



Del Monte Dunes, Ltd. Teaching Note

Overview

It's 10:00 a.m. on Thursday, August 29, 1986, and Bill Conners, Assistant City Attorney for the City of Monterey, is reading a complaint filed in Federal district court against the City by the Del Monte Dunes, Ltd. development company. Del Monte's complaint alleges that the City's recent denial of its Tentative Subdivision Map constitutes an unconstitutional taking of private property without just compensation, in violation of the Fifth Amendment of the United States Constitution. Bill is reviewing the City's files on this matter to refresh his memory. After he reviews the public record, he plans to analyze the City's possible defenses and the likely outcome of any litigation, including what monetary relief may be awarded if Del Monte prevails.

Learning Objectives

The primary learning objective for the case is the development of strategic legal thinking: putting themselves in the shoes of the Assistant City Attorney, the students will propose a municipal legal strategy aimed at defending the City against this claim and preventing similar takings claims in the future. In so doing, the students have been asked to address the following areas: development of the public record, advice to "clients," legal procedural options, working relationships, and "damage control." Secondarily, the case requires that students analyze whether a taking has occurred; whether a "ripeness" argument should be made on behalf of the City; what factors influence the calculation of monetary damages for a temporary taking; and whether the City should pursue settlement of the takings claim.

Mary J. Decker prepared this note, under the editorial guidance of Meg Caldwell, Lecturer of Law, Director of the Environmental and Natural Resources Law & Policy Program at Stanford Law School, for the sole purpose of aiding classroom instructors in the use of SLS Case No. SLS 97-004. It provides analysis and questions intended to present alternative approaches to meeting the learning objectives of the case and stimulating class discussion. Copyright © 1997 by the Board of Trustees of the Leland Stanford Jr. University.

Assignment Questions

1. What legal standard applies in determining whether a taking occurred? What are Del Monte's strongest factual and legal arguments supporting its takings claim against the City? Assume you are Bill Conners. How would you respond to these arguments? Has a taking occurred?
2. Can the City prevail on a "ripeness" argument? Analyze the strengths and weaknesses of the ripeness argument in this case.
3. As Bill Conners, what steps would you take to prevent a similar takings claim against the City in the future? (Please address: development of the public record, advice you would give to your "clients," legal procedural options, importance of working relationships, and "damage control" techniques.)
4. What factors are relevant to the calculation of monetary damages for a temporary taking? Present an argument on behalf of the City for how monetary damages should be calculated.
5. From the City's perspective, discuss the pros and cons associated with settlement of the takings claim. Would you recommend settlement?

Analysis

The analysis section begins with a summary of the litigation in the case, followed by a discussion of the major topics covered in the five Assignment Questions. The remainder of this note consists of a Teaching Plan, including Board Plans.

This case is currently pending before the U.S. Supreme Court. The instructor should note that five published opinions exist regarding this case:

1. *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496 (9th Cir. 1990)
2. *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 95 F.3d 1422 (9th Cir. 1996)
3. *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 118 F.3d 660 (9th Cir. June 26, 1997)
4. *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 127 F.3d 1149 (9th Cir. October 28, 1997)
5. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 118 S. Ct. 1359 (March 30, 1998)(*cert. granted*).

The last three opinions consist of one-page orders. The instructor may want to ask the students not to read the published opinions until after the class discussion, since the case study is designed to develop the students' own analytical skills and to stimulate class discussion

based on their own analysis. Reading the Ninth Circuit's decisions is not a substitute for the students' own analysis of the Assignment Questions.

In the Ninth Circuit's first published opinion in 1990, a unanimous three-judge panel reversed the District Court's ruling that Del Monte's regulatory takings claim was unripe. On remand, a jury concluded a taking had occurred and awarded Del Monte \$1,450,000 in damages for a temporary taking. The City appealed. In the second published opinion in 1996, a different three-judge panel of the Ninth Circuit unanimously affirmed that Del Monte's taking claim was properly presented to the jury, that substantial evidence supported the jury's verdict, and that the jury's award was not excessive. The City sought *en banc* rehearing before the Ninth Circuit, which the 1996 panel granted as a request for rehearing of the jury question. (See the June 26, 1997 order.) The Ninth Circuit's earlier analysis of the jury question issue is found at 95 F.3d 1426-1430. After additional oral argument on August 6, 1997, the Ninth Circuit issued a one-page order on October 27, 1997 stating that the panel had voted not to amend its prior opinion and that a majority of judges on the court had rejected *en banc* rehearing. The City petitioned for a writ of certiorari to the U.S. Supreme Court. The Supreme Court granted the writ on March 30, 1998. The litigation status should be updated before future use of the case study.

