

2022 AICP EXAM

**PLANNING LAW CONCEPTS
AND
PLANNING LAW REVIEW**

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PLANNING LAW CONCEPTS

Adopted from *AICP Examination Preparation Handbook* (1999)
by Mike Waiczis, AICP, California Chapter PDO: 209-297-2347

Updated by Christopher J. Smith, Esquire, Connecticut Chapter of the APA (March of 2021)

Be sure to memorize the basic information about the following:

- Comprehensive Plan
- Concurrency
- Condemnation/Eminent domain
- Consistency
- Constitution
- Design Guidelines
- Development Controls
- Easements
- Eminent Domain
- First Amendment
- Floating/Overlay/Mapped Zones
- Growth Controls/Smart Growth
 - Urban Growth Boundaries
 - Growth Phasing
 - Rate of Growth Systems
 - Adequate Public Facilities
 - Impact Fees
 - Open Space Preservation Techniques
 - Community Character Regulations
- Inclusionary/Exclusionary Zoning/Linkage
- Moratoria
- Performance Zoning
- Police Power/Enabling Legislation/APA's *Growing SmartSM Legislative Guidebook*
- Inverse Condemnation/Takings
- Transferable Development Rights
- Variance

PLANNING LAW REVIEW

Adapted from the “Planning Historical Case Law” section of *The National AICP Examination Preparation Course Guidebook* (2000) and *AICP Examination Preparation Handbook* (1999)
by Mike Waiczis, AICP, California Chapter PDO: 209-297-2347

Updated by Christopher J. Smith, Esquire, Connecticut Chapter of the APA (March of 2020)

I. SOURCES OF LAW:

- A. United States Constitution
 - 1. First Amendment (freedom of speech, religion)
 - 2. Fifth Amendment (takings clause)
 - 3. Fourteenth Amendment: Applies Constitution to the States
 - a. Due Process Clause
 - (i) Procedural
 - (ii) Substantive
 - b. Equal Protection Clause
- B. Federal Statutes (some examples)
 - 1. Civil rights laws
 - 2. Fair Housing Act
 - 3. Americans With Disabilities Act
 - 4. Telecommunications Act
 - 5. Environmental laws, e.g., CERLCA, ESA
- C. State Constitutions and Statutes
 - 1. Police power
 - a. The inherent power of government to regulate private conduct to promote the general welfare
 - b. Distinct from Eminent Domain
 - c. Actions pursuant to the police power must be reasonably related to the public welfare
 - 2. Planning and zoning enabling acts
 - 3. Environmental laws, e.g., wetlands
- D. Local Regulation
 - 1. Must comport with Dillon's Rule/Enabling Acts
 - 2. Must be reasonably related to legitimate governmental purpose
 - 3. Presumption of validity
- E. Cases: NOTE THAT THE UNITED STATES SUPREME COURT DECIDED THE FOLLOWING CASES UNLESS NOTED WITH AN ASTERISK (*).

II. U. S. CONSTITUTION:

A. First Amendment (Free Speech; Sexually-Oriented Businesses; and Freedom of Religion):

1. Free Speech: Signs and Billboards

a. Concepts

In addition to public speech, commercial speech is protected by the First Amendment. This means that a locality cannot ban commercial speech from the community through planning and zoning, but it can be regulated. Signs and billboards may be regulated if the local ordinances are content-neutral, and impose time, place, or manner restrictions. A burden is placed on the locality to show that the regulations further a substantial governmental purpose and that they leave open ample alternative channels of communications for that kind of speech. In general, however, local government cannot ban political signs anywhere on private property in the community and you cannot give more favorable treatment to commercial signs than to non-commercial signs. Localities can, however, regulate the size, type, manner of display, and even the design of signs.

b. Cases

(i) Metromedia v. City of San Diego (1981).

Noncommercial (e.g., artistic or political) speech generally has a higher value under the First Amendment than purely commercial speech. In this case, the U.S. Supreme Court declared unconstitutional an ordinance prohibiting offsite billboard advertising because this prohibition encompassed noncommercial speech. However, the same ordinance may have been constitutional if it had only applied to commercial billboards.

Regulating Commercial Speech

The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on protected commercial speech is only valid if the regulation (1) is designed to implement a substantial government interest, (2) directly advances that interest, and (3) does not go further than necessary to accomplish its objective.

