Lessons from Luminaries

3:30PM – 4:50PM **Law Update Session** *JI-Lecture Hall*

Lessons from Luminaries of Land Law: Latest and Greatest Decisions

Moderator: **Michael D. Zarin**, Esq., *Partner, Zarin & Steinmetz*

Carol N. Brown, Esq.,
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Lessons from Luminaries

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Lessons from Luminaries of Land Law: Latest and Greatest Decisions

Carol N. Brown, Esq.,
Professor of Law, University of Richmond School of Law

AFFORDABLE HOUSING INITIATIVES

Friday, December 6, 2024
3:30 - 4:50 PM
Professor Carol N. Brown
The University of Richmond School of Law

UNIVERSITY OF RICHMOND RICHMOND School of Law

The Possibilities: Let's Try a Game

- *Think of a number from 1 to 10.*
- *Multiply that number by 9.*
- *If the number is a 2-digit number, add the digits together.*
- *Now subtract 5.*
- *Determine which letter in the alphabet corresponds to the number you ended up with (example: 1=a, 2=b, 3=c, etc.*
- *Think of a country that starts with that letter.*
- *Remember the last letter of the name of that country.*
- *Think of the name of an animal that starts with that letter.*
- *Remember the last letter in the name of that animal.*
- *Think of the name of a fruit that starts with that letter.*

California

*Housing Accountability Act

* Land Use Planning and Enforcement

Housing Accountability Act
Cal. Gov. Code § 65589.5 et. seq
Effective 1/1/2025

- Builder's Remedy – New Standards Beginning 2025

Housing Accountability Act
Cal. Gov. Code § 65589.5
2024 Cal. Legis. Serv. Ch. 265 (A.B. 1413)

- Builder's Remedy – New Standards Beginning 2025

AB 1893: Major reforms = enhanced safeguards for Builder's Remedy projects

  - Greater legal certainty
  - Creates state-imposed density standards for out of compliance localities
  - Among most ambitious state density standards
  - Enhanced accountability for California Department of Housing and Community Development to hold localities accountable.
  - Grandfathering and conversions to advance pipeline projects

Housing Accountability Act
Cal. Gov. Code § 65589.5
2024 Cal. Legis. Serv. Ch. 265 (A.B. 1413)

- Builder's Remedy – New Standards Beginning 2025

AB 1893: Major reform = enhanced safeguards for Builder's Remedy projects

AB 1886: Major reform = clarifies that California Department of Housing and Community Development decisions activate developers' Builder's Remedy and prohibits localities from using zoning codes to deny eligible housing projects.

Housing Accountability Act
Cal. Gov. Code § 65589.5
2024 Cal. Legis. Serv. Ch. 265 (A.B. 1413) Effective 1/1/2025

- Builder's Remedy – New Standards Beginning 2025

AB 1893: Major reform = enhanced safeguards for Builder's Remedy projects

AB 1886: Major reform = clarifies that California Department of Housing and Community Development decisions activate developers' Builder's Remedy and prohibits localities from using zoning codes to deny eligible housing projects.

AB 1413: Major reform = attempts to balance preventing abuse of the California Environmental Quality Act and protecting public engagement.

California Land Use Planning and Enforcement – Projects Beginning 2025

AB 2023: Major reform = Creates rebuttable presumption that a local government's housing element or amendment is invalid if the Calif. Department of Housing and Community Development finds that the housing element or amendment is not substantially in compliance with housing element law.

SB 1037: Major reform = Civil penalties for housing element noncompliance that is arbitrary, capricious, or entirely without evidentiary support.

AB 3093: Major reform =

- Adds two new income categories - extremely low and acutely low income housing;
- Require jurisdictions within the coastal zone that have not already identified adequate sites to accommodate housing needs for designated income levels in the locality to complete relevant local coastal program amendments;
- Analyze the impacts of their historic preservation ordinances on housing production

AB 2667: Major reform = Affirmatively furthering fair housing reporting requirements

SB 7: Major reform = Implements several changes to the Regional Housing Needs Allocation (RHNA) allocation process

Massachusetts

Massachusetts Affordable Homes Act (H. 4077)

Massachusetts Affordable Homes Act (H. 4977)

Promoting Affordable Housing Construction

Accessory Dwelling Units, Major Reform = Amends the Dover Amendment, G.L. c. 40A Sec., 3.

Residential Lots Under Common Ownership, Major Reform = Amends G.L. c. 40A Sec., 6 to allow development of certain adjacent lots held under common ownership to be developed as single-family residential.

Seasonal Communities, Major Reform = Amends G.L. c. 23B to allow the Executive Office of Housing and Livable Communities to designate seasonal communities that can use designated tools to promote year-round housing.

New Jersey

New Jersey Joint Affordable Housing Legislation: Senate Bill S50 and Assembly Bill A4

Bills Revamp Process for Municipalities to Meet Their Mount Laurel Obligations

Primary Bills, S-50/ A-4 Major Reform = Establishes a new, streamlined framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's Mount Laurel doctrine and the State's Fair Housing Act.

New Jersey S-50/ A-4 Major Reforms

Abolished Council on Affordable Housing (COAH). COACH's functions split between the Department of Community Affairs (DCA) and the Administrative Office of Courts (AOC).

The DCA = tasked with calculating regional need and municipal present and prospective obligations in accordance with the methodology outlined in in legislation.

The Affordable Housing Dispute Resolution Program (Program) within the AOC = tasked with handling any dispute.

