PLANNING & LAW

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at Pace University's Elisabeth Haub School of Law

Parking and Property Rights

by Mark White, Esq.

Mark White is a partner with White & Smith, LLC in Kansas City and Charleston. His practice includes drafting zoning and development codes, and assisting local governments with comprehensive plan implementation. He is also an adjunct Professor of Planning at the University of Kansas.

Parking is an important element of site design and shaper of urban form. In many car-dependent American communities, businesses see adequate off-street parking supplies as an important ingredient of economic success. For decades, local governments have required new businesses to provide off-street parking to minimize "spillover" parking onto surrounding streets and parking areas, and to avoid traffic congestion and air pollution from cars competing for limited spaces. However, in recent years, planners have increasingly challenged the need for minimum parking requirements. Spurred by Donald Shoup's influential book *The High Cost of Free Parking* (originally published in 2005 and updated in 2011) and Rick Willson's *Parking Reform Made Easy* (Island Press (2013), there is a growing awareness of the impact of excessive parking supplies on automobile dependency, urban design, and housing affordability. Free, off-street parking is seen as a hidden subsidy for motorists, which becomes capitalized into consumer and housing costs. There is also evidence that abundant supplies of free off-street parking—and in particular, surface parking—encourage driving (and therefore congestion); add to development costs; and create barriers to pedestrian movement, urban heat islands, increased stormwater runoff, and visual impacts. Freilich & White, *A 21st Century Land Development Code* (American Planning Association 2008), at 245, 267-68, White, *The Zoning and Real Estate Implications of Transit-Oriented Development*, Legal Research Digest, No. 12 (January 1999), at 8.

Communities are increasingly responding with regulations that tame excessive off-street parking supplies. (White, *supra*, at 25.) The most aggressive response is setting maximum parking ratios that directly limit the amount of parking on a site. This can avoid the inefficiencies of large areas of empty parking spaces, but it is aggressive and potentially controversial. Shared parking regulations allow complementary uses to limit supply by recycling spaces during alternating peak parking periods. And a growing number of communities allow or require businesses to pay a fee in lieu of required off-street parking (Shoup, "In Lieu of Required Parking," 18 J. Planning Education & Research 307 (1999). This allows the community to build parking spaces that are efficiently dispersed, avoiding the need for individual uses to provide their own parking facilities. My firm recently participated in a Land Use Code update for Aspen, Colorado, that implemented a "soft" parking maximum that triggers shared or public parking after a given number of spaces are provided based on studies by Nelson\Nygaard and REgeneration Development Strategies. In addition, a Unified Development Code adopted by the Lafayette, Louisiana Consolidated Government triggers green infrastructure requirements when parking reaches a given percentage above the required number of spaces to minimize runoff.

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Tiny Homes

by Matthew Norchi

Matthew Norchi is a fourth year graduate student at the University of North Carolina at Chapel Hill where he is pursuing a dual degree in law and urban planning. Last year, Matt served as PLD's Daniel J. Curtin, Jr. Fellow.

In the midst of a nationwide affordable housing crisis and a population increasingly focused on sustainability, the movement for tiny homes has been gathering steam. Tiny homes have become a sensation in the media, eliciting reactions ranging from strong support to outright dismissal as a legitimate housing option. Though the movement towards tiny houses has gained momentum in recent years, there still does not exist a set definition of a tiny home, nor is there unified motivation behind their propagation. Typically, the term tiny home refers to a house that is less than 500 square feet, though some are far smaller, coming in at less than 100 square feet. The homes themselves can serve wildly different purposes: some are constructed with wheels, some are designed as a hip alternative to typical housing options, some are designed with minimalist principles in mind and to reduce carbon emissions, and some are cobbled together with unused materials to house the homeless.

Proponents of tiny homes say that they offer a more sustainable housing option than larger houses, and that they are an effective tool in providing affordable housing options, particularly for individuals facing homelessness. Some of the media trends – underscored by the television show *Tiny House Hunters* on HGTV – tend to place tiny homes as a housing option for the future. However, despite offering a climate friendly housing option to minimalists and those experiencing homelessness, tiny homes face a number of issues. First, there are serious questions regarding their legality and compatibility with municipal zoning and land use goals. In addition to local government opposition, tiny homes often face strong opposition from neighbors and institutional forces. Second, there is widespread skepticism among urban planners and housing policy advocates as to the efficacy of tiny homes as a policy solution to homelessness or housing affordability. These questions complicate the proffered benefits of tiny home living, and present planners and policy makers with discerning the efficacy of tiny homes as a housing solution.

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Climate Change Litigation and the Atmospheric Trust: *Juliana v. The United States of America*

by Bradly Torgan, Esq.

Torgan is a member and former Chair of the Planning and Law Division. A former General Counsel of the California Department of Parks and Recreation, he is currently a Senior Lawyer in the natural resources practice group at Ward Keller in Darwin, Australia.

Planners generally have their respective gazes focused firmly at the ground. It's the nature of the beast. What happens from the ground up is very much a part of the traditional planning universe. Every now and then, though, it pays to look up from *terra firma*. Litigation less directly related to land use and planning winding its way through the courts could result in profound changes to that universe.

In September 2015, climate change activists filed litigation on behalf on nineteen children and "future generations" against the Obama Administration in the U.S. District Court of Oregon, *Juliana v. The United States of America*, Case No. 6:15-cv-01517-TC (D. Ore., filed September 10, 2015). The case alleges that the Administration is violating the children's constitutional rights by not doing enough to curb greenhouse gas (GHG) emissions and address climate change. More specifically, the Plaintiffs' complaint alleges that the government had "known for decades that carbon dioxide pollution was causing catastrophic climate change" and that substantial emissions reductions and a sharp move away from fossil fuel is necessary to protect the Plaintiffs' constitutional rights. In spite of that knowledge, the complaint further alleges, that the Defendants continue to create and enhance the dangers posed by the use of fossil fuels, including extraction, production, transportation, and exportation, including the subsidization of those activities. The hook for the complaint is the Department of Energy's operational approval of a Liquified Natural Gas terminal on the Oregon coast.

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PLD Pilots New Case Law Digest

The Planning & Law Division's new Case Law Digest presents summaries of recent federal and state court decisions addressing issues at the intersection of planning and law, with takeaway lessons to assist planners and land use attorneys in their practice.

PLD was proud to launch its first issue of the Digest in April 2019, sent directly to members via email. We will pilot the new Digest with several issues in 2019 and then ramp up production to publish every other month in future years.

See the first issue of the digest reprinted on page 5 of this newsletter.

~ Volunteers Needed ~

The digest is seeking volunteers for its advisory committee to help identify cases of utmost importance to planners and land use attorneys. **If you would like to join the Case Law Digest Advisory Committee or to suggest a case for the digest,** contact Digest Editor Meg Byerly Williams at mwilliams@skeo.com.

Climate Change

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The Administration's actions, according to the complaint, violate the children's rights to due process and equal protection, along with unenumerated rights under the Ninth Amendment. The suit also alleges a violation of the public trust and the government's affirmative duty to current generations and generations yet born to avoid substantial damage to the atmosphere. It is this last claim that has earned the case the moniker the 'Atmospheric Trust' case. Amongst the orders the Plaintiffs seek is to force the Defendants "to prepare and implement an enforceable national remedial plan to phase out fossil fuel emission and draw down excessive atmospheric CO_2 so as to stabilize the climate system and protect the vital resources on which Plaintiffs now and in the future will depend."

> THE PLAINTIFFS' COMPLAINT ALLEGES THAT THE GOVERNMENT HAD "KNOWN FOR DECADES THAT CARBON DIOXIDE POLLUTION WAS CAUSING CATASTROPHIC CLIMATE CHANGE

For those not familiar with the concept of public trust, the doctrine is a principle that the sovereign holds certain property in trust for the common benefit of all citizens. The sovereign may not alienate the property, nor may it deprive the public of its use and enjoyment. The roots of the doctrine are in Roman law and traces it path to the United States through English common law. Its traditional application in the United States has been to inter-tidal zones and land submerged below navigable waters.

Cases like this rarely get very far in the United States. They are usually dismissed early on procedural grounds. The most recent example is *Clean Air Council v. Unites States of America*, where the U.S. District Court for Eastern Pennsylvania dismissed the case on standing and redressability grounds. *Clean Air Council*, Civ. No. 14-4977 (E.D. Pa. Feb. 19, 2019). Only one case that can even remotely be considered a climate change case, *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F.Supp.2d 295 (D. Vt. 2007), made it to trial. There, the Court rejected an automobile industry challenge to Vermont's adoption of state GHG emission requirements for new motor vehicles based on GHG emissions standards developed and adopted by the California Air Resources Board, Ironically, the California standards themselves are now under attack from the Trump Administration.

This case may be different. It first survived a motion to dismiss. In a decision dated November 10, 2016 District Court Judge Ann Aiken held that the Plaintiffs had standing and had stated a legal claim sufficient to warrant trial on the merits. *Juliana*, 217 F.Supp.3d 1224 (D. Ore. 2016). Amongst Judge Aiken's more memorable lines in the fifty-four page ruling were "[e]xercising my reasoned judgment…I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society." Citing Justice Kennedy's majority opinion in the same-sex marriage case, *Obergefell v Hodges*, 135 S. Ct. 2584 (2015), Judge Aiken went on the write, "[j]ust as marriage is the 'foundation of the family,' a stable climate system is quite literally the foundation 'of society, without which there would be neither civilization nor progress.'" It is also the first and only published United States decision to cite the 1993 Philippines Supreme Court case of *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*, a decision well-known to international environmental law scholars for its adoption of the principle of inter-generational equity, a concept that any right to develop must take place in a manner that equitably meets the developmental and environmental needs of both present generations and generations yet to come.

The Trump Administration sought not once, but twice, to have the case dismissed on interlocutory appeal to the Ninth Circuit, only to be rebuffed both times. *In re United States*, 884 F. 3d 830 (9th Cir. 2018); *In re United States*, 895 F.3d 1101 (9th Cir. 2018). Neither of these refusals should seem remarkable, even in the context of rather novel litigation. Appellate courts are reluctant to intervene pre-trial if they believe that any perceived errors can be fully rectified on appeal after trial. That round of pre-trial machinations ended on July 30, 2018 when Justice Anthony Kennedy, acting in his capacity as the Supreme Court justice serving as "Circuit Justice" for the Ninth Circuit, denied an application to stay the proceedings as premature. In his order, though, Justice Kennedy raised an eyebrow at the breadth and scope of the Plaintiffs' claim, noting"[t]he breadth of respondents' claims is striking, however, and the justiciability of those claims presents substantial grounds for difference of opinion."

As expected, the pre-trial maneuvering didn't end there. On October 19, 2018 Chief Justice John Roberts, replacing Justice Kennedy, stayed all district court proceedings in *Juliana* and ordered the Plaintiffs to filed a response to the Trump Administration's petition to the Supreme Court seeking to dismiss the case. This looked like the proverbial handwriting on the wall, but the Supreme Court denied the application for a stay of proceedings on November 2, 2018. Again, the reason was that the application was premature. "At this time…the Government's petition for a writ of mandamus does not have a 'fair prospect' of success in this Court because adequate relief may be available in the United States Court of Appeals for the Ninth Circuit. When mandamus relief is available in the court of appeals, pursuit of that option

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Case Law Digest

by Meg Byerly Williams, Esq. and Maximillian Mahalek, MUP

The following excerpts are from PLD's new Case Law Digest, which presents summaries of recent federal and state court decisions addressing issues at the intersection of planning and law to assist planners and land use attorneys in their practice. PLD will publish several issues of the Case Law Digest per year, and this column will feature the digest's most significant cases in future newsletters.

California Supreme Court (CA), Referendum Challenging Zoning Ordinance is Valid Despite Temporary Inconsistency with General Plan

In *City of Morgan Hill v. Bushey*, 5 Cal. 5th 1068 (2018), the California Supreme Court concluded that citizens of a municipality may bring a referendum to challenge a zoning amendment that changed a property's zoning designation to comply with a general plan amendment. The City of Morgan Hill amended its general plan to change the land use designation of a vacant lot from "industrial" to "commercial" so that the lot could be developed with a hotel. The city council then amended the zoning ordinance to change the lot's zoning designation to "GC-General Commercial" to make it compliant with the recently amended general plan. Citizens sought to bring a referendum challenging the zoning amendment, which if passed would leave zoning in place that was inconsistent with the amended general plan. The city council repeatedly took steps to prevent the referendum from being placed on the ballot, claiming that, if successful, the referendum would violate California Planning and Zoning Law Section 65860, which requires a county or city zoning ordinance to be consistent with the general plan. The court disagreed, concluding that citizens of a municipality can challenge such a zoning amendment by referendum where the local government can make the zoning ordinance and general plan consistent through other means. Section 65860, subdivision (c) allows a local zoning ordinance to differ temporarily from the general plan for a "reasonable time" following a general plan amendment. The court stated that a referendum would "simply keep that inconsistency in place for a certain time –– until the local government can make the zoning ordinance and general plan consistent in a manner acceptable to a majority of voters." To achieve compliance between the zoning ordinance and general plan within a reasonable amount of time of a successful referendum, a local government could use another available zoning designation, create a new zoning district, or alter the general plan. Because it was not clear whether the City had other viable zoning designations or ways to resolve the inconsistency between its existing zoning ordinance and general plan, the court remanded the case to the trial court to consider these issues.

