

'Takings' Snapshots Volume 13
September 18, 1998

1. **Scope Pictures of Missouri, Inc. v. City of Kansas City**, 140 F.3d 1201 (8th Cir., April 20, 1998) (affirming judgment for city in suit brought by operators of adult entertainment establishments who alleged that open-booth requirement of ordinance regulating video viewing booths violated taking clause of the Missouri Constitution; court held that ordinance was not "unreasonable, oppressive, and confiscatory", as required to demonstrate a taking under Missouri law).

2. **Strom v. City of Oakland**, 1998 WL 5596599 (Neb., August 21, 1998) (reversing trial court order granting summary judgment to natural resources district in inverse condemnation action based on district's order requiring land owner to build terraces and sediment retention basins to control erosion; though court ruled that asserted 1/3 diminution in value of land would be insufficient to establish a regulatory taking, court ruled there were unresolved material issues relating to whether the costs imposed on the owner precluded a reasonable rate of return on the land or destroyed any distinct investment-backed expectations; owner lacked standing to sue city which filed complaint that led to district's erosion control order).

3. **City of Kentwood v. Estate of Sommerdyke**, 581 N.W.2d 670 (Mich., July 31, 1998) (in an important decision relating to the relevance of the owner's reasonable expectations to a physical-occupation taking claim, court held that Michigan highway-by-user statute did not effect a taking, even though statute established a rebuttable presumption that by creating a road across her private land owner dedicated to the public not only the land actually used as a road but also a larger right of way as defined by statute; court distinguished *Nollan* and relied on *Texaco v. Short*, in which the U.S. Supreme Court held that a state may condition an owner's retention of a property right on the performance of an affirmative act within a reasonable statutory period).

4. **Woodland Manor III Associates v. Keeney**, 713 A.2d 806 (R.I., June 25, 1998) (vacating grant of summary judgment to Rhode Island Department of Environmental Management in taking action based on DEM's reversal of position on extent of wetlands jurisdiction and effective denial of permit to fill wetland portion of development tract, where state court had previously found that state was equitably stopped from reversing its prior position on wetlands jurisdiction).

5. **Quinn v. Rent Control Board of Peabody**, 1998 WL 541402 (Mass.App., August 27, 1998) (in a highly complicated piece of litigation, the Massachusetts intermediate appellate court rejected takings challenges to city regulations limiting rent that can be charged to mobile home tenants and limiting ability of owners of mobile home parks to discontinue operations).

6. **Brotherton v. Department of Environmental Conservation**, 675 N.Y.S.2d 121 (App. Div., July 6, 1998) (affirming rejection of taking claim based on denial of wetland permit, on grounds that (1) plaintiff was barred from contending that he was the true owner from the time a corporate alter ego originally purchased the property, and instead plaintiff could claim ownership only from the time title was transferred from the corporation to the plaintiff, and (2) plaintiff did not sustain his heavy burden of establishing that regulation precluded the use of the property as a whole for any purpose for which it is reasonably adapted).