'Takings' Snapshots Volume 16
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1. South County Sand & Gravel, Inc. v. Town of South Kingston, 1998 WL 798721 (1st Cir., November 23, 1998) (federal appeals court affirmed grant of summary judgment to town, rejecting due process challenge to ordinance barring sand and gravel operators from expanding existing operations by more than 25%; court said that regulatory challenges of this type generally must be brought under the takings clause rather than the due process clause (citing Armendariz and other cases), but that in this case the requirements of the due process and takings clauses appeared to be *congruent* (prohibiting arbitrary or irrational government conduct) and the ordinance was valid under either clause; opinion written by Judge Selya, author of recent decision enjoining Massachusetts tobacco ingredient disclosure law as a taking).

2. United States v. Vertac Chemical Corp., No. LR-C- 80-109 (E.D. Ark., October 23, 1998) (rejecting constitutional challenge to retroactive imposition of liability under CERCLA, terming Eastern Enterprises inapplicable).

3. Sakla v. City of New Orleans, 1998 WL 830652 (E.D. La., November 30, 1998) (rejecting claim that city's denial of conditional use application to serve alcohol at existing restaurant effected a taking because plaintiff failed to show that a major portion of his property was destroyed).

4. Cumberland Farms, Inc. v. Town of Groton, SC 15797 (Conn. November 3, 1998) (in a rather complicated opinion relying primarily on Connecticut precedent, the Connecticut Supreme Court ruled that an inverse condemnation claim based on a zoning board of appeal's denial of a zoning variance is ripe for review despite a pending administrative appeal from the zoning board's decision).

5. **Miller & Son Paving, Inc. v. Plumstead Township**, 717 A.2d 483 (Penn., August 19, 1998) (Pennsylvania Supreme Court decision reversing judgment in favor of plaintiff who alleged a temporary taking based on the township's enforcement of a zoning ordinance which invalidly prohibited quarrying use; court held that ordinance did not deny owner all use of the property and that invalidity of ordinance does not automatically result in a taking).

6. **State v. Terrell**, 84 Ohio St. 3d 116 (Ohio, December 9, 1998) (holding that state statute which mandates closure of property for any purpose for one year where nuisance drug activity is found, or posting of a bond equivalent to value of the property, effects a taking as applied to owner who had no knowledge of and did not acquiesce in the nuisance, distinguishing U.S. Supreme Court decision in Michigan v. Bennis, which rejected a takings challenge to a forfeiture law).

7. **Adams Outdoor Advertising v. City of East Lansing**, 1998 Mich. App. LEXIS 317 (Mich.App. 317) (in a potentially very important case, the Michigan Court of Appeals affirmed trial court ruling that city sign ordinance requiring removal of certain billboards after lengthy amortization period effected an unconstitutional taking, rejecting majority view that amortization periods save billboard ordinances from takings problems; court reversed one portion of trial court judgment addressing new sign setback and spacing requirements and remanded issue for further fact-finding concerning economic impact and other Penn Central factors).

8. Dowerk v. Charter Township of Oxford, 1998 WL 842266 (Mich. App., December 4, 1998) (affirming rejection of takings challenge where plaintiff was required to upgrade access road as a condition of subdividing land for four residential units, where plaintiff could obtain permission to develop his 10-acre parcel for at least one residential unit without upgrading the road and therefore plaintiff could not show that property has lost all economic viability).

9. City of Miami v. Keshbro, Inc., 717 So2d 601 (Fla. App., September 16, 1998) (reversing trial court finding of a taking, and holding that no taking resulted from the city's six-month closure of motel which was operated as a brothel and drug house).

10. Toigo v. Town of Ross, A078486 (Cal. Ct. App., October 20, 1998) (affirming trial court's dismissal of takings claim as not ripe, where town considered and rejected two separate subdivision applications, but owners never explored a reduction in size, scope, or intensity of the development to respond to the town's concerns, and the evidence showed that there was a possibility that a well-designed, reduced-density project might receive approval).

11. Casino Reinvestment Development Authority v. Banin, ATL-L-2676-94 (Super. Ct., July 20, 1998) (dismissing eminent domain proceedings brought by N.J. Casino Reinvestment Development Authority on the ground that proceeding served Donald Trump's private purpose of acquiring lands for potential future casino development, rather than for public purposes, including alleviating traffic congestion and preserving open space, because CRDA/Trump agreement included inadequate conditions to ensure that property would actually be used for public purposes).