



New Government Lawyer Series - NGLS3
Land Use 101: Land Use Law and Zoning from
"Aardvark Shelters" to "Zydeco Cafes"

Monday, April 6, 2015

Resource Materials

U.S. Supreme Court Cases

Tarrant Regional Water District v. Herrmann (US 2013)

http://www.supremecourt.gov/opinions/12pdf/11-889_5ie6.pdf

Arkansas Game & Fish Commission v. U.S. (US 2012)

http://www.supremecourt.gov/opinions/12pdf/11-597_i426.pdf

Horne v. Department of Agriculture (US 2013)

http://www.supremecourt.gov/opinions/12pdf/12-123_c07d.pdf

Koontz v. St. Johns Water Management District (US 2013)

http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Arlington v.. FCC

http://www.supremecourt.gov/opinions/12pdf/11-1545_1b7d.pdf

Marvin M. Brandt Revocable Trust v. United States (US 2014)

http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Koontz Fallout

California BIA v. City of San Jose (pending, Cal. Sup. Ct.)

http://scholar.google.com/scholar_case?case=17931150985265517687&q=California+Building+Industry+Association+v.+City+of+San+Jos%C3%A9,+&hl=en&as_sdt=2,5

Commentary on *Koontz* (thanks to Rob Thomas at www.inversecondemnation.com for the list) [control and click to follow the link or go to www.inversecondemnation.com and search “Koontz”]:

Supreme Court Rules for Property Owner in Koontz v. St. Johns River Water Management District - lawprof Richard Frank, *Legal Planet*.

Supreme Court's Koontz Decision May Help Landowners Fighting Mitigation Payments - from the *Massachusetts Land Use Monitor*.

Does Koontz also blow holes in Williamson County? - J. David Breemer, *PLF Liberty Blog*.

Koontz v. St. Johns River Water Management District: Of Issues Resolved - and Shoved under the Table - lawprof Richard Epstein, *Point of Law*.

Supreme Court ruling bolsters private property rights - from the *LA Times*.

Opinion recap: Broadening property owners' right to sue - from *SCOTUSblog*.

Koontz Decision: No Big Deal or Blow to Sustainable Development? - Jonathan Nettler, *Planetizen*.

Late to the Game: Koontz and whether you can have a takings claim without an actual takings - lawprof Jessie Owley, *Land Use Prof Blog*.

CAC Reacts to Supreme Court Decision in Koontz Takings Case - *Constitutional Accountability Center*.

Land Owners Complete a Clean Sweep at the U.S. Supreme Court - Brad Kuhn,
California Eminent Domain Report.

A Few More Thoughts About Koontz - lawprof Eduardo Penalver, *PrawfsBlawg*.

Koontz' Unintelligible Takings rule: Can Remedial Equivocation save the Court from a Doctrinal Quagmire? - lawprof Rick Hills, *PrawfsBlawg*.

Koontz and Exactions: Don't Worry, Be Happy - lawprof Jonathan Zasloff, *Legal Planet*.

No Permit for You! - How Denying a Permit Could be a Taking - Jesse Souki, *Hawaii Land Use Law and Policy*.

Surprise! Environmental Lawprof Dislikes Koontz – Robert Thomas
Inversecondemnation.com

And these:

Koontz Decision: No Big Deal or Blow to Sustainable Development? - Planetizen

<http://www.planetizen.com/node/63926>

A Legal Blow to Sustainable Development - Prof. Echeverria, Vermont Law School
http://www.nytimes.com/2013/06/27/opinion/a-legal-blow-to-sustainable-development.html?_r=1&

A Legal Blow to Cities That Want to Take Your Property - Cato Institute
<http://www.cato.org/blog/legal-blow-cities-want-take-property>

First decision post-*Koontz*:

Town of Ponce Inlet v. Pacetta, Ct. App. Fl. (July 5, 2013)
<http://www.5dca.org/Opinions/Opin2013/070113/5D12-1982.op.pdf>

Pending case:

California Building Industry Association v. City of San Jose
Appeal pending, review granted – a case to watch in California Supreme Court
<http://www.courts.ca.gov/opinions/documents/H038563.PDF>

<http://www.inversecondemnation.com/files/final-pet-for-review.pdf>

Background cases:

