

# Zoning Bulletin

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## Eminent Domain—State and local regulations bar separate sale or development of undersized, contiguous parcels under common ownership

Property owners allege regulations constitute a regulatory taking under the Fifth Amendment

Citation: *Murr v. Wisconsin*, 2017 WL 2694699 (U.S. 2017)

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*The United States Supreme Court has appellate jurisdiction over all federal courts and state court cases involving issues of federal law, as well as original jurisdiction over a small range of cases.*

SUPREME COURT OF THE UNITED STATES (WISCONSIN) (06/23/17)—This case addresses the issue of, when determining whether a regulatory taking has occurred, what is the proper unit of property against which to assess the effect of the challenged governmental action.

**The Background/Facts:** The Murr siblings (the “Murrs”) own two adjacent lots—Lot E and Lot F—along the lower portion of the St. Croix River in the town of Troy, St. Croix County, Wisconsin. The Murrs’ parents purchased Lot F in 1960, and built a small recreational cabin on it. In 1961, the ownership of Lot F was transferred to the family plumbing company. In 1963, the Murrs’ parents purchased Lot E, which they held in their own names. In 1994, Lot F was transferred to the Murrs. In 1995, Lot E was transferred to the Murrs.

Eventually, the Murrs sought to move the cabin on Lot F to a different portion of the lot. They also sought to sell Lot E to fund the cabin relocation project. However, the unification of the lots under common ownership in the 1990s implicated state and local rules that barred their separate sale or development.

For the area where the Murrs’ property is located, Wisconsin rules prevent the use of lots as separate building sites unless they have at least one acre of land suitable for development. (Wis. Admin. Code §§ NR 118.04(4), 118.03(27), 118.06(1)(a)(2)(a), 118.06(1)(b) (2017).) Under a grandfather clause, substandard lots which were “in separate ownership from abutting lands” on January 1, 1976, the effective date of the regulation, may qualify as separate building sites (Wis. Admin. Code § NR 118.08(4)(a)(1).) The state rules also include a merger provision, which provides that adjacent lots under common ownership may not be “sold or developed as separate lots” if they do not meet the size requirement. (Wis. Admin. Code § NR 118.08(4)(a)(2).) Because Wisconsin rules require localities to adopt parallel provisions, the St. Croix County zoning ordinance contains identical restrictions. (See Wis. Admin. Code § NR 118.02(3) and St. Croix County Ordinance § 17.36I.4.a (2005).) The Wisconsin rules also authorize the local zoning authority to grant variances from the regulations where enforcement would create “unnecessary hardship.” (§ Wis. Admin. Code NR 118.09(4)(b); St. Croix County Ordinance § 17.09.232.)

The Murrs sought variances from the St. Croix County Board of Adjustment (the “Board”) to enable their building and improvement plan, including a variance to allow the separate sale or use of Lots E and F. The Board denied the requested variances.

The Murrs appealed. The state courts affirmed. In particular, the Wisconsin Court of Appeals determined that the relevant St. Croix County Ordinance “effectively merged” Lots E and F, so the Murrs “could only sell or build on the single large lot.”

The Murrs then filed an action in state court. They alleged that the state and county regulations worked a regulatory taking by depriving them of “all, or practically all, of the use of Lot E because the lot [could not] be sold or developed as a separate lot.”

The Takings Clause of the Fifth Amendment of the United States Constitution provides that private property shall not “be taken for public use, without just compensation.” The Takings Clause is made applicable to the States through the Fourteenth Amendment. Generally, the Takings Clause requires private property owners be compensated when their property is acquired by the government for a public purpose. Courts have also recognized that government regulation may be so onerous as to constitute a taking, such as: when a regulation “denies all economically beneficial or productive use of land;” and when a regulation “impedes the use of property without depriving the owner of all economically beneficial use.” Still, courts recognize that “[t]he complete deprivation of use will not require compensation if the challenged limitations ‘inhere . . . in the restrictions that background principles of the State’s law of property and nuisance already placed upon land ownership.’”

Here, the Murrs contended that the state and county regulations deprived them of all economically beneficial or productive use of Lot E, which they submitted was appraised at a value of \$40,000.

The State of Wisconsin (“Wisconsin”) and St. Croix County (the “County”) (hereinafter, collectively, the “Respondents”) countered that in looking at the issue of whether there was a regulatory taking here, the two lots had to be considered as a single whole lot due to their merger under the regulations. Respondents submitted appraisal values of: \$698,300 for the two lots together as regulated, and \$771,000 for the lots as two distinct buildable properties; and \$373,000 for Lot F as a single lot with improvements.

Finding there were no issues of material fact in dispute, and deciding the matter on the law alone, the County Circuit Court granted summary judgment to the Respondents. The court found that the relevant regulations did not constitute a regulatory taking because the Murrs could still build a new cabin on either lot or across both. The court also found that the Murrs had not been deprived of all economic value of their property, because the decrease in market value of the unified lots as compared to the lots had they been distinct buildable properties was less than 10 percent (e.g., \$771,000 vs. \$698,300).

The Murrs appealed. The State Court of Appeals affirmed. The court held that the regulatory takings analysis properly focused on Lots E and F together and that, using that framework, the merger regulations did not effect a taking.

The Murrs again appealed. The Supreme Court of Wisconsin denied discretionary review. The Supreme Court of the United States granted certiorari.

**DECISION: Judgment of Wisconsin Court of Appeals affirmed.**

The Supreme Court of the United States held that the state and county regulations challenged by the Murrs did not work a regulatory taking on the Murrs.

The Court explained that because a test for regulatory taking requires a court to compare the value that has been taken from the property with the value that remains in the property, the court must, critically, determine how to define the unit of property “whose value is to furnish the denominator of the fraction.” Again, here, the Murrs had argued that the “denominator” was Lot E, such that with the value of Lot E as both the numerator and denominator—

the whole value of Lot E was “taken” by the regulations. And, again, Wisconsin had argued that the “denominator” was Lots E and F together as one parcel, such that any value of Lot E that was “taken” by the regulations was only a portion, and not all, of the parcel. The Court agreed with Wisconsin. The Court held that, for the purposes of determining whether a regulatory taking occurred here, the proper unit of property against which to assess the effect of the challenged regulations was the single parcel consisting of Lots E and F together.

In reaching that conclusion, the Court emphasized that “no single consideration can supply the exclusive test for determining the denominator.” Instead, said the Court, courts must consider a number of factors, including: the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land. Moreover, the court said, “[t]he endeavor should determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel, or, instead, as separate tracts.” More specifically, the Court provided the following “multifactor standard”:

First, courts should give substantial weight to the property’s treatment, in particular how it is bounded or divided, under state and local law. Second, courts must look to the property’s physical characteristics, including the physical relationship of any distinguishable tracts, topography, and the surrounding human and ecological environment. Third, courts should assess the property’s value under the challenged regulation, with special attention to the effect of burdened land on the value of other holdings.

Here, applying that standard, the Court first found that the treatment of the property under state and local law indicated that the Murrs’ property “should be treated as one when considering the effects of the restrictions.” The state and local regulations merged Lots E and F. The merger provision, held the Court, was a legitimate exercise of government power. Moreover, noted the Court, the Murrs’ land was subject to that regulatory burden only because of the “voluntary conduct in bringing the lots under common ownership after the regulations were enacted.” Thus, concluded the Court, the valid merger of Lots E and F under state and local law “informs the reasonable expectation that they [would] be treated as a single property.”

Applying the second factor, the Court concluded that the physical characteristics of the Murrs’ property supported its treatment as a unified parcel. The lots’ rough terrain, narrow shape, and location along the river, all led to the reasonable expectation that their uses may be limited and subject to public regulation, said the Court.

Applying the third factor, the Court concluded that the prospective value that Lot E brought to Lot F supported considering the two as one parcel for purposes of determining whether there was a regulatory taking. While the Murrs were prohibited from selling Lots E and F separately, that restriction was, found the Court, “mitigated by the benefits of using the property as an integrated whole, allowing increased privacy and recreational space, plus the optimal location of any improvements.” More specifically, noted the Court, the combined lots were valued at \$698,300, which was far greater than the summed value of the separate regulated lots (Lot F with its cabin at \$373,000, and Lot E at \$40,000, according to values submitted by the Respondents and the Murrs).

Thus, holding that the the Court of Appeals was correct to treat Lots E and F as one parcel, the Court also concluded that the Court of Appeals was correct to conclude that the Murrs could not establish a compensable taking. They had not been deprived of all economically beneficial use of their property; they still could have a cabin on one of the lots or across both. Nor had the regulation impeded their use of land through a significant economic impact or interference with their investment backed expectations: The regulations devalued the property by less than 10%, and the regulations predated the Murrs' acquisition of both lots. Finally, the governmental action, noted the Court, "was a reasonable land-use regulation, enacted as part of a coordinated federal, state, and local effort to preserve the river and surrounding land."

See also: *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S. Ct. 158, 67 L. Ed. 322, 28 A.L.R. 1321 (1922).

