

'Takings' Snapshots Volume 21, April 21, 1999

1. Dakota Ridge Joint Venture v. City of Boulder, (10th Cir., August 21, 1998) (court of appeals affirmed district court order dismissing as unripe action alleging takings, due process, and equal protection claims, as well as numerous state law claims; court held that takings action was premature because plaintiff had not yet obtained a final decision; the futility exception did not apply because any improper delay was not excessive; and the due process and takings claims were also unripe because they were subsumed by the takings claim).

2. Krupp v. Breckenridge Sanitation District, 1999 WL 179013 (Colo. App., April 1, 1999) (affirming rejection of takings claim based on sanitation district's assessment of sewer service fee; court distinguished Nollan/Dolan on the grounds that (1) district lacked power to reject development application (and therefore there was no risk of leveraging as in Nollan and Dolan), and (2) assessment of fee for sewer service is distinguishable from an exaction of a possessory interest in real property, disagreeing in part with the California Supreme Court's Ehrlich decision).

3. AVR, Inc. v. City of St. Louis Park, 585 N.W.2d 411 (Minn. Ct. App, October 20, 1998) (affirming rejection of takings and other challenges to city's establishment of a two-year amortization period for a non-conforming ready-mix concrete plant; the court concluded that the city properly established a two year amortization period based on the fact that the owner already had recouped its investment and made a substantial profit on the plant, and the fact that the property had been fully depreciated for tax purposes). (This case is the subject of a pending petition for certiorari).

4. Loft Corp. v. City of New York, 1999 N.Y. App. Div. LEXIS 4063 (N.Y. App. Div., April 19, 1999) (reversing trial court, and appellate division ruled that takings challenge to recently enacted New York City watershed regulations was not ripe pending a "final determination as to a specific development plan with respect to a given parcel.")

5. Marcantonio v. Rousso, 684 N.Y.S.2d 567 (N.Y.App. Div., January 25, 1999) (affirming dismissal of taking claim based on mere delineation of building lot as wetlands; taking claim held to be premature because it cannot be said at this point in the process that the plaintiff has been denied all economically beneficial use of the property).

6. Externalist Foundation, Inc. v. City of Platteville, 1999 WL 144765 (Wis.App., March 18, 1999) (affirming rejection of taking claim based on town's denial of application for rezoning for multifamily use where plaintiff was permitted to continue historic farming use and property was zoned for single family development).

7. Mekuria v. WMATA, 1999 WL 181923 (D.D.C., March 26, 1999) (concluding that plaintiffs suffered a Fifth Amendment taking when vehicular and pedestrian access to their property was entirely cut off for several years during the construction of the Washington, D.C. subway system; court applied a narrow view of the relevant parcel).