Top 25 Cases in Planning and Environmental Law

The editor of *Planning & Environmental Law (PEL)* selected these nationally significant cases based on suggestions and comments offered by Dan Tarlock, a professor at Chicago-Kent College of Law, and other *PEL* reporters. Planning and environmental law within any state may also be substantially defined or extended by court decisions in that state.

Cases are listed chronologically. The editor's explanation of the case's significance follows the title. When available, we have included case abstracts printed in *PEL*'s predecessor publications, *Zoning Digest* and *Land Use Law & Zoning Digest*. Finally, we noted when APA's Amicus Curiae Committee filed a brief in the case, and added a link to the Committee brief where possible.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)

> The U.S. Supreme Court indicated, for the first time, that regulation of land use might be a taking. http://laws.findlaw.com/us/260/393.html

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)

> Established zoning as a valid exercise of police power by local government. http://laws.findlaw.com/us/272/365.html

Berman v. Parker, 348 U.S. 26 (1954)

> Established aesthetics and redevelopment as valid public purposes for exercising the power of eminent domain.
> http://laws.findlaw.com/us/348/26.html

Cheney v. Village 2 at New Hope, Inc., 241 A.2d 81 (Pa. 1968)

> Legitimized the planned unit development (PUD) process.
>
> An ordinance creating a planned unit development district and authorizing the planning commission to approve the type, size and location of buildings and uses within the district was not in violation of the municipal comprehensive plan or an illegal delegation of legislative power to the commission.
> http://aalto.arch.ksu.edu/jwkplan/cases/cheney.pdf

Citizens to Preserve Overton Park, Inc. v. Volpe , 401 U.S. 402 (1971)

> Established the "hard look" doctrine for environmental impact review.
>
> Private citizens and local and national conservation groups successfully challenge the decision of the Secretary of Transportation to authorize the use of federal funds to finance the construction of a highway through Overton Park in Memphis, Tennessee. Under § 4(f) of the Department of Transportation

Act of 1966 and § 138 of the Federal-Aid Act of 1968, the Secretary may not authorize the expenditure of federal funds for a highway through a public park if a "feasible and prudent" alternative route exists, and if no alternative route exists, he may approve construction only if there has been "all possible planning to minimize harm" to the park.
http://laws.findlaw.com/us/401/402.htm

Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971)

Made National Environmental Protection Act (NEPA) requirements judicially enforceable. www.altlaw.org/v1/cases/438776

Sierra Club v. Morton, 405 U.S. 727 (1972)

Opened up environmental citizen suits to discipline the resource agencies.
http://laws.findlaw.com/us/405/727.html

Golden v. Planning Board of Ramapo, 285 N.E.2d 291 (N.Y. 1972)

Recognized growth phasing programs.

Zoning ordinance, allowing subdivision development only by special permit upon showing that adequate municipal facilities and services were available or would be provided by the developer, constituted a rational attempt to provide for sequential and orderly residential development in conjunction with the needs of the community and its ability to supply public facilities.
http://aalto.arch.ksu.edu/jwkplan/cases/ramapo.pdf

Just v. Marinette County, 201 N.W.2d 761 (Wis. 1972)

Significantly integrated public trust theories into a modern regulatory scheme.

Shoreland zoning ordinance providing for the creation of conservancy, recreational, and general purpose districts along navigable streams and other bodies of water upheld as constitutional. A landowner has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others.
http://aalto.arch.ksu.edu/jwkplan/cases/just.pdf

Fasano v. Board of County Commissioners of Washington County, 507 P.2d 23 (Or. 1973)

Required zoning to be consistent with comprehensive plans and recognized that rezonings may be quasi-judicial as well as legislative.

Because rezoning to permit a large mobile home PUD determined the rights of only a few landowners, the action was adjudicatory rather than legislative in character and the presumption of validity normally afforded local legislative acts did not apply. In such cases, the burden of justifying the rezoning falls on the party seeking the change, who must show that the change will be in accordance with the comprehensive plan.
http://aalto.arch.ksu.edu/jwkplan/cases/fasano.pdf

Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976)

Opened up the possibility to control pornography via land use.

Special requirements applicable to adult theatres and bookstores upheld.
http://laws.findlaw.com/us/427/50.html

Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977)

Established that discriminatory intent is required to invalidate zoning actions with racially disproportionate impacts.

The disproportionate racial impact of the village's refusal to grant rezoning necessary to allow construction of low-income housing is not sufficient to prove violation of the Equal Protection Clause, absent evidence of racially discriminatory intent. http://laws.findlaw.com/us/429/252.html

Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)

Created modern Endangered Species Act law (protecting the snail darter).