Practice Significance: *A California municipality cannot prevent a referendum from being placed on a ballot because the referendum may result in noncompliance with the general plan. If such a referendum succeeds, inconsistency may exist between the general plan and zoning code temporarily while the municipality finds another way to make its zoning comply with the general plan.*

Illinois First District Appellate Court (IL), Illegal Use Becomes Prior Nonconforming Use Upon Annexation

In *Giannakopolous v. Adams*, 2018 IL App (1st) 162364, the Illinois First District Appellate Court recognized a legal nonconforming use where a property with an existing use was annexed by a municipality and placed in a zoning district where that use was not permitted. The defendants, property owners, operated an excavation business in unincorporated Cook County until the Village of Palos Park annexed their property in 1989. Defendants' excavation business was illegal under Cook County's zoning code and did not comply with the Village's R-1-A (single-family residence) zoning designation. Defendants did not enter into a formal annexation agreement with the Village, and the Village did not rezone the property or grant zoning relief when the property was annexed. In 2010, a neighbor (who, ironically, had previously used the defendants' excavating company to excavate the foundation for a new house) sued under Adjoining Landowner Act, 65 ILCS 5/11-13-15 to prevent defendants from continuing their excavation operation, arguing that the use was not permitted in the residential zoning district in place at the time of annexation. The trial court decided in favor of the plaintiff, finding that defendants' commercial use of the property violated the Village's zoning ordinance and that the Village did not have authority under state law to annex the property "as is" without formal hearings on granting a variance, rezoning, or reclassifying the property. On appeal, the First District Court disagreed, concluding that the commercial use became a legal, nonconforming use upon annexation. Defendants' excavation business was established prior to annexation and was zoned R-1-A under the Village's jurisdiction for the first time

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PLD Legacy Member Spotlight:
An Interview with David L. Callies, Esq., FAICP

by Mark Fanelli III

Each issue, our Legacy Member Spotlight column highlights a current PLD member's career path within the interconnected fields of planning and law.



David L. Callies, Esq., FAICP, is the Benjamin A. Kudo Professor of Law at the University of Hawaii's William S. Richardson School of Law, where he teaches land use, state and local government, legal writing, and real property. Prior to coming to Hawaii, he practiced local government and land use law with the firm of Ross & Hardies of Chicago, during which time he also taught as an adjunct professor at the University of Wisconsin-Milwaukee's School of Architecture and Urban Planning and served as an Assistant State's Attorney. He is a graduate of DePauw University, the University of Michigan Law School (J.D.), and the University of Nottingham (LL.M.), and a Past Foreign Fellow and present Life Member of Clare Hall, Cambridge University. He is a 2009 recipient of the University of Hawaii Board of Regents' Excellence in Teaching Award.

Mr. Callies is Past Chair of the Real Property and Financial Services Section of the Hawaii State Bar Association; Past Chair of the American Bar Association's Section of State and Local Government Law and the recipient of its Lifetime Achievement Award in 2006; Past Chair of the American Association of Law Schools' Section of State and Local Government Law; Past Chair of the Academics Forum, and member of Council, for the International Bar Association's Asia Pacific Forum; a member of the American Law Institute (ALI) where, since 2015, he is an advisor to its Restatement of the Law, 4th, Property project; a Member of the College of Fellows of the American Institute of Certified Planners (FAICP); a member of the American College of Real Estate Lawyers (ACREL); a Member and Past Regional Vice-President of Lambda Alpha International (LAI, a national land economics honorary), twice recipient of its National Member of the Year Award, and Past President of its Aloha Chapter; and Co-Editor of the annual Land Use and Environmental Law Review (with JB Ruhl). He is also a Board Member of the Social Science Association of Honolulu (President, 1993-2003); Past Member of the Board of Trustees of Holy Nativity School (2008-2011); and (since 2015) a Trustee of La Pietra-Hawaii School for Girls.

In 2015, the Owners' Counsel of America awarded Mr. Callies its Crystal Eagle Award for his contributions to the law of property rights. In 2017, William & Mary Law School awarded him the Brigham-Kanner Property Rights Prize for his lifetime contribution to property rights. He is presently writing a book on the public trust doctrine.

The author, Mark Fanelli III, is second year law student at Elisabeth Haub School of Law at Pace University in White Plains, New York.

What are some of the trends you have seen develop in land use law over the years and what have been the most radical changes?

Well, I have seen a couple of important trends over the last three years. Most prominent is the increasing use of agreements for both small and large developments. Development agreements, and the now popular public-private partnership agreements, seem to be taking over and leading to a better product and helping get over the many difficulties associated with developers. Limitations that the courts have set on exactions and impact fees led to the increased emphasis on development agreements. There has also been a lot of increasing attention to the public trust doctrine as a limitation on public lands.

Can you explain your view on the intersection of planning and law?

I have been doing both for about 50 years, since when I was in practice in Chicago and when my firm was closely associated with American Society of Planning Officials (ASPO), the forerunner to the APA. The issue is somewhat the same over the years: that being the implementation of plans through ordinances. The difference is that plans have increasingly become law through ordinances and statute. Planners plan and lawyers enforce.

What are some of the key issues you see in land use practice? Zoning practice?

The major issue right now, aside from the public trust doctrine and customary law or planning by agreement, is procedural. Lawyers tend to do a little better of a job

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Legacy Spotlight

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largely because of their education. They've taken take courses in constitutional law and administrative law and readily understand the problems with the procedural aspects, and the need to distinguish between legislative, judicial, and quasi-judicial hearings. There is really no constitutional right to participate in the legislative process, but there is for quasi-judicial hearings. What kind of hearing that occurs dictates what kind of court proceeding follows- administrative appeal or de novo hearing. This is a fairly important intersection.

As for zoning practice, I read the newsletter frequently, and there seems to be some emphasis on suburb versus city migration and what that means for planning. There is also some emphasis on transportation. For example, we have an increasing realization that self-driving cars are inevitable. This would mean we would have to put some thought into adaptation for the transit systems. One final issue deals with social justice. I have been doing some writing on discrimination in housing. This intersects planning and law and is emphasized by the new Supreme Court case on disparate impact.

How do you structure your land use law course at University of Hawaii's William S. Richardson School of Law? How would you like to see law schools nationwide improve their land use law courses?

I start off with the importance of planning. We go through basic elements of zoning, including specialized overlay districts. Then I go into discrimination in housing as well as a brief survey of the applicable environmental laws, coastal zone management, and FEMA. We cover a little bit of clean water and clean air, as well as endangered species so students have an understanding of where land use and environmental law overlap and intersect. Then I finish with constitutional matters with a focus on takings and connections with subdivision regulations. I emphasize what are valid exactions after the Nollan, Dolon, and Koontz cases. As for law schools improving their courses, I would like to see more emphasis on the importance of the plan, and the role of the public trust doctrine, which I think is a real sleeper.

You have researched, written, and lectured on a wide array of topics in the land use and planning field. Can you talk about some of the key issues facing the courts today that you find relevant?

One of the major ones is the issue of ripeness. There is a fair amount of activity regarding this at the circuit court level. David Breemer is an attorney who has won several cases related to this issue in the southeast. I think it is time for the Supreme Court to revisit the issue. The doctrine is occasionally regarded as jurisdictional, which it isn't. Overcoming ripeness has become imperative to bringing any kind of regulatory takings case.

Beyond that, the courts are continuing to struggle with disparate impact under the fair housing act. After *Inclusive Communities*, I had a Research Assistant come up with plenty of cases dealing with the issue. At a ten-to-one margin, the folks claiming disparate impact are losing when they should not. This is because of the standards that Justice Kennedy laid out for a successful disparate impact claim, especially the robust causality requirement.

Again, the public trust doctrine comes up. Some things that are subject to the public trust doctrine are often separated from water. We have a case in Hawaii in which two justices are suggesting that the public trust doctrine applies to the top of a mountain, which is far from water. The more the public trust doctrine is applied, the scarier it can be for folks who own undeveloped property.

You have had a lot of publications and articles. Can you recommend some of your work that young lawyers and planning professionals should read?

For an overview, I have been associated with regulatory takings for a long time. I co-authored (with Fed Bosselman and John Banta) a report called "The Taking Issue" back in 1973. It might be useful to read "Through a Glass Clearly: Predicting the Future in Land Use Takings Law." It summarizes the takings law and where we are going forward.

Another piece I might recommend is something I wrote for the Bringham-Kanner Property Rights Conference Journal called "Beyond Blackstone: The Modern Emergence of Customary Law." The article summarizes the modern emergence of customary law in the United States and internationally and the importance of custom in common law.

Finally, in the public trust area, something I wrote with David Robyak called "The Categorical Lucas Rule: 'Background Principles,' Per Se Regulatory Takings, and the State of Exceptions." This article deals with the public trust doctrine to some extent.

How has being a Planning and Law Division member added value to your personal and professional life?

I have been a member of the APA and its predecessors for a long time. This division has been the most important to me. One of the major benefits is the

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Legacy Spotlight

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networking that takes place at conferences for the APA and the annual business meeting of the division at the APA conference.

This newsletter adds to the professional knowledge of everyone in the field. The essay contest gives us an opportunity to read a well-researched paper on an important topic in today's society.

What advice do you have for young lawyers or planning professionals?

I'd be inclined to make sure that both planners and lawyers take a survey course in environmental, land use, and administrative law. Also consider taking a class in advanced real estate for lawyers as well as state and local government. As Jerry Maguire said, "show me the money, follow the money." In state and local government, we spent a month studying finances. We don't put enough emphasis on finance. You need to know who the players are and how the financial system, especially in the public sector, works.

Any final thoughts?

I have been blessed with some really good mentoring along the way. I strongly advise any young professional to grab a mentor and use them. I was lucky enough to have Fred Bosselman, Dan Mandelker, and Marlin Smith. I also have many colleagues who are immensely helpful, including Patty Salkin, Dwight Merriam, Shelley Saxer, Tom Roberts, Gideon Kanner, Mike Berger, Jim Ely, Dan Tarlock, and John Nolon.

Finally, I would urge the planners and lawyers to become mentors themselves. It's a rewarding and helpful to do so, and can be a way to contribute immensely to the practice.♦

PLD Leadership Babies!

Congratulations to:



*PLD Chair **Evan Seeman** and his wife Julia Zajac on the birth of their daughter, Eloise Florence Seeman, b. 2/15/19, 8 lbs, 12 oz*



*PLD Secretary/Treasurer **Cory Rutz** and her husband Andy on the birth of their daughter, Maeve Adelaide Rutz, b. 12/3/18, 7 lbs, 2 oz*



*PLD Newsletter Editor **Jennie Nolon Blanchard** and her husband Mark on the birth of their son, Calvin Nolon Blanchard, b. 2/19/19, 7 lbs, 3 oz*

All future PLDers in the making!

Movie Review:
Brick by Brick: A Civil Rights Story
by Ollia Pappas

"There is nothing natural about segregation. It is the result of past and current conscious public policies. Until people begin to understand that, that race and class segregation is a result of intentional choices, current day choices even, there is less likely to be outrage." –Sheryll Cashin, Author of *The Failures of Integration* and the first commentator in *Brick by Brick: A Civil Rights Story*.

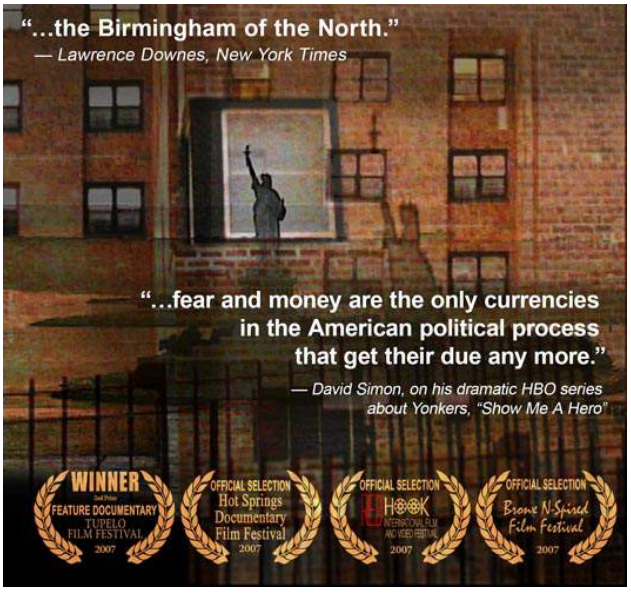
Brick by Brick: A Civil Rights Story depicts the struggles of racial integration after the Civil Rights Movement in the Northeast portion of the United States, specifically in the City of Yonkers. Yonkers is a fairly large city, located in New York just north of the Bronx on the Hudson River. It is a proud community, filled with hardworking citizens and many different types of neighborhoods, "ranging from comfortable to simple." However, the movie highlights that Yonkers has had its share of troubles fairly integrating its citizens and providing them with equal opportunities in housing and public education. African Americans in Yonkers have historically lived in only four communities: Runyon Heights, Ashburton Avenue, Cottage Place, and Warburton Avenue. Runyon Heights, "the only African American neighborhood in East Yonkers," was purposefully sealed off and isolated from the rest of the eastern section of City by a ten foot strip of surrounding land, originally fenced, when it was purchased by its neighboring white community, Homefield, for that exact purpose.

While Yonkers's history is wrought with many markers of systemic racial housing and education discrimination, *Brick by Brick* begins its civil rights tale with a complaint from a young African American resident, Winston Ross. Mr. Ross had complained to the Yonkers Board of Education that there was "racial isolation in the Yonkers school system." Instead of being counseled to go to college as he had hoped, Mr. Ross, like many other young African American school children in Yonkers, was steered into a commercial high school and eventually into a retailing program. The Yonkers councilmen, including Mayor Angelo Martinello and the Yonkers Board of Education, vehemently opposed this accusation and repeatedly stated, "we have done nothing wrong." Thanks to the efforts of the National Association for the Advancement of Colored People (NAACP) and residents such as Winston Ross, however, a federal lawsuit was brought against Yonkers for racial segregation in its low-income housing and discrimination within its public education school system. *Brick by Brick* takes its viewers through the history of this lawsuit and the effect it had on Yonkers's citizens.

