INSTITUTE ON
PLANNING,
ZONING, AND
EMINENT DOMAIN

Institute for Local Government Studies

Plano, Texas

December 10–12, 2008
The lectures in this volume were delivered at an Institute on Planning, Zoning and Eminent Domain at The Center for American and International Law. They represent the views of their authors (not necessarily of the Center). This institute, a continuing legal education program of The Center for American and International Law, was presented under the direction of Michael J. Marchand, President. The Proceedings continue previously held Institutes on Planning and Zoning and on Eminent Domain.

2009

LexisNexis®
# Table of Contents

<table>
<thead>
<tr>
<th>CHAPTER 1</th>
<th>Recent Developments in Planning and Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>Bruce M. Kramer</em></td>
</tr>
<tr>
<td>CHAPTER 2</td>
<td>National Update: Inverse Condemnation, Update on Takings Cases—Both Regulatory and Physical</td>
</tr>
<tr>
<td></td>
<td><em>Michael M. Berger</em></td>
</tr>
<tr>
<td>CHAPTER 3</td>
<td>Ethical Considerations in Land Use Law Blowing in the Wind</td>
</tr>
<tr>
<td></td>
<td><em>Patricia E. Salkin</em></td>
</tr>
<tr>
<td>CHAPTER 4</td>
<td>Property Rights Issues at the Cutting Edge: Inverse and Direct Condemnation</td>
</tr>
<tr>
<td></td>
<td><em>Michael M. Berger</em></td>
</tr>
<tr>
<td>CHAPTER 5</td>
<td>Georgetown Environmental Law and Policy Institute’s Takings-Net</td>
</tr>
<tr>
<td></td>
<td><em>Dwight H. Merriam</em></td>
</tr>
<tr>
<td>CHAPTER 6</td>
<td>On the Cutting Edge? Regulatory Takings Law in Texas: An Update</td>
</tr>
<tr>
<td></td>
<td><em>Terry D. Morgan</em></td>
</tr>
<tr>
<td>CHAPTER 7</td>
<td>Pay to Play — What’s New in Financing Infrastructure Impact Fees and Development Exactions in Texas</td>
</tr>
<tr>
<td></td>
<td><em>Terry D. Morgan</em></td>
</tr>
<tr>
<td>CHAPTER 8</td>
<td>Helping Development in a Down Economy</td>
</tr>
<tr>
<td></td>
<td><em>Dwight H. Merriam</em></td>
</tr>
<tr>
<td>CHAPTER 9</td>
<td>One (1) Ounce of RLUIPA Prevention</td>
</tr>
<tr>
<td></td>
<td><em>Dwight H. Merriam</em></td>
</tr>
<tr>
<td>CHAPTER 10</td>
<td>RLUIPA: Two Sides to the Story</td>
</tr>
<tr>
<td></td>
<td><em>Daniel Dalton, Dwight H. Merriam, Graham S. Billingsley</em></td>
</tr>
<tr>
<td>CHAPTER 11</td>
<td>Eminent Domain Issues Related to the Oil and Gas Industry</td>
</tr>
<tr>
<td></td>
<td><em>John Preston Baker</em></td>
</tr>
<tr>
<td>INDEX</td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER 1

RECENT DEVELOPMENTS IN PLANNING AND ZONING

Bruce M. Kramer
Maddox Professor of Law Emeritus
Texas Tech University School of Law
Lubbock, Texas

SYNOPSIS

§ 1.01 Introduction

§ 1.02 Land Use Controls and the Fourteenth Amendment

[1] Federal Cases

[a] Island Silver & Spice, Inc. v. Islamorada
[b] Cachia v. Islamorada
[c] North Pacifica LLC v. City of Pacifica
[d] Crown Point Development, Inc. v. City of Sun Valley
[e] Young v. Township of Coolbaugh
[f] Crippen v. City of Fresno
[g] Moreland Properties, LLC v. City of Thornton
[h] Braun v. Ann Arbor Charter Township
[i] MLC Automotive, LLC v. Town of Southern Pines
[j] Nichols v. Board of County Commissioners of County of La Plata
[k] DeNinno v. Municipality of Penn Hills
[l] Ruttenberg v. Jones
[m] Waimea Bay Associates One, LLC v. Thielen
[n] Sinclair v. City of Ecorse
[o] Clark v. Boscher
[p] Alzamora v. Village of Chester
[q] Henry Company Homes, Inc. v. Curb
[r] Dutko v. Lofthouse
[s] West Street Group LLC v. Epro