See also: *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798, 34 Env't. Rep. Cas. (BNA) 1897, 22 Env't. L. Rep. 21104 (1992).

See also: *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592, 52 Env't. Rep. Cas. (BNA) 1609, 32 Env't. L. Rep. 20516 (2001).

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*Case Note:*

*In its decision, the Court emphasized that there is no "categorical rule" or "any simple test" that all contiguous, commonly owned holdings must be combined for Takings Clause analysis. Rather, the Court said that courts must "define the parcel in a manner that reflects reasonable expectations of the property," through the application of the multifactor standard that the Court laid out in its decision.*

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## **Conditional Use/Grounds for Grant or Denial—County grants conditional use permit for funeral home, and community members appeal**

Community members contend county failed to consider adverse effects, including Asian community "cultural aversion to the death industry"

Citation: *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 2017 WL 2687761 (Md. 2017))

MARYLAND (06/22/17)—This case addressed the issues of whether, in granting a conditional use permit for a funeral home, a county board of appeals was required to: apply a zoning regulation that related generally to pub-

lic health, safety, security, or general welfare conditions; identify ordinary or inherent adverse effects of a funeral home; or consider “cultural aversion to the death industry” in its considerations.

**The Background/Facts:** Donaldson Properties (“Donaldson”) sought to build a funeral home and mortuary in a Rural Residential-Density Exchange Option (“RR-DEO”) zoning district in Howard County (the “County”). Funeral homes were authorized as a conditional use in the RR-DEO zoning district in the County, subject to requirements contained in Howard County Zoning Regulation (“HCZR”) §§ 131.B and 131.N.22. (See HCZR § 105.G.)

In June 2009, Donaldson filed a proposed conditional use plan (“CUP”) for the funeral home and mortuary. Donaldson later submitted two revised CUPs. In July 2013, the County Board of Appeals (the “Board”) issued a Decision and Order, finding that Donaldson’s revised CUP “met all of the legal criteria for the conditional use.” The Board based its conclusions “exclusively” on the General Standards for Use Approval contained in HCZR § 131.B and the Specific Criteria for Funeral Homes and Mortuaries contained in HCZR § 131.N.22.

Under § 131.B.2 of the HCZR, the Board had the power “to permit a conditional use provided that the proposed location [would] not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.” In evaluating a CUP under that standard, § 131.B.2 provided that the Board had to consider the following four adverse effect criteria: (a) physical conditions; (b) structures, walls, fences, and landscaping; (c) parking areas, loading areas, driveways, and refuse areas; and (d) safe access.

Section 131.N.22 provided that a conditional use may be granted for funeral homes or mortuaries in certain zoning districts, provided that certain land and building size and setback requirements were met.

Following the Board’s approval of Donaldson’s CUP, community members, organized as Clarksville Residents Against the Mortuary, Inc. (the “Opponents”), filed a petition for judicial review in the County circuit court. The court affirmed the Board’s decision.

The Opponents then appealed to the Special Court of Appeals, which affirmed the judgment of the circuit court.

The Opponents then filed a petition for writ of certiorari, which the Court of Appeals of Maryland granted. On appeal, among other things, the Opponents presented several arguments. First, the Opponents maintained that the Board, in analyzing Donaldson’s CUP, was required to apply HCZR § 130.C, which requires that in considering and deciding certain matters within the scope of the HCZR, the Board consider certain public health, safety, security, and general welfare considerations. The Opponents argued that, before granting the CUP, the Board was required to consider a “three-part scheme” of HCZR §§ 130.C, 131.B, and 131.N.22, and that the Board had failed to consider HCZR § 130.C. Second, the Opponents also argued that, before granting the CUP, the Board was required to identify the ordinary or inherent adverse effects of a funeral home. Third, the Opponents argued that the Board should have considered the Asian community members’ cultural aversion to the death industry, and that the Board erred in discounting “the cultural

sensitivity issue as ‘not a physical condition’ ” to be considered under HCZR § 131.B.2. The Opponents also argued that the mental health of the Asian community should have been considered by the Board before its issuance of the CUP because the legislative intent of the HCZR was to “preserv[e] and promot[e] health, safety, and welfare of the community.”

**DECISION: Judgment of Court of Special Appeals affirmed.**

The Court of Appeals of Maryland held that the Board properly analyzed Donaldson’s CUP. In so holding, the court rejected all of the Opponents arguments:

The court held that HCZR did not, as the Opponents had argued, contemplate Board consideration of “a three-part scheme,” including application of HCZR § 130.C, when reviewing a CUP. While HCZR § 130.C related generally to “public health, safety, security, and general welfare” considerations, the court found that HCZR § 131 “specifically address[ed] conditional uses, and provide[d] both general and specific standards that govern[ed] the [Board’s] approval of a conditional use.” Thus, looking to the legislative intent of the HCZR, and the plain words of the statute, while giving a “degree of deference” to the Board, the court concluded that “the standards set forth in HCZR § 130.C do not govern the [Board’s] consideration of conditional use applications” because: the zoning regulation governing the relevant zoning district specifically stated that the conditional uses authorized in that zone were subject to the “detailed requirements for conditional uses given in Section 131” (see HCZR § 105.G); and “the plain language of HCZR § 130, when read as whole, d[id] not specifically address conditional uses, except to state that the [Board] ha[d] the power ‘[t]o approve conditional uses as to location’ pursuant to HCZR § 131” (see HCZR § 130.B.5).

The court also held that the Board was not required to identify ordinary or inherent adverse effects of a funeral home before approving the CUP application. The court said this was because “those adverse effects were previously identified and weighed by the local legislature in deciding whether the use [was] compatible with other permitted uses within a given zone.”

And, the court held that “the Board properly concluded that the evidence of ‘cultural sensitivit[y]’ was not sufficient” to deny Donaldson’s CUP application. Addressing the Opponents’ argument that the mental health of the Asian community should have been considered by the Board before its issuance of the CUP because the legislative intent of the HCZR was to “preserv[e] and promot[e] health, safety, and welfare of the community,” the court reiterated its determination that, in approving funeral homes as a conditional use, the County Council had “already balanced the impact a funeral home would have on the general welfare and whether the use was compatible with the permitted uses in the zoning district.” Furthermore, the court noted that the plain language of the zoning regulations supported the finding that the Board, in deciding to grant or deny a CUP, was only required to consider the enumerated conditions contained in HCZR § 131.B (e.g., physical conditions; structures, walls, fences, and landscaping; parking areas, loading areas, driveways, and refuse areas; and safe access). The court found that the testimony provided by several members of the Asian community, explaining their “cultural aversion to the death industry[,]” “failed to provide a substantial

nexus” between their “cultural sensitivities” and those enumerated conditions the Board was required to consider. Accordingly, the court concluded that absent that substantial nexus, the Board did not err in concluding that Donaldson’s CUP would not “create an adverse cultural impact on vicinal properties or that such impact will be above and beyond those ordinarily associated with funeral home and mortuary uses in the RR-DEO zoning district.”

See also: *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981).

See also: *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974).

## Nonconforming Use/Due Process— Neighbor appeals town grant of permits to expand applicant’s nonconforming structure

Neighbor argues town misinterpreted ordinance, as well as violated his due process rights with ex parte emails

Citation: *Wolfram v. Town of North Haven*, 2017 ME 114, 2017 WL 2438530 (Me. 2017)

MAINE (06/06/17)—This case addressed the issue of whether a town’s grant of a land use permit for the expansion of a nonconforming use violated the local ordinance governing nonconforming structures, including area and lot coverage restrictions. It also addressed whether an objector’s due process rights were violated by bias and ex parte communications.

**The Background/Facts:** Nebo Lodge, Inc. and Nebo Real Estate, LLC (collectively, “Nebo”) owned property in the Village District in the Town of North Haven (the “Town”). The size of the Nebo property was less than the 20,000-square-foot minimum lot in the Village District. Accordingly, the two existing structures on the Nebo property were nonconforming. One of the two structures, a lodge, which housed an inn and restaurant, had been renovated and expanded in 2009 and 2010. In October 2013, Nebo filed applications for land use permits, seeking to tear down the majority of the second structure, a “bungalow,” rebuild it as an “annex,” and increase its size, and change its use to include staff housing, an office, storage, and a kitchen.

The Town’s Planning Board approved Nebo’s applications with conditions. The owner of the property across the street from Nebo’s property, Steven Wolfram (“Wolfram”), opposed Nebo’s land use permit applications. Wolfram appealed the Town’s approval of the permits to the Town’s Board of Appeals (“BOA”). The BOA affirmed the Planning Board’s decision.

Wolfram appealed to the Superior Court, which affirmed the BOA’s decision.

Wolfram again appealed. Wolfram contended that the BOA erred in interpreting various provisions in the Town’s Land-Use Ordinance (the

“Ordinance”). More specifically, Wolfram contended that the proposed annex: exceeded the Ordinance’s allowable expansion of a nonconforming structure; violated a section of the Ordinance that only allowed restoration or reconstruction of a nonconforming structure for “cause other than the wilful act of the owner;” and violated a 20% lot coverage restriction applicable to guest houses. Wolfram also argued that his due process rights were violated by bias and ex parte communications—specifically emails between Nebo representatives and members of the Planning Board.