Nollan v. California Coastal Commission

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0483_0825_ZS.html

Dolan v. Tigard

<http://www.law.cornell.edu/supct/html/93-518.ZS.html>

Lingle v. Chevron

<http://www.law.cornell.edu/supct/html/04-163.ZS.html>

Eastern Enterprises v. Apfel

<http://www.law.cornell.edu/supct/html/97-42.ZO.html>

Commentary:

John Baker and Katherine Swenson, ***Koontz v. St. Johns River Water Management District: Trudging Through a Florida Wetland with Nine U.S. Supreme Court Justices*** (May 2013)

<http://www.greeneespel.com/files/pdf/ReprintZPLR052013.pdf>

Ilya Somin, ***Two Steps Forward for the 'Poor Relation' of Constitutional Law: Koontz, Arkansas Game & Fish, and the Future of the Takings Clause***

Cato Supreme Court Review, pp. 215-243, 2012-2013 (Symposium on the 2012-13 Supreme Court Term), George Mason Law & Economics Research Paper No. 13-48
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325529

John D. Echeverria, ***Koontz: The Very Worst Takings Decision Ever?***

Vermont Law School Research Paper No. 28-13

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2316406

Justin R. Pidot, ***Fees, Expenditures, and the Takings Clause***

University of Denver Sturm College of Law

Date posted: July 26, 2013

Last revised: August 15, 2013

Working Paper Series

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2298307

John Ryskamp, ***Koontz Pulls the 'Trigger' on the Affordable Care Act***

Independent

Date posted: July 1, 2013

Working Paper Series

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2287280

Takings

Koontz v. St. Johns River Water Management District

http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf

Powell v. County of Humboldt, 166 Cal. Rptr. 3d 747, 757 (Cal. Ct. App. 2014)

<http://www.californialandusedevelopmentlaw.com/files/2014/03/Powell-v.-County-of-Humboldt.pdf>

Lingle v. Chevron, U.S.A., Inc., 544 U.S. 528 (2005)

<http://supreme.justia.com/cases/federal/us/544/04-163/>

Lost Tree Village Corp. v. United States, (Fed. Cir. 2013)

<http://www.ca9.uscourts.gov/images/stories/opinions-orders/12-5008.pdf>

Gregory M. Stein, David L. Callies, Brian Rider, *Stealing Your Property or Paying You for Obeying the Law? Takings Exactions after Koontz v. St. Johns River Water Management District 21* (American College of Real Estate Lawyers, March 2014).

http://files.alexandria.org/thumbs/datastorage/skoob/articles/BKAC1403%20TAB09%20Stein_Callies_Rider_Koontz_thumb.pdf

Home Builders Ass'n of Central Arizona v. City of Scottsdale, 930 P.2d 993, 1000 (Ariz. 1997) (*Dolan* does not apply to a “generally applicable legislative decision by the city) (emphasis in original)

http://www.leagle.com/decision/1997666187Ariz479_1595.xml/HOME%20BUILDERS%20ASS'N%20v.%20CITY%20OF%20SCOTTSDALE

Parking Ass'n of Georgia, Inc. v. City of Atlanta, 450 S.E.2d 200, 203 n.3 (Ga. 1994), *cert. denied*, 515 U.S. 1116 (1995) (zoning-imposed landscaping requirement not subject to *Dolan* scrutiny);

Krupp v. Breckenridge Sanitation Dist., 19 P.3d 687, 695-96 (Colo. 2001) (rejecting *Dolan* for legislatively-enacted impact fee).

Courts applying *Dolan* to legislative enactments include *Sparks v. Douglas County*, 904 P.2d 738 (Wash. 1995) (en banc) (road dedication requirement);

Amoco Oil Co. v. Village of Schaumburg, 661 N.E.2d 380 (Ill. App. Ct. 1995) (land dedication requirement);

Schultz v. City of Grants Pass, 884 P.2d 569 (Or. Ct. App.1994) (street-widening right-of-way dedication requirement).