Regulating Noncommercial Speech

Reasonably regulating the time, place and manner of noncommercial speech is permissible if the regulation (1) is not based on content, (2) serves a legitimate governmental interest, and (3) leaves open alternative channels for communicating the information.

- (ii) City Council of Los Angeles v. Taxpayers for Vincent (1984).

In its review of Los Angeles' ban of posting of all signs on public property, the court found that the ordinance was neutral concerning any speaker's point of view and that the state's interest in advancing aesthetic values is sufficiently substantial to justify the effect of the ordinance on freedom of expression because the effect is no greater than necessary to accomplish the City's purpose. Utility poles are not a "traditional" public forum, and their use may be restricted by the City to their primary purpose as long as the resulting restriction on speech is reasonable and is not an effort to suppress a particular point of view.

- (iii) Gilbert v. Reed (2015).

The Court held that the City of Gilbert, Arizona, improperly regulated noncommercial signs by: (1) defining categories for temporary, political and ideological signs based on content; and (2) then subjecting each category to different restrictions. The Court applied the strict scrutiny standard because the regulation was content-based. The Court then found the regulatory scheme, with its hierarchy of restrictions based upon the type of content, to violate the First Amendment. The Gilbert Court also reaffirmed Vincent (above) where a ban of all signs on public property was found to be content-neutral and held permissible.

2. **Sexually-Oriented Businesses**

a. Concepts

The same restrictions described above under "Concepts" related to signs and billboards apply to sexually-oriented businesses with some distinctions. Local governments cannot totally exclude sexually-oriented businesses from a community where it allows other commercial uses. Government can, however, regulate the location of these businesses, be it through concentration or disbursement.

b. Cases

- (i) Young v. American Mini-Theaters, Inc. (1976).

The U.S. Supreme Court upheld the constitutionality of an "anti-skid row" ordinance, holding that it was not vague, that the ordinance was not "unconstitutional prior restraint", and that classifying "adult" theaters differently from other theaters was not impermissible. The Court noted that although the First Amendment prohibits the "total suppression of erotic materials that have some arguably artistic value, it is manifest that society's

interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammelled political debate.”

The United States Court of Appeals for the Second Circuit considered a similar case in Buzzetti v. The City of New York (1998), in which a topless cabaret challenged a zoning amendment prohibiting adult entertainment in certain areas. The regulation was upheld because adult entertainment was not completely prohibited, making this a reasonable time, place, and manner restriction.

(ii) Schad v. Borough of Mt. Ephraim (1981).

The Borough of Mt. Ephraim adopted an ordinance allegedly seeking to encourage existing strip commercial uses and prohibiting all uses not expressly permitted. Because live entertainment in all forms was prohibited, the U.S. Supreme Court held that the ordinance was overboard.

3. **Freedom of Religion**

a. Concepts

In general, local governments can reasonably regulate religious uses, such as churches. The landscape may be changing with passage the Religious Land Use and Institutionalized Persons Act of 2000, which states that:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling government interest; and

(B) is the least restrictive means of furthering that compelling interest.

42 U.S.C. §2000cc(a)(1).

b. Cases

(i) City of Boerne v. Flores (1997).

This case had its genesis in the denial of a building permit for the alteration of a church in a historic district. The church appealed the denial of the permit as a violation of the Religious Freedom Restoration Act. The U.S. Supreme Court invalidated the RFRA as an *ultra vires* act by Congress.

- (ii) Cambodian Buddhist Society of CT, Inc. v. Newtown Planning and Zoning Commission, 285 Conn. 381 (2008)*

The Cambodian Buddhist Society challenged the Commission's denial of a special permit to construct a religious facility, citing violations of RLUIPA and its Connecticut counterpart, the Religious Freedom Act ("RFA"). The Connecticut Supreme Court affirmed the trial court's dismissal of the appeal. The Court found substantial evidence to support the Commission's denial of the special permit because the level of activity associated with the temple use would not be in harmony with the single-family neighborhood, and that the proposed septic system and water supply systems would create a health or safety hazard. In addition, the Court found that the trial court properly found that the record did not contain substantial evidence to deny the special permit based upon the temple's design not being in harmony with the neighborhood, and that the temple would create a traffic hazard.

B. Fifth Amendment (Eminent Domain and Inverse Condemnation):

1. Eminent Domain (Taking Property for a Public Use)

a. Concepts

The Fifth Amendment to the US Constitution allows taking private property for a public purpose if just compensation (equal to fair market value) is paid.

b. Cases

- (i) Berman v. Parker (1954).