The movie showcases what a major and vital role housing can play in education discrimination and overall racial segregation. For example, Yonkers had built 70,000 low-income apartments over the span of 40 years; however, these apartments were all located in the southwest portion of the city, and 99% them in just one isolated square mile area. Every affordable housing project that was proposed outside of this west downtown area failed to get approval. Therefore, low-income residents had no place to go except places like the "hole," a housing complex (formally known as the Schlobohm Housing Complex) located in downtown Yonkers that resembled its nickname due to its foundation being built lower into the ground than neighboring properties'. The schools also exemplified this sharp racial housing divide, since children went to the school that was located in their district. Judge Leonard Sand, the judge assigned to the Yonkers discrimination lawsuit, acknowledged the intentional discrimination patterns in Yonkers and, in a historic 600-page ruling issued in November of 1985, held that the city must change both its public education and housing policies to become more racially integrated.

As shown in the documentary, Yonkers had little difficulty integrating its public school system, primarily through the use of magnet schools, and experienced virtually no citizen opposition. However, building and integrating low-income housing within the eastern section of the city grew into a momentous battle, with city councilmen refusing to amend the zoning ordinance to include affordable housing provisions and Judge Sand imposing bankrupting fines on the City and threatening imprisonment for city officials who did not comply with the consent decree. Despite this vast resistance and the attempts to appeal

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Movie Review

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Judge Sand's decision, the first 200 units of low-income housing were finally finished in 1992—seven years after the first decision.

Many communities today are still struggling with housing integration, and including more provisions to incentivize affordable housing within their Zoning Ordinances. The goal is to create opportunities that not only benefit lower-income citizens, but also to make developers willing to participate. *Brick by Brick: A Civil Rights Story* is an important tool for planners and attorneys in that it is a poignant reminder of the large affect the development of our cities, towns, and villages can have on different populations. It is also a reminder that, as planners and attorneys, we are in a position to create more inclusive communities in a way that avoids a terrible situation like the one experienced by the residents of Yonkers.♦

Meet Our New Curtin Fellow



Lapeyrolerie

The Planning and Law Division welcomes Erin Lapeyrolerie as this year's recipient of the Daniel J. Curtin Fellowship. Erin is in the final year of her joint degree program earning a Juris Doctor from UC Hastings and Master of City Planning from UC Berkeley. Prior to this, she earned a B.A. in economics at New College of Florida.

Erin is excited to work with planning and law experts and to independently study the alternative relationships that humans can have with the land and how our relationship with land impacts overall human health and well-being. Examples include regulations around extracting resources from the land and commodification of residential properties.

Erin hopes that the knowledge she gains and distributes through this fellowship will lead to concrete actions that she and others can take to work with communities to create healthy, stable, happy, and sustainable neighborhoods.

The purpose of the PLD Daniel J. Curtin, Jr. Fellowship is to foster increased interest in the study of land use planning and its interrelationship with the law at the graduate, and law school levels; increased participation in the planning profession; and ultimately, greater service to communities across the nation.

Curtin Fellow Report

by Erin Lapeyrolerie
PLD Daniel J. Curtin, Jr. Fellow

Webinar

Thus far, as the FY2019 Curtin Fellow I organized and moderated a webinar (March 21, 2019) on the interaction of land use regulations and the legal cannabis industries across the United States. The panelists included three attorneys well-versed in cannabis and land use: Joanna Hossack an attorney at Clark Neubert, LLP in Sacramento and San Francisco; Christina Sava, an associate attorney at Anthony Law Group, in Oakland, California; and Karla Chaffee, an attorney at Robinson & Cole in Boston. Approximately 50 listeners tuned in for the webinar.

NPC19 Preparation

As part of my Fellowship, I will attend the National Planning Conference in San Francisco and am providing assistance to the PLD Leadership team to prepare for the Conference. I have updated the "PLD at NPC" events flyer to reflect the division's activities at the conference and have updated the PLD Member Publications flyer, listing recent publications from PLD members, which will be distributed at the conference, included in the newsletter, and posted on the website.

Newsletter Article / Website Resource

During the remainder of my fellowship, I plan to contribute to the PLD newsletter. One contribution will be a newsletter article concerning how land use regulations can foster low- and moderate-income homeownership models. This article will also be posted as a resource on the PLD website. I would also like to contribute to a "page out of planning history" article for the newsletter later in 2019.

Book Excerpt:

Environmental Justice

~ An Excerpt from Land Use in a Nutshell, 2nd Ed. ~

This column features modified excerpts from publications written by PLD members. The modified excerpt presented here is taken from the second edition of Professor John R. Nolon's and Provost Patricia E. Salkin's book "Land Use Law in a Nutshell," published in 2017.

John R. Nolon *is a Distinguished Professor of Law at the Elisabeth Haub School of Law at Pace University where he teaches property, land use, and sustainable development law courses and is also the Founder and Faculty Liaison of the Law School's Land Use Law Center. In 2009 he was awarded the American Planning Association's National Leadership Award for a Planning Advocate.*

Patricia E. Salkin *is Provost of the Graduate and Professional Divisions of Touro College. She most recently served as Dean and Professor of Law at the Touro College Jacob D. Fuchsberg Law Center. Provost Salkin served as an appointed member of the U.S. Environmental Protection Agency's National Environmental Justice Advisory Council and also on the Board of Directors of the New York Planning Federation.*

Environmental justice goes to the core of traditional land use decisions, such as siting locally unwanted land uses (geographic equity); the location and timing of public hearings (procedural equity); and sociological factors, including which groups hold the political power in making land use decisions (social equity).

A 1987 study by the United Church of Christ concluded that race was a more significant factor than socioeconomic status in the siting of waste facilities, and that three out of five African American and Latino residents lived in communities with uncontrolled waste sites. In 2002, the National Academy for Public Administration reported that comprehensive planning, zoning, and the amortization of land uses can be relied upon to address geographic equity, and that effective public participation is important to ensuring an equitable planning process. The report also advised that specialized training of local officials is essential to promote environmental justice.



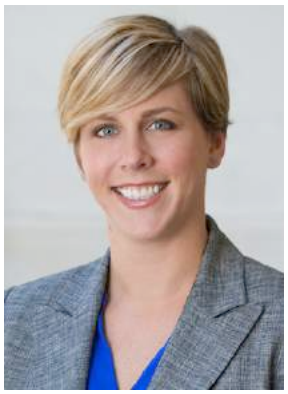
In 1994 President Clinton signed Executive Order 12898 to address environmental justice concerns. Under this order, federal agencies are required to identify and address any "disproportionately high and adverse human health or environmental effects of its programs . . . on minority populations and low-income populations" and to develop environmental strategies to avoid them.

Litigation over environmental justice issues has resulted in limited success. The issue of whether a plaintiff could challenge a public law or regulation for causing disparate, inequitable environmental impacts on minority communities under the Civil Rights Act was addressed by the 2001 U.S. Supreme Court case *Alexander v. Sandoval*. The majority stated that § 602 of the Civil Rights Act, under which such a rule may be promulgated, does not confer a private right of action. Several years later, in 2004, the federal court for the Northern District of Texas established in *Cox v. City of Dallas* that to prove a violation of the Equal Protection Clause in the area of environmental justice, plaintiffs must prove that (1) the action was the result of an official agency decision; (2) the city intended to discriminate against plaintiffs based on race; and (3) the action violated the Equal Protection Clause. While the court found that the failure to stop illegal dumping in an African American majority neighborhood was the result of the city's decision, it also found that the plaintiffs did not prove that this failure was caused by discriminatory intent.

Note, however, that in 2004 in *The Matter of the Application of the City of New York Department of Sanitation for a Solid Waste Management Permit pursuant to Environmental Conservation Law Article 27*, a New York Administrative Law Judge, considering objections to an application to build a composting facility, identified sources of authority under which environmental justice issues could be reviewed by the state, independent of the state's environmental justice policy. These included: (1) "the [state's] general authority to 'promote and coordinate the management of . . . resources . . . and take into account the cumulative impact upon all of such resources in making any determination in connection with any license, order . . . or other similar action'" and (2) the State Environmental Quality Review Act.♦

PLD Election Results Are In!

Last year, PLD held our bi-annual leadership elections for the positions of Secretary/Treasurer and Chair-Elect. **Cory Rutz** was elected as the new Secretary/Treasurer and our Secretary/Treasurer, **Brian Connolly**, was elected to the Chair-Elect position. Brian and Cory assumed their leadership positions on January 1, 2019. Chair-Elect, **Evan Seeman**, assumed the position of Chair and Chair **Meg Williams** remains on as our Immediate Past-Chair for the next two years. Thank you to our outgoing Immediate Past-Chair, **Jennie Nolon Blanchard**, for her eight years of service in PLD leadership!



Cory Rutz is an associate attorney at Otten Johnson Robinson Neff + Ragonetti, P.C. in Denver, Colorado where she represents property owners and developers in the acquisition and entitlement of commercial, residential and industrial projects. Her practice includes assisting clients with local government approval of annexations, subdivisions, rezonings and development agreements, as well as private matters such as covenants and restrictions, easements and construction contracts.

While earning her joint law and planning degrees, Cory interned with a national planning and zoning consulting firm, the US Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity, Denver Water, and the Western Water Policy Program at the University of Colorado. Before starting law school, Cory worked as a resin engineer for a global supplier of paints, coatings, and other chemicals.

Cory is excited to join PLD's leadership team as the division's new Secretary/Treasurer.



Brian Connolly is an attorney in the Land Use, Real Estate, and Litigation practice groups at Otten Johnson Robinson Neff + Ragonetti, P.C. in Denver, Colorado. He represents public- and private-sector clients in matters relating to zoning, planning, development entitlements and other complex regulatory issues. Brian's practice encompasses a broad range of land use matters including zoning compliance, rezonings and other regulatory amendments, planned-unit developments, development agreements, private covenants and restrictions, land use and zoning litigation, initiatives and referenda associated with land use approvals, and real estate transactions. Additionally, Brian specializes in the First Amendment and land use issues associated with outdoor sign and advertising regulation, and fair housing matters in the local planning and zoning context. Prior to practicing law, Brian was an urban planner for the planning department of Westchester County, New York. Brian has also worked in planning capacities at the federal and municipal government levels.

Brian serves on the advisory board of the Rocky Mountain Land Use Institute, and he frequently writes on planning and land use law topics, including fair housing, sign regulation, aesthetics, and other matters, and Brian is a regular speaker at conferences on these topics. Brian holds a J.D., *magna cum laude*, from the University of Michigan Law School, and a Master of Regional Planning and B.S. in urban and regional studies, both from Cornell University.

Brian served as PLD's Secretary/Treasurer for the past two years and has been an active member in PLD for several years prior to that. He routinely attends the National Planning Conference and has had the privilege of speaking in sessions with other distinguished PLD members on the topics of sign regulation, fair housing, the development process, and other land use and real estate law topics. He has also worked closely with PLD's Education Committee to bolster our webinar series. Brian has assisted with the Smith-Babcock-Williams Writing Competition as a submission reviewer. He looks forward to the opportunity to continue to serve PLD in his new role as Chair-Elect.♦

Job Announcements

PLD Newsletter Job Announcements allow planning and law related job seekers and employers to connect.

Please send your job postings to pld.newsletter@gmail.com and we'll include them in our next newsletter.

Be sure to include the name of the employer, position, contact information, and deadline for applications.



Parking

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Even without affecting supplies, communities increasingly require parking to be located behind buildings, either as a direct zoning requirement or through maximum setbacks / build-to lines and frontage buildout requirements that require buildings to occupy a given percentage of a lot frontage. A more conventional approach is to screen and shade parking areas with landscaping requirements.

Restrictions on parking supplies can (theoretically) limit the value of property by restricting the economic viability of uses that depend on parking access. Requirements that property owners provide publicly accessible parking can also be challenged as exactions. How far can communities go in requiring property owners to limit parking supplies, or in providing fees in lieu of shared spaces? This article explores several court cases and established law on parking and the constitutional rights of property owners.

MINIMUM PARKING REQUIREMENTS

The constitutionality of minimum parking requirements is well-established. *State v. Rush*, 324 A.2d 748, 751 (Me. 1974). While at least one older case invalidated minimum parking mandates on property rights grounds, it was later overruled. In 1959, a sharply divided Colorado Supreme Court invalidated an off-street parking requirement for a business zoning district that established parking ratios for eight different business uses as a taking and violation of due process. *City and County of Denver v. Denver Buick, Inc.*, 141 Colo. 121, 347 P.2d 919 (Colo. 1959). The court reasoned that business owners have an incentive to provide parking to meet their own needs, and that traffic congestion did not authorize a restriction requiring land to be devoted to "appropriate" portions of the property for parking. The court ruled that this interfered with the right to the free use of property without sufficient justification.

HOW FAR CAN COMMUNITIES GO IN REQUIRING PROPERTY OWNERS TO LIMIT PARKING SUPPLIES, OR IN PROVIDING FEES IN LIEU OF SHARED SPACES?