1-1
PLANNING, ZONING, & EMINENT DOMAIN

§ 1.03 Land Use Controls and the Fifth Amendment

[1] Regulatory Takings
   [a] Golden Gate Water Ski Club v. County of Contra Costa
   [b] Tobin v. Center Township
   [c] Quail Hill, LLC v. County of Richland
   [d] Action Apartment Association v. City of Santa Monica
   [e] City of Minot v. Boger
   [f] Jackson Hill Road Sharon CT, LLC v. Town of Sharon

[2] Vested Rights
   [a] Cribbin v. City of Chicago
   [b] Gra V., LLC v. Srinivasan
   [c] Downey Farms Development Corp. v. Town of Cornwall Planning Board
   [d] Pratt Construction Co., Inc. v. California Coastal Commission
   [e] Hellam Township v. Hellam Township Zoning Hearing Board

§ 1.04 Land Use Controls and the First Amendment

[1] Religion Clauses
   [a] Salt Lake City Mission v. Salt Lake City
   [b] Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County
   [c] Family Life Church v. City of Elgin
   [d] Cambodian Buddhist Society of Connecticut, Inc. v. Planning and Zoning Commission of Town of Newtwn

   [a] Adult Entertainment Facilities (AEFs)
      [i] Loring v. Planning and Zoning Commission of Town of North Haven
      [ii] Regensberger v. City of Waterbury
      [iii] City of Commerce City v. Enclave West, Inc.
      [iv] Sensations, Inc. v. City of Grand Rapids
[v] VIP of Berlin, LLC v. Town of Berlin
[vi] Richland Bookmart, Inc. v. Knox County
[vii] Sands North, Inc. v. City of Anchorage
[viii] Plaza Group Properties, Inc. v. Spencer County Plan Commission
[ix] MAJ Entertainment, Inc. v. Zoning Board of Adjustment of City of Philadelphia
[x] Horry County v. Parbel
[xi] State v. Stummer
[xii] 729, Inc. v. Kenton County Fiscal Court
[xiii] Doctor John’s v. Wahlen
[xiv] DEG, LLC v. Township of Fairfield
[xv] Foster v. City of El Paso
[xvi] Little Mack Entertainment II, Inc. v. Township of Marengo
[xvii] Entertainment Productions, Inc. v. Shelby County
[xviii] Flava Works, Inc. v. City of Miami
[b] Signs
[i] General Auto Service Station v. City of Chicago
[ii] American Outdoor Advertising Co., LLC v. Franklin Township Board of Zoning Appeals
[iii] City of Tucson v. Clear Channel Outdoor, Inc.
[iv] Massachusetts Bay Transportation Authority v. City of Somerville
[v] State of Missouri ex rel. Ad Trend, Inc. v. City of Platte City
[vi] Roma Outdoor Creations, Inc. v. City of Cumming
[vii] Naser Jewelers, Inc. v. City of Concord
[viii] Warminster Fiberglass Co., Inc. v. Upper Southampton Township
[ix] Desert Outdoor Advertising, Inc. v. City of Oakland
[x] Lamar Advertising of Penn, LLC v. Pitman
[c] Miscellaneous
[i] Harris v. Township of O’Hara
[ii] Steinburg v. Chesterfield County Planning Commission
[iii] Phelps-Roper v. Nixon
[iv] Lopez v. Town of Cave Creek
[v] Green v. City of Raleigh
[vi] Long Beach Area Peace Network v. City of Long Beach