**DECISION: Judgment of Superior Court affirmed.**

The Supreme Judicial Court of Maine rejected all of Wolfram’s arguments, and concluded that the BOA had not erred when affirming the land use permits issued to Nebo. Further, the court concluded that Wolfram’s due process rights were not violated.

In reaching its conclusions, the court looked at the common meaning of the language of the Ordinance, and construed the Ordinance “as a whole” “in order to achieve a harmonious result.”

Section 2.5 of the Ordinance allowed enlargement of grandfathered nonconforming structures without a variance, so long as “the enlargement . . . contains no more than 33% of the ground area of the grandfathered structure.” Wolfram had interpreted section 2.5 to limit the total expansion of all nonconforming structures on a lot to 33% of the ground area of a single nonconforming structure. He thus interpreted section 2.5 to require the Town to aggregate each expansion on the lot and to prohibit further expansion once that percentage, tied to a single nonconforming structure, had been reached. Wolfram had argued that because Nebo had already expanded the lodge, further expansion to the separate annex would, in the aggregate, exceed 33% of the original lodge’s ground area, which was not permitted.

The court found Wolfram’s interpretation was “unsupported by the language of the Ordinance.” The court found that the plain language of the Ordinance “clearly” permitted “any nonconforming structure to be expanded by up to 33% of the ground area of the previous structure.” Thus, here, the court said that Nebo’s two nonconforming structures—the annex and the lodge—could each be enlarged by up to 33% of the ground area of the structure that it replaced and comply with section 2.5. The court found that the annex expansion did not exceed 33% of the ground area of the structure that it replaced, the bungalow.

The court also rejected Wolfram’s argument that the annex expansion violated section 2.6 of the Ordinance, which provided that “[a]ny nonconforming use or structure which is hereafter damaged or destroyed by fire or cause other than the willful act of the owner of his agent, may be restored or reconstructed to its original dimensions, and used as before.” Wolfram had interpreted section 2.6 to prohibit restoration or replacement of the bungalow/annex—a “willfully demolished nonconforming structure.” The court interpreted section 2.6 to not apply to a willful demolition for renovation purposes undertaken with municipal approval, particularly as expansion of a nonconforming structure was explicitly permitted by section 2.5. In other words, the court concluded that even though Nebo was willfully demolishing the bungalow to build an expanded annex, that did not violate section 2.6.

As to Wolfram's argument that the annex violated a 20% lot coverage restriction applicable to guest houses, the court concluded that the annex was not a "guest house" since the bedrooms in the annex would be used by staff and not paying guests. Accordingly, the court concluded that the 20% lot coverage restriction was inapplicable here.

Finally, the court also rejected Wolfram's contentions that his due process rights were violated by bias and ex parte emails between Nebo and the Planning Board. The court found that one of the communications identified by Wolfram "implicate[d] the BOA's impartiality," and that many of the emails were directed at "complying with the permit process, the Ordinance, and other applicable standards prior to the Planning Board hearing." The court concluded: "Assuming the emails were improper ex parte communications, this would not be a basis to vacate the BOA's decision . . . because Wolfram . . . failed to point to any evidence that the communications in fact affected that decision." Finding a "dearth of evidence in the record that the BOA decision was the product of bias or procedural unfairness," the court concluded that the decision did not violate Wolfram's due process rights.

See also: *Zegel v. Board of Social Worker Licensure*, 2004 ME 31, 843 A.2d 18, 21 I.E.R. Cas. (BNA) 31 (Me. 2004).

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*Case Note:*

*Nebo had applied for a conditional use permit for the annex use. In his appeal, Wolfram had also argued that the BOA improperly failed to consider the Nebo property as a whole when assessing, as required by the Ordinance for conditional use permit applications, whether the use would have an adverse impact on the "quiet possession of surrounding properties." The court found that since "the evidence did not compel a finding that there was a 'substantial increase or expansion in the volume or intensity of the inn and restaurant use," the BOA was not required to consider the Nebo property as a whole. Rather, the court found that the BOA properly applied the Ordinance when finding that the annex use, alone, would not have such an adverse impact.*

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## Zoning News from Around the Nation

### FLORIDA

A new state law, effective July 1, preempts "local governments from regulating medical cannabis dispensaries any more than they regulate pharmacies." Reportedly, municipalities are considering options of: changing zoning laws for pharmacies, and applying already proposed medical marijuana rules to both dispensaries and pharmacies; or completely banning medical marijuana dispensaries.

Source: *Miami Herald*; [www.miamiherald.com](http://www.miamiherald.com)

## OHIO

Reportedly, a state legislative conference committee has voted to reject an amendment to the budget bill that would have eased restrictive state zoning requirements on wind farms. The bill was expected to be voted on and signed into legislation by Governor Kasich before June 30th.

Source: *Cleveland.com*; [www.cleveland.com](http://www.cleveland.com)

## PENNSYLVANIA

In an effort to increase affordable housing options, Philadelphia City Council members have introduced a bill that “would require that every major development [of projects with more than nine units], whether housing or rentals, include reduced-priced units,” with “[t]en percent of the units . . . priced for the working poor.” The bill would provide “inclusionary housing bonuses,” through zoning incentives that include allowing developers to construct buildings that are “taller and denser than Philadelphia’s zoning code normally allows.”

Source: *Philly.com*; [www.philly.com](http://www.philly.com)

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## Standing—Landlord seeks and is granted rezoning request

When tenant challenges zoning decision, landlord argues tenant does not have standing to make such a challenge

Citation: *Stuttering Foundation, Inc. v. Glynn County*, 2017 WL 2623872 (Ga. 2017)

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GEORGIA (06/19/17)—This case addressed the issue of whether a short-term tenant of real property has standing (i.e., the legal right) to challenge a zoning decision made at the request of the tenant's landlord.

**The Background/Facts:** The Stuttering Foundation, Inc. (the "Foundation") was a tenant of office space in a commercial development in Glynn County (the "County") that was owned by Lucas Properties Holdings III, LLC ("Lucas"). The Foundation's lease term was for five years. During the tenancy, Lucas sought to construct an addition to the rear of one of the existing buildings in the development. In furtherance of that goal, Lucas filed with the County an application for rezoning of the property. Lucas also sought approval of a site plan for the proposed construction. In March 2016, both the rezoning request and the site plan were approved by the County.

The Foundation was opposed to the new development. Among other things, the Foundation asserted that the property was subject to easements and restrictive covenants, and that various details of the site plan would violate the terms of the easements and covenants. The Foundation alleged that those violations would diminish the value of its leasehold interest in the property.

The County filed a motion to dismiss, asking the court to dismiss the Foundation's complaint. The trial court granted the County's motion to dismiss. The trial court found that the Foundation, as the tenant of the property, lacked standing to challenge a rezoning decision made at the request of the fee simple owner (i.e., the landlord/property owner).

The Foundation appealed.

**DECISION: Judgment of Superior Court affirmed in relevant part.**

The Supreme Court of Georgia held that the Foundation did not have standing to challenge the rezoning decision here.

In so holding, the court explained that there is a two-step test for determining a party's standing to challenge a rezoning decision. Known as the "substantial interest-aggrieved citizen" test, the test is: (1) whether a person claiming to be aggrieved has a substantial interest in the zoning decision; and (2) whether that interest is in danger from "suffering some special damage or injury not common to all property owners similarly situated." An affirmative answer to both parts of the test concludes that the party has standing to challenge the rezoning decision.

Here, the court concluded that the Foundation's status as a short-term tenant did not confer upon it the necessary "substantial interest" in the zoning decision sufficient to create standing to challenge the zoning decision here. The court found that the lease between the Foundation and Lucas created a usufruct (i.e., a "license in real prop-

erty . . . to do a particular act or series of acts on land of another without possessing any estate or interest therein”), not an estate for years. Finding that the usufruct granted in the lease did not convey an interest in real property, the court held that the Foundation had “no cognizable interest in this zoning decision that it could assert adversely to the actual property owner’s interest.” Under those circumstances, said the court, “it cannot be said that the tenant has a substantial interest in this zoning decision that grants it standing to challenge the decision.”

See also: *DeKalb County v. Wapensky*, 253 Ga. 47, 315 S.E.2d 873 (1984) (finding party holding vested or inchoate title to real property satisfied first prong of standing test regarding “substantial interest”).

See also: *Miller v. Fulton County*, 258 Ga. 882, 375 S.E.2d 864 (1989) (finding that challenger of zoning decision who has no estate or interest in real property has no standing because he/she can not show substantial interest in zoning decision).