The U.S. Supreme Court upheld use of eminent domain in furtherance of urban projects, including the taking of property from one property owner for the purpose of giving it to another property owner. The Court made this classic statement regarding the breadth of the concept public welfare:

The concept of the public welfare is broad and inclusive.....The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.

Ruling: The Court held that aesthetics could be a valid reason to support actions taken for the public welfare, and upheld redevelopment programs that took property in eminent domain and resold the property to private developers for redevelopment.

(ii) Kelo v. City of New London (2005)

The U.S. Supreme Court reaffirmed Berman v. Parker holding that economic development is a proper public use relative to eminent domain. The Court did not expand or restrict the power of eminent domain as articulated in Berman. (i.e., government may take private property from one property owner and give the property to another for public use where part of an integrated development plan).

(iii) Horne v. Department of Agriculture (2015)

The Court held that a taking requiring “just compensation” is not limited to real property, as addressed in Berman and Kelo discussed above. A compensable taking can involve personal property, as well. The Court held that a compensable taking “applies the same whether [the government is] taking your house or your car.” Horne involved a government subsidy program that provided for the government to purchase certain farm products (e.g., raisins) from farmers without having to pay “just compensation”, or “fair market value”, at the time of purchase.

2. **Inverse Condemnation (Physical Invasions and Regulatory Takings)**

a. Concepts

The Fifth Amendment to the U.S. Constitution states that private property may not be taken for a public use without just compensation.

b. Cases

(i) Physical Invasion

a) Loretto v. Teleprompter Manhattan CATV Corp. (1982)

The U.S. Supreme Court found that placement of a small box on the wall of an apartment building, authorized by statute, could amount to a taking, because it amounts to a physical occupation of property. The Court stated that the public interest served did not change its analysis.

(ii) Regulatory Takings: Denial of Economically Viable Use

a) Pennsylvania Coal Co. v. Mahon (1922).

The U.S. Supreme Court overturned a statute prohibiting the mining of coal that might cause the subsidence of a dwelling. The Court recognized that regulating land use without paying

compensation can be valid but that, at some point, regulation "goes too far" and results in a taking:

Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law...But obviously the implied limitation must have its limit....when the extent of the diminution reaches a certain magnitude, in most if not all cases there must be an exercise of eminent domain and compensation to sustain the act.

b) Goldblatt v. Town of Hempstead (1962).

An ordinance prohibited excavation below the water table at sand and gravel mines. The U.S. Supreme Court first determined that this ordinance did not involve the use of eminent domain:

A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit.

The Court held that a taking had not occurred, because there was no evidence that the ordinance reduced the value of the subject property.

c) Agins v. City of Tiburon (1980).

The U.S. Supreme Court upheld a zoning designation that restricted the number of single-family dwellings a property owner could put on his five acre parcel. The Supreme Court upheld the designation on the theory that the low-density zoning served "legitimate governmental goals" such as discouraging the premature and unnecessary conversion of open space land to urban uses.

Ruling: The Court upheld a restrictive zoning designation on the theory that the low-density zoning served "legitimate governmental goals" such as discouraging the premature and unnecessary conversion of open space land to urban uses. Agins established a two-part test: a regulation is a taking if it can be shown that it either 1) deprives property of all economically viable use, or 2) fails to advance a legitimate governmental interest.

- d) Lingle v. Chevron USA (2005).

The U.S. Supreme Court reaffirmed that when government either physically takes private property, or applies regulations that destroy all economic value of the property, government must pay just compensation (fair market value). Utilizing the planning process in an eminent domain situation involves the participation of all segments of the community working to define the public interest in any related proposed public use. In addition, Lingle eliminated the “substantially advances” a public interest test enunciated in Agins v. City of Tiburon (1980) (see above).

- e) Keystone Bituminous Coal Assn. v. DeBenedictis (1987).

Coal mine owners sought to invalidate a Pennsylvania state law that restricted the amount of coal they could mine from their property. The U.S. Supreme Court upheld the state law noting that the regulation affected less than two percent of the owner's coal and that the owners "have not shown any deprivation significant enough to satisfy the heavy burden placed upon one alleging a regulatory taking."

- f) First English Evangelical Lutheran Church v. County of Los Angeles (1987).