New Jersey S-50/ A-4 – Timeline

October 20, 2024: Fourth Round of regional need and municipal affordable housing obligations, which have been calculated and published by the DCA (PDF) for every town in New Jersey.

January 31, 2025: Municipal obligations to be adopted by resolution by the governing body.

February 28, 2025: Final date for an interested party to challenge a municipality's Fourth Round obligation.

March 1, 2025: If there is no challenge, municipality's determination of its Fourth Round obligations will be established by default/without any approval.

March 31, 2025: In the case of a Program challenge from an interested party, final date for decisions to be provided to the municipality and all involved parties.

New Jersey S-50/ A-4 – Timeline

June 30, 2025: Deadline to adopt a Housing Element and Fair Share Plan.

August 31, 2025: Deadline for an interested party to file a response alleging a municipality's Housing Element and Fair Share Plan are not in compliance with the "Fair Housing Act."

March 15, 2026: Final date for a municipality to adopt implementing ordinances and resolutions for the Fourth Round of its affordable housing obligations. Alternatively, if a municipality is involved in a continuing dispute by this date, the municipality may wait to adopt implementing ordinances and resolutions until such dispute is resolved.

Take-Aways

Lessons from Luminaries

3:30PM – 4:50PM **Law Update Session** *JI-Lecture Hall*

Lessons from Luminaries of Land Law: Latest and Greatest Decisions

Michael Allan Wolf, Esq.,
Professor of Law & Richard E. Nelson Chair in Local Government Law,
University of Florida Levin College of Law

Taking to Extremes: *Sheetz*, *Devillier*, and *180 Land. Co.*

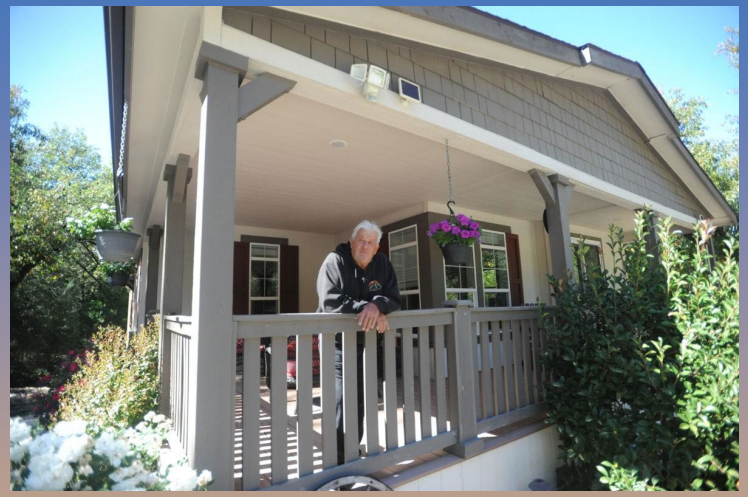
Michael Allan Wolf
Richard E. Nelson Eminent Scholar Chair in Local Government
University of Florida Levin College of Law

23rd Annual Alfred B. DelBello Land Use and Sustainable Development Conference
Fostering the Development of Sustainable Communities through Innovative Strategies

December 6, 2024

UF Levin College of Law
Environmental and Land Use Law Program
UNIVERSITY of FLORIDA

George Sheetz owns property in the center of the County near Highway 50, which the General Plan classifies as "Low Density Residential." Sheetz and his wife applied for a permit to build a **modest prefabricated house** on the parcel, with plans to raise their grandson there. As a condition of receiving the permit, **the County required Sheetz to pay a traffic impact fee of $23,420**, as dictated by the General Plan's rate schedule. Sheetz paid the fee under protest and obtained the permit. The County **did not respond to his request for a refund**.



The California Court of Appeal declined to assess the County's traffic impact fee for an essential nexus and rough proportionality based on its view that the *Nollan/Dolan* test does not apply to "legislatively prescribed monetary fees." That was error. **Nothing in constitutional text, history, or precedent supports exempting legislatures from ordinary takings rules. . . .**

[A]t oral argument, the parties expressed "radical agreement" that conditions on building permits are not exempt from scrutiny under *Nollan* and *Dolan* just because a legislature imposed them. The County was wise to distance itself from the rule applied by the California Court of Appeal, because, as we have explained, a legislative exception to the ordinary takings rules finds no support in constitutional text, history, or precedent.

We do not address the parties' other disputes over the validity of the traffic impact fee, **including whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity** as a permit condition that targets a particular development.

***Sheetz v. County of El Dorado*, 601 U.S. 267 (2024)**

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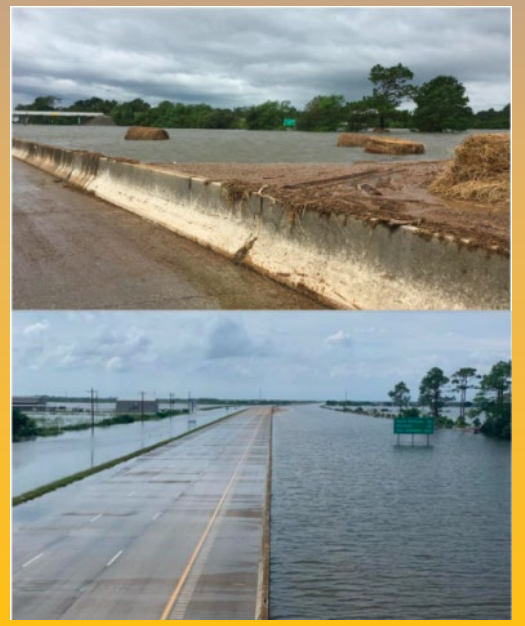
We granted certiorari to decide whether "a person whose property is taken without compensation [may] seek redress under the self-executing Takings Clause even if the legislature has not affirmatively provided them with a cause of action." Pet. for Cert. i. That question assumes the property owner has no separate cause of action under which to bring a claim based on the Takings Clause. . . .

