INSTITUTE FOR LOCAL GOVERNMENT LAWYERS
Saturday October 14, 2017

Resource Materials for Land Use

U.S. Supreme Court Cases

Murr v. Wisconsin **(US 2017)**
https://www.supremecourt.gov/opinions/16pdf/15-214_f1gj.pdf

U.S. Army Corps of Engineers v. Hawkes (US 2016)
https://www.supremecourt.gov/opinions/15pdf/15-290_6k37.pdf

California Building Industry Association v. City of San Jose (US 2016)
https://www.supremecourt.gov/opinions/15pdf/15-330_1q24.pdf

Murr v. Wisconsin
http://www.scotusblog.com/case-files/cases/murr-v-wisconsin/

Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc. (US 2015).
http://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf

Reed v. Town of Gilbert (US 2015)
http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Tarrant Regional Water District v. Herrmann (US 2013)
http://www.supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf

Arkansas Game & Fish Commission v. U.S. (US 2012)
http://www.supremecourt.gov/opinions/12pdf/11-597_i426.pdf

Horne v. Department of Agriculture (US 2015)
http://www.supremecourt.gov/opinions/14pdf/14-275_c0n2.pdf

Horne v. Department of Agriculture (US 2013)
http://www.supremecourt.gov/opinions/12pdf/12-123_c07d.pdf

Koontz v. St. Johns Water Management District (US 2013)
http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Arlington v. FCC (US 2013)
http://www.supremecourt.gov/opinions/12pdf/11-1545_1b7d.pdf

Marvin M. Brandt Revocable Trust v. U.S. (US 2014)
http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Koontz Fallout

California BIA v. City of San Jose (Cal. Sup. Ct.) (endorsing inclusionary housing ordinances by ruling that they are legally permissible as long as it can be shown the ordinance is reasonably related to the public welfare).
http://www.courts.ca.gov/opinions/documents/S212072.PDF

http://www.courts.ca.gov/opinions/revpub/H038563.PDF
http://scholar.google.com/scholar_case?case=17931150985265517687&q=California+Building+Industry+Association+v.+City+of+San+Jos%C3%A9,+&hl=en&as_sdt=2,5

Commentary on ***Koontz*** (thanks to Rob Thomas at www.inversecondemnation.com for the list) [control and click to follow the link or go to www.inversecondemnation.com and search "Koontz"]:

> ***Supreme Court Rules for Property Owner in Koontz v. St. Johns River Water Management District*** - lawprof Richard Frank, *Legal Planet*.
>
> ***Supreme Court's Koontz Decision May Help Landowners Fighting Mitigation Payments*** - from the *Massachusetts Land Use Monitor*.
>
> ***Does* Koontz *also blow holes in* Williamson County*?*** - J. David Breemer, *PLF Liberty Blog*.
>
> **Koontz v. St. Johns River Water Management District*: Of Issues Resolved - and Shoved under the Table*** - lawprof Richard Epstein, *Point of Law*.
>
> ***Supreme Court ruling bolsters private property rights*** - from the *LA Times*.

Opinion recap: Broadening property owners' right to sue - from *SCOTUSblog*.

Koontz Decision: No Big Deal or Blow to Sustainable Develoment? - Jonathan Nettler, *Planetizen*.

Late to the Game: Koontz and whether you can have a takings claim without an actual takings - lawprof Jessie Owley, *Land Use Prof Blog*.

CAC Reacts to Supreme Court Decision in Koontz Takings Case - *Constitutional Accountabllity Center*.

Land Owners Complete a Clean Sweep at the U.S. Supreme Court - Brad Kuhn, C*alifornia Eminent Domain Report*.

A Few More Thoughts About Koontz - lawprof Eduardo Penalver, *PrawfsBlawg*.

Koontz' Unintelligible Takings rule: Can Remedial Equivocation save the Court from a Doctrinal Quagmire? - lawprof Rick Hills, *PrawfsBlawg*.

Koontz and Exactions: Don't Worry, Be Happy - lawprof Jonathan Zasloff, *Legal Planet*.

No Permit for You! - How Denying a Permit Could be a Taking - Jesse Souki, *Hawaii Land Use Law and Policy*.

Surprise! Environmental Lawprof Dislikes Koontz – Robert Thomas Inversecondemnation.com

And these:

Koontz Decision: No Big Deal or Blow to Sustainable Development? - Planetizen

http://www.planetizen.com/node/63926

A Legal Blow to Sustainable Development - Prof. Echeverria, Vermont Law School
http://www.nytimes.com/2013/06/27/opinion/a-legal-blow-to-sustainable-development.html?_r=1&

A Legal Blow to Cities That Want to Take Your Property - Cato Institute

http://www.cato.org/blog/legal-blow-cities-want-take-property

First decision post-*Koontz*:

Town of Ponce Inlet v. Pacetta, Ct. App. Fl. (July 5, 2013)
http://www.5dca.org/Opinions/Opin2013/070113/5D12-1982.op.pdf

Background cases:

Nollan v. California Coastal Commission
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0483_0825_ZS.html