The U.S. Supreme Court held that a landowner may recover compensation for the time during which a use regulation temporarily deprives a landowner of use of its property. The Court held that:

where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective.

Ruling: The Court rejected the concept that the sole remedy for a taking is payment of the full value of property.

- g) Lucas v. South Carolina Coastal Council (1992).

The U.S. Supreme Court held that if a regulation removes all economic value from a property it is a taking even if the regulation serves a public purpose. The Court found an exception to this rule when the regulation prohibits an activity that would traditionally be a nuisance under state law.

Ruling: When a regulation goes so far as to deny all economic use of a property, it will be considered a taking unless the prohibited use is “*barred by existing rules or understandings*” derived from the state’s law of property and nuisance.

- h) City of Monterey v. Del Monte Dunes (1999).

Developer wins due to multiple unreasonable delays by municipality. Rough proportionality standard of *Nollan/Dolan* does not apply to general land development regulations and takings cases can go to a jury.

- i) San Ramos Hotel, L.P. v. City and County of San Francisco (2005)

In addressing which court should decide a takings claim (state or federal) and when, the U.S. Supreme Court held that state courts are competent to decide constitutional takings claims relative to local land-use decisions. The Court also recognized the value of the planning process, and that land-use decisions are best made at the local level where officials are accountable to the citizens of their respective community.

- j) Stop the Beach Renourishment, Inc. v. Florida DEP (2010)

The Court found no taking of littoral owners’ property rights where the State filled submerged land at Florida’s shoreline. State’s action to fill submerged land involved land that was public, not private, property; therefore, not a taking of private property.

- k) Murr v. Wisconsin (2017)

Court addressed whether State and local regulations that effectively “merged” two lots constituted a regulatory taking. An essential issue for the Court was whether the denominator for determining a regulatory taking would constitute one or two lots. The Court applied a three-factor test, which included recognizing that the subject two lots merged pursuant to State law, and concluded that the regulations did not amount to a regulatory taking.

(iii) Regulatory Takings: Exactions

a) Nollan v. California Coastal Commission (1987).

The California Coastal Commission required, as a condition of permit approval, that the Nollan's grant lateral beach access across their property. However, the Commission's reason for requiring this easement was that the new construction would obstruct the public's view of the ocean. The U.S. Supreme Court held that requiring the Nollan's to provide public access to the beach was not rationally related to the Commission's concern that public views of the ocean would be obstructed. Therefore, the exaction was unconstitutional.

Ruling: Development exactions "must serve the same legitimate police power interest as a refusal to issue the permit." In other words, if a commission can refuse to issue a permit due to a legitimate concern, but it instead grants the permit and imposes an exaction directly related to that concern, the exaction bears a "rational nexus" to the permit.

b) Dolan vs. City of Tigard (1994).

This case completes what is known as the "Nollan/Dolan" test, which is used to determine whether a local government has constitutionally attached an exaction to a land use permit.

The Supreme Court noted that requiring a developer to dedicate property was a severe exaction because it forces the developer to relinquish the right to exclude others from property—one of the most important property rights. There is a significant difference between requiring a dedication of property and imposing a "no build" condition. Local governments must justify such exactions with quantifiable findings, rather than speculation.

The Nollan/Dolan test requires exactions to be related in both nature and extent to the impact of the proposed development. Under this test, courts will first determine whether an exaction is directly related to a legitimate government interest (Nollan "rational nexus" test), and then whether the magnitude of the exaction bears a "rough proportionality" to the impact of the development (Dolan "rough proportionality" test). In order to determine the constitutionality of an exaction, courts will closely scrutinize the findings of local governments.

The Nollan/Dolan test requires local governments that impose exactions on land use approval to:

- (i) Develop very precise findings;
- (ii) Be sure findings make some effort to quantify the projected actual impact of the project on the public facility or use in question; and
- (iii) Avoid imposing dedication requirements and concentrate more on imposing conditions that restrict the owner's right to use a portion of the property.

Ruling: Permit/entitlement conditions of approval that require the deeding of portions of property to the government can be justified only if the required dedication is related to the nature and extent of the impact of the proposed development (*rough proportionality test*).

- c) Koontz v. St. Johns River Water Management District (2013).

This case reaffirmed the “Nollan/Dolan” test and further held that “improper coercion” in the land use process for the purpose of frustrating the Fifth Amendment can occur with a denial as well as an improper approval. The Court held that government may determine whether and how it may require an applicant in the land use process to mitigate impacts associated with a proposed development, but it may not “leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.”