The *Denver Buick* decision was overruled in 1975, with the Colorado Supreme Court noting that its 1959 decision was the only court decision in the United States to hold off-street parking requirements per se unconstitutional. *Stroud v. City of Aspen*, 188 Colo. 1, 532 P.2d 720 (Colo. 1975). In *Stroud*, the City required property owners to provide off-street parking or to lease space in a municipal parking facility. The court deferred to the City's legislative discretion, finding that off-street parking addresses air quality issues produced by drivers competing for spaces. The opinion also noted that *Denver Buick* was inconsistent with the majority of cases, widely criticized in law review journals, and was internally split. The Aspen ordinance was invalid, however, because the ordinance did not obligate the City—once it collected money for municipal spaces—to actually make those spaces available.

Local governments are not constitutionally obligated to set their parking standards sufficiently high to avoid spillover parking issues. In *State v. Rush*, *supra*, the court upheld an ordinance prohibiting parking on public streets for longer than 30 minutes between the hours of 2:00 AM and 6:00 AM. The plaintiff claimed that it was impossible to comply with the ordinance because the zoning regulations did not require a sufficient amount of parking, causing spillover into the public streets. In the residential district, there were more dwelling units than parking spaces. The court rejected this argument, noting that there is "no constitutional obligation to zone sufficient space for the parking of automobiles which are prohibited from parking on the streets overnight." The court further rejected the trial court's taking judicial notice that "ownership and operation of automobiles is necessary for personal and family transportation."

MAXIMUM PARKING RESTRICTIONS / PARKING CAPS

No case has addressed the constitutional viability of a maximum parking restriction. However, the cases decided to date indicate several things. First, courts recognize that parking affects the economic viability of property, and restrictions that go too far could conceivably result in viable regulatory takings claims. Second, property owners do not have a constitutional right to the maximum volume of parking that the property could ab-

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Parking

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sorb. *State v. Rush*, *supra*, 324 A.2d at 751; White, *supra*, at 20. Including shared parking provisions, counting off-site or onstreet parking toward the minimum parking required, can assist in defending parking restrictions.

In *Weiss v. Zoning Board of Review*, C.A. No. PC 09-2814 (R.I. Super. Ct. 2012), the court upheld the denial of a dimensional variance request to add four parking spaces to the front yard of a twelve-unit apartment building. The building was nonconforming as to the number of spaces—with 4 existing spaces, while the current zoning regulations required 18. However, the ordinance also allowed only 33% of the front yard to include paving for parking areas. The Comprehensive Plan established a policy to reduce surface parking and promote green space. The court noted that parking spaces were available for rent from an adjacent commercial site, which mitigated the hardship claim. Noting that a "variance to enable a property owner to provide off-street parking may not be so extensive as to change the zoning scheme established by the Ordinance," the court rejected the variance claim. Id. at 25 (citing Edward H. Ziegler, *Rathkopfs The Law of Zoning and Planning* § 83:24 (4th ed. 2012)).

REAR PARKING REQUIREMENTS

In a traditional main street or commercial area, parking is usually located to the rear of the site, with principal buildings facing the street. A requirement for rear parking is now commonplace in many design-based zoning restrictions or in form-based codes. Only one case has tested rear parking requirements, and invalidated them as applied to a gas station. In *Dallen v. City of Kansas City*, 822 S.W.2d 429 (Mo.App. 1991), the City of Kansas City, Missouri adopted a corridor overlay district that contained many neotraditional principles including ten-foot build-to lines (maximum setbacks), prohibitions on blank walls, a prohibition on parking between buildings and the primary street line. The plaintiffs owned a gasoline station they wished to build in a manner permitted by the underlying zoning district, but in conflict with the corridor overlay district. Finding that the underlying zoning district permitted "unrestricted use of the property" so long as the district requirements were complied with, the Court of Appeals found the requirements "confiscatory and unconstitutional." Specifically, the court ruled that the maximum setback was arbitrary and unreasonable in that it conflicts with the underlying regulations and "completely ignores the realities of operating a gas station."

COURTS SHOULD DEFER TO THE ENVIRONMENTAL, COMMUNITY CHARACTER, AND WALKABILITY OBJECTIVES OF STATE-OF-THE-ART PARKING RESTRICTIONS

The reasoning in *Dallen* is strange, and has not been applied in other cases. First, there are numerous examples of rear-loaded gas stations throughout the nation, and certainly more than existed at the time of the *Dallen* decision. Second, even if the regulations prohibited a gas station, there were numerous other uses permitted in the underlying district. In fact, the site has since developed as a chain pharmacy. Careful drafting that resolves conflicts with the underlying districts, bases the regulations on comprehensive planning policies, and documents the need for and viability of these types of regulations could avoid issues such as those that arose in *Dallen*.

Similarly, *J. D. Const. Corp. v. Board of Adjustment of Freehold Tp.*, 119 N.J.Super. 140, 290 A.2d 452 (N.J.Super. 1972) invalidated a requirement that garden apartments place parking facilities exceeding four spaces in side or rear yards. The court found that the regulation violated New Jersey's rule against aesthetic-based zoning, and that its language was uncertain and indefinite. The court also noted that most apartments are arranged at various angles to the street. New Jersey was (at least at the time) one of the few states that prohibited anti-aesthetic zoning, and it is now clear that parking placement standards advance public interests beyond aesthetics, such as promoting walkability and avoiding barriers to pedestrian movement, facilitating access to transit, and promoting public safety by putting "eyes on the street." Provisions that tame the aesthetic impacts of surface parking, such as landscaping requirements, have been upheld against takings challenges. *Parking Ass'n of Georgia, Inc. v. City of Atlanta*, 264 Ga. 764, 450 S.E.2d 200 (Ga. 1994), *cert. denied*, 515 U.S. 1116, 115 S.Ct. 2268, 132 L.Ed.2d 273 (U.S.), *reh'g denied*, 515 U.S. 1178, 116 S.Ct. 18, 132 L.Ed. 2d 902 (U.S.1995). In addition, the built environment is now replete with examples of garden apartments with rear-loaded parking.

CONCLUSION

While minimum parking requirements are now a well-established tool of zoning, many communities are rethinking this tool and turning it on its head with restrictions on the supply and location of parking. While there is little case law to date on these restrictions, they are likely to be subject to the same guidelines that govern conventional zoning restrictions. As recently reaffirmed in *Murr v. Wisconsin* (U.S. 2017), this will consider (1) the economic impact of the restrictions; (2) the extent to which the restrictions interfere with distinct investment-backed expectations; and (3) the character of the governmental action. Reasonable maximum regulations are unlikely to have sufficient economic impact to sustain a viable takings claim, and courts should defer to the environmental, community character, and walkability objectives of state-of-the-art parking restrictions. With these principles in mind, takings issues associated with parking restrictions are surmountable. ♦

THERE ARE SERIOUS QUESTIONS REGARDING THEIR LEGALITY AND COMPATIBILITY WITH MUNICIPAL ZONING AND LAND USE GOALS.

Tiny Homes

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Carbon Emissions

Fundamentally, the idea that cutting home size drastically will reduce energy consumption make sense: there is far less space to heat, cool, and provide electricity in a tiny home. Further, there is evidence to support that tiny homes produce fewer carbon emissions than typical homes: a 2010 report from the Oregon Department of Environmental Quality found that reducing home size by 50% led to a 36% decrease in carbon emissions (Jordan Palmeri, "A Life Cycle Approach to Prioritizing Methods of Preventing Waste from the Residential Construction Sector in the State of Oregon" [Oregon Department of Environmental Quality, September 2010]). Further, tiny homes are estimated to produce around 2,000 pounds of carbon emissions each year, compared to 28,000 pounds for an average home (James Hardy Building Products, "Sustainable and Small: The Tiny House Movement." American Institute of Architects, August 1, 2017). The reduction in carbon emissions is a promising benefit of tiny homes, though other aspects of tiny homes leave questions as to their viability as a permanent housing option.

Lifestyle Choice

Tied in with the idea of reducing carbon emissions is the idea that living a minimalist lifestyle in a tiny home is a more balanced way of living than a traditionally size home. Tiny homes have a niche following among those who, in the wake of a nationwide housing crisis, decided to downsize, or live in deliberate opposition to the "bigger is better" mindset that is seemingly ingrained in American culture. Adherents to this lifestyle often include individuals reticent to carrying debt, with particular support coming from millennials, women, and individuals living a transient lifestyle (Elliott, Donald L., and Peter Sullivan. 2015. "Tiny Houses and the Not-So-Tiny Questions They Raise." *Zoning Practice*, November).



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Affordable Housing Option

In addition to adhering to principles of minimalism and energy efficiency, tiny homes are often propagated as a way to shelter homeless populations in metropolitan areas. The idea is that, even if the tiny house is not connected to an electric grid, it is better than a tent at offering shelter from the elements. As many of the nation's population experiencing homelessness wait for years on the Section 8 voucher waitlist, tiny homes are proffered as a stop-gap solution.

On the other hand, there are some that advocate for tiny homes as a permanent solution for affordable housing shortages. A report issued by Community Frameworks in March of 2015, *Tiny Houses: A Permanent Supportive Housing Model*, traced the development and progress of Quixote Village, a tiny home community in Olympia, Washington. The report advocates for more permanent tiny home fixtures, which include heating and insulation, electricity, standard ceiling height, possess full bathrooms, have cooking facilities in or nearby, and enough space for a standard bed, chair, table and room for storage. These amenities run contrary to the majority of tiny homes, which are constructed as a temporary or mobile shelter option. The report noted that the Quixote Village – whose residents had all been homeless prior to the creation of the village – has largely been a success, with residents graduating college, obtaining full time and part-time jobs, and even operating businesses.

Legal and Institutional Hurdles

Unfortunately for tiny home proponents, local zoning codes and municipal regulations typically render tiny homes illegal. A large number of tiny homes are constructed on a trailer bed, with the intent that they can be

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Tiny Homes

continued from previous page

moved as needed. According to the New York Times, most densely developed areas do not allow individuals to permanently reside in structures considered temporary, such as RVs or tiny homes (*Where Can You Park a Tiny Home*? Lisa Prevost, N.Y. Times, October 6, 2017). Even for the tiny homes not built on wheels, there are hurdles: most municipalities set a minimum lot size for single family homes that impacts the feasibility of tiny homes, as the costs saved in home construction are rendered moot by the price of the land. Additionally, building codes often disfavor the construction of tiny homes on foundations. Andrew Morrison, a professional builder and tiny home advocate, states that "upwards of 90 percent of tiny-house owners are living illegally, when it comes to zoning" (*Where Can You Park a Tiny Home*? Lisa Prevost, N.Y. Times, October 6, 2017).

Many of the regulations that outlaw tiny homes could certainly be tweaked to allow for tiny homes. However, this change is not likely, at least for the near future, as many residents raise a familiar concern to the presence of tiny homes near their neighborhoods: the effect on property values. NIMBYism has long been a stumbling block for affordable housing development, and tiny homes face similar hurdles. One resident of a San Jose neighborhood expressed that, "people are sympathetic toward the homeless, but to put [a tiny home development] in an established neighborhood doesn't make sense" (Tiny Homes Are All the Rage. So Why Do So Few Communities Welcome Them? Nancy C. Unger, Washington Post, November 28, 2017). This sentiment is common in many locales throughout the nation. To further cool the tiny home fire, banks typically will not provide financing options for tiny homes, and many R.V. parks exclude tiny homes because the homes are too tall (*Let's Get Small*. Alec Wilkinson, The New Yorker, July 25, 2011). This community opposition coupled with the aforementioned legal and institutional hurdles means that tiny homes will likely not be a feasible housing option, at least without a large shift in municipal and institutional policy.

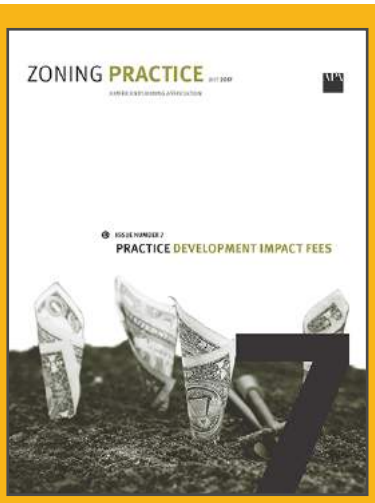
Skepticism of Permanence

Though tiny homes have been gathering steam in terms of support, there is still strong skepticism that they can offer anything more than temporary fixes for the United States' housing problem. Tiny homes fall into the "housing first" framework of combating homelessness, where priority is placed on getting those experiencing homelessness into a home, without conditions or tedious process. Housing first policies have been notably successful in reducing the population of the homeless in the United States. However, some are skeptical of tiny homes as a vehicle for this framework: Matthew Doherty, the executive director of the US Interagency Council on Homelessness, notes that there is a worry that "that the environment created by tiny homes sometimes does not create a permanent, home-like environment for people," and that "people need to be in home-like environments that feel like places they want to be for the long term. (*The Tiny Home Movement: A Creative Response to the US Homelessness Crisis*. Dwyer Gunn, The Guardian, August 2, 2016.)" Gene Tempest, a tiny home resident reflecting on her experience in the New York Times, underscores this idea, noting that living in a tiny home presents a number of problems, and is far from ideal. Tempest notes that items get worn faster as a result of the smaller environment, finding space is a continual battle, and cooking presents a host of issues (*What No One Tells You About Tiny Homes*. Gene Tempest, The New York Times, June 2, 2017). These criticisms are echoed by many in the planning community, who remain skeptical that tiny homes can meet adequate shelter standards in a long term capacity.

> TINY HOMES WILL LIKELY NOT BE A FEASIBLE HOUSING OPTION WITHOUT A LARGE SHIFT IN MUNICIPAL AND INSTITUTIONAL POLICY.