California Building Industry Association v. City of San Jose
<http://www.courts.ca.gov/opinions/revpub/H038563.PDF>

Lemire v. State Dept. of Ecology, 309 P.3d 395, 409 (Wash. 2013)
<http://www.courts.wa.gov/opinions/pdf/877033.pdf>

Merscorp v. Malloy (Conn. Super. Ct., 2013)
http://www.ctlawtribune.com/pdfwrapper.jsp?sel=/pdf/merscorp_malloy.pdf

Cerajeski v. Zoeller, 735 F.3d 577, 580 (7th Cir. 2013)
<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2013/D10-31/C:12-3766:J:Posner:aut:T:fnOp:N:1232851:S:0>

Canel v. Topinka, 212 Ill.2d 311, 288 Ill.Dec. 623, 818 N.E.2d 311, 324–25 (2004)
<https://www.courtlistener.com/ill/bTpL/canel-v-topinka/>

Cedar River Water & Sewer Dist., v. King Cnty., 315 P. 3d 1065, 1089 (Wash. 2013)
<https://www.courts.wa.gov/opinions/pdf/862931.pdf>

Marvin A. Brandt Revocable Trust v. United States, 134 S. Ct. 1257 (2014)
http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Hotze v. Sebellius, --- F.Supp. 2d ---, 2014 WL 109407
<http://www.larryjoseph.com/Dockets/Hotze-v-Sebelius/13-01318-SDTx-Decision.pdf>

Climate Change

Jennifer Peltz, Levees, Removable Walls Proposed To Protect NYC

Jun. 11 8:06 PM EDT

<http://bigstory.ap.org/article/mayor-discuss-prepping-nyc-warming-world>

Severance v. Patterson (Texas 2012 and 5th Cir. 2012)
<https://www.supreme.courts.state.tx.us/historical/2012/mar/090387.pdf>
<http://www.ca5.uscourts.gov/opinions/pub/07/07-20409-CV1.wpd.pdf>

Borough of Harvey Cedars v. Karan (New Jersey App. 2012; NJ Supreme Court 2013)
<http://njlaw.rutgers.edu/collections/courts/appellate/a4555-10.opn.html>

<http://njlaw.rutgers.edu/collections/courts/supreme/a-120-11.opn.html>

Stop the Beach Renourishment, Inc. v. Florida Dept. of Env. Protection, 560 U.S. 702 (2010)

Jordan v. St. Johns County (Fla. App.Ct. 2011, review denied)

Equal Protection

David Hill Development LLC v City of Forest Grove (D. Or. 2013)



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<http://tinyurl.com/lstvd42>

Comprehnesive Plans

City of Portland, OR, Bureau of Planning and Sustainability:

<http://www.portlandoregon.gov/bps/article/465826>

Oregon's statewide planning program:

http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf

Involving the public in the planning process via an app:

<http://www.portlandbps.com/gis/cpmapp/>

Growing Smart Legislative Guidebook (American Planning Association)

<http://www.planning.org/growingsmart/>

Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 2001): Zoning inconsistent with plan, building constructed pursuant to zoning ordered torn down.

http://scholar.google.com/scholar_case?case=9344086111461559402&hl=en&as_sdt=6&as_vis=1&oi=scholar

Griswold v. City of Homer, 186 P.3d 558 (Alaska 2008): Zoning passed by initiative inconsistent with plan, so invalidated.

http://scholar.google.com/scholar_case?case=4473075930033677947&hl=en&as_sdt=6&as_vis=1&oi=scholar

Haines v. City of Phoenix, 727 P. 2d 339 (Ariz. 1986): Plan had height limit of 250 feet, but court found 500 foot high building consistent.

http://scholar.google.com/scholar_case?case=6372077195414921944&hl=en&as_sdt=6&as_vis=1&oi=scholar

STATE OF CALIFORNIA GENERAL PLAN GUIDELINES
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH:

http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf

http://opr.ca.gov/docs/Update_GP_Guidelines_Complete_Streets.pdf

http://opr.ca.gov/docs/specific_plans.pdf

http://ceres.ca.gov/planning/plan_comm/

http://ceres.ca.gov/planning/open_space/open_space.html

http://opr.ca.gov/docs/SB244_Technical_Advisory.pdf

Robert L. Liberty, Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States, 22 ELR 10367 (1992)

<http://elr.info/store/download/25879/6111>

Regulation

Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control, 401 S.C. 570 (2013)

<http://www.sccourts.org/opinions/HTMLFiles/SC/27065.pdf>

Religious Land Use and Institutionalized Persons Act

Candlehouse, Inc. v. Town of Vestal, New York (USDC ND NY 2013)

<http://rluipa-defense.com/docs/Candlehouse%20v.%20Town%20of%20Vestal.pdf>

Wetlands

Final Compensatory Mitigation Rule

http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm

http://water.epa.gov/lawsregs/guidance/wetlands/upload/2003_05_30_wetlands_CMitigation.pdf

Adult Uses

35 Bar and Grille v. San Antonio, (USDC WD Tx 2013)



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Entertaining-Order-in

Housing – Inclusionary Zoning

42 USC § 3601 <http://www.justice.gov/crt/about/hce/title8.php>

Metropolitan Housing Development Corporation v. Arlington Heights, 616 F2d 1006 (7th Cir. 1980).