- (iv) Regulatory Takings: Moratoria

- a) Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency (2002).

The Tahoe Regional Planning Agency imposed a temporary moratorium on development of the land within the Lake Tahoe watershed to maintain the status quo while studying the impact of development on the water quality, etc of Lake Tahoe. Landowners affected by the moratorium contended that the moratorium denied them all economically viable use of their property and demanded compensation for the value of the use of their property during the moratorium. The Supreme Court held that a per se taking had not occurred. The adoption of a categorical rule requiring that any deprivation of all

economically viable use of property, no matter how brief, constitutes a compensable taking would impose an unreasonable financial burden on governments for the normal delays associated with the land use planning process.

3. **Ripeness**

a. Concepts

A takings case is not "ripe" to be heard until there is a final determination of permitted use of the property his may require repeated applications. Also, relief must generally be sought in state court before federal court.

b. Cases

(i) Williamson County Reg'l Planning Comm'n v. Hamilton Bank (1985)

Before a regulatory takings claim may be brought to federal court, there are two requirements:

- (1) the government entity charged with implementing the regulations must reach a final decision regarding the application of the regulations to the subject property; and
- (2) if the State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Fifth Amendment until she has used the State procedure and has been denied just compensation.

(ii) Suitum v. Tahoe Regional Planning Agency (1997)

The Supreme Court held that a determination by the Tahoe Regional Planning Agency that a lot was not eligible for development was a final decision ripe for adjudication. Owner was not required to first attempt to sell the property's development rights, as provided by a TDR (transfer of development rights) program.

(iii) Palazzolo v. Rhode Island (2001).

The Supreme Court abandoned the "Notice Rule" in holding that where a purchaser acquired coastal wetlands after state regulations were in effect, that purchaser was not deemed to be barred from claiming compensation for a taking due to the earlier-enacted restriction. The Court did not address whether a taking had, in fact, occurred.

C. Fourteenth Amendment (Due Process):

1. Concepts

The 14th Amendment to the U.S. Constitution prohibits states from depriving any person of life, liberty or property without due process of law.

Procedural due process cases involve the right to be heard, notice of hearings, and generally, the fairness of the procedures leading to a decision.

Substantive due process cases involve the extent to which a regulation advances a legitimate governmental purpose, e.g., the public health, safety, morals and general welfare.

2. Cases

a. Herrington v. County of Sonoma (9th Circuit Court of Appeals, 1987)*

The Ninth U.S. Circuit Court of Appeals found due process violations in the county's denial of a thirty-two-lot subdivision. The county held meetings without informing the developer and had used improper information to sustain a denial of the subdivision.

D. Fourteenth Amendment (Equal Protection):

1. Concepts

The 14th Amendment to the U.S. Constitution prohibits state from denying any person the equal protection of the law. This is a resurgent area of the law, which arises when a government tests similarly-situated landowners, or tracts of land or land use differently. Generally, courts will uphold a land use regulation against an equal protection challenge if it is "rationally related" to a legitimate state interest that allows the government to distinguish between uses.

2. Cases

a. Village of Arlington Heights v Metropolitan Housing Development Corp. (1977).

A developer was denied a re-zoning for a housing project to be financed with federal subsidies. The U.S. Supreme Court upheld the city's refusal to rezone, noting that although the "discriminatory impact of the particular legislation" is an important analytical starting point, absent a stark pattern of racial discrimination, a discriminatory impact alone does not establish an invalid regulation.

- b. Village of Willowbrook v. Olech (2000).

A homeowner alleged that the municipality refused to connect to her property to the municipal water supply unless she granted the municipality a 33-foot easement when the village only required a 15-foot easement from other property owners. These allegations were sufficient to state a claim under the Equal Protection Clause because the 14th Amendment protects individuals, or a “class of one”, from intentional and arbitrary discrimination.

III. FEDERAL STATUTES

A. Fair Housing Act:

1. Concepts

The amendments enacted by Congress in 1988 impact local zoning with respect to housing for the disabled, particularly group homes. Local zoning cannot discriminate against the disabled. For instance, if the locality allows four adults to share a house in a single-family neighborhood, it must do the same by right for disabled adults. Government cannot require a special permit, nor can it exclude four disabled adults from sharing a home in that neighborhood. More importantly, however, is the “reasonable accommodation” clause of the Fair Housing Act. This means that if government has some special restriction, even in a single-family area, it might have to waive that restriction in order to accommodate housing for the handicapped.