Dolan v. Tigard
http://www.law.cornell.edu/supct/html/93-518.ZS.html

Lingle v. Chevron
http://www.law.cornell.edu/supct/html/04-163.ZS.html

Eastern Enterprises v. Apfel
http://www.law.cornell.edu/supct/html/97-42.ZO.html

Commentary:

John Baker and Katherine Swenson, ***Koontz v. St. Johns River Water Management District: Trudging Through a Florida Wetland with Nine U.S. Supreme Court Justices*** (May 2013)
http://www.greeneespel.com/files/pdf/ReprintZPLR052013.pdf

Ilya Somin, ***Two Steps Forward for the 'Poor Relation' of Constitutional Law: Koontz, Arkansas Game & Fish, and the Future of the Takings Clause***
Cato Supreme Court Review, pp. 215-243, 2012-2013 (Symposium on the 2012-13 Supreme Court Term), George Mason Law & Economics Research Paper No. 13-48
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325529

John D. Echeverria, ***Koontz: The Very Worst Takings Decision Ever?***
Vermont Law School Research Paper No. 28-13
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2316406

Justin R. Pidot, ***Fees, Expenditures, and the Takings Clause***
University of Denver Sturm College of Law
Date posted: July 26, 2013
Last revised: August 15, 2013
Working Paper Series
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2298307

John Ryskamp, ***Koontz Pulls the 'Trigger' on the Affordable Care Act***
Independent
Date posted: July 1, 2013
Working Paper Series
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2287280

Takings

Murr v. Wisconsin **(US 2017)**
https://www.supremecourt.gov/opinions/16pdf/15-214_f1gj.pdf

In 2017, the US Supreme Court decided a relevant parcel case, Murr v. Wisconsin.[1] As Justice Holmes stated in 1922, whether application of a land use regulation results in a taking requiring just compensation under the Fifth Amendment, depends on if a regulation "goes too far." Since that time, the US Supreme Court has taken steps to determine how far is "too far." One of the factors in the formula for determining whether the impact is too onerous is evaluating the "economic impact of the regulation" considering the property value both before and after the regulation is imposed. The question that often arises is what is the base property or the "denominator" to be used in this comparison. In the Penn Central Transportation Company v. New York City case, the Court held that the economic consideration must take into account the property as a whole and could not be segmented to consider only the "air rights" as separate from surface development rights. However in a later case, Lucas v. South Carolina. Coastal Council, the Court has expressed some discomfort when a regulation eliminates all economically beneficial use from the property, which generally results in a taking. In other words, property ownership and how state and local land use laws treat land parcels could significantly influence the nature of the denominator in a takings case.

This was the setting for the US Supreme Court's decision in Murr v. Wisconsin. Plaintiffs had, on different occasions, acquired two adjacent parcels from family members or entities connected with those members. Neither of these lots could be developed for residential use separately under the local zoning regulations, because the adjacent St. Croix River had been designated for conservation under the federal Wild and Scenic Rivers Act and state-imposed regulations precluded the separate development on both of these lots, although the Plaintiffs had already lawfully built a cabin on one of them. The zoning regulations did allow for residential

[1] Murr v. Wisconsin, 137 S.Ct. 1933, 582 US___ (2017)(The first six paragraphs of this discussion of the Murr decision are adapted with permission in significant part from a statement prepared by Edward Sullivan, a retired practitioner in land use and municipal law from Portland, Oregon, and his former law partner, Carrie Richter of Bateman Seidel, also in Portland, Oregon).

development of individual undersized lots in certain circumstances, but had also required (before Plaintiffs acquired the lots), that adjacent parcels under the same ownership were considered "merged" so that only one house could be placed on these two lots. Plaintiffs claimed a regulatory taking under the merger and prohibition of development on undersized lot requirements.

During the proceedings below, the lower courts found in favor of the state, concluding that the Plaintiffs had other options for the use of the vacant lot in conjunction with the existing cabin, which could be moved or replaced and also that they had not been deprived of all economic value of their property. The appellate court held that the merger provision existed before Plaintiffs acquired either property, so that they were on notice of that limitation, and that it was unreasonable to expect otherwise, observing further that the difference in value of the merged parcel and the two parcels separately was less than 10%.

The US Supreme Court agreed with the lower courts. In writing for the majority, Justice Kennedy's analysis began with the nature of the property under consideration. The majority refused to define property for constitutional purposes as always coextensive with state law, which could allow that interest to be altered to defeat an otherwise legitimate Takings claim, instead choosing three new "factors" to determine the denominator, the parcel as a whole, *viz.* the treatment of the land under state law (as a landowner must recognize reasonable expectations that legitimate restrictions may be imposed), the physical characteristics of the land (I.e., human, topographic and environmental limits on its use), and the effect of regulations on other lands held by the same owner.