Richard DeVillier and more than 120 other petitioners own property north of U. S. Interstate Highway 10 between Houston and Beaumont, Texas. The State of Texas undertook several projects to facilitate the use of that portion of the highway as a flood-evacuation route. It **installed a roughly 3-foot-tall barrier along the highway median to act as a dam**, preventing stormwater from covering the south side of the road.

In August 2017, Hurricane Harvey brought heavy rainfall to southeast Texas. The new median barrier performed as intended, keeping the south side of the highway open. But, it **also flooded petitioners' land to the north, displacing them from their homes, damaging businesses, ruining crops, killing livestock, and destroying family heirlooms**. The same thing happened during Tropical Storm Imelda in 2019. . . .

***Devillier v. Texas*, 601 U.S. 285 (2024)**



As relevant, Texas moved to dismiss the federal inverse-condemnation claim, arguing that **a plaintiff has no cause of action arising directly under the Takings Clause**. It contended that only Rev. Stat. §1979, 42 U. S. C. §1983, provides a vehicle to assert constitutional violations, and §1983 does not authorize claims against a State. DeVillier did not dispute that he intended to bring his federal claim directly under the Fifth Amendment. Instead, **he responded that the Takings Clause is "self-executing,"** which, he argued, means that the Clause itself provides a cause of action for just compensation. . . .

The District Court denied Texas' motion [to dismiss], concluding that a property owner may sue a State directly under the Takings Clause. The Court of Appeals disagreed. In a one-paragraph opinion, it "h[eld] that the Fifth Amendment Takings Clause as applied to the states through the Fourteenth Amendment does not provide a right of action for takings claims against a state." . . .

Our precedents do not cleanly answer the question whether a plaintiff has a cause of action arising directly under the Takings Clause.

But, this case does not require us to resolve that question. The question presented asks what would happen if a property owner had no cause of action to vindicate his rights under the Takings Clause. . . .

The premise that Texas left DeVillier with no cause of action to obtain the just compensation guaranteed by the Takings Clause does not hold. Texas state law provides a cause of action by which property owners may seek just compensation against the State. **As Texas explained at oral argument, its state-law inverse-condemnation cause of action provides a vehicle for takings claims based on both the Texas Constitution and the Takings Clause**. . . . On remand, DeVillier and the other property owners should be permitted to pursue their claims under the Takings Clause through the cause of action available under Texas law.

***Devillier v. Texas*, 601 U.S. 285 (2024)**

In this matter, the City of Las Vegas challenges the district court's determination that a per se regulatory taking occurred and its $48 million award to the landowner, 180 Land Co., LLC. In its separate appeal, 180 Land challenges the district court's award of prejudgment interest.

The totality of the circumstances surrounding the City's handling of 180 Land's attempts to develop the 35 acres at issue, demonstrated through 180 Land's applications to develop the property, the official actions of the city council, and statements and actions of City representatives and employees, evinces **the futility of 180 Land's past and future development efforts on the property**. With any efforts to develop the property rendered futile, the district court did not err in determining that a per se regulatory taking occurred. The district court also did not err in relying on 180 Land's expert's valuation of the property to determine just compensation, especially as the City neither challenged the valuation nor provided alternative valuations. Finally, both parties' challenges to other aspects of the district court's damages award fail to present a basis for reversal. Accordingly, we wholly affirm the district court. . . .

Members of the City Council also commented regarding 180 Land's development proposals. While seeking election, former City Councilperson Steve Seroka stated in a news interview that the City would have the golf course acreage turned over to it in a land swap. Former Councilperson Bob Coffin also said, in a group text, that he was looking for "intel on the scum behind the [golf course] takeover. Dirt will be handy if I need to get rough." Councilperson Coffin further directed others to use their personal emails to discuss the golf course development issue and not to use the name of the golf course to avoid the communications being subject to disclosure under a previously issued subpoena. In an email, **Councilperson Coffin referred to someone from 180 Land, presumably Lowie, as a motherf***ker," "son-of-a-bitch," and "[a]sshole.“**

City of Las Vegas v. 180 Land Co., LLC, 546 P.3d 1239 (2024)

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The City asserts that the entirety of the golf course acreage had related topography and thus should be considered the relevant parcel for 180 Land's takings claim. But we see no such unique concerns regarding the golf course acreage, which the record demonstrates is in a suburban area surrounded by residential and commercial development, that might require treating the entirety of the golf course acreage as a single parcel. . . .

[T]reating the 35 acres as the denominator parcel of land for 180 Land's takings claim is appropriate. It is a single parcel with an individual parcel number and was treated as an individual parcel throughout the entirety of 180 Land's attempts to obtain the City's approval to develop it, even when 180 Land submitted applications regarding the entire 250 acres. And that the City approved development on the 17-acre parcel, but not on the 35-acre parcel, further demonstrates the 35 acres' separate nature. While the 35 acres used to be part of the 250 acres making up a golf course, there are no ecological or other physical aspects of the land that warrant us treating the 250 acres as the whole parcel in this case. The approval of development on the 17 acres adding value to the entire 250 acres does not outweigh these other considerations. . . .