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**Case Note:**

In its decision, the court noted that, although the Foundation lacked standing to pursue a reversal of the County’s zoning decision, the Foundation may have a contractual remedy for damages that it alleged it suffered if Lucas’ property development impaired or destroyed the value of the Foundation’s usufruct interest. More broadly, the court noted:

“[T]he terms of a lease may impose a duty on the landlord to seek or oppose a zoning decision in order to effectuate the intent of parties, but such a duty is contractual and may be enforced by an action against the landlord. Conversely, if the landlord obtains or resists a zoning decision such that the tenant’s rights under the lease are adversely impacted or damaged, the tenant may have a remedy against the landlord for breach of contract.”

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**Case Note:**

The Foundation had cited case law from other jurisdictions to support its assertion that a tenant has standing to challenge a zoning decision. The court found reliance upon those cases was “unpersuasive” because “Georgia’s landlord and tenant law is unusual in that it is based not on the common law but upon the statutory provision that the grant of a right simply to possess and enjoy the use of real estate passes no estate to the tenant but only a usufruct.” (See OCGA § 44-7-1 (a).)

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**Case Note:**

The Foundation had also argued that it had a substantial interest in the zon-

ing decision, and thus had standing here, because it was a beneficiary of the easements and covenants that burdened Lucas' property. The court rejected that argument, finding that the easements and covenants did not grant beneficiary status to the Foundation. Moreover, the court noted that the Foundation's remedy for any interference or violation of the easement rights by Lucas would be a claim for breach of contract.

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## Validity of Zoning Ordinance— Voters enact initiative that requires voter-approved site plan for certain development

Developers challenge validity of initiative, arguing its administrative in nature and thus in excess of initiative power

Citation: *Park At Cross Creek, LLC v. City of Malibu*, 12 Cal. App. 5th 1196, 2017 WL 2665935 (2d Dist. 2017)

CALIFORNIA (06/21/17)—This case addressed the issue of whether a city's initiative and referendum, which required a voter-approved site plan for certain development in excess of 20,000 square feet was invalid in excess of the initiative power. It also addressed whether a city's initiative, which required establishment-specific conditional use plans for formula retail establishments, was illegal.

**The Background/Facts:** In November 2014, the voters of the City of Malibu (the "City") enacted Measure R. Measure R was an "initiative designed to limit large developments and chain establishments." It had two primary components. First, Measure R required the City Council to prepare a specific plan for every proposed commercial or mixed-use development in excess of 20,000 square feet for the commercial area. Among other things, the specific plan had to address the following: floor area; requirements "to ensure the retention of retail businesses serving local residents and visitors"; preserving important view corridors and vistas; traffic; public facilities, services, and economic analysis; open space; parking; enlargement of the commercial area; and geological, hydroelectrical, and wastewater impacts. The City's specific plan then had to be placed on the ballot for voter approval. Second, Measure R restricted formula retail establishments, defined as "an establishment having 10 or more retail establishments in

the world and maintaining two or more of the following features: standardized array of merchandise or menu; standardized color scheme; standardized decor, facade, layout or signage; a servicemark or a trademark; 'and' uniform apparel." Measure R restricted the size of chain establishments. It also required that "formula retail establishments" obtain a conditional use permit ("CUP"), to be approved by the City's planning commission only upon findings that the proposed formula retail establishment: "complies with the size and occupancy limitations;" "will not impair the city's unique, small-town community character by promoting a predominant sense of familiarity or sameness, with consideration for all existing formula retail establishments;" and will promote a diverse commercial base." Further, Measure R provided that such approved CUPs "shall run solely with the operation of the formula retail establishment for which it was approved and continue to be valid upon change of ownership of the formula retail establishment, the land, or any lawfully existing building or structure on the land."

The Park at Cross Creek, LLC (the "Park") and Malibu Bay Company ("Malibu Bay"), both of which were developing projects in the City, petitioned the trial court to have Measure R declared invalid. They argued that Measure R improperly subjected administrative acts to vote, created an illegal CUP, and violated their substantive due process rights.

The trial court agreed with the Park and Malibu Bay. It held that Measure R's specific plan and voter approval requirements exceeded the scope of the initiative power and violated substantive due process. The court also held that Measure R created an illegal CUP that was "establishment-specific" and did not run with the land. Accordingly, the court declared Measure R facially invalid and enjoined the City from enforcing it.

The City, along with individuals who were the official proponents of Measure R, (hereinafter, collectively, the "City") appealed.

**DECISION: Judgment of Superior Court affirmed.**

The Court of Appeal, Second District, Division 3, California, held that Measure R exceeded the City's initiative power and was illegal.

In so holding, the court explained that California's Constitution "guarantees the local electorate's right to initiative and referendum, and that right is generally coextensive with the local governing body's legislative power." The electorate has the power to initiate legislative acts but not administrative or adjudicatory ones, said the court. The court explained the "rationale for this rule": "to allow the referendum or initiative to be invoked to annul or delay the executive or administrative conduct would destroy the efficient administration of the business affairs of a city or municipality."

The court further explained that to determine whether an initiative—such as Measure R—enacts legislation, the test is based on substance; the initiative is legislative in nature if it prescribes a new policy or plan, and it is administrative in nature if it “merely pursues a plan already adopted by the legislative body itself, or some power superior to it.” More specifically, said the court, “[i]n the land use context, legislative acts are distinguished from administrative or adjudicative ones on a categorical basis.” For example, emphasized the court, zoning ordinances and adoption of specific plans are legislative, while variances, CUPs, and subdivision map approvals are adjudicative, and adoption.

The City had argued that because Measure R concerned specific plans and voter approval of them, Measure R was a legislative act and therefore did not exceed the initiative power. The court disagreed, citing a difference between voter approval of a specific plan and requiring a city council to prepare a specific plan to be submitted for voter approval. The court found that while the former is a legislative act, the latter is an adjudicative one. More importantly, the court found that, in substance, Measure R was not setting legislative policy. It did not set standards for building height, size, or configuration, but instead required specific plans be prepared containing such details and to be submitted to the electorate. “The problem is Measure R requires details to be in specific plans that are voter-approved but sets no substantive policy or standards for those plans,” said the court. Moreover, Measure R “does not merely formalize any existing power of the electorate. It creates a new power—the requirement of a specific plan—and subjects it to voter approval. In this respect, Measure R limits [the City’s] governing body from carrying out its duties pursuant to its police power,” noted the court. Further, the court found Measure R withdraws from the City Council “the ability to issue discretionary land use entitlements or permits concerning a development project—unless and until voters approve a specific plan for that project,” which makes it a project-by-project review that would otherwise be subject to administrative, not voter, approval. And, the court found that “Measure R not only withdraws administrative authority but it also adds ‘layers’ to the administrative process,” “invalidly annul[ing] or delay[ing] executive or administrative conduct.”

With regard to Measure R’s CUP requirements, the court found they were illegal. Under “well-established principles,” a CUP “is administrative permission for uses not allowed as a matter of right in a zone, but subject to approval,” explained the court. A CUP is not a personal interest and does not attach to the permittee, but rather creates a right that runs with the land. Conversely, a condition which relates solely to the individual or applicant for the CUP does not relate to the property’s use and zoning, said the court.

Here, the court found that Measure R CUPs were establishment-

specific and restricted in their transferability—features contrary to the well-established CUP principles. By defining a specific formula retail establishment (e.g., Starbucks) as a “proposed use” and by requiring the land to be used only for that establishment (e.g., Starbucks), Measure R “conditions the CUP on the character of the permittee or applicant rather than on the use of the land,” and is thus illegal, found the court.

See also: *DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995).

See also: *Citizens for Planning Responsibly v. County of San Luis Obispo*, 176 Cal. App. 4th 357, 97 Cal. Rptr. 3d 636 (2d Dist. 2009).

See also: *Wiltshire v. Superior Court*, 172 Cal. App. 3d 296, 218 Cal. Rptr. 199 (4th Dist. 1985).

See also: *Citizens for Jobs and the Economy v. County of Orange*, 94 Cal. App. 4th 1311, 115 Cal. Rptr. 2d 90 (4th Dist. 2002), as modified on denial of reh’g, (Feb. 4, 2002).

See also: *Anza Parking Corp. v. City of Burlingame*, 195 Cal. App. 3d 855, 241 Cal. Rptr. 175 (1st Dist. 1987) (holding a CUP is not personal but runs with the land).

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**Case Note:**

*The City had argued that any invalid portions of Measure R could be severed. The appellate court disagreed and concluded that Measure R was invalid.*

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## **Eminent Domain— Property owner claims city inversely condemned his neighboring building through taking of parking lot**

City argues building was not inversely condemned because it retained some economic value and revenue source

Citation: *Barton v. City of Norwalk*, 326 Conn. 139, 2017 WL 2806277 (2017)

CONNECTICUT (07/04/17)—This case addressed the issue of whether a city inversely condemned a property owner’s building when it took his neighboring parking lot by eminent domain.

**The Background/Facts:** In 1981, Robert Barton (“Barton”) purchased a four-story walk-up commercial building at 70 South Main in the City of Norwalk (the “City”). In order to comply with the City’s zoning regulations that required more parking spaces for commercial use of his building, Barton also purchased a vacant lot at 65 South Main, creating 44 parking spaces. Over time, Barton leased space in the building to a number of commercial tenants.