In doing so, the majority rejected the formalist responses of both parties. The state would have found its regulations dispositive, while Plaintiffs sought to make lot lines (which themselves may be changed under state law) as having a strong presumption as being the starting point (so that two adjacent lots where a new cabin would be prohibited on one would make a case for a taking under Lucas). The majority focused instead on the reasonableness of the land use regulations and determined that merger provisions were of long standing and legitimate land use tools that may be used, in conjunction with other similar land use tools, to reduce substandard lots in separate ownerships over time. Reliance on lot lines, which may take different forms and significance across the country, was thus not useful. Applying the newly minted factors, the majority accepted the merger provisions as a reasonable exercise of state policy under the first factor. The shape of the parcels, their rough terrain and significantly undevelopable portions added to the rationality of the merger provisions under the second factor. Finally under the third factor, the lack of separate residential use on one of the two parcels is offset by the use of the property as an integrated whole, with additional open space and privacy and additional flexibility locating improvements. The market value differential in the value of the parcels separately and as merged also contributed to the rationality of the regulations.

Recently-appointed Justice Gorsuch did not participate in the decision. The Chief Justice, joined by Justices Thomas and Alito filed the principal dissent arguing that the majority's tests for defining the "denominator" represented a move away from deferring to property determinations under state law and that the new factors could appear to conflate the definition of property with the standards used to evaluate a regulatory taking in the first instance. Justice Thomas wrote separately calling for a complete review of regulatory takings from the standpoint of originalism.

The Court discussed the merger doctrine favorably as a counter to the Plaintiffs' and amici position that property lines are the only consideration. Local governments have found that

comforting. Three days after the decision Prof. John Echeverria of Vermont Law School declared on his blog in a post entitled "Big Victory for State and Local Governments in Murr": "The Murr case offers a ringing endorsement of the constitutionality of lot merger provisions."[2]

Importantly, the Court also did note that "the decision to adopt the merger provision at issue here was for a specific and legitimate purpose" and that petitioners voluntarily brought the lots under common ownership after the merger regulations went into effect.[3] The constitutionality of lot merger provisions may have been validated, but that does not preclude a lot merger from effecting a taking and it does not resolve the often intractable problem of determining the relevant parcel.

At the other end of the spectrum, Ilya Somin, Professor of Law at George Mason University, opines that the decision "creates a vague multifactor balancing test for addressing these issues…" and that it "is a recipe for confusion, uncertainty, and constant litigation. All of the factors in the test are complicated and difficult to measure. Often, which way they cut is in the eye of the beholder."[4]

Arguably, the Court's language could be used to undercut the merger doctrine in circumstances where the considerations that the Court says should be evaluated in determining the relevant parcel are consistent with treating the lots individually -- for example, where the "surrounding human and ecological environment" consists of a series of undersized lots that are all in individual ownership and already developed with houses, and there is no compelling environmental reason for limiting development of the second lot. In such a case it seems that the Murr test should fairly allow a determination that the lots remain distinct for regulatory takings purposes.

The Court's broad factors for determining the relevant parcel establish no bright line rules. Relevant parcel decisions will continue to largely ad hoc, perhaps because that is inherent in partial, regulatory takings.[5]

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[2] Echeverria, Takings Litigation, www.takingslitigation.com June 23, 2017.

[3] Murr v. Wisc., Slip op. at 17.

[4] Somin, "A loss for property rights in Murr v. Wisconsin, The Washington Post, June 23, 2017.

[5] See Eagle, The Parcel and Then Some: Unity of Ownership and the Parcel as a Whole, Vermont Law Review, Vol. 36, 2011, and Merriam, Rules for the Relevant Parcel, The Urban Lawyer University of Hawai'i Law Review, Summer, 2003, 25 Hawaii L. Rev. 353.

Solida v. United States, 778 F.3d 1351 (Fed. Cir. 2015) (When a church that owned a camp sued the government for an alleged taking of property without compensation in both federal district court and in federal claims court, based upon a water diversion project by the Fish and Wildlife Service as part of its wildlife management mandate, the government moved to dismiss the federal claims court action for lack of subject matter jurisdiction (pursuant to the Supreme Court's holding in *United States v. Tohono* under which the United States Court of Federal Claims does not have jurisdiction over any claim against the United States when the plaintiff has a previously filed a case against the United States in another court in respect to the same claim(s) asserted in the Court of Federal Claims). The Federal Circuit Court of Appeals upheld the Federal Court of Claims's dismissal, emphasizing the binding precedent set forth in Tohono. In a concurring opinion, Judge Taranto points to potential holes in the Tohono rule, stating that "if restorative relief is incomplete, as by leaving a temporary taking uncompensated, questions would arise about whether tolling of the statute of limitations might be recognized to avoid unconstitutionality or whether the combination of remedy-depriving statutes is unconstitutional as applied").
http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/14-5058.Opinion.2-24-2015.1.PDF

Labrayere v. Bohr Farms, LLC, 458 S.W.3d 319 (Mo. 2015) (finding statute limiting damages for agricultural nuisances does not authorize an unconstitutional private taking nor violate equal protection).
http://law.justia.com/cases/missouri/supreme-court/2015/sc93816.html

Kirby v. N.C. Dep't of Transp., 769 S.E.2d 218 (N.C. Ct. App. 2015) (The Map Act, a state statute which gives the North Carolina Department of Transportation the ability to designate hundreds of parcels for future highway use and prevent their development in the meantime for the avowed purpose of keeping the future acquisition price low, was held to effect a taking and property owners are entitled to compensation for such a designation).
https://scholar.google.com/scholar_case?case=17706063766671105645&q=Kirby+v.+N.C.+Dept+of+Transp&hl=en&as_sdt=8006

