'Takings' Snapshots Volume 29, January 20, 2000

1. McKay v. United States, 1998 WL 1257686 (Fed.Cir., December 21, 1999) (providing further evidence of the Federal Circuit's highly distinctive approach to the takings issue, the Federal Circuit reversed the court of claims' grant of summary judgment to the U.S. in a takings action alleging that the U.S. effected a taking of mineral interests by (1) placing test wells on a portion of the surface of the property (which was owned by the U.S.) to test for chemical contamination and (2) raising concerns about possible contamination of the property, which ostensibly led the local county to grant the owners only a limited permit to exploit the mineral interests; the court said there were unresolved material issues about whether the U.S. effected a physical occupation or a partial regulatory taking of the property which preclude the grant of summary judgment).

2. Ali v. City of Los Angeles 1999 WL 1257708 (Cal.Ct.Apps., December 28, 1999) (in an important but probably short-lived ruling, the California Court of Appeals affirmed a trial court ruling that the City of Los Angeles effected a taking by denying the owner of an SRO hotel permission to demolish the hotel; the city acted in the mistaken belief that it had the legal authority under state law to deny permission to demolish the hotel; the court applied the "normal delay" standard from the California Supreme Court's Landgate decision and found that this case did not involve a normal delay; the case implicitly raises the broader issue of the meaning of the requirement that a taking be for a "public use").

3. Isla Verde International Holdings, Inc. v. City of Camas, 1999 WL 1207027 (Wash. Ct. App., December 17, 1999) (the Washington intermediate court of appeals reversed a trial court ruling that a requirement that the developer provide a second fire access road to a subdivision violated substantive due process under the Washington state three-part due process test; but the court upheld a ruling that an open space set-aside requirement effected a taking under Dolan, given the lack of a showing of rough proportionality between the effects of the proposed residential subdivision and the open space requirement; the reasoning of the decision seems inconsistent with the U.S. Supreme Court's recent Del Monte Dunes decision narrowing the scope of Dolan).

4. District Intown Properties Ltd. Partnership v. District of Columbia, 1999 WL 1204343 (D.C. Cir., December 17, 1999) (D.C. Circuit affirmed trial court's rejection of a taking claim filed by the owner of an historic apartment complex in Washington, D.C.; the city denied the owner permission to construct townhouses on the grounds of the property; the court held that under the property as a whole rule the restriction resulted in a mere diminution in value that did not amount to a taking; court also said that claim was barred by a lack of reasonable-investment backed expectations, particularly because property owners must anticipate that standards will become more stringent to meet established legislative goals).

5. Town of Oyster Bay v. Commander Oil Corp., 1998- 08577 (N.Y. Sp.Ct. App.Div., October 22, 1999) (in an interesting and important decision defining the scope of public property rights in tidelands, the appellate division, reversing a trial court ruling, held that a riparian landowner's ability to exercise his property right to access navigable waters by dredging is subject to the requirement that permission first be obtained from the public owner of the underwater lands, in this case the local town).

6. Annapolis v. Waterman, 2000 WL 12838 (January 7, 2000) (in an unbelievably prolix but nevertheless useful and interesting opinion, the Maryland Court of Appeals reversed a trial court finding of a taking based on a city subdivision requirement that a developer set aside a portion of the property as open space for use by the residents of the development; the court ruled that the Dolan "rough proportionality" test did not apply in this case because the test is limited to the situation where land is required to be dedicated to the "general public").

7. Edwards Aquifer Authority v. Bragg, 2000 WL 35582 (Tex. App., January 19, 2000) (the Texas intermediate court of appeals ruled that the requirement of the Texas Private Real Property Rights Preservation Act concerning the preparation of "takings impact assessments "did not apply to limitations imposed by the Edwards Aquifer Authority on water withdrawals from the aquifer in order to protect endangered species; the court said the limitations were covered by an exemption in the act for government actions "reasonably taken to fulfill an obligation mandated by state law").

8. Saboff v. St John's River Water Management District, 2000 WL 33167 (11th Circuit January 18, 2000) (court of appeals, relying on res judicata doctrine, reversed a federal district court award of $100,000 under the federal Takings Clause; owners had claimed a taking based on water management district's issuance of a construction permit subject to the condition that the owners place a conservation easement on a portion of their property; court of appeals ruled that prior state court rejection of a state takings claim was res judicata as to federal takings claim subsequently asserted in federal court; court reaffirmed Eleventh Circuit rule that state court litigant can reserve right to litigate federal claim in subsequent federal court case, but held that the plaintiffs in this case had failed to make a clear, on the record reservation in the state court proceedings).

9. Forseth v. Village of Sussex, 2000 WL 10266 (7th Cir., January 3, 2000) (in a suit alleging that a town had "improperly interfered" with development of property and exacted a portion of the property for the personal benefit of the town's president, federal appeals court held that federal takings and substantive due process claims were not ripe under Williamson County; however, court held that equal protection claim was not subject to Williamson County and could proceed in federal court).

10. Madison River R.V. Ltd v. Town of Ennis, 2000 MT LEXIS 13 (Mt., January 20, 2000) (the Montana Supreme Court affirmed dismissal of an inverse condemnation claim under the federal and state constitutions filed by a property owner denied subdivision approval for a proposed RV park on the banks of the Madison River; the court said that the plaintiff failed to allege facts that would support the conclusion that the effect of the town's decision was "to deny all economically viable use of the property").

11. Cowell v. Palmer Township, 1999 WL 1212180 (E.D. Penn, December 16, 1993) (dismissing takings claim based on municipality's alleged interference with subdivision and development of property by placement of improper liens on property, because (1) plaintiff failed to pursue available state procedures for seeking compensation, and (2) plaintiff failed to allege facts that would show denial of all economically viable use of the property).