Prior to the jury's verdict, Del Monte sold the property to the State of California as park land. Specifically, in 1990 the California Coastal Conservancy approved a one-year option agreement to purchase the site for \$4.5 million. After certain chemical releases on the site were addressed, the Coastal Conservancy purchased the property in December of 1991 for \$4.5 million. The City of Monterey made no contribution to the acquisition funding.

Takings Analysis Relying on *Agins*, *Nollan*, and *Lucas*, the students should identify the following two-part test for determining whether an "as applied" taking has occurred: (1) Does the City's denial of the Tentative Map substantially advance a legitimate governmental interest, or (2) Has Del Monte been denied economically viable use of their property?

Though this is not an exaction case, in its 1996 decision upholding the jury's finding of a taking the Ninth Circuit invoked *Dolan* in analyzing whether the City's denial of the Tentative Map was "roughly proportional" to the expected impact of the development. The Court noted that under *Dolan*, the City's denial of the Tentative Map must be related both in nature and extent to the impact of the proposed development. Additionally, the Court analyzed whether there was an "essential nexus" between the City's denial of the Tentative Map and the City's stated purpose of protecting the environment and the health and safety of its citizens, as required by *Nollan*. The jury in this case concluded that a taking had occurred. The Ninth Circuit's 1996 decision, however, indicates that the form of verdict used does not show which prong the jury relied upon, or whether it relied on both.

As to the first prong — whether the government regulation or action substantially advances a legitimate governmental interest — the City argued that its denial of the Tentative Map under local land use regulations advanced the legitimate governmental interests of protecting the environment and the health and safety of its citizens. More specifically, the City argued that the 190-unit development proposal as submitted could not be approved

because it would destroy the habitat of an endangered species in violation of the federal Endangered Species Act and would have other significant and unmitigated environmental impacts in violation of the California Environmental Quality Act, the City's General Plan, and the policies of the LCP/LUP, and that access to the planned development posed public safety concerns, especially with regard to fire suppression. In response, Del Monte presented evidence that all of these issues had been satisfactorily addressed by Del Monte and planning department staff from 1984 to 1986, when the CUP was in effect. The Ninth Circuit in affirming the jury verdict for Del Monte, held that the City's denial of the Tentative Map lacked a sufficient nexus with the City's stated objectives because significant evidence presented by Del Monte showed that the City's denial of the 190-unit proposal was disproportional to the proposed development's impact.

As to the second prong — economically viable use of the property — the students should discuss the standard of analysis provided in *Lucas*. In its 1996 decision, the Ninth Circuit noted that under *Lucas*, compensation is required where a governmental action leaves a property owner without economically beneficial or productive options for the land's use. The Court suggested that this situation typically results where the governmental action requires that the land be left substantially in its natural state – indicating that “private property is being pressed into some form of public service in the guise of mitigating serious public harm.” See 95 F.3d at 1432. The City argued that at the time of trial, Del Monte had sold the property to the State of California for \$800,000 more than it paid for it, and therefore an economically viable use did exist. The Court rejected this argument, stating it went not to the issue of whether a taking had occurred, but to whether just compensation had been received. In affirming the jury verdict, the Court concluded that the jury was persuaded by Del Monte's evidence that the City had forced it to bear the burden of creating open space for the public to enjoy.

Ripeness for Review An “as applied” regulatory takings claim is ripe for review if: (1) the property owner has obtained a *final decision* from local land use authorities, and (2) the property owner has sought compensation in the state courts. *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986).

Here, most of the discussion will focus on the *first* prong of the ripeness test: whether the City has made a final decision regarding application of local land use regulations to the Del Monte property. With regard to the *second* prong of the ripeness test, the case study tells us that Del Monte filed their lawsuit against the City in federal district court. This would seem to violate the requirement that state procedures be followed first. Del Monte was able to file in federal court, however, because at the time they filed their lawsuit against Monterey in 1986, California law did not permit property owners to seek compensation for a regulatory taking through an inverse condemnation action in state court. The sole remedy available was to seek a writ of mandate invalidating the regulation. The law in this area changed in 1987, when the Supreme Court held in *First English Evangelical Lutheran Church v. County of Los Angeles*, that the Fifth Amendment requires states to compensate regulatory takings. 482 U.S. 304 (1987). In ruling on the ripeness issue in its 1990 opinion, the Ninth Circuit concluded that state remedies at the time of the alleged 1986 taking were inadequate, and thus an action

in federal court was allowed. For purposes of class discussion, it may be most efficient for the instructor to simply explain this chronology of events, after the issue has been identified by the students.