The City and the amici argue that 180 Land submitted only one development application for the 35-acre site before filing suit and that neither the City's denial of the master plan amendment for the entire 250-acre site, nor its rejection of two other nondevelopment applications, nor the City's other actions constituted a final decision ripening 180 Land's per se regulatory takings claim. 180 Land argues that its per se regulatory takings claim is ripe because it exhausted its administrative remedies or, alternatively, that such efforts would have been futile.

Considering the totality of the City's actions, we conclude that **any further attempts to apply for development by 180 Land would have been futile**, such that its takings claim was ripe.

City of Las Vegas v. 180 Land Co., LLC, 546 P.3d 1239 (2024)

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Lessons from Luminaries

3:30PM – 4:50PM **Law Update Session** *JI-Lecture Hall*

Lessons from Luminaries of Land Law: Latest and Greatest Decisions

Dwight H. Merriam, Esq., FAICP,
Attorney at Law

Short-Term Rentals

Friday, December 6, 2024
3:30 - 4:50 PM
Dwight Merriam, FAICP

Developing local STR regulations

Requires:

1. **A plan for planning,**
2. **A process that is inclusive of all interests, and**
3. **Identification and resolution of policy issues before drafting.**

The fundamental planning process

1. What do you have?

2. What do you want?

3. How do you get it?

First, don’t regulate

The importance of life safety issues.

Families of victims dead from carbon monoxide poisoning in Mexico Airbnb warn against short-term rentals

The families are demanding that Airbnb mandate carbon monoxide protectors.

https://abcnews.go.com/US/families-victims-dead-carbon-monoxide-poisoning-mexico-airbnb/story?id=94274732

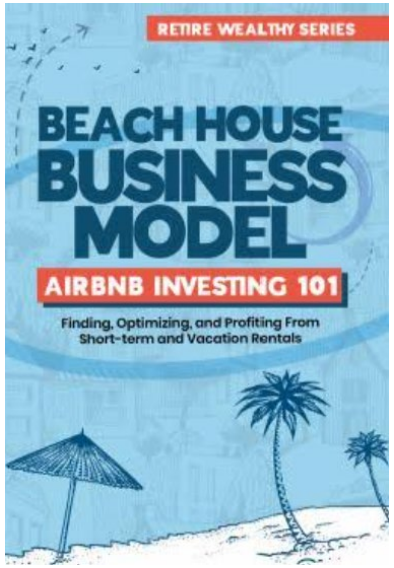
Most of the apartments where New Yorkers drowned were illegal residences.

Four of the five basement apartments where people were killed in Queens were illegal conversions, as was one in Brooklyn, the Department of Buildings said.

https://www.nytimes.com/2021/09/03/nyregion/nyc-illegal-basement-apartment-ida.html#:~:text=New%20York%20City's%20Department%20of,converted%20cellar%20or%20basement%20apartments

Hold a series of informational meetings

The objective is to create a dialogue with those who rent and those who may wish to.



"What everyone who does STR needs to know"

- -insurance
- -liability
- -privacy
- -HOA/covenant compliance
- -taxes (income, potential higher valuation)

Build database of contact information.

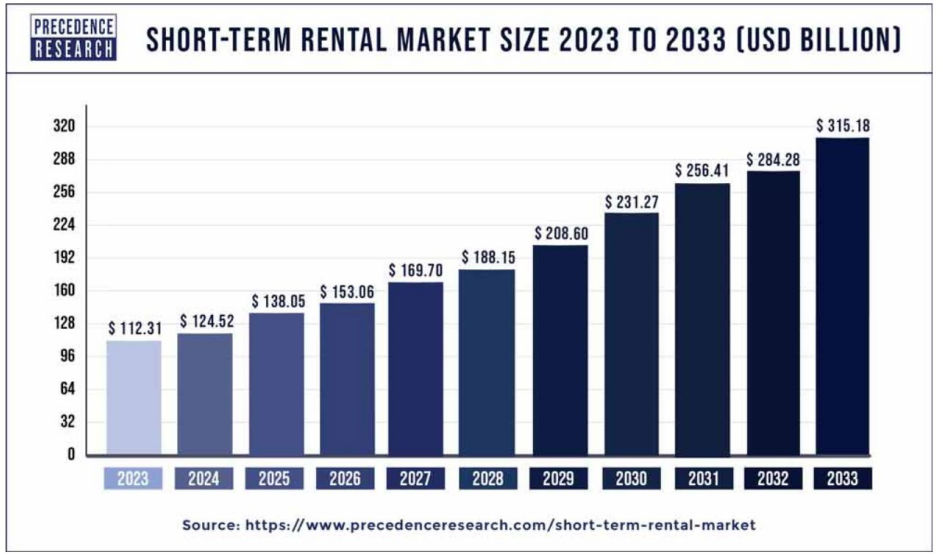
Then some workshops on issues

- The objective is to vet the issues before you write.

- They will vary greatly from town to town.

What is the demand?

1. A planning activity.
2. How many STRs are offered now?
3. How many needed to serve the community's needs?
4. Regulation might cap the number of STRs.



Data-driven

PLANNING MAGAZINE

4 Data-Driven Tips for Regulating Short-Term Rentals

See ABA article for a good summary of recent data:

Short-Term Rentals:
Can Cities Get in Bed with Airbnb?

https://www.americanbar.org/groups/state_local_government/publications/urban_lawyer/2021/51-2/shortterm-rentals-can-cities-get-inbed-airbnb/

And a Dartmouth study:

https://rockefeller.dartmouth.edu/report/short-term-rental-units-regulations-and-impacts-vermont

Commercial or private or both?