Irwin v. City of Minot, 860 N.W.2d 849, 2015 ND 60 (N.D. 2015) (The Court held that an issue of fact remains as to whether removing clay from the plaintiffs' property during a flood to build dikes, but without compensating the plaintiffs, occurred during an emergency that presented an "imminent danger" giving rise to an "actual necessity" to take the clay and precluding compensation for the taking).
http://www.ndcourts.gov/court/opinions/20140217.htm

Koontz v. St. Johns River Water Management District
http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Powell v. County of Humboldt, 166 Cal. Rptr. 3d 747, 757 (Cal. Ct. App. 2014)
http://www.californialandusedevelopmentlaw.com/files/2014/03/Powell-v.-County-of-Humboldt.pdf

Lingle v. Chevron, U.S.A., Inc., 544 U.S. 528 (2005)

http://supreme.justia.com/cases/federal/us/544/04-163/

Lost Tree Vill. Corp. v. United States, 787 F.3d 1111 (Fed. Cir. 2015) (holding that the denial of a wetland fill permit constituted per se regulatory taking).
http://www.cafc.uscourts.gov/sites/default/files/opinions-orders/14-5093.Opinion.5-28-2015.1.PDF

Lost Tree Village Corp. v. United States, (Fed. Cir. 2013)
http://www.cafc.uscourts.gov/images/stories/opinions-orders/12-5008.pdf

Gregory M. Stein, David. L. Callies, Brian Rider, *Stealing Your Property or Paying You for Obeying the Law? Takings Exactions after* Koontz v. St. Johns River Water Management District 21 (American College of Real Estate Lawyers, March 2014).
http://files.ali-cle.org/thumbs/datastorage/skoob/articles/BKAC1403%20TAB09%20Stein_Callies_Rider_Koontz_thumb.pdf

Home Builders Ass'n of Central Arizona v. City of Scottsdale, 930 P.2d 993, 1000 (Ariz. 1997) (*Dolan* does not apply to a "generally applicable *legislative* decision by the city) (emphasis in original)
http://www.leagle.com/decision/1997666187Ariz479_1595.xml/HOME%20BUILDERS%20ASS'N%20v.%20CITY%20OF%20SCOTTSDALE

Parking Ass'n of Georgia, Inc. v. City of Atlanta, 450 S.E.2d 200, 203 n.3 (Ga. 1994), *cert. denied*, 515 U.S. 1116 (1995) (zoning-imposed landscaping requirement not subject to *Dolan* scrutiny);

Krupp v. Breckenridge Sanitation Dist., 19 P.3d 687, 695-96 (Colo. 2001) (rejecting *Dolan* for legislatively-enacted impact fee).
Courts applying *Dolan* to legislative enactments include *Sparks v. Douglas County*, 904 P.2d 738 (Wash. 1995) (en banc) (road dedication requirement);

Amoco Oil Co. v. Village of Schaumburg, 661 N.E.2d 380 (Ill. App. Ct. 1995) (land dedication requirement);

Schultz v. City of Grants Pass, 884 P.2d 569 (Or. Ct. App.1994) (street-widening right-of-way dedication requirement).

Lemire v. State Dept. of Ecology, 309 P.3d 395, 409 (Wash. 2013)
http://www.courts.wa.gov/opinions/pdf/877033.pdf

Merscorp v. Malloy (Conn. Super. Ct., 2013)
http://www.ctlawtribune.com/pdfwrapper.jsp?sel=/pdf/merscorp_malloy.pdf

Cerajeski v. Zoeller, 735 F.3d 577, 580 (7th Cir. 2013)

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2013/D10-31/C:12-3766:J:Posner:aut:T:fnOp:N:1232851:S:0

Canel v. Topinka, 212 Ill.2d 311, 288 Ill.Dec. 623, 818 N.E.2d 311, 324–25 (2004)
https://www.courtlistener.com/ill/bTpL/canel-v-topinka/

Cedar River Water & Sewer Dist., v. King Cnty., 315 P. 3d 1065, 1089 (Wash. 2013)
https://www.courts.wa.gov/opinions/pdf/862931.pdf

Marvin A. Brandt Revocable Trust v. United States, 134 S. Ct. 1257 (2014)
http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Hotze v. Sebellius , --- F.Supp. 2d ---, 2014 WL 109407
http://www.larryjoseph.com/_Dockets/Hotze-v-Sebelius/13-01318-SDTx-Decision.pdf

Climate Change

Jennifer Peltz, Levees, Removable Walls Proposed To Protect NYC
Jun. 11 8:06 PM EDT
http://bigstory.ap.org/article/mayor-discuss-prepping-nyc-warming-world

Severance v. Patterson (Texas 2012 and 5th Cir. 2012)
https://www.supreme.courts.state.tx.us/historical/2012/mar/090387.pdf
http://www.ca5.uscourts.gov/opinions/pub/07/07-20409-CV1.wpd.pdf

Borough of Harvey Cedars v. Karan (New Jersey App. 2012; NJ Supreme Court 2013)
http://njlaw.rutgers.edu/collections/courts/appellate/a4555-10.opn.html
http://njlaw.rutgers.edu/collections/courts/supreme/a-120-11.opn.html