With regard to the first prong of the ripeness test, the students should identify the relevant test of finality and the futility exception, based on *Hamilton* and *MacDonald*. Under *MacDonald*, a property owner may need to resubmit a modified development proposal that satisfies the local government's objections to the initial development proposal. But useless or futile development applications need not be made. The City argued here that it had made no final decision regarding development of the Del Monte property. Rather, the City Council's June 3rd decision denying the Tentative Map merely identified *one level* of development the City *would not* permit, without establishing the type and density of development that the City *would* allow. In contrast, from Del Monte's perspective the City had made a final land use decision by granting of a Conditional Use Permit ("CUP") for a 190-unit development in 1984. The City Council's denial of the revised Tentative Map for the 190-unit development in 1986 after the conditions had arguably been met, indicated to Del Monte that the City's underlying purpose was to preserve the land as open space without providing just compensation. In analyzing this prong of the ripeness test in 1990, the Ninth Circuit concluded that the City had set forth the development it would permit, with express conditions, and that based on the evidence presented Del Monte had substantially fulfilled these conditions. The Court concluded that Del Monte was not required to seek a variance from local land use regulations, since the City had admitted the development proposal did not conflict with express terms in the City's zoning ordinance or general land use plan. No further development application was required; the Ninth Circuit held the taking claim was ripe. See 920 F.2d at 1506.

The City's Future Legal Strategy for Avoiding Takings Claims The case study tells us that Assistant City Attorney Bill Conners had attended most planning department staff meetings, Planning Commission meetings, and City Council sessions to provide legal advice, guidance and direction to his clients. The case study specifically notes that Bill advised the City Council prior to their June 3rd vote denying the Tentative Map. The case study also includes various documents from the public record as Exhibits, to help show the steps taken by planning staff and the City Council to document their decision making process.

Based on the case study, the exhibits, and Assignment Question number three, the students should present a proposed legal strategy aimed at avoiding future takings claims against the City. The strategy should address the following areas: development of the public record, advice to "clients," legal procedural options, importance of working relationships, and "damage control" techniques.

Calculating Damages for a Temporary Taking In this case, the federal court jury determined that "just compensation" for the taking was \$1,450,000. It is not known precisely how the jury arrived at this figure. Neither party presented evidence that the damages were \$1.45 million. Del Monte provided expert testimony regarding the length of the development delay, the property appreciation rate, and the likelihood that the 190-unit project rejected by the City Council would have been approved by the California Coastal Commission. Del

Monte's expert witness testified that the relevant period of delay for which compensation was due extended up to the date of trial. Del Monte's expert also testified that the property increased in value over time as Del Monte moved through the development application process, and therefore the appreciation rate on the property could be expected to be higher than the average eight to ten percent rate of return. Finally, Del Monte's expert testified that in his opinion, the project denied by the City Council would have been approved by the California Coastal Commission.

Just compensation in an inverse condemnation action is generally the fair market value of the property at the time of the taking. But no set formula for calculating damages for a temporary taking has been developed. Under *First English*, the property owner must be compensated for the period during which the taking was effective. Thus the start and end of the taking period are often hotly contested. Once the duration of the taking is established, a methodology for calculating just compensation for that period must be adopted. One method of calculating damages suggested by the *Wheeler* case is to compare the fair market value of the property without the regulatory restriction to the fair market value of the property with the restriction. *Wheeler v. City of Pleasant Grove*, 833 F.2d 267 (11th Cir. 1987). The damages for the taking are the difference between the two fair market values.

A creative approach to calculating damages was developed in the *Herrington* case by District Court Judge Charles A. Legge, Jr., the same trial court judge that handled the Del Monte case. *Herrington v. County of Sonoma*, 790 F. Supp. 909 (1991). Though *Herrington* dealt with a due process violation of the 14th Amendment, (Herrington having abandoned his taking claim earlier in the action), the Court looked to temporary takings analyses for guidance in developing an equation that attempts to quantify the probability that the proposed development would take place, absent the due process (or takings) violation. Judge Legge came up with the following formula, which the parties in *Herrington* used to calculate total damages of about \$52,000. Each of the parties provided extensive expert testimony on what value each of the relevant factors in the equation should be given.

$$[(aX + bY) - Y] RT + aC$$

where: a = probability of approval of lots requested

b = probability that number of lots requested would not be approved
so, (a + b = 100)

