'Takings' Snapshots Volume 14
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1. On Monday, October 5th, the U.S. Supreme Court announced denial of certiorari in six takings cases, including **Landgate, K& K Construction, Small Landowners of Oahu (aka Richardson), Virginia Beach; Ariadne**; and **Dodd**. All of these cases have been discussed in prior editions of takings snapshots. Landgate, K& K Construction, and Virginia Beach, in particular, affirm important sideboards on takings claims.

2. On Wednesday, October 7th, the Court heard oral argument in **City of Monterey v. Del Monte Dunes**, in which the Ninth Circuit affirmed a $1.45 million temporary taking award against the City of Monterey, California. At the risk of oversimplifying the unknowable, the Justices' questions suggested a fair amount of sympathy for many of the particular legal arguments advanced by the City and its amici; serious concern that the City's actions unreasonably delayed a final decision on this development project; and frustration over the confused procedural posture of the case.

3. **Bormann v. Board of Supervisors**, 1998 WL 650904 (Iowa, September 23, 1998) (in an important and ironic twist on the usual takings argument, the Iowa Supreme Court struck down the state's right to farm law, which broadly immunized agricultural operators in designated agricultural areas from private nuisance actions, as an unconstitutional taking of the right of neighbors to bring nuisance suits).

4. **Carolina Water Service, Inc. v. City of Winston- Salem**, 1998 WL 633900 (4th Cir., September 10, 1998) (court of appeals affirmed dismissal of claim by utility that city effected a taking when it required certain of the utility's customers to join in the city water system or suffer the loss of public sewer service; court held that, based on Penn Central factors, there was no taking because, even if economic impact was substantial, the utility had no reasonable investment-backed expectation that the city might not take this action, and because the city's action did not constitute a physical occupation).

5. **District Intown Properties Limited Partnership v. The District of Columbia**, 1998 WL 668083 (D.D.C., September 25, 1998) (Federal District Court Judge Oberdorfer, in an eloquent and thoughtful opinion, rejected a takings challenge to the District of Columbia's denial of building permits to construct eight townhouses on the grounds of an historic apartment complex constructed in the 1920's on upper Connecticut Avenue in the District; the court found that plaintiffs could not establish a taking under either Lucas or Penn Central; notably, the court ruled that even though the apartment building was only designated as an historic landmark after the permit applications were filed, the denial did not defeat any reasonable investment-backed expectations because the owners knew of the complex's historic value and knew or should have known of the existing authority to make landmark designations; also the court faulted the plaintiffs for failing to present evidence that the undeveloped grounds of the complex do not contribute to the value of the complex as a whole.)

6. **U.S. v. J.B. Stringfellow, Jr,** (C.D. Cal.) (in apparently the first post-Eastern Enterprises case of its type, a federal judge recently rejected takings and due process challenges to the imposition of liability under CERCLA; the court took the unusual step of adopting and incorporating by reference the brief filed by the United States).

7. **Forseth v. Village of Sussex**, 1998 WL 681469 (E.D. Wisc., September 25, 1998) (district court overruled objections to magistrate's report and dismissed challenge to conditioning of zoning approval with requirement that owner transfer some property to a third party; court ruled that substantive due process claim for violation of property rights is not recognized in 7th circuit, even though plaintiff alleged that property was being taken for private use; regulatory taking claim challenging condition was not ripe for failure to exhaust available administrative remedies or pursue compensation in state court; claim that town effected a taking by causing flooding of plaintiff's property also not ripe for failure to exhaust state compensation remedy; equal protection conspiracy claim also not ripe on the same basis).

8. **Quinn v. Rent Control Board of Peabody**, 698 N.E.2d 911 (Mass. Apps. Ct., August 27, 1998) (state court of appeals affirmed rejection of facial regulatory taking claim to Peabody mobile home park rent control law, because, among other things, ordinance guaranteed owner a fair net operating income).