2. Cases

- a. City of Edmonds v. Oxford House (1995).

The U.S. Supreme Court held that the Fair Housing Amendments Act requires that municipalities allow group home as use by right in single-family residential zones.

B. American With Disabilities Act:

1. Concepts

Prohibits discrimination against the disabled in any program of local government, which includes zoning. Also has a “reasonable accommodation” clause.

2. **Cases**

- a. Innovative Health Systems, Inc. v. City of White Plains, (2d Circuit Court of Appeals, 1997).*

The Second U. S. Circuit Court of Appeals held that Americans With Disabilities Act applies to municipal zoning as a "program" of local government.

C. **Telecommunications Act of 1996 (TCA):**

1. **Concepts**

This statute deals with local zoning for cellular and personal wireless communications towers and facilities. Communities can regulate the location of these towers, but there are several things that are pre-empted by this statute.

- a. Communities cannot exclude these towers completely.
- b. Sites must be made available to service all areas of the community.
- c. The locality cannot discriminate against functionally equivalent providers. For example, a cellular tower owned by Company A is serving the neighborhood, you cannot deny a permit to Company B because there is already service there. The statute aims to promote competition.
- d. Local government cannot regulate at the local level the electric-magnetic emissions from these towers. It can, however, require that these admissions comply with Federal Communications Commission standards.

2. **Cases**

- a. City of Rancho Palos Verdes v. Abrams (2005).

A property owner who successfully challenges a municipality for violating the federal TCA may request that the court remedy the violation and order the subject permit issued. However, the property owner is not entitled to money damages or attorney fees.

D. **Religious Land Use & Institutionalized Persons Act of 2000 (RLUIPA)**

IV. ZONING CASES

A. **Village of Euclid v. Ambler Realty Co. (1926).**

The U.S. Supreme Court upheld the Village of Euclid's comprehensive zoning ordinance, which created different zoning districts, as a proper exercise of the police power. Euclid established an easy standard for a city to meet: "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control".

Ruling: The Court upheld zoning as constitutional under the United States Constitution as being within the police power of the state.

B. **Village of Belle Terre v. Boraas (1974).**

The U.S. Supreme Court upheld a zoning ordinance that allowed no more than two unrelated persons to live in a single housekeeping unit.

C. **Moore v. City of East Cleveland (1976).**

The U.S. Supreme Court held that a family definition prohibiting grandchildren from living with their grandparents was unconstitutional. The "usual judicial deference" to legislative regulation was inappropriate because the family definition used here impaired freedom of personal choice in family life, a liberty interest protected by the due process clause.

D. **Penn Central Transportation Co. v. City of New York (1978).**

The U.S. Supreme Court recognized the validity of regulation for historic preservation and aesthetic purposes:

"Because the court has recognized, in a number of settings that states and cities may enact land use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of the city.... the plaintiffs do not contest that New York City's objective of preserving structures and areas with special historic, architectural or cultural significance is an entirely permissible governmental goal."

V. GROWTH CONTROL CASES

A. **Construction Industry of Sonoma v. City of Petaluma (9th Circuit Court of Appeals, 1975).***

The Ninth U. S. Circuit Court of Appeals upheld Petaluma's growth control plan that included a quota on the number of residential dwellings that could be built annually. The court held that the plan served a legitimate state interest---avoiding uncontrolled and rapid growth.

B. Golden v. Planning Board of Town of Ramapo (Court of Appeal of New York, 1972).*

The Court of Appeal for the State of New York upheld a growth control plan based on the availability of public services.

C. Associated Homebuilders, Inc. v. City of Livermore (Supreme Court of California, 1976).*

The California Supreme Court upheld a growth control measure based on service and facility availability. The court said that "public welfare" can involve regional welfare.

D. Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel 1) (Supreme Court of New Jersey, 1975).*

Court held that in New Jersey communities in growing areas in the way of urban expansion must take their fair share of the region's affordable housing.

E. Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel 2) (Supreme Court of New Jersey, 1983).*

Court held that municipalities must remove all municipally created barriers to the construction of their fair share of affordable housing, and also that affirmative measures such as builder's remedies, mandatory set-asides, subsidies, and mobile home zoning must be used to ensure that fair share goal would be reached.