X = value of land with potential to develop number of lots requested

Y = value of land with no development

So, (aX + bY) = weighted probability of approval of number of lots requested

R = rate of interest

T = duration of the delay, after taking started

C = increased costs of development resulting from the delay

This probability equation could be applied to the Del Monte case as follows. For purposes of doing the calculation, assume the following values have been adopted by the court. First, assume an 80% probability that the 190-unit development would have been approved, and a corresponding 20% probability that it would not have been approved, *if* the City Council had not acted unconstitutionally in denying the June 3rd proposal. Also assume that the value of the land with the potential to build a 190-unit residential development is \$10 million, and that the value of the undeveloped land is \$4.5 million. Assume the rate of interest is 13%. (One possible approach to selecting an interest rate is to adopt the 52-week U.S. Treasury Bill rate of interest applicable to civil judgments, for the time period in question. See 28 U.S.C.A. § 1961.) Assume the duration of the temporary taking is 2 years. Assume the increased costs of development associated with the 2-year delay are \$50,000.

The equation would be as follows:

$$[(.80 \times \$10 \text{ million} + .20 \times \$4.5 \text{ million}) - \$4.5 \text{ million}] \times .13 \times 2 \text{ yrs.} + .80 \times \$50,000$$

$$[(\$8 \text{ million} + \$.90 \text{ million}) - \$4.5 \text{ million}] = \$4.4 \text{ million}$$

$$\$4.4 \text{ million} \times .13 = \$.572 \text{ million}$$

$$$.572 \text{ million} \times 2 \text{ yrs.} = \$1.144 \text{ million}$$

$$.80 \times \$.05 \text{ million} = \$.040 \text{ million}$$

\$1.144 million + \$.040 million = \$1.184 million, or \$1,184,000 in temporary takings damages

The Pros and Cons of Settlement Whether it makes sense for the City to pursue settlement discussions with Del Monte depends on a variety of factors. From the case study, we know that the City has a policy forbidding settlement of lawsuits that it feels have little or no merit. The purpose of this policy, of course, is to discourage the filing of nuisance lawsuits against the City by plaintiffs that hope to force a small settlement from the City. Requiring trial of such cases, many of which may be valued at less than the total cost of trying the case, is thought to reduce the number of these suits filed against the City. It may be worth noting that while a small city of 30,000 like Monterey, that has only one or two attorneys working for it, may be able to execute this policy more consistently, since all settlements could be reviewed by the same attorney. It may be much more difficult to police the implementation of such a policy in a large city where perhaps over a hundred deputy city attorneys are involved in evaluating and settling cases.

With regard to the State of California's interest in acquiring the Del Monte Dunes property for conservation purposes, the City was willing to entertain and possibly participate

in such a negotiation, but *only after* the takings claim had been adjudicated. Entering into such discussions while the takings claim was pending would, in the City's view, provide support for Del Monte's allegation that the City was attempting to decrease the property's market value so that the government could purchase it at a lower price.

Teaching Plan

The 97 minute teaching plan builds on the Assignment Questions and analysis presented above. This plan assumes that Bill Connors will attend the class as a guest.

Introduction	2 minutes
Has a taking occurred?	10 minutes
The ripeness argument	10 minutes
Strategy for the future	30 minutes
Calculating damages	10 minutes
Settlement	10 minutes
Guest's Response to Analysis	10 minutes
Guest Q&A Session	10 minutes
Closing	5 minutes

Introduction (2 minutes)

This case is used as the last of four class periods devoted to the subject of takings in a Land Use Law seminar at Stanford. The seminar is limited to 15 students that are second and third-year Stanford Law School students or Stanford Business School students. The case can be introduced with a brief factual summary that sets the stage for the students' analysis of the City's legal strategy to avoid takings claims by developers, with an emphasis on the creation of a public record that demonstrates the findings associated with each City Council decision on the project.

Has a taking occurred? (10 minutes)

This discussion is geared to Assignment Question one. The discussion can begin by calling on a student to state the two-part *Agins* test for determining whether a taking occurred. The two-part test can be written on the board. The instructor could then ask whether a taking occurred, or not. After a show of hands for each position, the instructor could call on a student to present Del Monte's strongest arguments that a taking has occurred. The points raised by the student can be recorded on the B-1 Board Plan. A second student can then present the City's responsive arguments, which are also recorded on the Board Plan.