An intractable issue in New Orleans…

- Limitation on number of CSTR units per building?
- A ban on whole home or whole building CSTRs?

***Hignell-Stark v. City of New Orleans*, 46 F.4th 317 (5th Cir. 2022).**

https://scholar.google.com/scholar_case?case=4921925587087244825&q=hignell+city+of+new+orleans&hl=en&as_sdt=40000006

***Hignell v. City of New Orleans,* Civil Action No. 19-13773 (E.D. La. Feb. 27, 2024).**

https://scholar.google.com/scholar_case?case=2846149371737511083&q=hignell+new+orleans&hl=en&as_sdt=8006

Only principal residences?

***Mendez v. City of Chicago*, 2023 I.L. App (1st) 211513 (Ill. App. Ct. 2023).**

https://scholar.google.com/scholar_case?case=18072069703017830972&q=Mendez+v.+City+of+Chicago&hl=en&as_sdt=40000006

Owner-occupied or whole house rentals?

From *Hignell-Stark*:

A.

The City's residency requirement discriminates against interstate commerce. A law is discriminatory when it produces "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *United Haulers*, 550 U.S. at 338 (quotation omitted). A law may discriminate on its face, in purpose, or in effect. *See Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 945 F.3d 206, 213 (5th Cir. 2019); *Allstate Ins. Co. v. Abbott*, 495 F.3d 151, 160 (5th Cir. 2007). But the only form of discrimination that implicates the dormant Commerce Clause is discrimination between "substantially similar entities." *Davis*, 553 U.S. at 342 (quotation omitted).

The residency requirement discriminates on its face against out-of-state property owners. The City doesn't just make it more difficult for them to compete in the market for STRs in residential neighborhoods; it forbids them from participating altogether. The City prohibits anyone from using a property as an STR unless the owner has a permit.[14] And the City does not offer permits for STRs in residential neighborhoods unless the STR is "located on the same lot of record as the owner's primary residence" and the owner has a homestead exemption for that property.[15] The upshot is that only residents of the City may enter the market for STRs in residential neighborhoods.[16]

Is an STR a single-family use?

More from others, in just a bit, but…

“Although ‘‘residence’’ can mean a home, it can also mean a place where someone lives for some period of time without the same sense of permanence associated with a home. Moreover, to interpret ‘‘residence,’’ as that term is used in the 1994 regulations, as a place where one dwells with a sense of permanence, distinguished from a place of temporary sojourn, would render that term duplicative of ‘‘home’’ and essentially meaningless. Given that the drafters explicitly wrote the 1994 regulations to state that a single-family dwelling could be a ‘‘home’’ or ‘‘residence,’’ we conclude that they also found the differences in the meanings attached to each to be significant and chose not to render the term ‘‘residence’’ superfluous.”

FRANCES WIHBEY *v.* ZONING BOARD
OF APPEALS OF THE PINE
ORCHARD ASSOCIATION
(AC 45283)

Bright, C. J., and Elgo and Norcott, Js.

https://www.jud.ct.gov/external/supapp/Cases/AROap/AP218/218AP107.pdf

Will it violate single-family covenants?

Should regulations require review of covenants?

W. Mountain Assets LLC v. Dobkowski, 2023 WL 2398675 (N.Y. Sup. Ct. Mar. 7, 2023). In this recent case in the NY trial court, the restrictive covenants in a subdivision limited use of the parcels to "single family residential purposes." One owner (an LLC) began using its property for "rental on an ongoing, short-term, repetitive basis to transient, vacationing tenants." In other words, this was an AirB&B type of use. Neighbors brought suit to enjoin this use.

- The court granted summary judgment for the neighbors.

In the court's view, the resolution of this dispute does not lie in any construction of the terms "residential" or "commercial," but in the construction of the term "single-family" as used in the covenant. The court is guided in this matter by the Court of Appeals decision in White Plains v. Ferraioli, 34 N.Y.2d 300, 304-306, 357 N.Y.S.2d 449, 313 N.E.2d 756 (1974), rendered in the context of a restrictive zoning ordinance and, therefore, in the court's view, an analogous context (see id. at 305, 357 N.Y.S.2d 449, 313 N.E.2d 756 [like a restrictive covenant in a deed, "[z]oning is intended to control types of housing and living."]). In that case, the Court held that a single-family use is one that "bears the generic character of a family unit as a relatively permanent household" (id. at 306, 357 N.Y.S.2d 449, 313 N.E.2d 756). Transient living, the Court held, falls outside the scope of a single-family residential use.

https://scholar.google.com/scholar_case?case=6729947553832209 18&q=W.+Mountain+Assets+LLC+v.+Dobkowski,&hl=en&as_sdt=40000006

from Marshal Granor:

- **In *Vera Lee Angel Revocable Trust v. O'Bryant*, 2018 Ark. 38, 537 S.W.3d 254 (2018), the Supreme Court of Arkansas held that using a home for short-term rentals did not constitute "commercial use" and is not in violation of the recorded subdivision covenants. Those covenants prohibited the use of lots for anything other than residential purposes and specified that motels and hotels were prohibited commercial uses. After the owner's parents vacated the subject residence, the owner first allowed friends to use the property, but then began advertising on the internet to vacationers. Overturning the lower court, the Supreme Court held that the covenants did not rule out residential rentals, but only prohibited a "commercial use."**