Mt. Holly Gardens Citizens in Action v. Township of Mount Holly, 658 F3d 375 (3rd Cir. 2010)
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-1507.htm>

Magner v. Gallagher, 619 F.3d 823 (8th Cir. 2010)
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/10-1032.htm>

Executive Order 12892 -

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/EO12892

United States Anti-Discrimination Center of Metro New York v. Westchester County, Slip Copy, 2009 WL 970866 (S.D.N.Y.)

HUD's Settlement Agreement with Westchester County -
<http://www.hud.gov/content/releases/settlement-westchester.pdf>

Logan, Jenny, “*Otherwise Unavailable*”: *How Oregon Revised Statutes Section 197.309 Violates the Fair Housing Act Amendments*, *Journal of Affordable Housing*, Vol. 22-2, Winter 2014.

http://www.americanbar.org/publications/journal_of_affordable_housing_home/Volume_22_1.html

www.housinglandadvocates.org

AMG Realty Co. v. Warren Township, 207 N.J. Super. 388 (1984).(fair share formula)

Hills Development Company v. Township of Bernards, 103 N.J. 1 (1986). (Mt. Laurel III)(sustained the NJ Fair Housing Act as an alternative to Judicial Relief)

Holmdel Builders' Association v. Holmdel Township, 121 N.J. 550 (1990). (housing fees)

Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I)

Southern Burlington County NAACP v. Township of Mount Laurel II, 92 N.J. 158 (1983) (Mount Laurel II).

Toll Brothers, Inc., v. Township of West Windsor, 173 N.J. 502 (2002).(builder remedy still viable for non-COAH towns)

N.J.S.A 52:27D-301, et seq. (N.J. Fair Housing Act, setting up COAH)

Holmes, Robert C., *Southern Burlington County NAACP v. Township of Mt. Laurel, (1975), Establishing a Right to Affordable Housing Throughout the State by Confronting the Inequality Demon*, Chapter 3, in *Courting Justice, 10 New Jersey Cases That Shook the Nation*, Paul Trachtenberg Ed., (2013)

Robert C. Holmes, *The Clash of Home Rule and Affordable Housing: The Mount Laurel Story Continues*, Connecticut Public Interest Law Journal, Vol. 12 No. 2 2013.

Robert C. Holmes, *A Black Perspective on Mount Laurel II: Toward a Black Fair Share*, Seton Hall L. Rev. Vol. 14 No. 4 1984.

<http://njlaw.rutgers.edu/collections/courts/supreme/a-127-11.opn.html> (July 2013 N.J. Supreme Court opinion reversing Governor Christie's abolition of COAH)

<http://njlaw.rutgers.edu/collections/courts/supreme/a-90-10.opn.html> (Sept. 2013 N.J. Supreme Court opinion voiding growth share rules and setting deadline for new rules; the deadline has been extended to May, 2014)

<http://www.state.nj.us/dca/services/lps/hss/transinfo/reports/units.pdf> (link to site which says the Mt. Laurel/COAH programs had created about 60,000 new units and rehabilitated about 15, 000 units as of March, 2011).

[Douglas S. Massey](#), *“Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb,”* Princeton University Press (2013)

Housing – Distressed Properties

The Center for Community Progress’ Building American Cities Toolkit.

- The section on problem property owners is: <http://www.communityprogress.net/problem-property-owners-pages-201.php>
- The section on reusing vacant properties is: <http://www.communityprogress.net/reusing-vacant-properties-pages-202.php>

Alan Mallach, *BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS* (2nd ed. 2010)

Alan Mallach, *Abandoned and Vacant Properties: Using Model Ordinances and Creative Strategies*, IMLA 2012 Code Enforcement Conference (Oct. 20, 2012).

“Vacants to Value” - vacantstovalue.org – the signature program of the Mayor Stephanie Rawlings-Blake of Baltimore dealing with vacant properties; contains many materials.

Julie A. Tappendorf & Brent O’ Denzin, *Turning Vacant Properties into Community Assets Through Land Banking*, 43 *The Urban Lawyer* 3 (Summer 2011).

