

Temporary ban on construction upheld by court

By Anne Gearan
Associated Press

WASHINGTON | The Supreme Court sided with local government Tuesday in a clash between private property rights and officials' fears that overbuilding would ruin the clear, azure waters of Lake Tahoe.

The court ruled 6-3 that a temporary ban on development around the lake was not a "taking" of private land for which the Constitution requires payment from the government.

The ruling was a victory both for the regional planning agency in Lake Tahoe and local officials generally. It was a loss for hundreds of people who bought land around the lake on the California-Nevada border and have waited decades to build there.

It was also a disappointment to conservative activists, who had hoped the Tahoe case would further the cause of private property rights.

"This decision will make it more difficult for individuals to hold governments accountable when they strategically and unjustifiably use procedural maneuvers to prevent people from building homes on property that is rightfully theirs," said Chip Mellor, president of the Institute for Justice, a conservative public interest law firm.

The Tahoe Regional Planning Agency halted homebuilding around the lake from 1981-84 because of concern that development was clouding the lake's water and perhaps fouling the environment in other ways. The agency said it needed time to study effects of development before issuing new permits.

Some landowners were not allowed to build even after the temporary ban ended, but the Supreme Court considered only whether the moratorium constituted a government seizure of land.

The court affirmed an appeals court decision against the landowners, who had sought \$27 million in damages.

While sympathetic to the aging landowners, some of whom have died during the two decades

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land use decisions may result if judges place time limits on a local development hiatus.

"It would only serve to disadvantage those landowners and interest groups who are not as organized or familiar with the planning process," Justice John Paul Stevens wrote for the majority.

The three most conservative justices disagreed. Lake Tahoe is a national treasure, and the planning agency's efforts to prevent further environmental harm were probably well-intentioned, Chief Justice William Rehnquist wrote for himself and Justices Antonin Scalia and Clarence Thomas.

"But, as is the case with most governmental action that furthers the public interest, the Constitution requires that the costs and burdens be borne by the public at large, not by a few targeted citizens," he wrote.

The case made for strange bedfellows, with Solicitor General Theodore Olson, one of the leading conservatives in the Bush administration, backing the Tahoe planning agency against the landowners.

Local planning officials and environmentalists said the decision preserves local power to protect natural resources.

Patrick Parenteau, who teaches environmental law at Vermont Law School, said the ruling breaks with a 15-year Supreme Court trend of favoring individual property rights over government aims.

"The importance in this decision is in what didn't happen," he said. "This is the bullet dodged."

A ruling for the landowners would have tied the hands of local officials faced with growth that outpaces

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