Stop the Beach Renourishment, Inc. v. Florida Dept. of Env. Protection, 560 U.S. 702 (2010)

Jordan v. St. Johns County (Fla. App.Ct. 2011, review denied)

Equal Protection

Warden v. City of Grove, Okla., 604 Fed.Appx. 755 (Mem) (10th Cir. 2015) (held that due process and equal protection claims brought by the developer of a mobile home park were not

ripe for judicial review because the developer had "not even applied for a permit for his development, as [he] has not sought the approval of the Planning Commission, a prerequisite to applying for a permit[,] nor were there any 'evidentiary materials suggesting that [he] has sought a variance [from the Board]."
http://www.ca10.uscourts.gov/opinions/14/14-5114.pdf

Miller v. City of Monona, 784 F.3d 1113 (7th Cir. 2015) (holding that the approved condominium project was not suitable comparator for purposes of owners' class-of-one equal protection claim and the denial of owners' project was rationally related to persistent asbestos and building code problems on the property).
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2015/D05-01/C:13-2575:J:Tinder:aut:T:fnOp:N:1544912:S:0

David Hill Development LLC v City of Forest Grove (D. Or. 2013)

00251339.PDF

http://tinyurl.com/lstvd42

Comprehnesive Plans

Apple Grp., Ltd. v. Granger Twp. Bd. of Zoning Appeals, --- N.E.3d ----, 2015 WL 3774084 (Ohio 2015) (holding that Township's comprehensive plan met all required factors and may be included within its zoning resolution instead of a separate and distinct document).
http://supremecourt.ohio.gov/ROD/docs/pdf/0/2015/2015-Ohio-2343.pdf

Concrete Nor'west v. W. Wash. Growth Mgmt. Hearings Bd., 185 Wash.App. 745, 341 P.3d 351 (2015) (The county council did not have a duty to amend its comprehensive plan and zoning map and designate plaintiff's property as mineral resource land).
http://www.courts.wa.gov/opinions/pdf/D2%2045563-3-II%20Published%20Opinion.pdf

RDNT, LLC v. City of Bloomington, 861 N.W.2d 71 (Minn. 2015) (The state supreme court held that the city acted within its discretion in denying a nursing home's application for a conditional use permit to expand its existing assisted living services by adding a third building to its campus because the proposed mitigation conditions were insufficient. In a concurring opinion, Justice Anderson wrote that while he agrees with the majority's ultimate holding, he is "particularly struck by the willingness of the City to ignore the longstanding use of property by RDNT, a use the predates the arrival of the neighbors now complaining about traffic." He wrote separately "to address an alarming argument advanced by the City that the majority… [did] not reach in affirming the court of appeals. That argument is that the City may properly deny a conditional use permit when the proposed use is in conflict with its comprehensive plan. [His] concurring opinion [was] prompted by significant uncertainty in [the] statutory framework and confusion in [the] case law concerning the role of comprehensive plans… There are constitutional implications lurking behind that insistence of the City that a conditional use permit may be denied for any comprehensive plan violation").

http://caselaw.findlaw.com/mn-supreme-court/1694937.html

City of Portland, OR, Bureau of Planning and Sustainability:
http://www.portlandoregon.gov/bps/article/465826

Oregon's statewide planning program:
http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf

Involving the public in the planning process via an app:
http://www.portlandbps.com/gis/cpmapp/

Growing Smart Legislative Guidebook (American Planning Association)
http://www.planning.org/growingsmart/

Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 2001) (zoning inconsistent with plan, building constructed pursuant to zoning ordered torn down.)
http://scholar.google.com/scholar_case?case=9344086111461559402&hl=en&as_sdt=6&as_vis=1&oi=scholarr

Griswold v. City of Homer, 186 P.3d 558 (Alaska 2008): Zoning passed by initiative inconsistent with plan, so invalidated.
http://scholar.google.com/scholar_case?case=4473075930033677947&hl=en&as_sdt=6&as_vis=1&oi=scholarr

Haines v. City of Phoenix, 727 P. 2d 339 (Ariz. 1986): Plan had height limit of 250 feet, but court found 500 foot high building consistent.
http://scholar.google.com/scholar_case?case=6372077195414921944&hl=en&as_sdt=6&as_vis=1&oi=scholarr

STATE OF CALIFORNIA GENERAL PLAN GUIDELINES
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH:

http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf

http://opr.ca.gov/docs/Update_GP_Guidelines_Complete_Streets.pdf

http://opr.ca.gov/docs/specific_plans.pdf

http://ceres.ca.gov/planning/plan_comm/

http://ceres.ca.gov/planning/open_space/open_space.html

http://opr.ca.gov/docs/SB244_Technical_Advisory.pdf

Robert L. Liberty, Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States, 22 ELR 10367 (1992)
http://elr.info/store/download/25879/6111

Preemption

City of Fort Collins v. Colo. Oil and Gas Ass'n
https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2015/15SC668.pdf

Regulation

Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control, 401 S.C. 570 (2013)
http://www.sccourts.org/opinions/HTMLFiles/SC/27065.pdf

Religious Land Use and Institutionalized Persons Act

Trinity Lutheran Church of Columbia, Inc. v. Pauley
http://www.scotusblog.com/wp-content/uploads/2015/11/trinity-op-below.pdf
http://www.scotusblog.com/wp-content/uploads/2015/11/Trinity-Lutheran-Cert-Petition.pdf

Bernstein v. Vill. of Wesley Hills, Nos. 08-CV-156 (KMK), 12-CV-8856, 2015 WL 1399993 (S.D.N.Y. 2015) (Village did not impose or implement a land use regulation, within the meaning of the Religious Land Use and Institutionalized Persons Act, when they filed an action alleging that the town board's approval of the development of a religious corporation's property violated state environmental review laws, where the village had no capacity to impose or implement environmental review).

