Chapter 7

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Boomer v. Atlantic Cement Co., Inc.

Court of Appeals of New York

26 N.Y.2d 219, 309 N.Y.2d 312, 257 N.E.2d 870 (1970)

Bergan, J. Defendant operates a large cement plant near Albany. These are actions for injunction and damages by neighboring land owners alleging injury to property from dirt, smoke and vibration emanating from the plant. A nuisance has been found after trial, temporary damages have been allowed; but an injunction has been denied.

The total damages to plaintiffs' properties are, however, relatively small in comparison to the value of defendants' operation and with the consequence of the injunction that plaintiffs seek.

The ground for denial of the injunction, notwithstanding the finding both that there is a nuisance and that plaintiffs have been damaged substantially, is the large disparity in economic consequences of the nuisance and the injunction. This theory cannot, however, be sustained without overruling a doctrine which has been consistently reaffirmed in several leading cases in this court and which has never been disavowed here, namely that where a nuisance has been found and where there has been any substantial damage shown by the party complaining an injunction will be granted.

Although the court at Special Term and the Appellate Division held that an injunction should be denied, it was found that plaintiffs had been damaged in various specific amounts up to the time of the trial and damages to the respective plaintiffs were awarded for those amounts. The effect of this was, injunction having been denied, plaintiffs could maintain successive actions at law for damages thereafter as further damages occurred.

The court at Special Term also found the amount of permanent damage attributable to each plaintiff, for the guidance of the parties in the event both sides stipulated to the payment and acceptance of such permanent damage as a settlement of all the controversies among the parties. The total of permanent damages to all plaintiffs thus found was $185,000.

This result at Special Term and at the Appellate Division is a departure from a rule that has become settled; but to follow the rule literally in these cases would be to close down the plant at once. This court is fully agreed to avoid that immediately drastic remedy; the difference in view is how best to avoid it. [The court noted that the defendant's investment in the plant was in excess of $45 million, and that 300 people were employed there.]

One alternative is to grant the injunction but to postpone its effect to a specified future date to given opportunity for technical advances to permit defendant to eliminate the nuisance; another is to grant the injunction conditioned on the payment of permanent damages to plaintiffs which would compensate them for the total economic loss to their property present and future caused by defendant's operations. For reasons which will be developed the court chooses the latter alternative.

The parties could settle this private litigation at any time if defendant paid enough money and the imminent threat of closing the plant would build up the pressure on defendant. If there were no improved techniques found, there would inevitably be applications to the court at Special Term for extensions of time to perform on showing of good faith efforts to find such techniques.

Moreover, techniques to eliminate dust and other annoying by-products of cement making are unlikely to be developed by any research the defendant can undertake within any short period, but will depend on the total resources of the cement industry nationwide and throughout the world. The problem is universal wherever cement is made.

For obvious reasons the rate of research is beyond the control of defendant. If at the end of 18 months the whole industry has not found a technical solution a court would be hard put to close down this one cement plant if due regard be given to equitable principles.

On the other hand, to grant the injunction unless defendant pays plaintiff such permanent damages as may be fixed by the court seems to do justice between the contending parties. All of the attributions of economic loss to the properties on which plaintiffs' complaints are based will have been redressed.

It seems reasonable to think that the risk of being required to pay permanent damages to injured property owners by cement plant owners would itself be a reasonable effective spur to research for improved techniques to minimize nuisance. Thus, it seems fair to both sides to grant permanent damages to plaintiffs, which will terminate this private litigation. The judgment, by allowance of permanent damages imposing a

servitude on the land, which is the basis of the actions, would preclude future recovery by plaintiffs or their grantees.