§ 1.05 Subdivisions
[1] Impact Fees
   [a] Citizens’ Alliance for Property Rights v. Sims
   [b] Ocean Harbor House Homeowners Association v. California Coastal Commission
   [c] New Jersey Shore Builders Association v. Township of Jackson
   [d] Upton v. Town of Hopkinton

[2] Subdivision Regulation
   [a] Higby Development, LLC v. Sartor
   [c] Milestone Homes, Inc. v. City of Bonney Lake
   [d] McGrath Construction, Inc. v. Upper Saucon Township Board of Supervisors
   [e] Matthews v. Planning Board of Brewster
   [f] Far Away Farm, LLC v. Jefferson County Board of Zoning Appeals
   [g] Howeth Investments, Inc. v. City of Hedwig Village
   [h] Logan v. City Council of the City of Roanoke
   [i] City of Hammond v. Parish of Tangipahoa
   [j] Wisconsin Realtors Association, Inc. v. Town of West Point
   [k] Spencer v. Kootenai County
   [l] Gardner v. Board of County Commissioners of Wasatch County
   [m] Blue Ridge Co., LLC v. Town of Pineville
   [n] Farmers for Fairness v. Kent County
   [o] Dubois Dutch, LLC v. Sandy Township Board of Supervisors
   [p] Jade Realty Corp. v. Town of Eliot
   [q] Kurschner v. City of Camden Planning Commission
   [r] City of Charlestown Advisory Planning Commission v. KBJ, LLC

[3] Planned Unit Developments and Site Plan Review
   [a] Muldoon v. Planning Board of Marblehead
   [b] Watergate East Committee Against Hotel Conversion v. District of Columbia Zoning Commission
   [c] Amerada Hess Corp. v. Burlington County Planning Board
   [d] Richardson v. Zoning Commission of Town of Redding

§ 1.06 NIMBY Syndrome

[1] Telecommunications Facilities [TCFs]
   [a] Sprint Telephony PCS, L.P. v. County of San Diego
   [b] USCOC of Greater Missouri, LLC v. County of Franklin
RECENT DEVELOPMENTS IN PLANNING & ZONING

[c] Sprint Spectrum, L.P. v. Charter Township of Brandon
[d] Sprint Spectrum, L.P. v. City of Jeffersonville Board of Zoning Appeals
[e] Sprint Spectrum, L.P. v. Town of Swansea
[f] Cellco Partnership v. Franklin County
[g] Red Sky Communication, LLC v. City of Lenexa
[h] USCOC of Greater Missouri, LLC v. City of Ferguson
[i] T-Mobile South, LLC v. City of Jacksonville
[j] Verizon Wireless (VAW) LLC v. Douglas County
[k] Daniels v. Town of Londonderry
[l] In re Shaw

[a] Chiapella v. District of Columbia Board of Zoning Adjustment
[b] A Helping Hand, LLC v. Baltimore County
[c] Derry Senior Development, LLC v. Town of Derry
[d] Community Resources for Justice, Inc. v. City of Manchester
[e] Lieb v. Trimble
[f] Bontrager Auto Service, Inc. v. Iowa City Board of Adjustment

[a] AES Sparrows Point LNG, LLC v. Smith
[b] Humbert/Birch Creek Construction Co. v. Walla Walla County
[c] Lane Construction Corp. v. Town of Washington
[d] Coal Gas Recovery, L.P. v. Franklin Township Zoning Hearing Board
[e] Midwest Minerals, Inc. v. Board of Zoning Appeals
[f] J.L. Storedahl & Sons, Inc. v. Clark County
[g] Kyser v. Kasson Township
[h] Legrand v. Ewbank
[i] Friends of Mt. Vernon Springs, Inc. v. Town of Siler City
[j] Continental Coal, Inc. v. Cunningham
[k] Flathead Citizens for Quality Growth, Inc. v. Flathead County Board of Adjustment