Candlehouse, Inc. v. Town of Vestal, New York (USDC ND NY 2013)
http://rluipa-defense.com/docs/Candlehouse%20v.%20Town%20of%20Vestal.pdf

DOJ Report Combating Religious Discrimination Today: Final Report **(July 2016)**
https://www.justice.gov/crt/file/877936/download

Wetlands

Final Compensatory Mitigation Rule
http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm
http://water.epa.gov/lawsregs/guidance/wetlands/upload/2003_05_30_wetlands_CMitigation.pdf

Adult Uses

Showtime Entm't, LLC v. Town of Mendon, 472 Mass. 102, 32 N.E.3d 1259 (2015) (held that pre-enactment studies and other evidence, e,g. of secondary effects, used by the town in developing regulations prohibiting the sale of alcohol at adult establishments demonstrated a "countervailing State interest" sufficient to justify the ban on the sale of alcohol at such businesses, but even though the ban was justified it was not adequately tailored because it not only banned the sale of alcohol in adult entertainment establishments but also banned it in any legitimate theater that happened to be in the adult entertainment overlay district and wanted to show a mainstream performance like the rock musical "Hair" or "Equus", neither of which is adult or sexually oriented and presumably would not be the source of the secondary effects that come from serving alcohol in places that do provide adult entertainment).
http://masscases.com/cases/sjc/472/472mass102.html

35 Bar and Grille v. San Antonio, (USDC WD Tx 2013)

139072525-Judge-s-Entertaining-Order-in

Housing – Inclusionary Zoning

42 USC § 3601 http://www.justice.gov/crt/about/hce/title8.php

Metropolitan Housing Development Corporation v. Arlington Heights, 616 F2d 1006 (7th Cir. 1980).

Mt. Holly Gardens Citizens in Action v. Township of Mount Holly, 658 F3d 375 (3rd Cir. 2010)
http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-1507.htm

Magner v. Gallagher, 619 F.3d 823 (8th Cir. 2010)
http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1032.htm

Executive Order 12892 -
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EXO12892

United States Anti-Discrimination Center of Metro New York v. Westchester County, Slip Copy, 2009 WL 970866 (S.D.N.Y.)

HUD's Settlement Agreement with Westchester County -
http://www.hud.gov/content/releases/settlement-westchester.pdf

Logan, Jenny, *"Otherwise Unavailable": How Oregon Revised Statutes Section 197.309 Violates the Fair Housing Act Amendments*, Journal of Affordable Housing, Vol. 22-2, Winter 2014.

http://www.americanbar.org/publications/journal_of_affordable_housing_home/Volume_22_1.html

www.housinglandadvocates.org

AMG Realty Co. v. Warren Township, 207 N.J. Super. 388 (1984).(fair share formula)

Hills Development Company v. Township of Bernards, 103 N.J. 1 (1986). (Mt. Laurel III)(sustained the NJ Fair Housing Act as an alternative to Judicial Relief)

Holmdel Builders' Association v. Holmdel Township, 121 N.J. 550 (1990). (housing fees)

Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I)

Southern Burlington County NAACP v. Township of Mount Laurel II, 92 N.J. 158 (1983) (Mount Laurel II).

Toll Brothers, Inc., v. Township of West Windsor, 173 N.J. 502 (2002).(builder remedy still viable for non-COAH towns)

N.J.S.A 52:27D-301, et seq. (N.J. Fair Housing Act, setting up COAH)

Holmes, Robert C., *Southern Burlington County NAACP v. Township of Mt. Laurel, (1975), Establishing a Right to Affordable Housing Throughout the State by Confronting the Inequality Demon*, Chapter 3, in Courting Justice, 10 New Jersey Cases That Shook the Nation, Paul Trachtenberg Ed., (2013)

Robert C. Holmes, *The Clash of Home Rule and Affordable Housing: The Mount Laurel Story Continues*, Connecticut Public Interest Law Journal,
Vol. 12 No. 2 2013.

Robert C. Holmes, *A Black Perspective on Mount Laurel II: Toward a Black Fair Share,* Seton Hall L. Rev. Vol. 14 No. 4 1984.

http://njlaw.rutgers.edu/collections/courts/supreme/a-127-11.opn.html (July 2013 N.J. Supreme Court opinion reversing Governor Christie's abolition of COAH)

http://njlaw.rutgers.edu/collections/courts/supreme/a-90-10.opn.html (Sept. 2013 N.J. Supreme Court opinion voiding growth share rules and setting deadline for new rules; the deadline has been extended to May, 2014)

http://www.state.nj.us/dca/services/lps/hss/transinfo/reports/units.pdf (link to site which says the Mt. Laurel/COAH programs had created about 60,000 new units and rehabilitated about 15, 000 units as of March, 2011).