Conclusion

Tiny homes are a vexing question for planners and policy makers. With tiny home communities spreading across the US, it is clear that the movement has a strong groundswell of supports and activists. Tiny homes certainly appear to offer benefits: as noted before, there is evidence to support that tiny homes are more environmentally friendly than larger homes, and they remain a compelling option to consider for communities attempting to combat homelessness. However, shortcomings of tiny homes, such as the lack of space and inadequate cooking facilities, seem to indicate that they might not be the permanent solution to housing problems that many advocates believe.♦



APA's Zoning Practice is looking for contributors!

Do you have an idea you'd like to explore at the intersection of zoning, planning, and law? Zoning Practice is currently looking for potential authors and welcomes your contribution. If you'd like to submit a proposal or learn more about contributing, please check out our contributor guidelines or email Zoning Practice co-editor Joe DeAngelis at jdeangelis@planning.org

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upon annexation. The Village annexed the property knowing that defendants' use of the property would not comply with the residential zoning designation, intending to allow the use to continue, and accepting it "as-is." The First District Court concluded that Palos Park could allow defendants to continue their excavation business as a prior legal nonconforming use without complying with state procedural requirements.

Practice Significance: *Illinois municipalities may annex property with existing uses not permitted under the new zoning district requirements and recognize them as a legal non-conforming uses.*

Maryland Court of Special Appeals (MD), Maryland State Law Preempts Local Zoning Regulations for Covered Solar Generating Systems

In *Board of County Commissioners of Washington County v. Perennial Solar, LLC*, 239 Md. App. 380 (2018), the Maryland Court of Special Appeals found that state law preempts local zoning authority with respect to covered solar energy generating facilities. Perennial Solar, LLC (Perennial) filed an application with the Washington County Board of Zoning Appeals (the Board) for a special exception and variance to construct and operate an 86-acre Solar Energy Generating System (SEGS). The proposed solar farm would produce sufficient offsite electricity to power over 2,000 homes. The Board approved the application, and Perennial applied for a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Services Commission (PSC), as required by state law. The County Commissioners and several neighboring landowners appealed the Board's decision. Perennial moved to dismiss the appeal, asserting that PSC has exclusive jurisdiction to approve a SEGS, including site location. The Circuit Court agreed, holding that Public Utilities Article (PUA) Section 7-207 preempted local zoning. The County Commissioners and landowners appealed to the Maryland Court of Special Appeals, which affirmed. Appellants argued that PUA Section 7-207 does not preempt zoning because the location of SEGS does not present a sufficiently compelling public interest and the PUA does not govern all solar generating systems. The court disagreed, concluding that Section 7-207 comprehensively regulates covered solar energy systems so as to impliedly preempt local zoning regulation. Section 7-207 grants the PSC broad authority to determine whether and where the SEGS may be constructed and operated, does not require compliance with local zoning ordinances, and requires local government input in the review process, all additional evidence of the state's intent to govern development of SEGS. The court further stated that Section 7-207's exemptions for certain generating systems do not lessen the law's comprehensiveness. The court also disagreed with Appellants' argument that Section 7-207 only regulates public service companies, finding that Section 7-207 expressly forbids "a person" from constructing a covered generating station prior to obtaining a CPCN permit and defining a person as an "individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation or other entity." PUA §1101(u). Because Perennial is "a person" seeking to construct a covered generating station in Maryland, it is required to obtain a CPCN through PSC.

Practice Significance: *Maryland municipalities may only regulate solar energy systems that do not require a CPCN permit under PUA Section 7-207.*

Connecticut Supreme Court (CT), Municipal Regulations for Advertising Signs Lack Authority Under State Law to Regulate Signs Announcing Homeowner's Personal Opinion

In *Kutcha v. Arisian*, 329 Conn. 530 (2018), the Connecticut Supreme Court found that a Milford homeowner's three signs, expressing her dissatisfaction with her home improvement contractor, were not advertising signs under Connecticut law. The City's Zoning Enforcement Officer (ZEO) ordered the homeowner to remove the signs on the grounds that they violated the City's zoning regulations. After the homeowner failed to remove the signs, the ZEO commenced an action, in part, to enjoin the homeowner from maintaining the noncompliant signs. The defendant argued that the City lacked authority to regulate her signs under Connecticut General Statutes Section 8-2, which permits municipal regulation of the height, size, and location of "advertising signs and billboards." The trial court found that defendant's signs violated the City's sign regulations but denied the ZEO's request for an injunction. The ZEO appealed, and the Connecticut Supreme Court elected to hear the case. On appeal, the ZEO argued that the term "advertising" in Section 8-2 meant any sign making a public announcement and that limiting the definition to signs promoting goods, services, or activities "might constitute improper content-based speech discrimination" in violation of the First Amendment to the US Constitution. The court affirmed, concluding that "advertising signs under Section 8-2 means any form of public announcement intended to aid directly or indirectly in the sale of goods or services, in the promulgation of a doctrine or idea, in securing attendance or the like." Under this definition, the defendant's signs were not advertising signs because they express the defendant's personal opinion and do not promote anything or benefit the defendant after a reader receives the signs' messages. The court determined that the statutory language was clear, and "the court will not rewrite it to make it constitutional." In response to *Kutcha v. Arisian*, H.B. 5229 has been introduced in the 2019 Regular Session of the Connecticut General Assembly to amend Section 8-2 by removing the word "advertising."

Practice Significance: *Currently, municipalities in Connecticut may only regulate those signs that promote*

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Case Law Digest

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something for the benefit of the proponent. Municipal regulations that broaden the definition for advertising signs to include other types of announcements are not authorized under Section 8-2; however, this may change if the Connecticut General Assembly passes H.B. 5229.

United States District Court, Southern District of New York, Far-reaching NYC Ordinance that Compels Home-sharing Platforms to Report User Data Monthly Likely Violates Fourth Amendment

In *AirBnb, Inc. v. City of New York*, 2019 U.S. Dist. LEXIS 755 (2018), the United States District Court for the Southern District of New York held that a New York City ordinance requiring home-sharing platforms to turn over large amounts of customer data on a monthly basis likely violates the Fourth Amendment's prohibition against unreasonable searches and seizures. In an effort to crack down on short-term rentals that violate the City's Multiple Dwelling Laws (the purpose of which is to regulate the potentially harmful effect of short-term rentals in residential buildings), the City passed Local Law 146, which would require "booking services" for short-term rentals to submit to the City monthly transaction reports that contain location, contact, advertisement, rental type, rental duration, fee, and rent collection information for every short-term rental listed on a covered platform. Airbnb, Inc. and HomeAway, Inc., two online home-sharing services, separately filed suit to enjoin enforcement of the ordinance. They each sought a preliminarily injunction to enjoin the application of the ordinance, claiming, in part, that the law violated the Fourth Amendment of the US Constitution. The court decided in favor of the plaintiffs, holding that the ordinance's "categorical demand" for "sweeping monthly data productions" is likely unreasonable under the Fourth Amendment. The court stated that the ordinance, despite being a legislative, rather than executive, act, implicates the Fourth Amendment because it requires the production of user-related, short-term rental records in which home-sharing platforms have a reasonable expectation of privacy to keep sensitive information from competitors and to protect users' privacy. The platforms' user privacy policies and past compliance with valid subpoenas did not result in forfeiture of their privacy rights. The court concluded that the ordinance is not a reasonable search and seizure because it is not limited in scope and is devoid of tailoring, as it covers all short-term rentals, captures virtually all monthly user information, and is the functional equivalent of issuing an identical subpoena to every covered booking service every month in perpetuity, regardless of whether any factual basis to suspect a violation of the City's Multiple Dwelling Laws exists. Additionally, the ordinance does not provide a neutral forum before which a booking service could argue that the demand for user data was unreasonable or challenge a penalty for noncompliance under the Fourth Amendment. The fact that the ordinance increases investigative efficiency does not make the searches and seizures reasonable. Because the ordinance likely intrudes on protected Fourth Amendment interests and the plaintiffs met all requirements for relief, the court issued a preliminary injunction enjoining the ordinance pending final disposition.

Practice Significance: *Municipal ordinances requiring home-sharing platforms to report user information in connection with laws to regulate the potential adverse effects of short-term rentals must comply with the Fourth Amendment.* ♦



Climate Change

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is ordinarily required." Without that "fair prospect" of ultimate success, a stay would have been inappropriate.

Back to the Ninth Circuit the Trump Administration has gone. The appellate court set an expedited briefing schedule for the government's appeal of the District Court decision to allow the litigation to move forward, with briefing completed on March 8, 2019. A stay of proceedings at the District Court was also issued.

The Trump Administration's arguments can loosely be described as (1) the Plaintiffs lack standing; (2) even if Plaintiffs have standing, there is no constitutional right to a "livable climate"; and (3) the public trust doctrine does not extend to either the federal government or the atmosphere. Sixteen amicus briefs were filed, the vast majority in support of the Plaintiffs. As of the writing of this article, the Ninth Circuit has not issued a decision. ♦

Member Activities



Share your pictures with us!

We want to know what PLD members are up to! Did you see another PLD member at a networking event? Hold an exciting conference? Participate in a Habitat build? Join other PLD members in a 5K walk?

Whatever your story, send your pictures and captions to pld.newsletter@gmail.com and we will publish them in future newsletters.

Update on Amicus Curiae Activity of the APA as of March 23, 2018

by John M. Baker, Esq.

John M. Baker is a founding partner of the Minneapolis law firm Greene Espel PLLP. He taught land-use law for nine semesters at a law school in St. Paul. He has been a member of the Planning and Law Division since 2006 and currently chairs the APA's amicus curiae committee.

This report reflects Court decisions issued in the past year in matters where the APA appeared as amicus and where APA amicus briefs were filed (or are expected to be filed). It also describes several key cases that the Committee considered for amicus participation but ultimately declined.

I. Outcomes in cases where the APA participated as an amicus

A. *Carruth, et al. v. City of Plano* (Texas Supreme Court)

The APA and other interested groups joined a letter to the Texas Supreme Court, in a case arising from an effort at "ballot box guiding." The letter sought to persuade the Texas Supreme Court to grant discretionary review over a court of appeals' decision.

Texas authorizes initiative and referendum, with certain judicially-enforced limitations. A petition to either repeal Plano's comprehensive plan or to put the plan up for a referendum was submitted to the city secretary. On counsel's advice, the secretary did not forward the petition to the City Council for actions (that could have included putting on the ballot or repealing it in its entirety). (Counsel's advice was that zoning regulations are not subject to a referendum vote.) A mandamus claim directed at the city secretary and at the City Council followed. The claim against the City Secretary sought to compel her to present the petition to the City Council, and the claim against the City Council sought to require the Council to reconsider the Plan and either put it on the ballot or repeal it in its entirety, and in the interim treat the old plan as the effective one.

The Texas Court of Appeals held that "the trial court had subject matter jurisdiction over the petition for a writ of mandamus against the City Secretary," but that the claims against the City Council were not yet ripe.

The case was considered an important one in part because it puts the City between a rock and a hard place. Under the City's charter, if a regulation is removed (or approved) by voters, it can only be reinstated (or repealed) by the voters. Thus, if a comprehensive plan can also be subject to initiative and referendum, one likely effect is that planners would need to make recommendations on permits and zoning applications in the prolonged absence of an effective comprehensive plan.

The Committee authorized the APA to join a letter drafted by Scott Houston of the Texas Municipal League, requesting the Texas Supreme Court to review the Court of Appeals' ruling in this matter. Members of the committee contributed analysis for the letter.

On January 26, 2018, the Texas Supreme Court ordered full briefing of the case. Unfortunately, on August 31, 2018, the Texas Supreme Court denied (without explanation) Plano's petition for review.

B. *Elvis Cruz, et al., v. City of Miami* (Florida District Court of Appeals)

A Florida statute, Section 163.3215(3), authorizes an aggrieved party to bring an action to challenge a Development Order that "materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan." Section 163.3194(3)(a) also requires that a development order or land development regulation be consistent with the comprehensive plan "if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation: are compatible with and further" the objectives of the comprehensive plan. Florida's Second District Court of Appeals had published a decision narrowly interpreting statutory standing to challenge the consistency requirements of a development plan, as applying only to alleged inconsistent use, density, or intensity of the subject property. *See Heine v. Lee County*, 221 So.3d 1254, 1257 (Fla. 2d DCA 2017). Then, in October 2017, the *Heine* decision was interpreted by a lower court in Miami, in a way that construed the consistency requirement even more narrowly. The City had approved a furniture sales showroom for an area guided as residential. But because the circuit court did not consider that the challenge was based on the allegedly inconsistent use, density or intensity of the subject property, it granted summary judgment for the City. Plaintiffs then appealed.

In January 2018 the committee authorized submission of an amicus brief to the Third District Court of Appeals. That brief, which the Florida APA chapter joined, was submitted in early March 2018, and was written by committee member Nancy Stroud. It urged the court to construe the Florida

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Amicus Update

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statutes as authorizing court challenges to ensure consistency with any part of an applicable comprehensive plan, not limited to matters related to uses, densities and intensities. It urged the appellate court to allow an affected third party to challenge the consistency of a local government development order with the comprehensive plan if the order materially alters the use or density or intensity of the property (regardless of whether the alleged inconsistency does so as well), and then to use such standing to attack inconsistencies with any element of the comprehensive plan, and with any objective or policy of the plan.

Oral arguments were held on September 11, 2018. Unfortunately, on November 7, 2018, the appellate court issued a one-line order affirming the decision below. See *Cruz v. City of Miami,* 259 So. 3d 97 (Fla. Dist. Ct. App. 2018) (table).