Then, in February 2002, the City condemned the parking lot at 65 South Main in order to build a new police headquarters on the land. The City paid Barton \$127,000 as just compensation for the condemned land.

Barton challenged the compensation offered, arguing that 65 South Main’s “highest and best use,” for which Barton should be compensated, was as a mixed use development worth considerably more than that paid by the City. The trial court agreed, finding 65 South Main was worth \$310,000 as a mixed use development.

In that action, Barton had also tried to add a claim for losses to 70 South Main as a result of the taking of 65 South Main. However, the City had successfully objected to Barton’s attempts to amend the pleadings to add that claim. As a result, Barton later filed a second action against the City in which he alleged that the City had inversely condemned 70 South Main when it took 65 South Main.

In that second action, the trial court found that the lack of parking, caused by the taking of 65 South Main, had “substantially destroyed [Barton’s] ability to operate [70 South Main] as a leasable facility and enjoy even a modicum of financial success.” The court found that the evidence showed that 70 South Main had “substantially depreciated in value, by [more than 80 percent]” because of the “taking through eminent domain of the dedicated parking spaces [at 65 South Main].” The court concluded that the City, in taking 65 South Main, had thus also inversely condemned 70 South Main. The court awarded Barton \$899,480 in damages plus \$543,384.49 in prejudgment interest.

The City appealed. Among other things, the City argued that 70 South Main was not inversely condemned because it retained economic value, was approximately one half occupied, and continued to generate revenue.

**DECISION: Judgment of Appellate Court affirmed.**

The Supreme Court of Connecticut held that the City had inversely condemned 70 South Main when it took 65 South Main because Barton’s use and enjoyment of 70 South Main was “substantially destroyed.”

The court explained that “[i]nverse condemnation is a cause of action against a governmental defendant to recover the value of property

which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. . . .” In other words, an inverse condemnation action is “an eminent domain proceeding initiated by the property owner rather than the condemnor.” The court further explained that property may be “taken without any actual appropriation or physical intrusion” if “the property cannot be utilized for any reasonable and proper purpose” such as with “total destruction of a property’s economic value or substantial destruction of an owner’s ability to use or enjoy the property.”

Here, the court found that the City had inversely condemned 70 South Main when it took 65 South Main as evidenced by Barton’s “extreme difficulty renting space at 70 South Main [due to the lack of parking], which, in turn, resulted in a more than 80 percent diminution of its value.” Specifically, the court found that the evidence showed that the lack of parking had rendered 70 South Main undesirable to prospective tenants as evidenced by: a drop in leased space from 97% in 2001 to 5% in 2011; and a real estate broker conclusion that prospective tenant interest in 70 South Main would not materialize into a lease principally due to the lack of parking. The court also found that when Barton attempted to obtain from the City necessary permits for certain maintenance services at 70 South Main, City agencies “rebuffed” him on the basis of lack of parking. Moreover, the court found that, based on documentary and oral expert testimony of a commercial real estate appraiser, the value of 70 South Main had fallen by more than 80% due to the “absence of available parking.”

Responding to the City’s arguments, the court was unpersuaded “that the fact that 70 South Main retain[ed] some economic value undermine[d] the trial court’s conclusion that the [Barton’s] use and enjoyment of the property was substantially destroyed.” The court reiterated that “Connecticut law on inverse condemnation requires total destruction of a property’s economic value or substantial destruction of an owner’s ability to use or enjoy the property.” Therefore, the court concluded, “[I]logic dictates that where inverse condemnation is found for substantial—but not complete—destruction of an owner’s ability to use or enjoy property, the remaining quantum of use or enjoyment will be reflected in some economic value.” Thus, where, as here, the plaintiff (i.e., Barton, here) has shown that his or her use and enjoyment of property has been substantially destroyed, “the taking is of constitutional magnitude and the plaintiff is entitled to just compensation for the inverse condemnation of his property” with the usual measure of damages being the difference between the market value of the property before the taking and the market value of the property thereafter.

In sum, the court concluded that Barton had proven his theory of inverse condemnation as to 70 South Main.

See also: *Caruso v. Zoning Bd. of Appeals of City of Meriden*, 320 Conn. 315, 130 A.3d 241 (2016).

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**Case Note:**

*On appeal, the City had also argued that Barton was judicially estopped from bringing an action for inverse condemnation as to 70 South Main. Specifically, the City had argued that Barton should be estopped from asserting that 70 South Main should be valued with the use of 65 South Main as a parking lot since, in his previous eminent domain action, Barton had argued the highest and best use of 65 South Main as a mixed use development and not as a parking lot.*

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The court explained that judicial estoppel applies if: (1) “a party’s later position is clearly inconsistent with its earlier position;” (2) “the party’s former position has been adopted in some way by the court in the earlier proceeding;” and (3) “the party asserting the two positions would derive an unfair advantage against the party seeking estoppel.”

The City’s argument here rested on the first element of judicial estoppel. The City claimed that Barton’s positions with respect to 65 South Main were “clearly inconsistent” in the two eminent domain actions. Barton claimed that the positions were not inconsistent “because a person need not actually use property in accordance with its asserted highest and best use.” The Supreme Judicial Court of Connecticut agreed with Barton.

## Zoning News from Around the Nation

### CONNECTICUT

Governor Dannel P. Malloy has vetoed House Bill 6880—an affordable housing relief bill. Reportedly, the bill would have “made it harder for developers to appeal zoning denials by towns of projects.” The bill had received 116 votes in the House and 30 votes in the Senate.

Source: *New Haven Register*; [www.nhregister.com](http://www.nhregister.com)

### NEW YORK

Southampton’s Town Board has voted to halt future applications for Planned Development Districts. Such districts “grant special zoning regulations—such as creating mixed-use or affordable housing units for a property in a residential zone without changing the zoning for the

entire area—in exchange for predetermined public benefits, such as open space.” Board members cited overdevelopment and “too much unpredictability in the zoning process,” as reasons for the change.

Source: *Newsday*; [www.newsday.com](http://www.newsday.com)

## WISCONSIN

In mid-June, a bill was introduced in the state House of Representatives, which aims to “loosen government control” over land within the St. Croix National Scenic Riverway. In the state Senate, a companion bill was introduced. The bill provides that “neither the Wisconsin Department of Natural Resources nor St. Croix County can ‘prohibit the operation of an event facility and lodging establishment in existing buildings on a property located in the riverway that was historically used as a recreational campground.’”

Source: *Minneapolis Star Tribune*; [www.startribune.com](http://www.startribune.com)

# ZONING PRACTICE

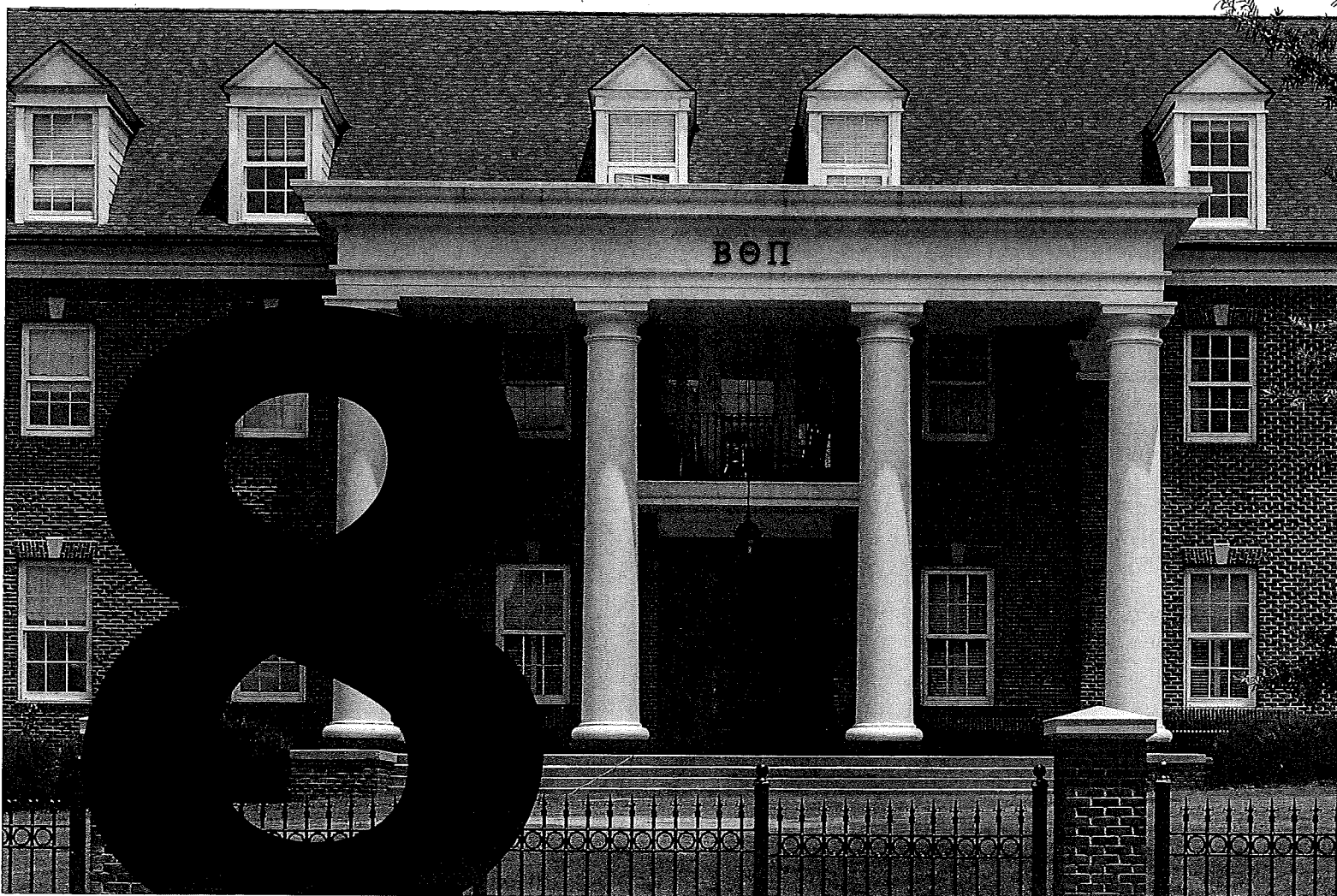
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## PRACTICE STUDENT HOUSING