- **Relying on *Black's Law Dictionary*, the appeals court found that "commercial" means engaging in commerce or involving the ability of a product or business to make a profit. Each "commercial" example in the dictionary had an outward appearance and manner of operation that was readily distinguishable from a single-family dwelling. Here, there was no outward sign of commerce. The single-family house looked just like the other homes in the neighborhood. Without an outward sign of commerce there could be no violation of the "only for residential purposes" covenants.**

Contrast *Vera Lee Angel* with *Edwards v. Landry Chalet Rentals, LLC*, 246 So. 3d 754 (La. Ct. App. 2d Cir. 2018), writ denied, 244 So. 3d 437 (La. 2018). wherein the Court of Appeal of Louisiana held that using a home for short-term rentals did, in fact, constitute "commercial use" and was in violation of the subdivision covenants. The owner contended his use was residential, as people were "residing" in the home and not engaging in the sale of products or other commercial uses.

The appeals court relied, in part, on (you guessed it) *Black's Law Dictionary* which defined "commercial" as conducting an activity for profit or a use that furthers an ongoing profit-making business activity. The court reasoned that leasing all or a portion of a residence is done for profit, thus the residence-only covenant was breached. The court also looked to the actions of the owner, who had insured the property against lost rents and business liability and did so with a commercial" insurance policy. Thus, at least in Louisiana, transient tenants occupy a residence in a "commercial" setting and not as a residential use.

For additional analysis about whether governments may exclude STR's by considering them commercial enterprises, consider *Tarr v. Timberwood Park Owners Association, Inc.* Tarr v. Timberwood Park Owners Association, Inc., 556 S.W.3d 274 (Tex. 2018). Here, the Texas Supreme Court spent several thousand words to conclude that using the on-line Vacation Rentals by Owner (VRBO) platform to lease an entire house, did not violate the deed prohibition against non-residential uses.

Marshal Granor, Esq.

Past Chair, Real Property, Probate and Trust Law Section of Pennsylvania Bar Association
Fellow, College of Community Association Lawyers

Do they reduce the availability of affordable housing?

Sometimes the STRs are cheaper than long-term rentals.

https://www.planetizen.com/blogs/118079-short-term-renters-matter-too

But the weight of the evidence is otherwise, STRs adversely affect affordability.

https://www.planetizen.com/node/87103/should-we-blame-airbnb-exorbitant-housing-prices

But like so many things, it of depends…

- The rapid spread of short-term rentals ("STRs") in New Orleans has affected the housing market in neighborhoods throughout the city.
- In the past decade, the STR market has grown rapidly in cities around the world, as online platforms such as Airbnb and VRBO have facilitated STR marketing and transactions, and as entrepreneurs have found ways to operate hundreds of STRs at scale. In New Orleans, the number of STR listings has more than doubled in just the past three years. STRs make up approximately 3.5 percent of all occupied housing units in the city, one of the highest rates for similarly sized cities in the nation.

- The shift of housing units to STR use has reduced the availability of housing for New Orleans residents. This phenomenon has been concentrated in neighborhoods like Marigny, Bywater and Treme, where between 10 to 16 percent of occupied housing units are listed as STRs.

https://www.nola.gov/nola/media/City-Planning/HRA_New-Orleans-Short-Term-Rental-Housing-Study-FINAL-8-1-19.pdf

Harvard Business Review

Government Policy And Regulation

What Does Banning Short-Term Rentals Really Accomplish?

by Sophie Calder-Wang, Chiara Farronato, and Andrey Fradkin

February 15, 2024

panchof/Getty Images

Summary. Concerns that short-term rentals fueled by platforms like Airbnb have caused long-term rents to rise in major cities has caused some governments to place limits, including bans, on them. But research of New York City found that short-term rentals are *not* the biggest contributor to high rents, especially when it comes to the most vulnerable segments of a city's residents. Given that short-term rentals have benefits, bans are a poor solution.

https://hbr.org/2024/02/what-does-banning-short-term-rentals-really-accomplish#:~:text=Minimal%20Impact&text=Her%20finding%3A%20The%20presence%20of,costs%20in%20the%20recent%20past.

Form of regulation

Zoning or general law or hybrid?

-Simsbury, CT by general law; zoning regs provide:

Short-Term Rental: Any furnished living space rented by a person(s) for a period of one (1) to twenty-nine (29) consecutive days. A short-term rental must have separate sleeping areas established for guests and guests must have at least shared access to one (1) full bathroom and cooking area. Operation of a short-term rental requires a permit via town ordinance.

-Hartford, CT by zoning

License?

As of right?

Site plan, with or without a hearing?

Special permit?

