

THEORIES OF MUNICIPAL LIABILTY AND DEFENSES

*By Brian A. Goldman, Esq.
CRMC Legal Counsel*

R.I.G.L. 42-35-15

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

R.I.G.L. 42-35-15 (continued)

- 1) In violation of constitutional or statutory provisions;
- 2) In excess of the statutory authority of the agency;
- 3) Made upon unlawful procedure;
- 4) Affected by other error or law;
- 5) ***Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or***
- 6) ***Arbitrary or capricious*** or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Substantial Evidence

- Legally competent evidence is defined as evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

- “...Nor shall private property be taken for public use, without just compensation”.
- This is the “Takings” Clause of the Constitution.

TYPES OF “TAKINGS”

● **Direct Condemnation a.k.a. Eminent Domain**

● **Inverse Condemnation**

- 1) Physical Takings
- 2) Regulatory Takings

Pennsylvania Coal Co. v. Mahon

260 U.S. 393 (1922)

- Justice Oliver Wendell Holmes for the Court:
“[t]he general rule at least is , that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking”.

CATEGORICAL TAKINGS

- Lucas v. S.C. Coastal Council 505 U.S. 1003 (1992)

“[a] regulation that declares ‘off limits’ all economically productive or beneficial uses of land [that] goes beyond what the relevant background principles [of state nuisance law] would dictate” requires just compensation.

- Lucas cases are called “total takings” cases.

REGULATIONS WITH AN OVERLY SEVERE IMPACT

- Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978)
- Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex set of factors including;
 1. the regulation's economic effect on the landowner;
 2. the extent to which the regulation interferes with reasonable investment-backed expectations; and
 3. the character of the government action.



QUESTIONS

?

?

?

?