# Meeting and Beating the Challenge of Off-Campus Student Housing

By Dwight Merriam, FAICP

One way to start a spirited discussion of the problems of off-campus college housing is to offer that it always seems to come in a fixed ratio of eight guys/four cars/two kegs. But the glib purported “ratio” of guys-cars-kegs says too much and too little at the same time. Indeed, while speaking on the issues in Utah I was told: “Here in Utah, you can pretty much skip the ‘two kegs’ part.” It also says too little because, of course, it is not just young men, but women who choose off-campus housing. And most of the students living off-campus conduct themselves responsibly and make good neighbors.

Off-campus private student housing can be a real positive in maintaining and enhancing the attractiveness of an educational institution and meeting the demand for housing when colleges might not have the wherewithal to provide it.

Problems inevitably ensue when no one plans for private-market housing. Colleges fail to partner with their host communities or, even worse, neglect their responsibility to provide housing, and college towns do nothing to meet the housing demand. Off-campus student housing is good for all stakeholders, if it is done properly in the right place. Though the challenges are great, off-campus student housing problems can be eliminated and prevented with the right planning, carefully thought-out regulation, effective enforcement, and continuing cooperation and coordination between town and gown.

## THE DEMAND FOR HOUSING

There are nearly 5,000 two- and four-year colleges in the United States and more than 20 million students (U.S. Department of Education 2017). Most college students commute to campus (Snyder and Dillow 2015, Table 311.10). Many live off campus to save money (Gordon 2015).

A dozen schools do not have an off-campus housing problem because 100 percent of their students live on campus. Among

them are the service academies. Many others, such as Harvard and Bennington, have nearly all their students living on campus.

At the other end of the spectrum, there are over 30 colleges with no on-campus housing, including Cooper Union in New York, Louisiana State University-Shreveport, and the University of Michigan-Dearborn (*U.S. News & World Report* 2017). Everyone there lives off-campus, commuting from home or living in private-market housing.

## THE ECONOMIC IMPERATIVE

Room and board now averages about \$12,000 (College Board 2017). That is more than \$1,300 a month, often for a shared room (raise your hand if you shared an on-campus room with at least one other person), common bathroom, and a fabulous, gourmet dining experience in a relaxing communal setting.

Now take eight students and combine their room and board money—you have more

than \$10,000 a month to bid against the local economy for housing and food. Medians, means, all manner of statistics mean little given that many of these off-campus housing markets are geographically small, but Zillow reports that the average rent for a four-bedroom house ranges from \$1,195 in Missouri to \$4,000 in New York, which includes New York City. Even if our students only paid half of their pooled room and board money for housing, they could still easily outbid the highest average.

These are averages. Boston University charges \$15,270 per academic year for a shared room with the required meal plan (2017). Get eight BU students together and you unleash \$122,000 of rent-bidding and food-buying power on the community. Take half of that for housing, and you have \$61,000 to spend, more than \$5,000 a month. What “normal” household can compete with that?



Wikimedia (CC)



Student homes and on-street parking in the South Student Neighborhood near the University of Dayton in Dayton, Ohio.

The plain fact is that college students can almost always outbid more traditional households for an apartment or house. Even in Boston, with its red-hot real estate market, the students win. The *Boston Globe* Spotlight Team, the same people portrayed in the 2015 biographical crime drama film *Spotlight*, which won Oscars for Best Picture and Best Original Screenplay, published a “Shadow Campus” series describing the takeover of a single-family neighborhood by college students (2013).

The reporters describe one house with on-file building plans showing six bedrooms, yet it had 14 people living in 12 bedrooms, including three in an illegal basement apartment. A Boston University senior, Binland Lee, was killed in a fire in that house when she was trapped in her illegal attic room. A year earlier, right across the street, another student escaped a fire by jumping from an attic window, suffering permanent traumatic brain injury.

Economics are the driver here: from the landlords seeking the highest revenues, to the students struggling for affordability, to the colleges that admit more students than they can or will provide housing for. This is a life-safety issue, and more will die and others will be injured, some for life, if the off-campus student housing demand is not met and the problems are not aggressively addressed. If we assist the private market in building new, clean, safe, student-adapted moderate- and high-density housing close to campus, we will go far toward protecting our young people—and our single-family neighborhoods.

#### THE SAD STATE OF THE LAW

Exacerbating—maybe it is better described as aiding and abetting—the problem is the troubling precedent in the U.S. Supreme Court, the failure to address the issues at the state level, and the utter lack of effective local regulation that would help bring order to the chaos.

The U.S. Supreme Court in *Village of Belle Terre v. Borass* (1974) ruled for the village in a student off-campus housing case, thus validating as a matter of federal constitutional law a definition of family designed to keep the students out:

[o]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit,



Discgts11, Wikimedia (CC BY-SA 3.0)

➡ The Greek Village near the University of South Carolina's campus in Columbia is home to 20 purpose-built fraternity and sorority houses.

exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single house-keeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

The Court accepted the belief that:

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.

The *Belle Terre* decision is still good law. But it interprets the U.S. Constitution only, not the state constitutions. A half-dozen or more state courts have held similar definitions of family to be unconstitutional under their state constitutions. For example, New York courts in a series of decisions interpreting its state constitution have essentially reversed *Belle Terre*.

Where does *Belle Terre* and the law in most states leave us with regard to off-campus housing? To the extent that local zoning defines “family” or “household” in a similarly restrictive way, and most do, the result is a nation of willful violators—principally, the landlords who rent to households that do not qualify under zoning to live together and the tenants, and home owners,

who intentionally and in knowing violation of the law choose to live together when they are not, by definition, a legal “family” or “household” (Durning 2012 and Olevri 2015). This turning a blind eye to the law can be avoided with good regulation, while at the same time protecting the so-called “family values” that are sometimes a pretext for exclusion, not the avoidance of nuisance.

#### A ‘MONKEY WRENCH’ INTO THE WORKS

The Fair Housing Amendments Act (FHAA) protects the rights of protected classes of people—physically disabled or developmentally challenged, for example—to live most places where any single family might. The FHAA trumps local zoning and is used most often to permit the location of sober houses for recovering alcoholics and substance abusers. About half of the federal circuits support a “rule of eight” limiting such houses to eight people. State statutes often mimic the federal law and provide their own level of protection. When considering the definition of family in the context of off-campus student housing regulation, it is essential to consider how you will handle group homes.

And it is not just the FHAA. Planners need to consider the needs of other “alternative household” types: extended families that share no relationship by blood, marriage, or adoption; cohousing; group homes

for those not protected by the FHAA, among them halfway houses and alternatives to incarceration; short-term rentals such as Airbnb; fraternities and sororities; group homes for abused and neglected youths and runaways; shelters for battered women; homes for teenage mothers and their children; homes for the elderly; foster care and short-term support homes; respite care; and many more. Over-inclusive regulation to stop off-campus housing can wipe out housing opportunities for other types of households. Under-inclusive regulation to avoid those unintended consequences can leave the door open to the off-campus housing you are trying to control. It is a hard line to draw.

#### PROVEN TECHNIQUES TO ADDRESS THE ISSUES

We have almost 40,000 counties, municipalities, and townships in the U.S. (U.S. Census 2012), and with a little digging we can find many good, workable approaches to the off-campus student housing problem.

#### Coordinate, Plan, and Measure to Meet Demand

Most important is creating and maintaining a working town and gown relationship. It isn't easy, but it is essential (Hamden 2015 and Kovner 2015). Good examples abound. Check out Chapel Hill, North Carolina, and its efforts to work together with the University of North Carolina (2017). Take a look at their guidance for off-campus living and their "Good Neighbors" brochure that applies a "gentle touch" to the issue of property maintenance and code enforcement (2013 and 2009).

