Unit 7 Constitutional Limitations

Regulatory Takings: Condemnation, Regulation and Impermissible Takings of Private Property

5th Amendment Takings Clause

- "nor shall private property be taken for public use, without just compensation."
  - Public use
  - Just compensation

Public Use

- All governmental uses of property
- Private, for profit, public utilities
- Urban renewal

Just Compensation

- Fair Market Value (FMV)
- The price that a willing buyer would pay a willing seller

Eminent Domain in NC

- Power conferred solely by General Assembly
- Condemnors
  - Public
  - Private

Eminent Domain Procedure

- No prior offer to purchase required
- Notice
- Institution of action
  - Service of summons & complaint
  - Deposit with the court
- Answer by defendant

Eminent Domain Procedure

- Determination of damages & other issues
  - Commissioners used if sole issue is compensation
  - Trial *de novo* from findings of commissioners
- Vesting of title
  - Quick take
  - Standard

Inverse Condemnation

- No legal action by public entity
- Corresponds to the torts of trespass or nuisance
- Physical v. nonphysical
- Attorney fees available (NC)

U.S. Supreme Court Decisions

- Physical invasion
- Regulatory takings
  - Usually, but not necessarily, nonphysical

U.S. Supreme Court Decisions

- Lucas v. S.C. Coastal Council (1992)
- Dolan v. City of Tigard (1994)
- Nollan v. California Coastal Commission (1987)
- Loretto v. TelePrompter Manhattan CATV Corp. (1982)

Other cases

- Loveladies Harbor, Inc. v. U.S. (Fed. Cir. 1994) - framework problem [appeal from U.S. Court of Federal Claims]
- Florida Rock Industries, Inc. v. U.S. (Fed. Cir. 1994) - partial taking
- Bormann v. Bd. Of Supervisors in & for Kossuth Co., Iowa (Iowa Supreme Court 1998)

NC Law

- Exactions
  - Meets need created by developer
  - Commensurate benefit to development
  - Schools & general road improvements forbidden in N.C.

NC Law

- No state equivalent of Takings Clause
- NC cases more generous than federal
- Partial takings
  - Calculation
    - FMV before less FMV after
  - Offsets

Summary of limitations on federal & state power

- Constitutional
- Statutory
- Institutional

Constitutionality of Zoning

- Uniform scheme
- No spot zoning
- No guarantee of highest & best use