The discussion here must be crisp and move along quickly to be covered in 10 minutes. This discussion, and the brief discussion of the ripeness issue that follows, are preparatory to the main theme of the case study discussed under Assignment Question three. To provide focus and move the discussion along, the instructor may want to use a variety of follow-up questions. For example: *What legitimate state interest has been advanced by the*

City's rejection of Del Monte's proposed access route? Or, After the June 3rd City Council decision, are there any economically viable uses left for the property? What, for example?

If time allows, another possible avenue of analysis would be to explore the differences in a 5th Amendment takings claim versus a 14th Amendment due process claim. In the actual litigation, both a substantive due process claim and a takings claim were alleged. Interestingly, the Court held that the City did not violate Del Monte's substantive due process rights because the City asserted valid regulatory reasons for denying the Tentative Map, while the jury concluded a taking had occurred.

The Ripeness Argument (10 minutes)

This brief discussion responds to Assignment Question two. If the issue of ripeness is raised under the first discussion area, the instructor should acknowledge the issue but reserve discussion of the issue until later, perhaps calling on the student that raised the issue initially. The two-part ripeness test should be elicited from the student and recorded on the Board. The instructor may dispense with discussion of the second prong of the ripeness test (compensation first sought in state court) by briefly explaining the peculiar circumstances of this case (see page 4 above).

Initially, the instructor may want to ask the students about the strategic significance of a ripeness challenge, both from the City's perspective and from Del Monte's viewpoint. The point being that ripeness is a threshold requirement for a decision on the merits. The remainder of the discussion here can then focus on the first prong of the ripeness test; whether a final decision has been obtained regarding application of local land use regulations to the Del Monte property. By a show of hands, students should indicate whether they believe such a decision had been made or not.

A possible opening question for the topic is: *For those of you that believe a final decision regarding the application of local land use regulations to the Del Monte property has been made by the City, what is that decision and who made it? Specifically, what level of development has the City determined is allowed? Not allowed? What documents in the record support your conclusion? How so? What does the CUP grant? Has Del Monte been barred from developing the 37 acre parcel by the City? What uses are allowed for the property under applicable zoning ordinances? Have those particular uses been barred? If the student raises the question of futility, the instructor may ask: What facts support your argument that submittal of any further development application by Del Monte would be futile? Could a developer submit a series of overly ambitious proposals in order to "ripen" a takings claim? Or, if the futility issue is not raised: Is it futile for Del Monte to submit a revised application?*

To elicit students' views to the contrary, the instructor could ask: *For those of you that believe no final decision by the City had been made, what supports your conclusion? Can you point to the section of the record that supports your view? How do you respond to Del Monte's argument that it would be futile for Del Monte to submit a revised proposal under the circumstances?*

The City's Future Legal Strategy (30 minutes)

This is the primary discussion area of the case study, responding to Assignment Question three. It may be useful and more efficient for the instructor to have the headings for B-3 already written on a Board that can be pulled down for use when the Assignment Question is considered by the class. The Board Plan headings are provided in B-3 below. As the students describe their proposed strategy and the problem the strategic advice is designed to prevent, the instructor can record the information on the board.

With regard to the students' strategy in ensuring an adequate public record is created, the instructor may ask: *What do you think about the planning staff's 1985 report? What legal weight does the staff's report carry? What else might be done in such a situation? Based on the materials provided in the case study, do you think Del Monte was misled regarding the property's development potential during the 21 month period between the City Council's issuance of the 1984 CUP and its denial of the revised Tentative Map in 1986? Do you think the City Council's findings in Resolution No. 84-160 and Resolution No. 86-96 are contradictory?*

With regard to the students' evaluation of legal procedural options, possible follow-up questions include: *From the City's viewpoint, what are the advantages and disadvantages of using a CUP process? A Tentative Map process? Can I have a volunteer that can present Del Monte's perspective on using a CUP? A Tentative Map process? Does your analysis hinge on whether ultimate development of the parcel is anticipated or not? And: What about the City instituting a development moratorium until its comprehensive local coastal planning is completed? Is that advisable?*

It may be fruitful to posit the following questions before discussing potential advice to clients, working relationships, and "damage control:" *Who are Bill Conner's "clients"? The planning department staff? The Planning Commission Members? The City Council Members? The citizens living in the City? Others? How would you deal with the fact that some City officials that Bill advises are elected representatives that essentially gave him his job? How would you explain to a City Council member the City's potential liability with regard to a takings claim? What significant relationships need tending in a situation such as that described in the case? What are the interest of the various parties that the City has relationships with?*