Even with the town's best efforts, the economics of the demand for off-campus housing continues to put pressure on the affordable housing stock (Ball 2015). In response, the town has formed a partnership with the university and Self-Help, a local nonprofit community developer, to work with residents to create more affordable housing. The resulting Northside Neighborhood Initiative (NNI), steered by residents of the traditionally African American Northside neighborhood on the edge of downtown, invests funds from the partner organizations to acquire and build affordable units.

Chapel Hill's housing and community director Loryn Clark, AICP, notes that "already, after just two years, the NNI has helped to increase the stock of affordable housing available to families, in a way that

empowers community members." Chapel Hill's planning and development services director, Ben Hitchings, AICP, adds, "pairing proactive outreach to students with creative community partnerships can help reduce the impacts of off-campus student housing and build the stock of affordable units available to local residents."

Exemplary regulations along the same lines of "if you can't beat 'em, accommodate 'em" abound.

College Station, Texas, has three Northgate overlay districts "characterized as a unique 'campus neighborhood' containing local businesses, churches, and off-campus housing in close proximity to the University" (§12-5.8.B). According to College Station's planning director, Lance Simms, AICP, these districts have "been instrumental in helping the city accommodate the ever-growing student population." Simms says that residents of the city's "established single-family neighborhoods often view student rentals as a threat and the Northgate districts help relieve the rental pressure by providing a place for students to live, work, eat, and recreate near the university."

Las Cruces, New Mexico, has similarly been proactive in meeting the demand with its University Overlay District, by which it intends to allow greater flexibility to developers and land owners while encouraging the development of a vibrant, mixed use University District (§38-44). The purpose "is to implement transportation, land use and urban design policies as established in the University District plan." The "walkable, mixed-use, higher density" district "supports sustainable development by providing an alternative to low-density development in peripheral areas." The city's community development director, David Weir, AICP, says that "the city and New Mexico State University have collaborated through the overlay district to plan, develop, and redevelop the University Avenue [area] for over 20 years." According to Weir, the overlay helps satisfy demand for student housing, while protecting older single-family neighborhoods from the negative effects of student encroachment. "The overlay has fostered improved aesthetics for the entire the corridor and the interface between the city and university," says Weir.

Zoning to meet demand and to reduce the impacts is not a cure-all, however. There can still be tensions. Ames, Iowa, has a

high-density residential district as well as a Campustown Service Center mixed use district for certain areas adjacent to the Iowa State University campus (§29.704 & §29.809). According to the city's planning and housing director, Kelly Diekmann, "in the areas near campus we have had a lot of tension of balancing neighborhood livability issues with student housing demands." In response, the city is reviewing its parking regulations and occupancy rules to help mitigate some of the impacts of student housing in established single-family neighborhoods. Diekmann says the city permits up to five unrelated persons per dwelling unit in higher density areas, but has also typically required more off-street parking in those areas. The exception is the Campustown district, where off-street parking requirements are lower to encourage redevelopment.

According to Diekmann, Ames is also considering changes to its occupancy standards, rental concentration restrictions on the number of homes that can be licensed for rental in certain areas, additional property and building improvement requirements for rentals, provisions to manage teardowns and rebuilds or additions that could affect neighborhood character, and greater articulation of the differences between group living and household living.

#### REGULATE IN AREAS SUBJECT TO INVASION

The impacts of existing student housing on single-family neighborhoods can be addressed with zoning regulations that prevent or ameliorate these impacts. Ames, Iowa, uses an overlay district in "impacted" areas east and west of the campus to prevent the demolition of fraternities and sororities on the east side and to relieve off-campus student housing pressures on the west side (§§29.1110–1111).

The range of alternative approaches is illustrated by the other communities with overlay districts including St. Paul, Minnesota (§67.700); Columbia, Missouri (§29-21.1); East Lansing, Michigan (§50-772 et seq.); and Oxford, Mississippi (§A.2:148).

Some communities control development near campus with form-based codes. In 2014, Ithaca, New York, adopted six Collegetown Area Form Districts for an area near Cornell University to help implement the city's 2009 *Collegetown Urban Plan and Conceptual Design Guidelines* (§32-45.1 et seq.).



➡ Purpose-built student housing in Minneapolis's Dinkytown neighborhood near the University of Minnesota.

According to Ithaca's director of planning and development, JoAnn Cornish, the melding of form-based codes with student housing zoning has "given the city the power to mandate certain design and aesthetic principles to developers who are snapping up real estate at about \$3 million an acre in our Collegetown." The prescriptive standards in the form districts ensure that developers are clear about what the city expects. "They can't cheap out on design and materials just because they paid so much for the property," says Cornish. "That argument won't fly in Ithaca."

Similarly, Tallahassee, Florida's University Urban Village District is an overlay zone with a regulating plan (§10-205 & §10-280 et seq.). According to Tallahassee-Leon County principal planner Artie White, AICP, "The University Urban Village District has very successfully catalyzed the redevelopment of a largely vacant warehouse district located between two major universities, creating a walkable mixed use activity center that continues to attract significant private investment." White points out that, while the residential development is largely geared to students, the district's urban design guidelines have helped shape the district "into a distinctive place with commercial and retail

uses that are supported not only by students, but by the entire community."

#### Define Student Housing

There is a lot of law to be found in the definitions. Types of households can be defined to include or exclude off-campus student housing arrangements in various housing types, among them private dormitories, purpose-built multifamily student housing, fraternity/sorority/cooperative living houses, and student rental homes. A "student residence" in Allentown, Pennsylvania, is a living arrangement where three or four full-time or part-time students live together. The definition applies only in the Student Residence Overlay District, while the traditional definition of family applies elsewhere (§1303). In Newark, Delaware, a "student home" is limited to three students and then, in somewhat unusual fashion, the definition lists 28 streets or street segments where student homes are not permitted (§32-4.123.1). The same term is defined in State College, Pennsylvania, and then linked to restrictive provisions in three residence districts (§19.B.201 & §19.D.501.1(6)).

A "student dwelling" in Williamsburg, Virginia, is imprecisely defined as "a building

containing three or more dwelling units located in close proximity to the campus of the College of William & Mary and designed to be occupied by students at the college" (§21-2). The regulations limit them to no more than two students in efficiency/one-bedroom units and up to four students in two or more bedrooms, only in the Urban Business District by special permit §21-355.1 & §21-354). As a condition of approval, applicants must either demonstrate that the dwelling is managed by the college or submit a management plan for upkeep and maintenance.

You can find "student housing" defined so as to limit it to housing designed for student rental with a bathroom for each bedroom, and also in typical construction multifamily buildings with apartments of three or more bedrooms. In Orange County, Florida, there are also criteria for student housing developments that, among other things, require a 400-foot separation from single-family uses measured from the property line and a six-foot masonry wall when the student housing is along a right-of-way (§38-1259).

Out west in Pueblo, Colorado, you will find "student housing" to be defined broadly as "a residence for occupancy by groups of people not defined as a family, where such building is specifically designed for students of a college, university, trade school or nonprofit

organization for the purpose of providing rooms for sleeping and living purposes . . .” (§17-2-2). They are allowed only by special permit with 14 site, design, operation, and transportation considerations (§17-4-12). Minor changes to the site plan can be approved without a new special permit process.

Finally, a “private dormitory” is the term used in Auburn, Alabama’s regulations to describe student-adapted private market apartments, typically with a bathroom provided for each bedroom (§203). The private dormitories are limited to the three Urban Neighborhood districts (§502.02.H).

#### **GET RID OF THAT BELLE TERRE DEFINITION OF FAMILY**

It does not work today and it probably did not when the case was decided. First, ease up on the definition of family to enable those who are a little different than the traditional family to live where they want without being in violation of the zoning. An extended straight, gay, or lesbian unmarried couple with foster children is just as good as any other family. They deserve to live where everyone else does.

Next, consider the government’s responsibilities under the FHAA and analogous state laws, and fold into the regulatory strategy the siting of protected group homes. Then consider group homes that may not be directly protected by federal and state statute, such as a homeless shelter.

While you are blending all this together, think what to do about those pesky off-campus college students. Remember, you have already coordinated with the college, found out what housing it expects to provide, and determined what the demand is for student housing. In the process you have worked with private developers to learn more about what students want, including roommates or not, price points, amenities, and transportation options. You have provided zoning in appropriate locations for moderate- to high-density development specifically targeted to students to take the pressure off the rest of the town. Still, how do you break the eight guys/four cars/two kegs conundrum created by the students outbidding the private market for single-family houses and apartments all over town?

#### **Define the ‘Functional Family’**

There is a definitional and procedural approach that can serve to protect the single-family

residential district while allowing greater numbers of people who are unrelated yet share common bonds, that is, a “functional family,” to live in single-family zoning districts. Remember, this definitional approach is an adjunct to zoning specifically for off-campus student housing and is intended to enable alternative households other than students to live in single-family areas.