II. Amicus briefs filed and awaiting decision

***A. Knick v. Township of Scott* (U.S. Supreme Court)**

Current takings jurisprudence provides that before a property owner can state a ripe claim of a taking without just compensation in violation of the Fifth Amendment, he or she must first try and fail to obtain just compensation under reasonably available state law remedies. This is generally known as "prong two" of the ripeness requirements stated in the 1985 *Williamson County* case, although the requirement predates that decision by many decades. Over the last fifteen or twenty years, many cert petitions have asked the Court to throw out this requirement. In the Court's 2005 opinions in the *San Remo* case (which did not directly involve ripeness but the effect of a state-court adjudication that resulted from trying to ripen a federal takings claim), four justices (Thomas, Rehnquist, Kennedy and O'Connor) seemed ready to cut back on this requirement, but Justice Scalia didn't join that opinion.

On March 5, 2018, the U.S. Supreme Court granted a cert petition that presents that question of whether *Williamson County*'s "prong two" requirement should be overruled. The case is *Knick v. Township of Scott.* It is less of a regulatory takings suit than a physical invasion takings suit. (The Township adopted an ordinance requiring cemeteries to be open to the public.) But petitioners are not just trying to repeal prong two in facial physical invasion cases.

After extensive discussions, the amicus committee authorized submission of an amicus brief that staked out a position independent of either party to the case. Noting that the Supreme Court's current precedent generally requires that takings plaintiffs first seek just compensation under state law in order to "complete" their federal takings claim, but that the Supreme Court's 2005 *San Remo* decision recognized an exception to that requirement for facial takings claims, the APA brief urged the Court to continue to follow both lines of authority, leaving both requirements in place (and therefore reversing the Third Circuit's decision based on the facial takings claim exception). Equally important, however, the amicus brief identified several situations in which the general rule had been misinterpreted and misapplied in certain lower courts, thus creating conflicts, and recommended how such conflicts could be resolved in a way that is consistent with the objectives of sound land use planning.

The case has been argued, then re-argued. The first argument occurred in October 3, 2018 (during the Court's first week of the term), before an eight-judge Court (because Justice Kennedy had retired, and Brett Kavanaugh had not yet been confirmed). One month later, the Supreme Court ordered supplemental briefing of an issue and announced the case would be reargued. (By that point, Justice Kavanaugh had been sworn in, so setting reargument insured that the case would be decided by a nine-justice Court, which reduced the chances of a tie vote.) The

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Help the APA Amicus Committee!

The APA occasionally files amicus curiae, or "friend-of-the-court," briefs in state and federal courts in cases of importance to the planning profession and the public interest. The role of the Amicus Curiae Committee (which is populated entirely by PLD members!) is to find and review cases of potential interest and to make a recommendation as to whether APA participation is warranted.

The Committee is always interested in learning about cases that it might consider for participation, and is always searching for attorneys interested in drafting amicus briefs. If you hear of an interesting case or are interested in joining our bank of brief writers, please email John M. Baker, Amicus Committee Chair, at JBaker@greeneespel.com.

For additional information on Committee members and briefs, visit: www.planning.org/amicus

Amicus Update

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supplemental briefing order specifically directed the parties to brief or re-brief Knick's fallback argument, discussed in footnote 14 of Knick's brief on the merits and during the oral argument by Justices Alito and Kagan. That question was, in essence, whether the Fifth Amendment is violated if the government (1) takes property and (2) fails to provide or guarantee compensation at the time of the property injury challenged as a taking. The effect of interpreting the Fifth Amendment that way, would be to make a takings claim "complete" upon a final decision constituting a taking unless the defendant government either cuts a check for an amount constituting just compensation, or guarantees to do so. The focus of the rebriefing order suggested that one or more justices may be interested in finding an point in the process (earlier than failing to obtain compensation after pursuing a meaningful state law avenue) when an alleged taking will become one that is "without just compensation."

The case was then reargued on January 16, 2019. On the issue that was the subject of supplemental briefing, the United States and the Township were aligned, but the United States still argued that the taking itself gives rise to federal subject matter jurisdiction in federal court. This time, there was more attention given to the Court's historical decisions, with both the property owner and the Township attempting to show that their interpretation was well-rooted in the Court's pre-*Williamson County* caselaw, but with the United States brief distinguishing the plaintiff's authorities. There was also greater attention given to separation of powers issues, with Knick arguing that plaintiffs alleging takings by state or local governments should have the same rights that exist by statute against the federal government, and the Township arguing that the failure of Congress to have enacted a local government version of statute means the Court should stay its hand.

As of March 27, 2019, the Court has not yet issued its ruling.

III. <u>Cases considered for amicus participation in the last year, but ultimately declined</u>

A. **(Alabama Supreme Court)**

This case involves a potential indirect restriction on the authority of Alabama cities to require public utilities and telecommunications companies, as part of the redevelopment of a downtown area, to move their lines underground, at least without having the question caught up in a state public service commission's rate regulation processes. The trial court ruled that it lacked jurisdiction.

B. **(Minnesota Supreme Court)**

This case involves a takings clause and dormant commerce clause challenge to a county that adopted an ordinance that bans all "industrial mining" but allows mining for "local construction materials." The main purpose of "industrial mining" is to obtain silica sand, which is used for fracking. Because there is no in-state oil and natural gas drilling in Minnesota, all silica sand used for fracking in exported to other states. Until the new ordinance was adopted in 2016, the County required a conditional use permit (CUP) for both construction and industrial mining. After the ordinance, industrial mining was banned, but construction mining continued to require a CUP. The case is scheduled to be argued April 10, 2019.

C. ***Center for Community Action and Environmental Justice v. City of Moreno Valley*** **(California Supreme Court)**

The case involves whether the state constitutional rights of initiative and referendum give citizens a right to craft a development agreement that could then be adopted or rejected by a voter initiative, or whether, at most, the role of the citizens is limited to a referendum that could occur after a city's legislative body approves the development agreement. (The California Supreme Court ultimately declined to review the case).♦

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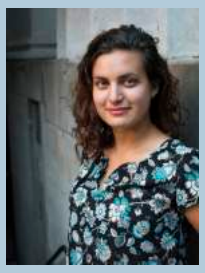
PLD Announces Winners of 35th Annual Smith-Babcock-Williams Student Writing Competition

PLD sincerely congratulates the winners of this year's Smith-Babcock-Williams Student Writing Competition for their exemplary contributions to the planning field.



Bauman

First prize goes to Andrew Bauman for his article "Legally Enabling a Modern-Day Mayberry: A Legal Analysis of Form-Based Codes." Andrew graduated in May 2018 from Saint Louis University School of Law with a Concentration in Urban Development, Land Use and Environmental Law. He is an Associate Attorney at Wegmann Law Firm in Hillsboro, MO and is a member of the The Missouri Bar.



Akrawi

Second prize was awarded to Emma Akrawi for her article "Conservation Easements & Adaptation: Considering a Climate Lens." Emma will graduate in 2019 from Vermont Law School. After completing a judicial clerkship, Emma hopes to pursue work in support of people mitigating climate change through sustainable energy, land use, and agricultural practices.

Finally, **honorable mention** was awarded to Alyssa Bruns for "Murr v. Wisconsin: When State and Local Land Use Regulation Becomes Takings." Alyssa will graduate in 2019 from Mitchell Hamline School of Law and plans to pursue a career in real property.



Bruns

We express our deep appreciation to Alan Weinstein, the Chair of the SBW Writing Competition Committee, for his continued dedication to this program. Many thanks to all PLD members who supported our competition by passing along the announcement to eligible students and encouraging them to submit entries.

Announcement of Next Competition – deadline is June 7th!

PLD's 36th Annual Smith-Babcock-Williams Student Writing Competition is open to law students and planning students writing on a question of significance in planning, planning law, land use law, local government law or environmental law. The **deadline for entries is June 7, 2019** The winning entry will be awarded a prize of $2,000 and submitted for publication in *The Urban Lawyer*, the law journal of the American Bar Association's Section of State & Local Government Law. The Second Place paper will receive a prize of $400 and one Honorable Mention prize of $100 also will be awarded. Click here for official rules and further details.

Please support the Smith-Babcock-Williams Student Writing Competition by sharing this announcement with eligible students and encouraging them to submit entries.

Report on 2018 Student Writing Competition
by Alan Weinstein, Esq.
March 6, 2019

We received twenty entries last year for the 35th annual Smith-Babcock-Williams Student Writing Competition. The number of entries in recent years remains well below our previous "normal" level of 35-50 entries; however, this appears to be common to other similar student writing competitions.

The 1st Prize winner ($2,000) was Andrew Bauman, Saint Louis University School of Law, Class of 2018, for: "Legally Enabling a Modern-Day Mayberry: A Legal Analysis of Form-Based Codes." The 2nd Prize winner ($400) was Emma Akrawi, Vermont Law School, Class of 2019, for: "Conservation Easements & Adaptation: Considering a Climate Lens." Honorable Mention ($100) was awarded to Alyssa Bruns, Mitchell Hamline School of Law, Class of 2019, for: "*Murr v. Wisconsin*: When State and Local Land Regulation Become Takings."

Because I will be away from the university on Sabbatical from mid-May 2019 until mid-August 2020, Brian Connolly graciously agreed to manage the 2019 Competition. Going forward from there, it is likely that I will remain at the university for only one more year after I return from my Sabbatical, so I think the time has come for me to step-down as Chair after about 25 years.

I recommend that we discuss the future of the Writing Competition at the Business Meeting based on three developments: the need to find a new Chair for the Competition, the "new normal" low number of entries, and changes at *The Urban Lawyer,* including transition from print to online and the apparent failure to find a law school "host" for the journal. These changes have resulted in no issues being published (online) since May 2018. In response to my inquiry about when publication is expected, Robert Thomas, Chair of the Section, replied: "The articles are in production with ABA Publishing, having gone through the editing process with our editors. We are awaiting ABA Publishing's response on when the Issue will be ready."

Law Content Committee Report

by Jennie Nolon Blanchard, Esq., MEM

Jennie Nolon Blanchard is the current Chair for the APA's National Planning Conference Law Content Committee and is a former Chair of the Planning and Law Division, of which she has been a member since 2009. She is Adjunct Professor and Senior Staff Attorney at the Land Use Law Center of Pace University's Elisabeth Haub School of Law.

This report reviews what the Law Content Committee did this year, as well as changes that have been made to the law session selection process and lessons learned for the future. Tremendous thanks to the members of the Planning and Law Division who served with me on this year's NPC Law Content Committee: Brian Connolly (Committee Vice Chair), John Baker, Daniel Bolin, Rebekah Dohrman, Donald Elliott, David Henning, Daniel Mandelker, Evan Seeman, David Silverman, Susan Trevarthen, and Alan Weinstein.

Assessed Proposals for CM-Law Qualification

The main charge of the Law Content Committee is to assess National Planning Conference (NPC) proposals for qualification as sessions offering CM-Law credit. To qualify for CM-Law, a proposal must demonstrate that the content is related to planning law (such as environmental law, land use law, redevelopment law, administrative law, or housing law), with training on law constituting a majority of the proposal content. The content must be closely related to recently enacted planning laws or recent (within the last 10 years) case decisions, or to trends in existing planning laws or case decisions.

This was the second year for the APA's new process of selecting law sessions. Last year (for NPC18), the Committee reviewed twelve session proposals, eight of which it approved for law credit, constituting the full lineup of law sessions at NPC18. From these eight sessions, the Committee selected three for Bettman Law Series distinction. The twelve proposals were given to the Committee for review only after they successfully completed the subject mater track review process. Meaning that several proposed law sessions (some with prominent speakers covering important topics) never made it to the Committee because they were eliminated by the track reviewers. The consensus at that time was that, should the Committee be given the opportunity to review law sessions earlier in the process, we could avoid the elimination of important sessions that seemed less exciting to track reviewers.

To accommodate our request, APA changed the timing of the Law Content Committee's review for NPC19 to coincide with review by the track committees. Recommended sessions from the law Committee were then heavily weighted in favor of approval by track chairs. This year, the Committee reviewed seven session proposals (technically eight, but one was a duplicate that was submitted as both a deep dive and regular educational session).
After reviewing the written Committee Member comments, the Committee held a conference call to discuss the sessions. From the seven proposals, the Committee approved six for law credit, all of which were accepted by their respective track review chairs.

Made Recommendations to Improve Proposals

Once the committee assesses proposals for CM-Law credit worthiness, the goal then becomes to ensure that these law sessions are strong enough to receive final approval by APA's NPC Education Subcommittee for the NPC19 lineup. As part of the Committee conference call, the group made recommendations for changes to four of the six law-qualifying sessions. All session proposers (most of whom were on the Committee) implemented the suggested changes and submitted revised proposals.

All six of the Committee's approved sessions were subsequently accepted for NPC19 by the NPC Education Subcommittee. This lineup includes sessions on (1) religious inclusiveness in wake of RLUIPA, (2) federal laws governing what can be done to slow or mitigate the impacts of gentrification, (3) legal issues with short-term rentals, (4) approaches to addressing nonconformities, (5) effective legal tools for problem properties, and (6) intergovernmental dynamics (covering the complicated relationship between land use regulatory authorities and other units of local government, particularly schools).

Identified & Filled Gaps in Coverage

After speaking with APA about the small number of law sessions proposed, APA agreed that NPC19 would likely need three additional strong law sessions and suggested that the Committee develop or solicit additional proposals, to be submitted through the Emerging Trends call.

As part of the Committee's conference call, the group identified gaps in coverage in the proposed session lineup and developed proposals to fill these gaps. The Committee also identified several PLD members who are well-respected legal experts and frequent NPC speakers who were not currently included in existing law proposals and attempted to sign them on as speakers for the newly developed sessions.