[a] Yakima County v. Eastern Washington Growth Management Hearings Board
[b] Terra Nova Dairy, LLC v. Wabash County Board of Zoning Appeals
[c] Olmer v. Madison County Board of Commissioners
[d] Zweygardt v. Board of County Commissioners of County of Elbert
[e] Sexton v. Jackson County Board of Zoning Appeals
[f] Borrelli v. Zoning Board of Appeals of City of Middletown
[g] Ruley v. West Nantmeal Township Zoning Hearing Board
[h] Meerland Dairy LLC v. Ross Township
[i] Walck v. Lower Towamensing Township Zoning Hearing Board

[5] Sanitary Landfills and Junkyards
[a] Guy v. Town of Temple
[b] Southeastern Chester County Refuse Authority v. Board of Supervisors of London Grove Township
[c] City of Cleveland v. Abrams
[d] 600 Land, Inc. v. Metropolitan Board of Zoning Appeals of Marion County
[e] Tosi v. County of Fresno
[f] Megin v. Zoning Board of Appeals of Town of New Milford
[g] Henry v. Cherokee County
[h] Pawtucket Transfer Operations, LLC v. City of Pawtucket
[i] Eagle Container Co., LLC v. County of Newberry

§ 1.07 Potpourri

[1] Discretionary Permits
[a] Variances
[i] Cornell v. Board of Appeals of Dracut
[ii] Posick v. Mark IV Construction Co., Inc.
[iii] Meyer v. MW Red Bank, LLC
[iv] Kaufman v. Village of Kings Point
[v] In re Stadsvold
[vi] Rural Water Co., Inc. v. Zoning Board of Appeals of Town of Ridgefield
[vii] Nine A, LLC v. Town of Chesterfield
[viii] Fay v. Belmar Zoning Board of Adjustment
[ix] Miller v. Scott
[x] Vaughn v. Zoning Hearing Board of Township of Shaler
[xi] Burcham v. Metropolitan Board of Zoning Appeals
[xii] Baumer v. City of Jennings
[xiii] Camp v. Town of Shapleigh
[xiv] Schellhardt v. Mercer County Commissioners
[xv] Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill
RECENT DEVELOPMENTS IN PLANNING & ZONING

[xvi] Durkin Village Plainville, LLC v. Zoning Board of Appeals of Town of Plainville
[xvii] Price v. 13-14 Union, LLC
[xviii] Naser v. Town of Deering Zoning Board of Adjustment

[b] Conditional Use Permits and Special Exceptions
[i] Lord Family of Windsor, LLC v. Planning and Zoning Commission of Town of Windsor
[ii] Millineum Maintenance Management, Inc. v. County of Lake
[iii] In the Matter of West Beekmantown Neighborhood Association, Inc. v. Zoning Board of Appeals of Town of Beekmantown
[iv] K. Hovnanian Pennsylvania Acquisitions, LLC v. Newtown Township Board of Supervisors
[v] Mann Brothers Real Estate, LLC v. City of Minneapolis
[vi] Tennyson v. Zoning Hearing Board of West Bradford Township
[vii] Kelly v. County of Chelan
[viii] Miller v. District of Columbia Board of Zoning Adjustment
[ix] Tonnesen v. Town of Gilmanton
[x] Singley v. County Commissioners of Frederick County
[xi] Rubenstein v. City of New Orleans
[xii] McDonald v. City of Concord
[xiii] Weaverville Partners, LLC v. Town of Weaverville Zoning Board of Adjustment

