

What Ever Happened to the Property Rights Revolution?

Thoughts on the Triumph of Urban Planning,
Zoning, and Built Environment NIMBYISM

By

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All private property rights
are held subject to

police power regulation

to promote the general welfare!

Protection of private property rights

- Rule of Law/Ultra vires claims
- Substantive due process claims
- Equal protection claims
- Vested rights claims
- Nonconforming use claims
- Regulatory taking claims

US Supreme Court Cases

Regulatory Takings - Urban Planning

1. *Village of Euclid* (1926) (OK local zoning)
2. *Penn Cent. Transp. Co.* (1978) (Ok landmark preservation)
3. *Lucas* (1992) (OK near loss of all value)
4. *Palazzolo* (2001) (OK 94% reduction in value)
5. *Tahoe-Sierra* (2002) (OK only temporary loss of all use)
6. *Nollan* (1987) and *Dolan* (1994) (OK development exactions)

Regulatory Takings

A. Categorical Regulatory Taking Claims

1. Regulation causes a permanent physical invasion of owner's land
2. Regulation denies an owner any economically viable use of the land
3. Development exactions "causation" and "proportionality" nexus related to some particular development problem

B. All Other Regulatory Taking Claims

(Partial benefit extraction claims - horizontal equity analysis as applied to facts of particular case)

The Triumph of Urban Planning and Zoning and Built Environment NIMBYISM

Under an urban planning
and zoning regime...

True or false?

Under an urban
planning regime

An owner has **no property right** to
put land to it's most profitable use.

An owner has **no property right** to chose
the use to which the land will be developed.

An owner has **no property right** to prevent the rezoning of her land.

An owner has **no property right** to prevent the rezoning of a nearby tract of land.

An owner has **no property right** to maintain the land in it's natural state.

An owner has **no property right** to cut or remove trees or vegetation on the land.

An owner has **no property right** to develop land in violation of timing, phasing, and related infrastructure, contiguous development controls, impact fees or new urbanist building requirements that reasonably implement a local growth management plan.

An owner has **no property right** in developing a large tract of land to determine its use, density or open spaces or to destroy trees or wildlife habitat or to build on wetlands, floodplains, steep slopes, or ridge lines or in migration, riparian, water recharge, or designated archeological, historical, or scenic protection areas.

An owner has **no property right** to chose the type, size, height, color or style of a home or the uses, density, coverage, setbacks, yards, fences, accessory structures, lighting, parking, signs, borders, household living companions, pets or even lawn ornaments in using land as a home.

An owner has **no property right** to chose the type, size, height, architectural style, color, use, density or setback of an apartment, commercial or office building or it's landscaping, open spaces, fences, signs, parking, lighting, ingress or egress or other operations and activities on the land.

The End