The four new sessions proposed covered: (1) equity in zoning (substantive implementation of equity matters, going beyond procedural inclusion in the process), (2) legal and planning issues related to regulating marijuana, (3) right-of-way management (covering a broad range

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Content Committee

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of issues stemming from small cell antennae, to scooters, autonomous vehicles, dockless bikeshares, etc.), and (4) managing the digital-age public meeting (covering the perennial topic of constitutional requirements in the application and approval process).

The first three of these four sessions were selected for the NPC19 lineup through the Emerging Trends session review process (on which only the Committee Chair and Vice-Chair were given the opportunity to vote) and were approved for CM-Law credit, resulting in nine total law sessions at this year's conference.

Selected Sessions for Bettman Law Series

The Committee's final charge for NPC19 was selection of three out of the nine sessions to be honored with the Bettman Law Series distinction. In addition to providing a platform for leading voices in planning and law, the Bettman Law Series honors the career of Alfred Bettman, who served as the first president of the American Society of Planning Officials from 1934 through 1938 (which consolidated with the American Institute of Planners some forty years later to create the American Planning Association). He was a groundbreaking figure devoted to making the case that the practice of city planning, when applied effectively, could work to improve the public good.

After the Emerging Trends sessions were approved and the full lineup of law sessions was finalized, the Committee voted using a ranking system to select the three most appropriate sessions for Bettman distinction. Through this process, the Committee selected the sessions on (1) equity in zoning, (2) problem properties, and (3) gentrification for this year's Bettman Law Series.

Negotiated Process Improvements

This was the second year for the APA's new process of selecting law sessions. We saw improvements upon last year's process and have identified the need for further changes. Over the past two years serving as Committee Chair, I have had countless conversations with APA on how to develop a workable process that results in high-quality law sessions. There were certainly marked improvements in the process and outcomes, but issues still remain.

Selection of Chair & Committee:

One issue discussed with APA is how to ensure that law content reviewers are truly qualified to assess law sessions. Law and Ethics are specialty categories for CM credit and individuals who assess sessions on these topics need to possess such expertise—especially because the content reviewer scores and comments are considered by track chairs when making their final selections. The APA's process for selecting reviewers relies on members to volunteer as track or content reviewers. Thus, members with an interest in law, but lacking necessary expertise, may volunteer for the Law Content Committee. The Ethics Content Review Committee is constituted by members of the AICP Ethics Committee. Working with APA to develop a similar system for the Law Content Committee, we determined that, going forward, the Committee will be Chaired by the current Chair of the Planning and Law Division, who will be given the opportunity to review the law content volunteers and select those whose biographies demonstrate familiarity with the law to serve on the Committee. Membership in the Planning and Law Division is also considered. To sit on the Committee, individuals *must* volunteer to serve as law content reviewers through the online system, as the Chair will not be permitted to appoint additional members.

We tested this approach for the first time this year with great success, though some additional research was required as some bios were insufficient to determine legal experience. Due to the small number of session proposals, I was able to limit Committee members to those with legal backgrounds—having all reviewers review all proposals—resulting in a true Committee of experts, constituted by leading members of the Planning and Law Division. APA expressed some concern that we may not be able to spare volunteers if presented with a large number of proposals because they will have to be divided up. This is an issue that can be addressed if and when it arises. The main issue for the Committee Chair to address going forward is to ensure that leading PLD members continue to volunteer through the online portal. This requires providing reminders and instructions separate from those contained in APA emails, which are often overlooked.

Number of Proposals:

As mentioned above, to avoid the main issue faced during the NPC18 review (i.e., elimination of important sessions that appeared less exciting to track reviewers), APA changed the timing of the Law Content Committee's review for NPC19 to coincide with review by the track committees. Unfortunately, APA received significantly fewer law session proposals for NPC19. The positive outcome of this change was that all six of the Committee's approved sessions made it through to the NPC19 lineup, instead of being eliminated in the track review process. The situation, however, presents a new issue that next year's Committee Chair should work with the rest of PLD to address: how to garner a larger number of high-quality law sessions through the initial submission process in June.

Gaps in Coverage & Speakers:

Upon my initial receipt of the original seven law session proposals this year, I expressed some concerns to APA regarding the small number of sessions, some quality issues raised by reviewer comments, gaps in content coverage, and the absence of quite a few of PLD's well-respected legal experts who frequently serve as NPC speakers. To address these concerns, APA suggested the process described above where the Committee would not only vet sessions for law credit, but also recommend changes to strengthen proposals, identify gaps and develop Emerging Trends sessions

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Education Committee FY2018 Program Report

2019 American Planning Association National Planning Conference – San Francisco, CA
Planning & Law Division Business Meeting – Monday, April 15, 2019 – 7:00 to 8:30AM
by David Silverman, Esq., AICP

In FY2018 (October 1, 2017 through September 30, 2018) PLD sponsored two webinars, attended by over 100 people that together generated over $4,000 in Division revenue, after you subtract APA's fees. Volume-wise, this was not a great year for us, but the programming was still very high quality and well attended and received. The FY2018 webinars were:

- Special Topics in Planning and the First Amendment, December 14, 2017
  Daniel Bolin, Ancel Glink, P.C.
  Brian Connolly, Otten Johnson Robinson Neff & Ragonetti, P.C.
  Evan Seeman, Robinson & Cole LLP

- Rules of the Game: A Framework for Fair & Effective Zoning Hearings, July 26, 2018
  Kurt Asprooth, Ancel Glink, P.C.
  David Silverman, Ancel Glink, P.C.

More encouraging, we are off to a solid start on FY2019 (October 1, 2018 through September 30, 2019) webinar programming. So far, PLD has sponsored:

- Planning, Law, and Plain English, November 1, 2018
  Kimberley Mickelson, City of Houston
  David Silverman, Ancel Glink, P.C.

- Planning and Caselaw Update, January 31, 2019
  John Baker, Greene Espel
  Deborah M. Rosenthal, FitzGerald Yap Kreditor LLP
  Alan Weinstein, Cleveland State University, Cleveland-Marshall College of Law/Maxine Goodman Levin College of Urban Affairs

- How Land Use and Resource Regulations are Shaping the Legal Cannabis Industry, March 21, 2019
  Erin Lapeyrolerie, PLD's 2018-19 Curtin Fellow
  Karla Chaffee, Robinson & Cole LLP
  Joanna Hossack, Clark Neubert LLP
  Christina Sava, Anthony

These three webinars have been attended by about 140 people and generated over $4,000 in Division revenue, once you net out APA's fees, which is $500 per webinar—an ongoing issue that I've raised with them—for a "platform and setup" fee. Regardless, FY2019 is off to a much stronger start than the entirety of FY2018. We believe we can make FY2019 among the best, particularly since PLD has endorsed eight sessions at this year's National Planning Conference. That is a tremendous amount of ready-made content that can be converted and shared with a wider audience through our webinar programming. This year's eight endorsed sessions are as follows (refer to the Planning & Law Track flyer for more information):

- Legal Issues with Short Term Rentals, Saturday, April 13, 10:45AM – 12:15PM
  Dan Bolin, Ancel Glink, P.C.
  Teresa Ou, Host Compliance, LLC
  Christopher Smith, Chaddick Institute – DePaul University

- Right-of-Way Management: Small Cells to Scooters, Saturday, April 13, 1:00PM – 2:30PM
  Dan Bolin, Ancel Glink, P.C.
  Brandon Bordenkircher, Chaddick Institute – DePaul University
  Alicia Giudice, City of San Rafael, CA
  Gail Karish, Best Best & Krieger LLP
  Alan Weinstein, Cleveland State University, Cleveland-Marshall College of Law/Maxine Goodman Levin College of Urban Affairs
  Kent Wyatt, Engaging Local Government Leaders

- Effective Legal Tools for Problem Properties (Bettman Symposium), Sunday April 14, 8:30AM – 10:00AM
  Jessica Bacher, Pace University Land Use Law Center
  Meg Byerly William, Skeo Solutions, Inc.
  Alan Mallach, Center for Community Progress
  Dwight Merriam, Attorney at Law

- Gentrification and the Law, (Bettman Symposium), Sunday April 14, 10:30AM – 12:00PM
  William Anderson, AECOM
  Don Elliott, Clarion Associates

- Regulating Marijuana: Legal and Planning Issues, Sunday, April 14, 1:00PM – 2:30PM
  Karla Chaffee, Robinson & Cole, LLP
  Greg Minor, City of Oakland, CA
  Alan Weinstein, Cleveland State University, Cleveland-Marshall College of Law/Maxine Goodman Levin College of Urban Affairs

- Everything Old Is New Again, Sunday, April 14, 5:45PM – 7:15PM
  Abram Barge, City of Denver
  Brian Connolly, Otten Johnson Robinson Neff & Ragonetti, P.C.
  Matthew Goebel, Clarion Associates

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Education Committee

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- Intergovernmental Dynamic: Politics, Laws, and Schoolhouses, Monday, April 15, 10:15AM-11:45AM
  David Silverman, Ancel Glink, P.C.
  Candace Stowell, City of South Lake Tahoe, CA
  Kizito Wijenje, Albuquerque Public School District, NM
  Frank Zotter, School and College Legal Services

- Equity in Zoning: More than Words (Bettman Symposium), Monday, April 15, 1:00PM to 2:30PM
  Don Elliott, Clarion Associates
  Elizabeth Garvin, Community ReCode
  Deborah Rosenthal, FitzGerald Yap Kreditor LLP

We'd really like at least three—preferably all—of these sessions to be converted into webinars. We do not anticipate that converting the sessions into webinars will require a lot of front-end work for the speakers. The amount of exposure, not only for the individual speakers and their companies but also for PLD, as well as the revenue potential, is huge. We absolutely need to seize these opportunities.

Within a few weeks after NPC19, PLD Leadership will reach out to the endorsed session speakers to schedule dates for webinars. This always takes a fair amount of coordination with APA, but all the speakers really need to do is show up on the scheduled date; we will handle all APA logistics.

As demonstrated by the breadth of programming and the extraordinarily talented people presenting at the sessions above, PLD's single greatest contribution to APA membership is our members' collective knowledge base and unique experiences. Our Division is uniquely situated to really impact planning practice in the United States. That impact is best delivered through innovative programming.

Please consider getting involved with PLD's webinar program. It is a great way not only to share your knowledge but also to build your personal and firm brand among a huge audience of people in your home states and across the country. In addition, do not forget that *Planning Magazine* has an 800-word column every month called Legal Lessons, and they pay for content! If you are interested in writing for the Legal Lesson column, please contact Lindsay Nieman, Associate Editor at 312-786-6731 or lnieman@planning.org. Finally, we are exploring a few other ways to broaden PLD's reach and more current, and perhaps less formal, ways to deliver content. PLD will explore opportunities to join forces with organizations outside the APA universe, such as Engaging Local Government Leaders (ELGL), to build expanded relationships with a broader range of local government professionals. We will also provide opportunities to deliver content through podcasting, a conversational and easy to use way to share information and ideas.♦

Content Committee

continued from previous page

to fill these gaps, and attempt to fill speaking roles with the missing legal experts.

While this process ultimately produced a sufficient number of high-quality law sessions, it was not without problems. The major issue being that the identified gaps in coverage do not always produce topics that qualify as an emerging trend. The Committee's initial review this year identified a major gap in sessions covering perennial topics that provide planners with important fundamentals. The Committee developed a strong session proposal to fill this gap but, ultimately, it was rejected—most likely because it truly could not pass muster as an emerging trend.

The issue that next year's Committee Chair should work with the rest of PLD to address is ensuring that sessions covering not only important hot topics, but also important planning law fundamentals are proposed through the initial submission process in June. Also to consider is how to ensure that sessions involve a broader array of legal experts, including both our leading PLD members as well as non-member experts who might then gain interest in joining PLD.

Conclusions:
One problem in dealing with the above issues is that Committee members are newly selected each year and the NPC proposal submission window closes only one week after Committee members are notified of their selection as reviewers (at least according to last year's timeline). Fortunately, as mentioned, APA has agreed to appoint the PLD Chair to serve as Law Content Committee Chair going forward. Therefore, although the full Committee will not be appointed in time to help address the above issues, the Committee Chair will be known and can still manage this process.

While there are some additional issues not discussed in this report, most are minor and will be remedied with further experience. Over the past two years, APA has been extremely helpful and willing to make adjustments, but they cannot do this without feedback from members and from the Committee. Please be sure to express any concerns to me or to the next Committee Chair, Evan Seeman, who will continue this charge to work with APA to improve this new and evolving process.♦

INDUSTRY RESOURCES FROM PLD MEMBERS

Quorum Forum: The podcast local governments need to do business



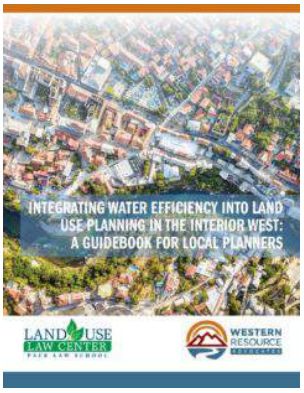
Be sure to tune into Ancel Glink's "Quorum Forum," the podcast local governments need to do business!

Launched last year, Quorum Forum includes episodes covering a wide array of topics from tiny homes to liquor control, to sunshine laws, and the silver tsunami.
Visit http://quorumforum.ancelglink.com to see the full lineup of episodes.