Jasen, J. (dissenting). I see grave dangers in overruling our long-established rule of granting an injunction where a nuisance results in substantial continuing damage. In permitting the injunction to become inoperative upon the payment of permanent damages, the majority is, in effect, licensing a continuing wrong. It is the same as saying to the cement company, you may continue to do harm to your neighbors so long as you pay a fee for it. Furthermore, once such permanent damages are assessed and paid, the incentive to alleviate the wrong would be eliminated, thereby continuing air pollution of an area without abatement.

It is true that some courts have sanctioned the remedy here proposed by the majority in a number of other cases, but none of the authorities relied upon are analogous to the situation before us. The promotion of the interests of the polluting cement company has, in my opinion, no public use or benefit. I would enjoin the defendant cement company unless, within 18 months, [it] abated this nuisance.

Spur Industries, Inc. v. Del E. Webb Development Co.

Supreme Court of Arizona

108 Ariz. 178, 494 P.2d 700 (1972)

Cameron, Vice Chief Justice. From a judgment permanently enjoining the defendant, Spur Industries, Inc., from operating a cattle feedlot near the plaintiff Del E. Webb Development Company's Sun City, Spur appeals. [W]e feel that it is necessary to answer only two questions. They are:

1. Where the operation of a business, such as a cattle feedlot, is lawful in the first instance, but becomes a nuisance by reason of a nearby residential area, may the feedlot operation be enjoined in an action brought by the developer of the residential area?

2. Assuming that the nuisance may be enjoined, may the developer of a completely new town or urban area in a previously agricultural area be required to indemnify the operator of the feedlot who must move or cease operation because of the presence of the residential area created by the developer?

The area in question is located in Maricopa County, Arizona, some 14 to 15 miles west of the urban area of Phoenix. In 1956, Spur's predecessors in interest, H. Marion Welborn and the Northside Hay Mill and Trading Company, developed feedlots, about ½ mile south of Olive Avenue, in an area between the confluence of the usually dry Agua Fria and New Rivers. The area is well suited for cattle feeding and in 1959, there were 25 cattle feeding pens or dairy operations within a 7-mile radius of the location developed by Spur's predecessors. In April and May of 1959, the Northside Hay Mill was feeding between 6,000 and 7,000 head of cattle and Welborn approximately 1,500 head on a combined area of 35 acres.

In May of 1959, Del Webb began to plan the development of an urban area to be known as Sun City. For this purpose, the Marinette and the Santa Fe Ranches, some 20,000 acres of farmland, were purchased for $15,000,000 or $750 per acre. This price was considerably less than the price of land located near the urban area of Phoenix, and along with the success of Youngtown was a factor influencing the decision to purchase the property in question.

By September 1959, Del Webb had started construction of a golf course south of Grand Avenue, and Spur's predecessors had started to level ground for more feedlot area. In 1960, Spur purchased the property in question and began a rebuilding and expansion program extending both to the north and south of the original facilities.

Accompanied by an extensive advertising campaign, homes were first offered by Del Webb in January 1960 and the first unit to be completed was south of Grand Avenue and approximately 2 ½ miles north of Spur. By 2 May 1960, there were 450 to 500 houses completed or under construction. At this time, Del Webb did not consider odors

from the Spur feed pens a problem and Del Webb continued to develop in a southerly direction, until sales resistance became so great that the parcels were difficult if not impossible to sell.

By December 1967, Del Webb's property had extended south to Olive Avenue and Spur was within 500 feet of Olive Avenue to the north. Del Webb filed its original complaint alleging that in excess of 1,300 lots in the southwest portion were unfit for development for sale as residential lots because of the operation of the Spur feedlot.

Del Webb's suit complained that the Spur feeding operation was a public nuisance because of the flies and the odor, which were drifting or being blown by the prevailing south to north wind over the southern portion of Sun City. At the time of the suit, Spur was feeding between 20,000 and 30,000 head of cattle, and the facts amply support the finding of the trial court that the feed pens had become a nuisance to the people who resided in the southern part of Del Webb's development. The testimony indicated that cattle in a commercial feedlot will produce 35 to 40 pounds of wet manure per day, per head, or over a million pounds of wet manure per day for 30,000 head of cattle, and despite the admittedly good feedlot management and good housekeeping practices by Spur, the resulting odor and flies produced an annoying if not unhealthy situation as far as the senior citizens of Sun City were concerned.