Douglas S. Massey, "*Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb,"* Princeton University Press (2013)

Housing – Distressed Properties

62-64 Main St. LLC v. Mayor & Council of Hackensack, 221 N.J. 129, 110 A.3d 877 (N.J. 2015) (Property owners challenged city's classification of their lots as blighted. The state supreme court reversed the state appellate court's holding that the houses were not blighted. The supreme court found that the properties were in various states of ruins, constituting blight, and a landowner's desire to develop property does not militate against a blight declaration in New Jersey law).

The Center for Community Progress' Building American Cities Toolkit.

- The section on problem property owners is: http://www.communityprogress.net/problem-property-owners-pages-201.php
- The section on reusing vacant properties is: http://www.communityprogress.net/reusing-vacant-properties-pages-202.php

Alan Mallach, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS (2nd ed. 2010)

Alan Mallach, *Abandoned and Vacant Properties: Using Model Ordinances and Creative Strategies*, IMLA 2012 Code Enforcement Conference (Oct. 20, 2012).

"Vacants to Value" - vacantstovalue.org – the signature program of the Mayor Stephanie Rawlings-Blake of Baltimore dealing with vacant properties; contains many materials.

Julie A. Tappendorf & Brent O' Denzin, *Turning Vacant Properties into Community Assets Through Land Banking*, 43 The Urban Lawyer 3 (Summer 2011).

Timothy A. Davis, *A Comparative Analysis of State and Local Government Vacant Property Registration Statutes*, 44 The Urban Lawyer 2 (Spring 2012).

Stephen Whitaker and Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent and Foreclosed Property on Sales Prices of Neighboring Homes*, Federal Reserve Bank of Cleveland (Oct. 2011).

Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties*, 34 Zoning & Planning Law Report 1 (2011)

Jessica A. Bacher, *Addressing Distressed Properties: Legal Tools*, 39 R.E.L.J. 207 (2010);

Dwight H. Merriam, *Helping Development in a Down Economy*, 50 Municipal Lawyer 14 (2009).

Sorell E. Negro, *A New Tool for Vacant Properties: Land-Banking*, Municipal Lawyer (March/April 2012).

Sorell E. Negro, *You Can Take It to the Bank: The Role of Land Banking in Dealing with Distressed Properties*, 35 Zoning & Planning Law Report 9 (September 2012).

Medical Marijuana

City of Riverside v. Inland Empire Patients Health & Wellness Center, 300 P.3d 494 (Cal. 2013)

The Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq.

Riverside v Inland Empire Patients Health & Wellness Ctr, Inc, 56 Cal 4th 729; 156 Cal Rptr 3d 409; 300 P3d 494 (2013),

Signs

Reed v. Town of Gilbert, 2015 WL 2473374, 576 U.S.__ (U.S. 2015) (holding that the provisions of a municipality's sign code that made content-based distinctions between "Temporary Directional Signs, Ideological Signs, and Political Signs" unconstitutionally discriminate against a particular kind of content) (text commentary based on blog postings 6/22/15 and 6/30/15 at www.RLUIPA-Defense.com authored by K. Chaffee, E. Seeman, and B. Connolly, with permission).
http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

Courts will view content neutrality differently given the U.S. Supreme Court's 2015 decision in *Reed v. Gilbert.* Further, Reed makes clear that view-point neutral regulation is not synonymous with content-neutral regulation. Good News Community Church (Good News) claimed that Gilbert's sign ordinance made impermissible content-based distinctions between "Temporary Directional Signs, Ideological Signs, and Political Signs." Good News, which holds services at different locations from week to week, used signs directing congregants to each week's chosen location. Gilbert categorized such signs as "Temporary Directional." The Ninth Circuit disagreed with Good News, finding that the sign restrictions, including the distinctions among them, were content-neutral for purposes of free speech:

> [T]he distinction between Temporary Directional Signs, Ideological Signs, and Political Signs are content-neutral. That is to say, each classification and its restrictions are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign. . . . It makes

> no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted. Accordingly, as the speaker and event determinations are generally "content-neutral," Gilbert's different exemptions for different types of noncommercial speech are not prohibited by the Constitution.

The Supreme Court disagreed. The Court's majority opinion, authored by Justice Thomas, started with the well-recognized principle: "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and maybe justified only if the government proves that they are narrowly tailored to serve compelling state interests." The Court found that the ordinance is "content based on its face." According to the Court, the ordinance regulates based on the message conveyed: Temporary Directional signs convey a message directing the public; Political Signs are designed to influence the outcome of an election; and Ideological Signs communicate a message or idea. By regulating the message, Gilbert regulated the "communicative content of the sign," making the ordinance content based and subject to strict scrutiny review. Even though the ordinance may have a content-neutral justification, "[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech."