Listen and subscribe on your favorite podcast platform:
iTunes: https://itunes.apple.com/us/podcast/quorum-forum/id1380233731
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Interested in being a guest? Show ideas? Email podcast@ancelglink.com

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New Resource: Guidebook on Land Use Planning Strategies for Water Conservation

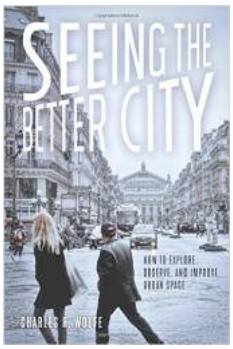
For a secure water future, water conservation and efficiency must be integrated into community planning and development.

The new Guidebook, "Integrating Water Efficiency into Land Use Planning in the Interior West: A Guidebook for Local Planners", provides hundreds of techniques, sample codes/policies, and community examples that explain how to reduce the water footprint of new development. Each chapter provides water efficiency policy options in a different planning stage. These include comprehensive plans, zoning code, subdivision regulations, site-plan regulations, development agreements, non-zoning incentives, and more.

Western Resource Advocates teamed up with Pace University's Land Use Law Center to develop this comprehensive Guidebook that provides land use planners with the resources necessary to fully integrate water efficiency into their land use planning efforts. The partner organizations worked for five years training local governmental officials, developing and testing land use tools and techniques, and receiving input from and recommending actions to regional and state agencies. Click here to download this resource

Going to San Francisco? Check out our conference guide on page 30

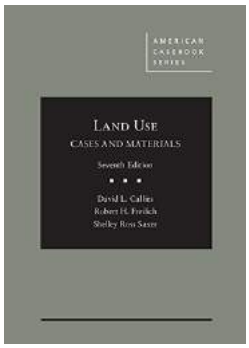
Recent Books by PLD Members



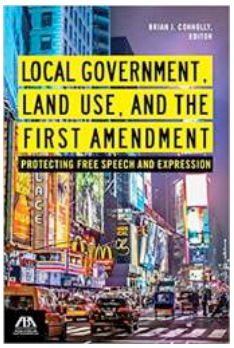
Charles R. Wolfe, *Seeing the Better City: How to Explore, Observe, and Improve Urban Space,* Island Press, 2017.



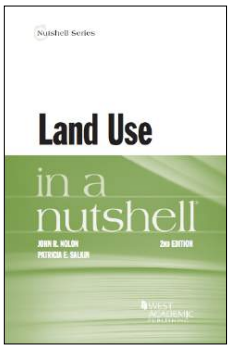
Adam Lovelady and David W. Owens, *Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions*, UNC School of Government, 2017.



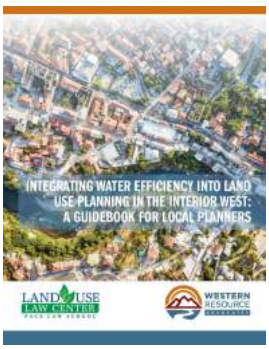
David L. Callies, Robert Freilich & Shelley Ross Saxer, *Cases and Materials on Land Use (American Casebook Series - 7th edition),* West Academic Publishing, May 2017.



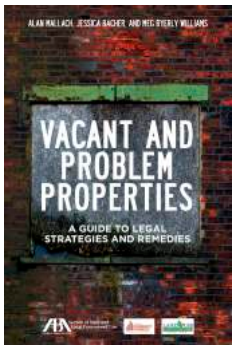
Brian J. Connolly, Ed. *Local Government, Land Use, and the First Amendment: Protecting Free Speech and Expression,* ABA Publishing, 2017.



John R. Nolon and Patricia E. Salkin, *Land Use in a Nutshell,* Thomson West, 2017.



Jennie Nolon Blanchard, Ed. *Integrating Water Efficiency Into Land Use Planning in the Interior West: A Guidebook for Local Planners,* Western Resource Advocates, 2018.



Alan Mallach, Jessica Bacher & Meg Byerly Williams, Eds. *Vacant and Problem Properties: A Guide to Legal Strategies and Remedies*, ABA Publishing, 2019.

Recent Articles by PLD Members

2019

Mark White, "Codes that Avoid Regulatory Takings Traps: Applying Murr v. Wisconsin," *Zoning Practice* (forthcoming).

2018

Howard D. Geneslaw, "Development Applications Must Include All Checklist Items to Receive Protection from Changes in Development Regulations, New Jersey Supreme Court Rules," (2018).

Daniel Mandelker, Practicable Alternatives for Wetlands Development Under the Clean Water Act, *Environmental Law Reporter*, Vol. 48, No. 10 (2018).

Dwight H. Merriam, For the Record, *The Commissioner* (2018).

John R. Nolon, Low Carbon Land Use: Paris, Pittsburgh, and the IPCC, *University of Arkansas Little Rock Law Review* Vol. 40 (2018).

Evan J. Seeman, John F. X. Peloso, Jr., Karla L. Chaffee, and Diana E. Neeves, Robinson Cole LLP, Local Government Regulation of Religious Land Uses Under RLUIPA, *Thomson Reuters Practical Law* (2018).

Evan J. Seeman, Brian R. Smith, and Kevin P. Daly, Inverse Condemnation: Asserting the Ripeness Defense in Federal Courts, *Thomson Reuters Practical Law* (2018).

Evan J. Seeman, Brian R. Smith, and Kevin P. Daly, Inverse Condemnation: Subsumption and Ripeness of Related Constitutional Claims, *Thomson Reuters Practical Law* (2018).

Ed Sullivan, "Protecting Oregon's Estuaries," *Ocean & Coastal Law Journal*, Vol. 23, No.2 (2018).

Ed Sullivan, "Shorelands Protection in Oregon," *Journal of Environmental Law and Litigation,* Vol. 33 (2018).

Ed Sullivan and Paul Diller, "The Challenge of Housing Affordability in Oregon: Facts, Tools and Outcomes," *Journal of Housing and Community Development,* Vol. 27 (2018).

Ed Sullivan, Steven R. Schell and Alan K. Brickley, "Climate Change and Oregon Law: What Is to Be Done?" *Journal of Environmental Law and Litigation,* Vol. 33 (2018).

Mark White, "The Takings Denominator in Zoning Lot Merger Cases: Murr v. Wisconsin," *Planning & Law* (Spring 2018).

2017

David L. Callies, Housing Discrimination and Exclusionary Zoning in the United States, (with Derrick B. Simon) *Journal of International and Comparative Law,* Vol. 3 (2017).

Brian J. Connolly, Understanding the First Amendment Limitations on Government Regulation of Artwork, *State and Local Law News*, Vol. 40, No. 2 (Winter 2017).

For a full list of publications by PLD members, visit:

www.planning.org/divisions/planningandlaw/member/memberpublications.htm

If you are a PLD member and would like us to add your book, article, or other publication to our website, contact Chair-Elect, Brian Connolly at bconnolly@ottenjohnson.com.



PLD's National Planning Conference Guide

PLANNING CONNECTS US
NPC 19
San Francisco
April 13–16, 2019

April 13-16 | San Francisco

PLD is proud to be one of nine divisions partnering together to create the first **Divisions' Joint Day of Service**

The event is funded in large part through a grant from the APA Divisions Council and contributions from each of the involved divisions.

Organized in partnership with the Fruitvale Unity Council, the project will target areas with high propensities of graffiti and vandalism along highly travelled pathways leading to the Fruitvale BART Station.

If you can arrive to NPC a day early, PLEASE JOIN US!
Details and link to register in image below.

Divisions' Joint Day of Service @ NPC 2019

Fruitvale TOD and Village Beautification Project – *8 FREE CM CREDITS!* **Friday, 4/12, 9:00am – 5:00pm**

APA Transport | APA Women & Planning | APA Housing & CD | APA Black Comm. | APA Latinos | APA LGBTQ | APA Planning & Law | APA Small Town & Rural | APA Tech

in partnership with

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Co-sponsored by the APA Divisions Council



Join APA Divisions just a little bit early in San Francisco as we partner with the Fruitvale Unity Council to beautify the area surrounding the Fruitvale BART Station. Our DAY OF SERVICE will include:

- **Community Mural**
- **Tile Art Treatment for Trash Receptacles**
- **Community Cleanup**
- **Pop-up Community Outreach with The Unity Council**

This is a great opportunity to support an incredibly vibrant community, and to live out our values as professional planners. Log CM credits here. *See you there!*

For more details or to sign up, click here.



Source: www.favianna.com



JOIN THE PLANNING & LAW DIVISION FOR OUR EVENTS
AT THE 2019 NATIONAL PLANNING CONFERENCE

Happy Hour

Sunday, April 14, 5:30-7:00 PM (Chambers Eat + Drink, 601 Eddy Street)

Network with PLD members and enjoy great conversation. Appetizers and your first drink are on us!
Located in TBD.

Business Meeting & Reception

Monday, April 15th 7:00-8:30 AM (Marriott Marquis - Pacific A)

Connect with other professionals, hear how PLD is doing, and learn more about the benefits of membership!

Thank you to our meeting sponsor:

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PLD Endorsed Sessions

(all offer CM-Law 1.5 & CLE 1.5)

Legal Issues with Short-Term Rentals
Saturday, April 13th, 10:45 AM-12:15 PM (3018)

Right-of-way Management: Small Cells to Scooters
Saturday, April 13th, 1:00-2:30 PM (3020)

BETTMAN SESSION: Effective Legal Tools for Problem Properties
Sunday, April 14th, 8:30-10:00 AM (3018)

BETTMAN SESSION: Gentrification and the Law
Sunday, April 14th, 10:30 AM-12:00 PM (3020)

Regulating Marijuana: Legal and Planning Issues
Sunday, April 14th, 1:00-2:30 PM (3020)

Everything Old Is New Again
Sunday, April 14th, 4:15-5:45 PM (3020)

Intergovernmental Dynamics: Politics, Laws, and Schoolhouses
Monday, April 15th, 10:15-11:45 AM (3020)

BETTMAN SESSION: Equity in Zoning: More Than Words
Monday, April 15th, 1:00-2:30 PM (3020)

Thank you to

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PLANNING & LAW — National Planning Conference 2019

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Making Great Communities Happen

*Use the **Planning & Law Division**'s suggested "Planning & Law Track" to make the most of the 2019 Conference. Learn more about the intersection of planning and law, and get an update on legal issues affecting planning.*

Saturday

Zoning Reforms to Boost ADU Development 10:45 a.m. - 12:00 p.m. (Room 2004) CM 1.25

PLD ENDORSED SESSIONS

Legal Issues with Short-Term Rentals 10:45 a.m. - 12:15 p.m. (Room 3018) CM-Law 1.5 & CLE 1.5
Right-of-way Management: Small Cells to Scooters 1:00 - 2:30 p.m. (Room 3020) CM-Law 1.5 & CLE 1.5

Sunday

Affordable Housing and Growth Management 8:30 - 9:45 a.m. (Room 2006) CM 1.25
Density Bonuses: Let's Get the Bonus! 8:30 - 9:45 a.m. (Room 2008) CM 1.25

PLD ENDORSED SESSIONS

BETTMAN SYMPOSIUM: **Effective Legal Tools for Problem Properties,** 8:30-10:00 a.m. (Room 3018) CM-Law 1.5 & CLE 1.5
BETTMAN SYMPOSIUM: **Gentrification and the Law,** 10:30 a.m. -12:00 p.m. (Room 3020) CM-Law 1.5 & CLE 1.5

Resilient Zoning: The Norfolk Experience 1:00 - 2:15 p.m. (Room 3014) CM 1.25
Short-term Rental Enforcement: Data and Innovation 1:00 - 2:15 p.m. (Room 2007) CM 1.25

PLD ENDORSED SESSION

Regulating Marijuana: Legal and Planning Issues, 1:00-2:30 p.m. (Room 3020) CM-Law 1.5 & CLE 1.5

Setting the Standard for Code Audits 2:45 - 5:15 p.m. (Room 3014) CM 2.5

PLD ENDORSED SESSION

Everything Old is New Again, 4:15-5:45 p.m. (Room 3020) CM-Law 1.5 & CLE 1.5

PLD Happy Hour
5:30-7:00 p.m.
Chambers Eat + Drink, 601 Eddy Street
Network with PLD members and enjoy great conversation

Monday

PLD Business Meeting & Breakfast
7:00-8:30 a.m.
Marriott Marquis, Pacific A
Connect with other professionals and hear more about the benefits of PLD membership
Sponsored by: Otten Johnson PC

Planning for Sign Code Success 8:30 - 9:45 a.m. (Room 2007) CM 1.25
Religious Inclusiveness in Wake of RLUIPA 8:30 - 10:00 a.m. (Room 3020) CM-Law 1.5 & CLE 1.5
Cannabis Ordinances: Models for Growth 10:15 - 11:30 a.m. (Room 3018) CM 1.25

PLD ENDORSED SESSIONS

Intergovernmental Dynamics: Politics, Laws, and Schoolhouses, 10:15-11:45 a.m. (Room 3020) CM-Law 1.5 & CLE 1.5
BETTMAN SYMPOSIUM: **Equity in Zoning: More Than Words,** 1:00-2:30 p.m. (Room 3020) CM-Law 1.5 & CLE 1.5

Is Zoning Racist? Equity and Zoning 2:45 - 4:00 p.m. (Room 3018) CM 1.25
Zoning Hacks for Missing Middle Housing 2:45 - 4:00 p.m. (Room 2016) CM 1.25

Tuesday

Innovations in TDR Programs 8:30 - 9:45 a.m. (Room 2008) CM 1.25
Preservation of Historic Signs 10:15 - 11:30 a.m. (Room 2004) CM 1.25



To join the Planning & Law Division:
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