AICP EXAM PREPARATION
Planning Law Concepts Review

Prepared By:
Christopher J. Smith, Esq.
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
(860) 251-5606
cjsmith@goodwin.com

© Christopher J. Smith, Esq.
Overview

Legal Concepts:

A. **Defined terms**

B. **Sources of Law**

- Constitutional provisions
- Federal or state statutes
- Local regulations
- Court decisions
Essential Theme

Police power:

• Regulate private conduct

• Public welfare
Police Power and Local Land Use Regulation Requirements

• Must be within authority delegated by applicable enabling legislation (Dillon’s Rule)

• Regulation will be afforded a presumption of validity

• Must be “reasonably related” to legitimate government purpose
Federal Constitutional Provisions

- **First Amendment**: Speech and religion
- **Fifth Amendment**: Takings
- **Fourteenth Amendment**: Due process and equal protection
Caselaw

Court Applies:
• Legal concepts
• Constitutional provisions
• Federal and State statutes
• Local Regulation

To:
• A case’s specific fact pattern

Result:
• Caselaw
First Amendment

• **Speech:**
  – Signs and billboards
  – Adult entertainment

• **Religion:**
  – RFRA
  – *City of Boerne v. Flores* (1997)
  – RLUIPA (2000)
First Amendment – Speech Signs and Billboards

• Metromedia v. City of San Diego (1981)
  – Commercial speech
  – Noncommercial speech

• City Council of Los Angeles v. Taxpayers for Vincent (1984)

• Gilbert v. Reed (2015)
First Amendment – Speech
Adult Entertainment

• **Young v. American Mini-Theaters, Inc.** (1976)
  – Can regulate and distinguish
  – Can’t totally ban

• **Buzzetti v. The City of New York** (1998)
  (2nd Circuit)

• **Schad v. Borough of Mt. Ephraim** (1981)
First Amendment - Religion

• City of Boerne v. Flores (1997)
  – Invalidated Religious Freedom Restoration Act ("RFRA")

• RFRA replaced with Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA")
First Amendment - Religion

Religious Land Use and Institutionalized Persons Act ("RLUIPA") test:

• Action is in furtherance of a compelling government interest; and

• Action is least restrictive means of furthering that compelling interest
Fifth Amendment - Takings

• **Eminent Domain** – Taking private property for public use

• **Inverse Condemnation**
  – Physical invasion
  – Regulatory taking
  – Exactions
  – Moratoria
Fifth Amendment - Takings
Eminent Domain

• Take private property for public good – permissible; but must compensate
• Berman v. Parker (1954)
  – “Public good” is broad and inclusive
  – Aesthetics can be valid reason (blight)
  – Reaffirmed Berman
  – Economic development can be a valid reason
• Horne v. Department of Agriculture (2015)
  – Taking can apply to personal property as well as real property as occurred in Berman and Kelo
Fifth Amendment - Takings
Inverse Condemnation

Physical invasion of private property:

• Loretto v. Teleprompter Manhattan CATV Corp. (1982)
Fifth Amendment - Takings
Inverse Condemnation

Regulatory takings:

• Pennsylvania Coal Co. v. Mahon (1922)
  – Introduced regulatory taking concept

• Agins v. City of Tiburon (1980)
  – Introduced two-part test for taking:
    – Property must be deprived of all economic viable use
    – Regulation must advance a legitimate government interest

• Lingle v. Chevron USA (2005)
  – Eliminates second prong of Agins test
  – “Just compensation” equal to fair market value
Fifth Amendment - Takings
Inverse Condemnation

Regulatory takings (continued):

- **First English** (1987)
  - Temporary takings can occur
- **Lucas** (1992)
  - Exception to taking – prohibit nuisance
- **Del Monte Dunes** (1999)
  - Multiple delays can result in taking
  - Jury
- **San Ramos Hotel** (2005)
  - Can go to state court for takings
Fifth Amendment - Takings
Inverse Condemnation

Exactions:

• **Nollan** (1987)
  - Exaction must have a “rational nexus” to the permit

• **Dolan** (1994)
  - Magnitude of exaction must bear a “rough proportionality” to the impact of the development
Fifth Amendment - Takings
Inverse Condemnation

Exactions (continued):

• **Nollan/Dolan test** (in addition to the “rational nexus” and “rough proportionality” requirements) must:
  - Make precise findings
  - Quantify actual impacts associated with proposal on public use
  - Generally should avoid dedication (open space), and concentrate on restrictions of use (easement)
Fifth Amendment - Takings
Inverse Condemnation

Exactions (continued):


  − Reaffirmed “Nollan/Dolan” test
  − Held can raise “improper coercion” with an application denial as well as with an improper approval
  − Off-site wetlands mitigation
Fifth Amendment - Takings
Inverse Condemnation

Moratoria – is a permissible planning tool

• Tahoe – Sierra Preservation Council v. Tahoe Regional Planning Agency (2002)
Fifth Amendment - Takings

Ripeness – must have “finality” to enable one to litigate a taking claim.

• Williamson County (1985)

• Palazzolo v. Rhode Island (2001)
Fourteenth Amendment
Due Process

Procedural:

• Herrington (1987) (9th Circuit)
  - Failure to provide notice of hearings and denial of right to be heard
Fourteenth Amendment
Equal Protection

Substantive:

• Failure of regulation to advance legitimate government purpose (e.g., public health and safety)
  
  • Village of Arlington (1977)

  • Village of Willowbrook v. Olich (2000)
Federal Statutes

I. Fair Housing Act (reasonable accommodation):

II. American With Disabilities Act (reasonable accommodation):
   • Innovative Health Systems, Inc. v. City of White Plains (2\textsuperscript{nd} Circuit)
Federal Statutes (continued)

III. Telecommunications Act of 1976 (“TCA”)
   • City of Ranchos Palos Verdes v. Abrams (2005)

IV. Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”)
“Must Know” Cases

I. Village of Euclid (1926) – grand daddy

II. Village of Belle Terre (1974)
   - Definition of family – unrelated persons (federal constitution)

III. Moore v. East Cleveland (1976)
    - Definition of family - grandparent

IV. Penn Central (1978)
    - Historic preservation for aesthetic purposes is valid
Growth Control Cases

I. **Construction Industry of Sonoma v. Petaluma** (9th Circuit)
   - Cap on number of annual residential dwellings is valid

II. **Golden v. Ramapo** (Ct. of App. N. Y. 1972); and **Associated Homebuilders v. Livermore** (CA Supreme Court)
   - Concurrency requirement is valid

III. **Mount Laurel** (#s 1 and 2 – N.J. Supreme Court)
   - Fair share of affordable housing – can be required