[2] Non-Conforming Uses (NCUs)
[a] Star Northwest Inc. v. City of Kenmore
[b] Parslow v. Zoning Board of Appeals of Town of Middleton
[c] Smith Brothers Woodland Management, LLC v. Zoning Board of Appeals of Town of Brookfield
[d] Michaels v. Zoning Board of Appeals of Wakefield
[e] Greater Harrodsburg/Mercer County Planning & Zoning Commission v. Romero
[f] City of St. Albans v. Hayford
[g] Weber v. Troy Township Board of Zoning Appeals
[h] City of Okoboji v. Okoboji Barz, Inc.
[i] Zitzkat v. Truro Zoning Board of Appeals
[j] Robicheau v. Zoning Board of Appeals of Norwood
[k] Goyonaga v. Board of Zoning Appeals for City of Falls Church
[l] Trudo v. Town of Kennebunkport
[m] First Pioneer Trading Co., Inc. v. Pierce County
[n] Bjorklund v. Zoning Board of Appeals of Norwell
[o] Churchill Realty Trust v. City of Dover Zoning Board of Adjustment
[p] Wiltzius v. Zoning Board of Appeals of Town of New Milford

[3] Rezoning
[a] Bridge v. Mayor & Board of Aldermen of City of Oxford
[b] Dutko v. Planning and Zoning Board of City of Milford
[c] Holladay Town Center, LLC v. Holladay City
[d] Pond View, LLC v. Planning and Zoning Commission of Town of Monroe
[e] Vanspeybrouck v. Tillamook County
[f] Valenti v. Board of County Commissioners of Lyon County
[g] Little Joseph Realty, Inc. v. Town Board of Town of Babylon
[h] Miller v. City of Arnold
[i] Gaida v. Planning and Zoning Commission of City of Shelton
[j] Blust v. City of Blue Ash
[k] Ex parte Nathan Rodgers Construction, Inc.
[l] IBC Denver II, LLC v. City of Wheat Ridge
[m] Exeter Building Corp. v. Town of Newburgh
[n] Albuquerque Commons Partnership v. City Council of City of Albuquerque
[o] Laurel Valley Watch, Inc. v. Mountain Enterprises of Wolf Ridge, LLC

[a] Matter of Land Master Montg I, LLC v. Town of Montgomery
[b] Kamaole Pointe Development, LP v. County of Maui
[c] Town of Burrillville v. Pascoag Apartment Associates, LLC
[d] Board of Appeals of Woburn v. Housing Appeals Committee
[e] Town of Hingham v. Department of Housing and Community Development

[5] Intergovernmental Conflicts
[a] Volunteer Fire Association of Tappan, Inc. v. Town of Orangetown
[b] Board of Supervisors of Loudon County v. Town of Purcellville
[c] Berger v. City of Boulder
[d] Herman v. County of Berrien
[e] Holt's Cigar Co., Inc. v. City of Philadelphia
[f] Department of Transportation v. City of Idaho Springs
[g] Hackett v. J.L.G. Properties, LLC
[h] City of Detroit v. Ambassador Bridge Co.

[6] Popular Zoning [herein of initiative and referendum]
[a] Griswold v. City of Homer
[b] State ex rel. Stoll v. Logan County Board of Elections

[7] Enforcement of Zoning Ordinances
[a] 81 Spooner Road LLC v. Town of Brookline
[b] Bennett v. Town of Hampstead
[c] Lovelace v. Orange County Board of Zoning Appeals
[d] Sweeney v. A.L. Prime Energy Consultants
[e] Spinner v. City of Dallas
[f] Continental Homes of Texas, L.P. v. City of San Antonio
[g] Peterson v. City of Abbeville
[h] Fillion v. Hannon
[i] Machnics v. Sloe
[j] 9th & 10th St. LLC v. Board of Standards & Appeals of City of New York
[k] City of Wilmington v. Hill
[l] Sassone v. Hartel Enterprises, LLC
[m] Heim v. Zoning Board of Appeals of Town of New Canaan
[n] In re Times & Seasons, LLC
[o] Dunlap v. Orange County

[8] Author's Choice
[a] Ouelette v. Town of Kingston
[b] City of Corona v. Naulls
[c] G.H. v. Township of Galloway
[d] Viola v. O'Dell
[e] Barry v. Historic District Commission of Borough of Litchfield
[f] Rossi v. Town Board of Town of Bailston
[g] Gibbons v. Historic District Commission of Town of Fairfield
[h] Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles
[i] Lowe v. Pima County