It is clear that as to the citizens of Sun City, the operation of Spur's feedlot was both a public and private nuisance. They could have successfully maintained an action to abate the nuisance. Del Webb, having shown a special injury in the loss of sales, had a standing to bring suit to enjoin the nuisance. The judgment of the trial court permanently enjoining the operation of the feedlot is affirmed.

In addition to protecting the public interest, however, courts of equity are concerned with protecting the operator of a lawful, albeit noxious, business from the result of a knowing and willful encroacher by others near his business.

In the so-called "coming to the nuisance" cases, the courts have held that the residential landowner may not have relief if he knowingly came into a neighborhood reserved for industrial or agricultural endeavors and has been damaged thereby.

Were Webb the only party injured, we would feel justified in holding that the doctrine of "coming to the nuisance" would have been a bar to the relief asked by Webb, and, on the other hand, had Spur located the feedlot near the outskirts of a city and had the city grown toward the feedlot, Spur would have to suffer the cost of abating the nuisance as to those people locating within the growth pattern of the expanding city.

There is no indication in the instant case at the time Spur and its predecessors located in western Maricopa County that a new city would spring up, full-blown, alongside the feeding operation and that the developer of that city would ask the court to order Spur to move because of the new city. Spur is required to move not because of any

wrongdoing on the part of Spur, but because of a proper and legitimate regard of the courts for the rights and interests of the public.

Del Webb, on the other hand, is entitled to the relief prayed for (a permanent injunction), not because Webb is blameless, but because of the damage to the people who have been encouraged to purchase houses in Sun City. It does not equitably or logically follow, however, that Webb, being entitled to the injunction, is then free of any liability to Spur if Webb has in fact been the cause of the damage Spur has sustained. It does not seem harsh to require a developer, who has taken advantage of the lower land values in a rural area as well as the availability of large tracts of land on which to build and develop a new town or city in the area, to indemnify those who are forced to leave as a result.

Having brought people to the nuisance to the foreseeable detriment of Spur, Webb must indemnify Spur for a reasonable amount of the cost of moving or shutting down.

It is therefore the decision of this court that the matter be remanded to the trial court for a hearing upon the damages sustained by the defendant Spur as a reasonably foreseeable and direct result of the granting of the permanent injunction.

Mugler v. Kansas

Supreme Court of the United States

123 U.S. 623 (1887)

Harlan, J. By a statute of Kansas, approved March 3, 1868, it was made a misdemeanor, punishable by fine and imprisonment, for anyone, directly or indirectly, to sell spirituous, vinous, fermented, or other intoxicating liquors, without having a dram shop, tavern, or grocery license.

But, in 1880, the people of Kansas adopted a more stringent policy. On the 2nd of November of that year, they ratified an amendment to the state constitution, which declared that the manufacture and sale of intoxicating liquors should be forever prohibited in that State, except for medical, scientific, and mechanical purposes.

In order to give effect to that amendment, the legislature repealed the act of 1868, and passed an act, approved February 19, 1881, to take effect May 1, 1881.

Mugler, Ziebold, and Hagelin were engaged in manufacturing beer at their respective establishments (constructed specially for that purpose) for several years prior to the adoption of the constitutional amendment of 1880. They continued in such business in defiance of the statute of 1881, and without having the required permit.

The buildings and machinery constituting these breweries are of little value if not used for the purpose of manufacturing beer; that is to say, if the statutes are enforced against the defendants, the value of their property will be very materially diminished.

The general question in [this] case is whether the foregoing statutes of Kansas are in conflict with that clause of the Fourteenth Amendment, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law.

