Lucas 25 Years Later: Has the Sky Fallen?

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3:15 – 4:00 PM
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The Research Project

• Reviewed more than 1,600 cases, federal and state
• Categorical taking found in 27 cases in 25 years
• That’s 1.7%
IN the event of a tie, the newly elected House of Representatives will elect the president, and the newly elected Senate will elect the vice president.
Possible Electoral Vote Counts
When you vote, you don’t elect the president: You tell your state’s electoral-college *electors* how to vote. In most states, all electors vote with the state’s popular opinion. If 51 percent of voters in California choose Hillary Clinton, all 55 of California’s electors will vote for Clinton — and none will vote for Donald Trump. (Historically, a few so-called *faithless electors* have voted against popular opinion. They never changed the outcome of an election, so we don’t model them.)

We simulated a Nov. 8 election 10 million times using our state-by-state averages. In 9.8 million simulations, Hillary Clinton ended up with at least 270 electoral votes. Therefore, we say Clinton has a 98.0 percent chance of becoming president.
So, It Has No Impact?

• It does
  – In how litigants shape their cases
  – In driving the denominator in developing the claim
  – In directing contractual relationships
http://web.law.duke.edu/voices/lucas#
ISLE OF PALMS
Historical Shorelines [Estimated]
Shoreline at Wild Dunes, Isle of Palms, South Carolina (photo courtesy of Chris Jones)
Beachfront houses in Wild Dunes, Isle of Palms, South Carolina (photo courtesy of Chris Jones)
Pink house built on one of David Lucas's lots, Isle of Palms, South Carolina
David Lucas’ Lots 2014 (Courtesy of Meg Caldwell and Eric Hartge)
Pink house built on one of David Lucas's lots, Isle of Palms, South Carolina
The Importance of the Denominator
Several Names

- Numerator-denominator
  - Or just the denominator problem
- Takings fraction
- Relevant parcel
- Parcel as a whole
- Nonsegmentation
- Nonseverance
Surface and Subsurface Rights
Air Rights
Consolidated Operations
Noncontiguous Holdings
Later-Acquired Properties
Transfer of Development Rights
The Temporal Dimension

Now

Later
A Hypothetical

An Iowa farmer decides to sell his farm and retire to Maui ...
In our day there are no longer any ideas, or they are scarcer than hens' teeth.

— Louis Aragon —
Nuisance Abatement

Private Agreements and the Denominator

Pyramidal Segmentation and Public Law Impact

Delay
Nuisance Abatement
(4 cases, 7 disputes)

• *City of Seattle v. McCoy* (Wash. App. 2000)
  – Lounge and restaurant
  – Drug nuisance statute
  – McCoy had leasehold
Lessons Learned

• Weak or unsupported statutory nuisance defenses critical.
• Inconsistency with common law may help.
• Then, a *Lucas* take.
Private Agreements and the Denominator
(8 cases)

- **Love Terminal Partners v. United States** (Fed. Cl. Apr. 19, 2016)
  - Master lease of 26 acres (Lemmon Avenue Terminal)
  - Wright Amendment Reform Act of 2006 limited Southwest Airlines to 20 gates
  - Lost 6+10+26 gates
  - $133.5 million
Love Field 1973
Lessons Learned

- Structuring the deal can be key.
- Is any use whatsoever left?
- Layer on *Penn Central* partial taking.
Pyramidal Segmentation and Public Law Impact

(12 cases)

  - Armory used commercially and for vehicle storage
  - Downzoned to residential use
  - Residential lot had negative value
  - Nonconforming use status denied
Addendum #2

Sale of Real Property – 1400 S. Gribble Street Bid No. 2016-09

The following questions were asked by a potential bidder. The City’s responses are in notated in blue. This addendum makes this information available to all potential bidders.

1. What is the current zoning?
   R-1 District: One and two-family Residential District – 6,000 square feet minimum lot area.

2. Can a specific use permit be a component of the sale of this property?
   No
Lessons Learned

- *Euclid v. Ambler* rides again.
- Is any use whatsoever left?
- Consider cost of enabling alternative use.
Delay (4 cases)

- **Monks v. City of Rancho Palos Verdes** (Cal. App. 2008)
  - Moratorium on 16 lots
  - Some waiting 30 years
  - Near landslide area
  - Zoned residential and all utilities installed
  - Uncertainty about stability
Project Area and Affected Parcels

Legend
- Project Boundary
- Monks Plaintiff Lot
- Vacant or Underdeveloped, Potentially Developable under Proposed Ordinance Revisions

City of Rancho Palos Verdes
Lessons Learned

- Too long is too long.
- Need proof of nuisance.
In Summary...

- It’s all about the denominator.
- That’s seen in Nuisance Abatement, Private Agreements, Pyramidal Segmentation, and Delay.
- Does it make *Murr* all the more important?
Prof. Brown and Dwight have discovered the key to the Lucas case.
It’s the denominator!
Questions and, we hope, some answers...