U.S. Supreme Court in a 6-3 decision held that the Endangered Species Act of 1973 prohibits the completion and operation of the Tellico Dam.
http://laws.findlaw.com/us/437/153.html

Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978)

Introduced a means-end balancing test for regulatory takings and validated historic preservation controls.

Restrictions on the development of the Grand Central Terminal did not amount to a taking of property, since Penn Central could transfer the development rights to the other properties and a reasonable return on the property was allowed, the U.S. Supreme Court ruled.
http://laws.findlaw.com/us/438/104.html

***Agins v. City of Tiburon**, 447 U.S. 255 (1980)

Used an alternative takings test to the *Penn Central* test.

U.S. Supreme Court rules that the open space zoning ordinance of the city of Tiburon, California, does not result in a taking of property without payment of just compensation. http://laws.findlaw.com/us/447/255.html

Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981)

Extended commercial speech to aesthetic regulation.

Ordinance that substantially restricted both commercial and noncommercial off-site billboards as well as noncommercial on-site billboards held unconstitutional under the First Amendment.
http://laws.findlaw.com/us/453/490.html

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)

Held that any physical occupation is a taking, no matter how de minimis.

State law that required landlords to permit installation of cable television facilities on their property constituted a taking because it was a physical nvasion of permanent duration. http://laws.findlaw.com/us/458/419.html

Southern Burlington County NAACP v. Township of Mt. Laurel (II), 456 A.2d 390 (N.J. 1983)

Created the model fair housing remedy for exclusionary zoning.

In a decision consolidating six exclusionary zoning cases, the court affirmed and refined the state's constitutional requirement that municipalities must provide their fair share of low- and moderate-income housing in their regions and established remedies to accomplish this objective by means of three judges who are given responsibility for ruling on exclusionary zoning cases. http://aalto.arch.ksu.edu/jwkplan/cases/burlington.pdf

***Williamson County Regional Planning Commission v. Hamilton Bank**, 473 U.S. 172 (1985)

Defined the ripeness doctrine for judicial review of takings claims.

No final decision for judicial review has been made and a claim of a taking without just compensation is premature where a property owner fails to seek the possible relief of variance and condemnation procedures.
http://laws.findlaw.com/us/473/172.html

*__First English Evangelical Lutheran Church of Glendale v. Los Angeles County__, 482 U.S. 304 (1987)

Allowed damages (as opposed to invalidation) as a remedy for regulatory takings.

Just compensation clause of Fifth Amendment requires compensation for temporary takings which occur as a result of regulations ultimately invalidated in court. http://laws.findlaw.com/us/482/304.html

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

Created the "essential nexus" takings test for conditioning development approvals on dedications a nd exactions.

Requiring the conveyance to the public of an easement for lateral beach access as a condition for a permit to replace a one-story beach house with a two-story residence and a two-car garage is a taking without just compensation because it is unrelated to the public interest in protecting the public access to the beach. http://laws.findlaw.com/us/483/825.html

*__Lucas v. South Carolina Coastal Council__, 505 U.S. 1003 (1992)

Defined categorical regulatory takings and an exception for regulations rooted in background principles of law.

Compensation to be paid to landowners when regulations deprive them of all economically beneficial land use unless uses are disallowed by title or by state law background principles of private and public nuisances. http://laws.findlaw.com/us/505/1003.html

*__Dolan v. City of Tigard__, 512 U.S. 374 (1994)

Extended *Nollan*'s "essential nexus" test to require "rough proportionality" between development impact and conditions.

Permit condition requiring land dedication for pedestrian/bike path is unconstitutional taking when city has not made individualized showing that dedication would "roughly proportionately" lessen traffic generated by proposed new development. http://laws.findlaw.com/us/512/374.html

Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995)

Applied the Endangered Species Act to land development.

Secretary of Interior's definition of "harm" to endangered species (prohibited by Endangered Species Act of 1973) is valid when defined as "significant habitat modification or degradation where it actually kills or injures wildlife." http://laws.findlaw.com/us/515/687.html

*__Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency__, 535 U.S. 302 (2002)

> Sanctioned the use of moratoria and reaffirmed the parcel-as-a-whole rule for takings review.
>
> Moratoria on development are not *per se* takings under the Fifth Amendment, but should be analyzed under the multi-factor *Penn Central* test. www.law.cornell.edu/supct/html/00-1167.ZS.html

***** Cases in which the American Planning Association filed *amicus curiae* (friend of the court) briefs