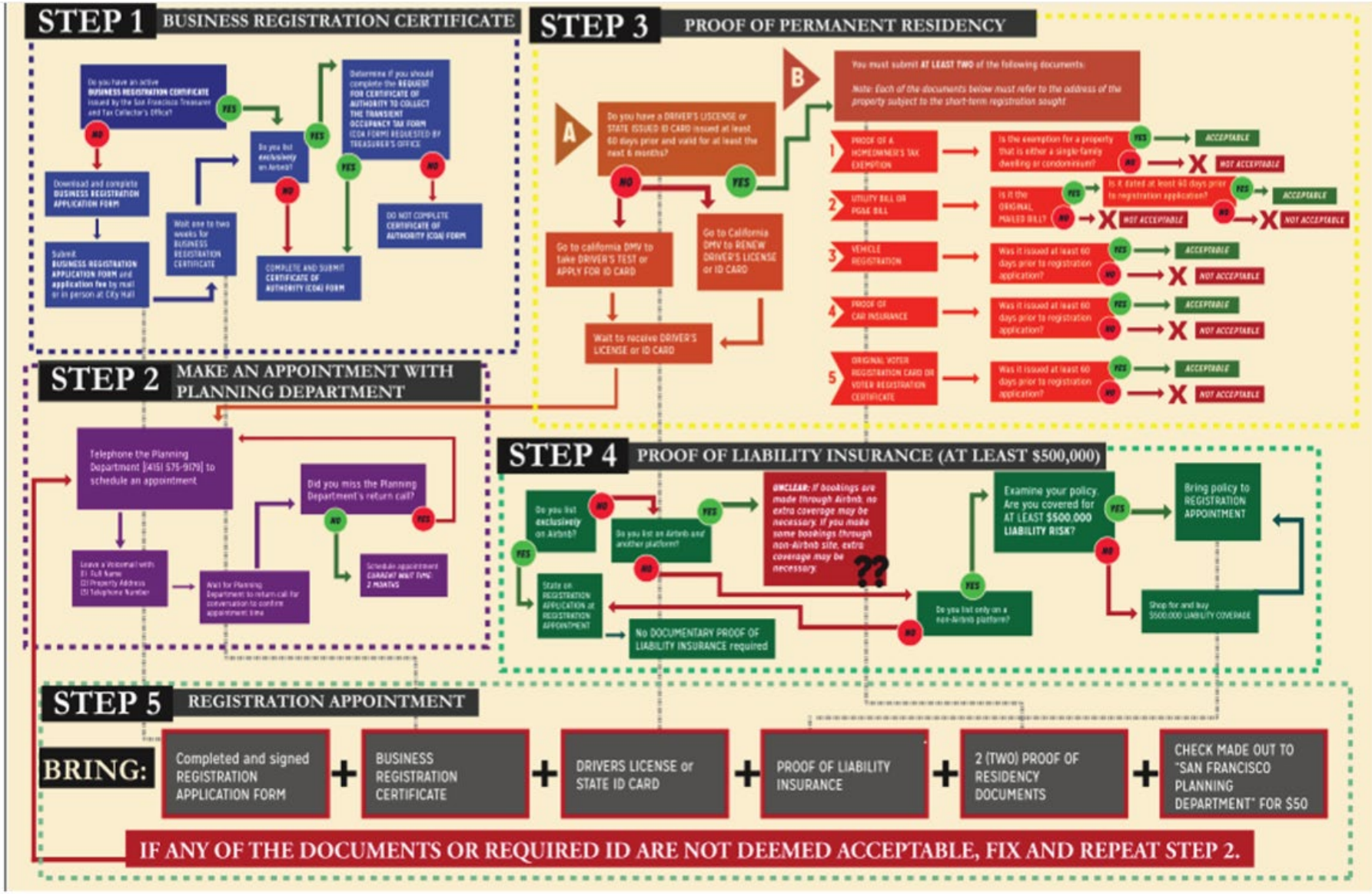
Time limitation on approval?

Transferable?

See Boise, Idaho:

https://codelibrary.amlegal.com/codes/boiseid/latest/boise_id/0-0-0-47262#JD_3-22-2

View of the San Francisco process by an Airbnb supporter…



Statement of purposes

Life safety

Nuisance and other police power objectives

Support of tourism

Economic development

Extra income

Definitions

Critical in most regulations.

Many will be necessary:

…bedroom, dwelling unit, event, intermediate length occupancy (San Francisco), local representative, lodging operator, lodging transaction, occupant, owner, owner-occupied, primary resident, STR, STR marketplace…

Where allowed

Floor area

Lot size

In an existing residence

Attached or detached structure

What zones?

-overlays
-special development districts

Maximum occupancy

Per bedroom?

Total?

For events?

No sleeping outdoors?

Length of occupancy

Minimum number of days

Airbnb NYC litigation – 30 day minimum

https://www.nytimes.com/2023/06/01/nyregion/airbnb-sues-nyc-rentals.html

https://rules.cityofnewyork.us/wp-content/uploads/2022/11/FINAL-RULES-GOVERNING-REGISTRATION-AND-REQUIREMENTS-FOR-SHORT-TERM-RENTALS.pdf

https://www.nyc.gov/site/specialenforcement/registration-law/registration.page

Maximum days per year

90 in San Francisco

See generally as to issues in regulation:

https://granicus.com/pdfs/Whitepaper_-A-practical-guide-to-effectively-regulating-short-term-rentals-on-the-local-government-level.pdf

Newport, RI

30 days minimum unless owner-occupied

https://www.cityofnewport.com/en-us/city-hall/departments/city-clerk/applications-forms/short-term-rental-regulations

Newport, RI

- **Short Term Rentals Are Not Permitted in Residential Zones**

  Under an ordinance change passed by the City Council on March 23, 2022, property owners in Newport's Residential Zones are *no longer permitted* to rent their properties for less than 30 days, unless the home serves as a primary residence.
- **Owner-occupied properties may continue to rent up to 2 rooms to no more than four people by right.**
- **For properties in the Limited Business Zone, short-term rentals are also prohibited, unless the owner of the property is granted a Special Use Permit by the Zoning Board of Review. To downloand an application, please visit the *Zoning & Inspections Department web page*.**
- **Short-term rentals, or transient guest facilities, remain permissible in the City's General Business and Waterfront Business zones.**

Minimum facilities

Shared bathroom?

Cooking?

Separate entrance?