Keeping in view these principles as governing the relations of the judicial and legislative departments of Government with each other, it is difficult to perceive any ground for the judiciary to declare that the prohibition by Kansas of the manufacture or sale within her limits of intoxicating liquors for general use there as a beverage is not fairly adapted to the end of protecting the community against the evils which confessedly result from the excessive use of ardent spirits. There is no justification for holding that the State, under the guise merely of police regulations, is here aiming to deprive the citizen of his constitutional rights, for we cannot shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks.

[I]t is contended [by the defendants] that, as the primary and principal use of beer is as a beverage; as their respective breweries were erected when it was lawful to engage in the manufacture of beer for every purpose; as such establishments will become of no value as property, or, at least, will be materially diminished in value, if not employed in the manufacture of beer for every purpose—the prohibition upon their being so employed is, in effect, a taking of property for public use without compensation, and depriving the citizen of his property without due process of law.

As already stated, the present case must be governed by principles that do not involve the power of eminent domain, in the exercise of which property may not be taken for public use without compensation. 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.

Pennsylvania Coal Co. v. Mahon

Supreme Court of the United States

260 U.S. 393 (1922)

Mr. Justice Holmes. This is a bill in equity brought by the defendants in error to prevent the Pennsylvania Coal Company from mining under their property in such a way as to remove the supports and cause a subsidence of the surface and their house. The bill sets out a deed executed by the Coal Company in 1878 [that] conveys the surface, but in express terms reserves the right to remove all coal under the same, and the grantee takes the premises with the risk, and waives all claim for damages that may arise from mining out the coal. But the plaintiffs say that whatever may have been the Coal Company's rights, they were taken away by an act of Pennsylvania commonly known there as the Kohler Act.

The statute forbids the mining of anthracite coal in such a way as to cause the subsidence of, among other things, any structure used as a human habitation. As applied to this case the statute is admitted to destroy previously existing rights of property and contract. The question is whether the police power can be stretched so far.

Government can hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not all cases there must be an exercise of eminent domain and compensation to sustain the act. The question depends upon the particular facts. The greatest weight is given to the judgment of the legislature, but it always is open to interested parties to contend that the legislature has gone beyond its constitutional power.

This is the case of a single private house. No doubt there is a public interest even in this, as there is in every purchase and sale and in all that happens within the commonwealth. Some existing rights may be modified even in such a case. But usually in ordinary private affairs the public interest does not warrant much of this kind of interference. A source of damage to such a house is not a public nuisance even if similar damage is inflicted on others in different places. The damage is not common or public. The extent of the public interest is shown by the statute to be limited, since the statute ordinarily does not apply to land when the surface is owned by the owner of the coal. Furthermore, it is not justified as a protection of public safety. That could be provided for by notice. Indeed, the very foundation of this bill is that the defendant gave timely notice of its intent to mine under the house. On the other hand, the extent of the taking is great. It purports to abolish what is recognized in Pennsylvania as an estate in land—a very valuable estate—and what is declared by the Court below to be a contract hitherto binding the plaintiffs. If we were called upon to deal with the plaintiffs' position alone,

we would think it clear that the statute does not disclose a public interest sufficient to warrant so extensive a destruction of the defendant's constitutionally protected rights.

It is our opinion that the act cannot be sustained as an exercise of the police power, so far as it affects the mining of coal under streets or cities in places where the right to mine such coal has been reserved. What makes the right to mine coal valuable is that it can be exercised with profit. To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it. Thus we think that we are warranted in assuming that the statute does.

The rights of the public in a street purchased or laid out by eminent domain are those that it has paid for. If in any case its representatives have been so short sighted as to acquire only surface rights without the right of support, we see no more authority for supplying the latter without compensation than there was for taking the right of way in the first place and refusing to pay for it because the public wanted it very much. The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation.

The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change. As we have already said, this is a question of degree—and therefore cannot be disposed of by general propositions.