Poughkeepsie, New York, has eased into this by allowing a “rebuttable presumption” that five unrelated people living together who are not related by blood, marriage is not a family. The household can rebut the presumption by providing evidence that it is the “functional equivalent of a family” (§210-9).

Painesville, Ohio, has collected examples of other functional family definitions (2013).

The Court of Appeals of Michigan in *Stegeman v. City of Ann Arbor* (1995) upheld the right of a functional family subject to a special use permit to occupy a single-family dwelling. In that case the regulations defined a functional family as “a group of no more than 6 people plus their offspring, having a relationship which is functionally equivalent to a family . . . .” It explicitly excluded groups of students or other individuals “where the common living arrangement or basis for the establishment of the housekeeping unit is temporary.”

The use of the “functional family” is by no means without problems. Some argue there is too much discretion and too much opportunity for misuse. More importantly, when it is used for protected classes under the FHAA, it may stigmatize the potential residents. Is it right to require an adult with an intellectual disability or a clean and sober person in recovery from substance abuse or their representatives to be subjected to a public hearing and questioning in order to live like any other family? That is in part a legal issue in some jurisdictions, but everywhere it is a front-and-center public policy issue that needs to be talked through. Perhaps it is better to have an opportunity to accommodate the alternative household types through a special use permit process than not at all, especially when it will enable the exclusion of college students from a neighborhood.

#### **Talk Softly and Carry a Big Stick**

Most regulations are no good unless enforced. Enforcement of zoning and other local regulations needs to be swift, certain, and consistent in single-family

neighborhoods where students have taken over detached houses and apartments. One of the keys to successful enforcement is to know where off-campus student housing is, and that the housing is appropriate and safe. Licensing and inspection requirements can help. Landlords in Gainesville, Florida (§14-5.1 et seq.); Lawrence, Kansas (§6-1301 et seq.); and West Lafayette, Indiana, (§117.01 et seq.) are required to get permits and submit to periodic inspections in order to rent. Colleges warn their students to check for required licenses before renting (Georgetown University n.d.).

The most interesting example of strict enforcement comes from Narragansett, Rhode Island, where students from the University of Rhode Island in nearby North Kingston have had a major impact on the housing market. The town of Narragansett got tough on enforcement. Party too hard and get busted for having an “unruly gathering.” You are warned, and the police are required to post a 10” by 14” bright orange sticker by the front door entitled “Notice of Public Nuisance” that warns of the consequences of a second offense (§46-32).

Sound like the scarlet letter? Can they do that? Yes, the can, said the First Circuit Court of Appeals, acknowledging Nathaniel Hawthorne in its decision (*URI Student Senate* 2011, footnote 1).

Syracuse, New York, has a “Nuisance Party Ordinance” with a dozen types of nuisances that aptly describe the usual party house (§16-65 et seq.). The city defines a “nuisance party” as “a social gathering which is conducted on premises within the City of Syracuse and which, by reason of the conduct of the persons in attendance, results in any one (1) or more of the . . . [listed] conditions or events occurring at the site of the said social gathering, or on neighboring public or private property. . . .” The penalty? Up to \$500 or 15 days of imprisonment.

Flagstaff, Arizona, has a noise control ordinance that includes a “Nuisance Parties” section defined similarly to that in Syracuse, but with escalating fines for repeat offenders (§6-08-001-0005). Note that these ordinances are not in the zoning law.

And in Bloomington, Indiana, the city goes after the problem from the traffic side, with an ordinance typical of many places requiring resident parking permits. In this case, it is one per vehicle per resident

(§15.37). The unintended consequence of such regulations can be cars parked on lawns.

### SUMMING IT UP

The last thing you want to do is enforce regulations to stop nuisance parties. It is a losing game of Whac-A-Mole. Instead, town

and gown need to coordinate and cooperate, and the housing demand must be met, preferably in optimal locations. There are better ways to protect family values than the *Belle Terre* definition of family, but it takes work. Some towns are winning the battle and winning the war. It can be done. Overarching the

efforts to get the right use in the right place is the need to protect those households that federal and state laws require be afforded equal housing opportunity. Social equity demands the same for many other types of households. Zoning and other regulations can do this.

Remember what the U. S. Supreme Court said in the first zoning case, *Village of Euclid v. Ambler Realty* (1926): "A nuisance may be merely a right thing in the wrong place—like a pig in the parlor instead of the barnyard." We respect our college students and their need or desire to live off campus. We just need to get them in the right place.

### REFERENCES

- Ball, Billy. 2015. "After 15 Years Chapel Hill Is Still Trying to Get a Grip on Its Housing Problem." *Indy Week*, March 18. Available at [tinyurl.com/ydbxv9jc](http://tinyurl.com/ydbxv9jc).
- Boston Globe. 2013. "Shadow Campus." Available at [bostonglobe.com/metro/specials/shadow-campus](http://bostonglobe.com/metro/specials/shadow-campus).
- Boston University. 2017. "Cost of Education for Undergraduates." Available at [tinyurl.com/m65okmb](http://tinyurl.com/m65okmb).
- Chapel Hill (North Carolina), Town of. 2009. "Good Neighbors." Available at [townofchapelhill.org/home/showdocument?id=1768](http://townofchapelhill.org/home/showdocument?id=1768).
- Chapel Hill (North Carolina), Town of. 2013. "Off-Campus Student Life." Available at [tinyurl.com/yd46n4wd](http://tinyurl.com/yd46n4wd).
- Chapel Hill (North Carolina), Town of. 2017. "Town and Gown Collaboration." Available at [tinyurl.com/y7kvb9z](http://tinyurl.com/y7kvb9z).
- College Board. 2017. "Trends in Higher Education: Tuition and Fees and Room and Board Over Time." Available at [tinyurl.com/pg9zc38](http://tinyurl.com/pg9zc38).
- Durning, Alan. 2012. "Decriminalizing Roommates: Occupancy Limits." *Sightline Institute*, December 10. Available at [tinyurl.com/ycf6m7cl](http://tinyurl.com/ycf6m7cl).
- Georgetown University. n.d. "Verify Your Landlord." Available at [tinyurl.com/zazwxqv](http://tinyurl.com/zazwxqv).
- Gordon, Larry. 2015. "College Students Move Off Campus as Room and Board Costs Rise." *Los Angeles Times*, August 16. Available at [tinyurl.com/y853mhqn](http://tinyurl.com/y853mhqn).
- Hamden (Connecticut), Town of. 2015. "Town/Gown: Allies + Antagonists." In *Plan of Conservation and Development*. Available at [tinyurl.com/yash4l5a](http://tinyurl.com/yash4l5a).
- Kovner, Josh. 2015. "Town vs. Gown: Student Housing Strains Quinnipiac-Hamden Relationship." *Hartford* *Courant*, March 8. Available at [tinyurl.com/y9ha7lla](http://tinyurl.com/y9ha7lla).
- Oliveri, Rigel C. 2015. "Single Family Zoning, Intimate Association, and the Right to Choose Household Companions." *Florida Law Review*, 67: 1401–1453. Available at [tinyurl.com/yd3c64l4](http://tinyurl.com/yd3c64l4).
- Painesville (Ohio), City of. 2013. "Spreadsheet of Example Ordinances of Definition of Family." Available at [tinyurl.com/y7g6bawd](http://tinyurl.com/y7g6bawd).
- Snyder, Thomas D., and Sally A. Dillow. 2015. *Digest of Education Statistics 2013*. Washington, D.C.: U.S. Department of Education. Available at [nces.ed.gov/pubs2015/2015011.pdf](http://nces.ed.gov/pubs2015/2015011.pdf).
- Stegeman v. City of Ann Arbor*, 540 N.W.2d 724, 213 Mich. App. 487 (Ct. App. 1995). Available at [tinyurl.com/y7zkkub9](http://tinyurl.com/y7zkkub9).
- URI Student Senate v. Town of Narragansett*, 631 F.3d 1 (1st Cir. 2011). Available at [tinyurl.com/y91q3q4w](http://tinyurl.com/y91q3q4w).
- U.S. Census Bureau. 2012. "2012 Census of Governments." Available at [census.gov/govs/cog](http://census.gov/govs/cog).
- U.S. Department of Education, Institute of Education Sciences, National Center for Educational Statistics (IES NCES). 2017. "Fast Facts." Available at [nces.ed.gov/FastFacts](http://nces.ed.gov/FastFacts).
- U.S. News and World Report*. 2017. "Most Campus Commuters." Available at [usnews.com/best-colleges/rankings/most-off-campus](http://usnews.com/best-colleges/rankings/most-off-campus).
- Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974). Available at [tinyurl.com/ydaghrft](http://tinyurl.com/ydaghrft).
- Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926). Available at [tinyurl.com/y7uharem](http://tinyurl.com/y7uharem).

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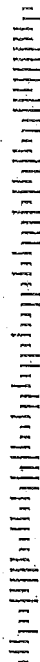
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