Parking?

Use

Filming?

LOS ANGELES

Porn Industry Uses Airbnb, Rental Houses for Filming

The industry tells NBC4 homeowners may never know if their property was used as an adult film set.

By Jenna Susko and Matt Schrader • Published February 25, 2016 • Updated on February 26, 2016 at 9:47 am

Nearly four years after Los Angeles County passed new requirements for pornographic performers, the porn industry has spread to nearby counties like Ventura County — and much of that filming is happening in residents' homes with or without their knowledge. Jenna Susko reports for the NBC4 News at 11 p.m. on Thursday, Feb. 25, 2016.

Trending Stories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Grandma stabbed to death in front of family during violent rampage in the High Desert


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California DMV changing its disabled parking placard renewal process

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Who is playing in the 2023 US Open? Entire field, odds


PASADENA
Pasadena Heritage's beloved 'Bridge Party' returns after a five-year hiatus


ALHAMBRA
'A great deal': SoCal one-bedroom home on a bridge lists for $250K

Application

- Attestation of compliance with health and safety
- Agreement to allow inspections
- Certification of insurance
- Maps and plans
- Parking
- Trash
- Certification of privacy protection
- Emergency action plan
- Safety
- Notification “tree”
- Maintaining list of occupants (not recommended)

Application

- Insurance
- Cameras and other monitors

Enforcement

Typical zoning enforcement?

Citations?

More informal administrative review for minor issues?

Fini...

Lessons from Luminaries

3:30PM – 4:50PM **Law Update Session** *JI-Lecture Hall*

Lessons from Luminaries of Land Law: Latest and Greatest Decisions

Donald L. Elliott, Esq., FAICP,
Senior Consultant, Clarion Associates, LLC

Land Use Luminaries

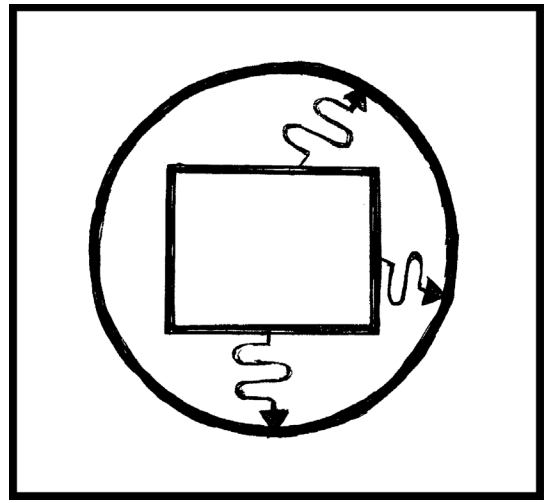
Pace Land Use Law Conference
December 6, 2024

Don Elliott, Esq., FAICP
Senior Consultant
Clarion Associates

Simplifying Approvals

Administrative Approvals For Individual Projects Whenever Possible

- Change Conditional Uses with Permitted Uses subject to objective standards
- Ensure the objective use-specific standards are grounded in public health and safety – not harmony community character
- Allow staff to make limited administrative adjustments to dimensional standards during the hearing process (without requiring a separate variance procedure) where properties have complicating site conditions caused by the owner
  - Chicago Zoning Ordinance 13-17-1000 et. seq.
  - Philadelphia Zoning Code 14-303(16)
  - Albuquerque Integrated Development Ordinance 14-16-5-4(O)



Simplifying Approvals

When Public Hearings on Individual Projects Happen

- Fewer, more objective standards decision-making criteria
  - Never include harmonious, compatible, complementary, or character
  - Public opposition is not a criteria for rule-based decision-making by an appointed body
- If conflicting credible testimony given, you can choose which to credit
  - Mention a reason behind your decision, but you do not need to mention what you did not believe or credit
- Feel free to correct mis-information or testimony unrelated to the decision-making criteria presented during the hearing
- Control the process – remind audience of the criteria -- use a timer
  - *Eberhardt v Tinley Park*, No. 1-23-0139, (Ill. Ct. App. April 24, 2024
  - *Creative Environments, Inc. v. Estabrook,* 680 F.2d 822 (1st Cir.), *cert. denied,* 459 U.S. 989, 103 S. Ct. 345, 74 L. Ed. 2d 385 (1982)

Simplifying Approvals

Legislative Reform

- Limit the use of problematic approval criteria – as Connecticut has done for "community character"
- Remove the need for – or ability to require – a public hearing through state action
- Colorado passed five affordable housing bills this year – two of which removed the ability of local governments to require public hearings
  - **Transit-oriented Communities** bill *(HB24-1313)* requires administrative approvals of housing projects within defined distances of transit stations and corridors, subject only to objective standards, which cannot include limits on zoning density below 40 du/acre (averaged over all such areas in the community)
  - **Accessory Dwelling Unit** bill *(HB24-1152)* requires administrative approvals of one attached or detached ADU on every lot where single-family homes are allowed (including in PUDs), subject only to objective standards that cannot include defined "restrictive design standards"

CONTINUING EDUCATION CREDITS

CLE Credits

NYS Planning & Zoning Credits
Email Ann Marie McCoy at amccoy@law.pace.edu.

CM Credits
Please visit the Certification Maintenance section of APA's website (www.planning.org/cm) to claim credits.
The event will be posted to the APA website soon. We will add the information to our website (Https://law.pace.edu/annual-conference-2023) as soon as it is available.

AIA/HSW/PDH Credits
Email Valerie Brown at vbrown@aiawhv.org

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