Possible Role Play If time allows, it might be fun to ask two students to role play a meeting between Bill Connors and City Council member Mayor Roberson, just prior to the June 3, 1986 vote denying the Tentative Map. Bill knows that the Mayor is going to vote *against* the revised Tentative Map for the 190-unit proposal. The Mayor voted *for* Resolution No. 84-160 in 1984. But the Mayor believes the conditions of the 1984 CUP have not been met by Del Monte, and also wants to be responsive to the concerns of residents in the neighboring apartment complex who are opposed to development of the parcel and have been actively lobbying him to vote against the project. How should the student playing Bill advise the Mayor and City Council member? The key issue here is examining how Bill can provide guidance to an elected official in order to create a public record that is legally sufficient to

support the decision made by the City Council, and that is free of remarks that may undermine the City's legal position with regard to potential takings claims.

Calculating Damages for a Temporary Taking (10 minutes)

This brief discussion area follows Assignment Question four. If time is an issue, the instructor may want to give a brief narrative response to this question covering the generally accepted property valuation methods, and then ask the students to identify key factors that influence how temporary takings damages may be calculated. Possible responses are: duration of the taking; property valuation method; interest rate; increased costs of development; possible offset argument regarding sale price; and the probability development would be approved if no unconstitutional act had occurred.

Settlement (10 minutes)

This discussion area can also be covered quickly in response to Assignment Question five. The pros and cons of potential settlement discussions can be elicited in rapid fire succession from three or four students, and recorded on the Board Plan. For example, settlement could reduce litigation costs, offer certainty of result, and possibly avoid negative press. On the other hand, the City might prevail in court, settlement could encourage frivolous or marginal claims and would require some payment NOW, and Del Monte may have an inflated view of the case's value at this point making a fair and reasonable settlement now impossible. A significant factor that should be probed with the students, is the impact of existing working relationships on the ability of the parties to conduct productive settlement negotiations. For example: *How receptive do you think Del Monte will be at this time to the possibility of settlement?*

Guest's Response to the Students' Analysis (10 minutes)

The 10 minutes devoted to the guest's analysis of the students' discussion provides an opportunity for the teacher to move to the back of the room and turn the discussion over to the guest and the students. To prepare for this session, the guest should be advised to take notes during the students' discussion and be prepared to respond to specific points raised by the students. For example, the guest could address the suggested solutions to problems that were identified by the students, especially where the City adopted similar solutions. How these solutions were implemented in real life, and with what results, should be explained to the students. The guest can also use this time to clarify facts and applicable law in the case, and to add additional factual background or an update on the status of the case that might provide greater insight to the students. Above all, it is important that the guest's remarks be responsive to the points of analysis raised by the students.

During this 10-minute period, the guest should be addressing the class. Student questions should be held until the start of the Q& A Session. The teacher should promptly intervene, if necessary, to end the 10 minute session and start the 10 minute Q&A Session.

Q&A Session with Guest (10 minutes)

Students should be encouraged to ask questions of the guest. If it hasn't come out already, students are typically interested in finding out how the case turned out in real life, as well as more general questions about what it is like to be a lawyer for a City government.

Closing (5 minutes)

If no guest attends the class, the instructor may close with a summary of the real-life litigation and the following points. If a guest attends, the instructor may open the next class discussion with this summary, and any additional insights gleaned from the guest Q&A session or follow-up on questions that students raised during the class discussion.

1. After a long period of judicial inactivity, a flurry of court decisions on regulatory takings in recent years means that local governments need to take proactive steps to establish a record capable of withstanding the scrutiny of judges *and* juries.
2. Given the current confusion about the status of takings law, predicting the results of litigation will continue to be problematic.
3. The number of takings claims being brought is expected to increase.
4. Look for possible federal legislation in this area in the future, especially with regard to the creation of a private cause of action aimed at overcoming the ripeness limitation.

BOARD PLANS

B-1

LEGITIMATE STATE INTEREST SUBSTANTIALLY
ADVANCED?

Yes

No

ECONOMICALLY VIABLE USES DENIED?

Yes

No

B-2

FINAL DETERMINATION BY CITY:

Yes

No

B-3

THE CITY'S STRATEGY:

(the students' proposal) *(problem being addressed)*

Public Record

Advice to Clients

Legal Procedural Options

Working Relationships

Damage Control

B-4

DAMAGES: <u>Relevant Factors:</u> <u>Calculation Methods:</u>

B-5

PURSUE SETTLEMENT?	
<u>Pros</u>	<u>Cons</u>