The Court went on to conclude that Gilbert's purported reasons for the regulation, preserving the Town's aesthetic appeal and traffic safety, were not adequate justifications to pass strict scrutiny review. Assuming that these interests were "compelling," the Court found the ordinance "hopelessly underinclusive" because the same restrictions were not placed on other types of signs. Thus, Gilbert failed to show that its ordinance was "narrowly tailored to further a compelling government interest."

The Court concluded the majority opinion by noting that its decision does not limit a municipality's ability to regulate signage, so long as the regulation is content neutral. For instance, "size, building materials, lighting, moving parts, and portability" may be regulated without reference to a sign's message. Further, "on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner."

The majority opinion does not cite to any of the majority opinions in the abortion clinic cases (including the 2014 decision in *McCullen v. Coakley*, where Chief Justice Roberts espoused a different view of content neutrality than the Court adopted in *Reed*), nor does it cite to some standard sign law precedents such as *Metromedia* and *Ladue*. The "secondary effects" cases relating to the regulation of adult business also go unmentioned. It may be difficult to reconcile the Reed majority opinion with some of the holdings in these prior cases, and it remains to be seen whether Reed was truly intended to cut back at any of these earlier decisions.

The *Reed* decision does not mention the distinction between noncommercial and commercial speech. Older cases, including *Metromedia*, held that commercial speech gets less First Amendment protection than noncommercial speech. In the 30-plus years since *Metromedia*, however, commercial speech has received increasing protection. The 2011 case of *Sorrell v. IMS Health* reviewed commercial speech regulations under a time, place, and manner noncommercial speech analysis. It may prove to be that the Court's approach in *Reed*, the heavy

citation to *Sorrell* in the *Reed* majority, and failure to mention the commercial speech doctrine suggests a gradual phasing-out or weakening of the commercial speech doctrine.

Although the decision was unanimous, the Justices filed three separate concurring opinions. Justice Alito, joined by Justices Kennedy and Sotomayor added "a few words of further explanation." Justice Alito stressed that municipalities are not powerless to enact sign regulation, and provided a non-inclusive list of content neutral criteria:

Lamar Advertising v. Zoning Board of Rapid City
http://ujs.sd.gov/Uploads/opinions/26254.pdf

Riya Cranbury Hotel, LLC v. Zoning Bd. of Adjustment of the Township of Cranbury (N.J. Sup. Ct. 2013)
http://www.njlawarchive.com/20130201101013470672563/

Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment (N.H. 2013) http://www.courts.state.nh.us/supreme/opinions/2013/2013031bartlett.pdf

Brown v Town of Cary, 2013 WL 221978 (4th Cir. 2013)http://www.ca4.uscourts.gov/Opinions/Published/111480.P.pdf

Subdivisions

Town of Hollywood v Floyd, (S.C. 2013)
http://www.sccourts.org/opinions/HTMLFiles/SC/27252.pdf

Variances

Bartlett v. City of Manchester (N.H. 2013)
http://www.courts.state.nh.us/supreme/opinions/2013/2013017bartlett.pdf

Hydraulic Fracturing

Anschutz v. Dryden (NY App. Div. May 2, 2013)
http://earthjustice.org/sites/default/files/Dryden-Decision.pdf

John R. Nolon & Steven E. Gavin,
HYDROFRACKING: STATE PREEMPTION, LOCAL POWER, AND COOPERATIVE GOVERNANCE
http://law.case.edu/journals/lawreview/Documents/63CaseWResLRev4.pdf

David L. Callies,

FEDERAL LAWS, REGULATIONS, AND PROGRAMS AFFECTING LOCAL LAND USE DECISION MAKING: HYDRAULIC FRACTURING

The American Law Institute - Continuing Legal Education
Land Use Institute: Planning, Regulation, Litigation, Eminent Domain, and Compensation
August 14 - 16, 2013
http://files.ali-cle.org/thumbs/datastorage/skoobesruoc/pdf/CV003_chapter_33_thumb.pdf

Cooperstown Holstein Corporation v. Town of Middlefield
In the Matter of Mark S. Wallach, as Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden

HTTP://WWW.NYCOURTS.GOV/CTAPPS/DECISIONS/2014/JUN14/130-131OPN14-DECISION.PDF

Robinson Township v. Commonwealth of Pennsylvania

HTTP://WWW.PACOURTS.US/ASSETS/OPINIONS/SUPREME/OUT/J-127A-D-2012OAJC.PDF?CB=1

State ex rel. Morrison v. Beck Energy Corp. No. 2013-0465, 2015 WL 687475, 2015-Ohio-485 (2015) (The Court held that a town ordinance prohibiting oil and gas drilling violated the Ohio State Constitution, which does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations that the state has permitted. The Court determined the ordinance to further be an exercise of police power and in conflict with state statutes addressing oil and gas drilling).

http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2015/2015-Ohio-485.pdf

https://www.sconet.state.oh.us/rod/docs/pdf/9/2013/2013-ohio-356.pdf

Masone v. City of Aventura and City of Orlando v. Udowychenko

http://www.floridasupremecourt.org/decisions/2014/sc12-644_Corrected.pdf

CTS Corp v Waldeburger
http://www.supremecourt.gov/opinions/13pdf/13-339_886a.pdf