning Commission. Under appellant's proposal, the subject property, at least part of which was planted with corn, would be subdivided into 159 single-family and multifamily residential lots.

The Yolo County Planning Commission rejected the subdivision plan, however, and the Board of Supervisors of the County affirmed that determination. The Board found nu-

¹The Fifth Amendment provides "nor shall private property be taken for public use, without just compensation." The Fifth Amendment prohibition applies against the States through the Fourteenth Amendment. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 236, 239, 241 (1897). See also *Williamson Planning Comm'n v. Hamilton Bank*, 473 U. S. —, —, n. 1 (1985) (slip op. 1, n. 1); *San Diego Gas & Electric Co. v. San Diego*, 450 U. S. 621, 623, n. 1 (1981).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

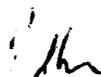
June 20, 1986

Re: 84-2015 - MacDonald v. Yolo County

Dear Chief:

It looks like this case is ready to come down, but I wonder if it is worthwhile sitting on Tuesday to announce only one case. If it cannot be moved to Monday, perhaps we could have it announced at a later date.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 24, 1986

MEMORANDUM TO THE CONFERENCE

Re: Cases held for MacDonald, Sommer & Frates v. Yolo, No. 84-2015

Note
First English Evangelical Church v. County of Los Angeles, No. 85-1199, is an appeal from a judgment of the California Court of Appeal. I shall vote to note probable jurisdiction.

Appellant had erected a dining hall, two bunkhouses, a caretaker's lodge, an outdoor chapel, and a footbridge on 12 acres of its 21-acre private campground in the Angeles National Forest. After a severe flood destroyed the campsite, the County enacted an ordinance, § 1 of which states:

"A person shall not construct, reconstruct, place or enlarge any building or structure, any portion of which is, or will be, located within the outer boundary lines of the interim flood protection area located in Mill Creek Canyon." App. to Juris. Statement A31.

Appellant, alleging that this ordinance denied it all beneficial use of its property and effected a "taking," sought damages in California Superior Court. The Superior Court judge bifurcated the jury trial into liability and damages phases. At the close of appellant's evidence on liability, the trial court granted the County's motion for nonsuit. The rationale of the trial court was as follows:

"However, a careful reading of the Agins [v. City of Tiburon, 24 Cal.3d 266, 598 P.2d 25 (1979)] case persuades the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

September 30, 1985

MEMORANDUM TO THE CONFERENCE:

Re: 84-2015 MacDonald, Sommer & Frates v. County of Yolo, et al.

This case was relisted for me. In order to reach the Fifth Amendment takings issue in this case it seems to me we would have to first confront and reject the California Court of Appeal's conclusion that the land retains sufficient economic value to preclude the regulatory takings claim. I am not sure on the record before us we can successfully do that and we would very likely end up (as in Williamson County last Term) failing to address the underlying question. For that reason, I will vote to dismiss.

Sincerely,

Sandra

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 15, 1985

Re: 84-2015 MacDonald, Sommer & Frates v. County
of Yolo, et al.

Dear Byron,

Please join me in your dissent from
denial of certiorari.

Sincerely,



Justice White

Copies to the Conference



CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Supreme Court of the United States
Washington, D. C. 20543

June 13, 1986

No. 84-2015 MacDonalld, Sommer & Frates
v. Yolo County

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

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