Timothy A. Davis, *A Comparative Analysis of State and Local Government Vacant Property Registration Statutes*, 44 *The Urban Lawyer* 2 (Spring 2012).

Stephen Whitaker and Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent and Foreclosed Property on Sales Prices of Neighboring Homes*, Federal Reserve Bank of Cleveland (Oct. 2011).

Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties*, 34 *Zoning & Planning Law Report* 1 (2011)

Jessica A. Bacher, *Addressing Distressed Properties: Legal Tools*, 39 *R.E.L.J.* 207 (2010);

Dwight H. Merriam, *Helping Development in a Down Economy*, 50 *Municipal Lawyer* 14 (2009).

Sorell E. Negro, *A New Tool for Vacant Properties: Land-Banking*, *Municipal Lawyer* (March/April 2012).

Sorell E. Negro, *You Can Take It to the Bank: The Role of Land Banking in Dealing with Distressed Properties*, 35 *Zoning & Planning Law Report* 9 (September 2012).

Medical Marijuana

City of Riverside v. Inland Empire Patients Health & Wellness Center, 300 P.3d 494 (Cal. 2013)

The Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq.

Riverside v Inland Empire Patients Health & Wellness Ctr, Inc, 56 Cal 4th 729; 156 Cal Rptr 3d 409; 300 P3d 494 (2013),

Signs

Lamar Advertising v. Zoning Board of Rapid City
<http://uj.s.sd.gov/Uploads/opinions/26254.pdf>

Riya Cranbury Hotel, LLC v. Zoning Bd. of Adjustment of the Township of Cranbury (N.J. Sup. Ct. 2013)
<http://www.njlawarchive.com/20130201101013470672563/>

Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment (N.H. 2013) <http://www.courts.state.nh.us/supreme/opinions/2013/2013031bartlett.pdf>

Brown v Town of Cary, 2013 WL 221978 (4th Cir. 2013)
<http://www.ca4.uscourts.gov/Opinions/Published/111480.P.pdf>

Subdivisions

Town of Hollywood v Floyd, (S.C. 2013)
<http://www.sccourts.org/opinions/HTMLFiles/SC/27252.pdf>

Variances

Bartlett v. City of Manchester (N.H. 2013)
<http://www.courts.state.nh.us/supreme/opinions/2013/2013017bartlett.pdf>

Hydraulic Fracturing

Anschutz v. Dryden (NY App. Div. May 2, 2013)
<http://earthjustice.org/sites/default/files/Dryden-Decision.pdf>

John R. Nolon & Steven E. Gavin,
HYDROFRACKING: STATE PREEMPTION, LOCAL POWER, AND COOPERATIVE GOVERNANCE
<http://law.case.edu/journals/lawreview/Documents/63CaseWResLRev4.pdf>

David L. Callies,
FEDERAL LAWS, REGULATIONS, AND PROGRAMS AFFECTING LOCAL LAND USE DECISION
MAKING: HYDRAULIC FRACTURING

The American Law Institute - Continuing Legal Education
Land Use Institute: Planning, Regulation, Litigation, Eminent Domain, and
Compensation
August 14 - 16, 2013

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Cooperstown Holstein Corporation v. Town of Middlefield
In the Matter of Mark S. Wallach, as Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden

[HTTP://WWW.NYCOURTS.GOV/CTAPPS/DECISIONS/2014/JUN14/130-131OPN14-DECISION.PDF](http://www.nycourts.gov/ctapps/decisions/2014/jun14/130-131opn14-decision.pdf)

Robinson Township v. Commonwealth of Pennsylvania

[HTTP://WWW.PACOURTS.US/ASSETS/OPINIONS/SUPREME/OUT/J-127A-D-2012OAJC.PDF?CB=1](http://www.pacourts.us/assets/opinions/supreme/out/j-127a-d-2012oajc.pdf?cb=1)

State ex rel. Morrison v. Beck Energy Corp.

<https://www.sconet.state.oh.us/rod/docs/pdf/9/2013/2013-ohio-356.pdf>

Masone v. City of Aventura and City of Orlando v. Udowychenko

http://www.floridasupremecourt.org/decisions/2014/sc12-644_Corrected.pdf

CTS Corp v Waldeburger

http://www.supremecourt.gov/opinions/13pdf/13-339_886a.pdf