[T]he question at bottom is upon whom the loss of changes desired should fall. So far as private persons or communities have seen fit to take the risk of acquiring only surface rights, we cannot see that the fact that their risk has become a danger warrants the giving to them greater rights than they bought.

Mr. Justice Brandeis (dissenting). Coal in place is land; and the right of the owner to use his land is not absolute. He may not so use it to create a public nuisance; and uses, once harmless, may, owing to changed conditions, seriously threaten the public welfare. Whenever they do, the legislature has power to prohibit such uses without paying compensation; and the power to prohibit extends alike to the manner, the character, and the purpose of the use.

Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the State of rights in property without making compensation. But restriction imposed to protect the public health, safety, or morals from dangers threatened is not a taking. The restriction here in question is merely the prohibition of a noxious use. The State does not appropriate it or make any use of it. The State merely prevents the owner from making a use that interferes with paramount rights of the public.

The restriction upon the use of this property can not, of course, be lawfully imposed, unless its purpose is to protect the public. But the purpose of a restriction does not cease to be public, because incidentally some private persons may thereby receive gratuitously valuable special benefits. Furthermore, a restriction, though imposed for a public purpose, will not be lawful, unless the restriction is an appropriate means to a public end. Restriction upon use does not become inappropriate as a means, merely because it deprives the owner of the only use to which the property can then be profitably put. Nor is a restriction imposed through exercise of the police power inappropriate as a means, merely because the same end might be effected through exercise of the power of eminent domain, or otherwise at public expense.

Keystone Bituminous Coal Assn. v. DeBenedictus

Supreme Court of the United States

480 U.S. 470 (1987)

Justice Stevens, delivered the opinion of the Court. In *Pennsylvania Coal Co. v. Mahon*, the Court reviewed the constitutionality of a Pennsylvania statute that admittedly destroyed "previously existing rights of property and contract." In that case, the "particular facts" led the Court to hold that the Pennsylvania Legislature had gone beyond its constitutional powers when it enacted a statute prohibiting the mining of anthracite coal in a manner that would cause subsidence of land on which certain structures were located.

Now, 65 years later, we address a different set of "particular facts," involving the Pennsylvania Legislature's 1966 conclusion that the Commonwealth's existing mine subsidence legislation had failed to protect the public interest in safety, land conservation, preservation of affected municipalities' tax bases, and land development of the Commonwealth. Based on detailed findings, the legislature enacted the Bituminous Mine Subsidence and Land Conservation Act (the "Subsidence Act" or the "Act"). Petitioners contend, relying heavily on our decision in *Pennsylvania Coal*, that the Act violates the Contracts Clause of the Federal Constitution. The District Court and the Court of Appeals concluded that *Pennsylvania Coal* does not control for several reasons. We agree.

[The petitioners allege that various sections of the Act] constitute a taking of their private property without compensation in violation of the Fifth and Fourteenth Amendments.

Petitioners assert that disposition of their takings claim calls for no more than a straightforward application of the Court's decision in *Pennsylvania Coal Co. v. Mahon*. Although there are some obvious similarities between the cases, we agree with the Court of Appeals and the District Court that the similarities are far less significant than the differences, and that *Pennsylvania Coal* does not control this case.

We have held that land use regulation can effect a taking if it "does not substantially advance legitimate state interests, or denies an owner economically viable use of his land." Application of these tests to petitioner's challenge demonstrates that they have not satisfied their burden of showing that the Subsidence Act constitutes a taking. First, unlike the Kohler Act [the act reviewed in *Pennsylvania Coal*], the character of the government action involved here leans heavily against finding a taking; the Commonwealth of Pennsylvania has acted to arrest what it perceives to be a significant threat to the common welfare. Second, there is no record in this case to support a finding, similar to the one the Court made in *Pennsylvania Coal*, that the Subsidence Act makes it impossible for petitioners to profitably engage in their business, or that there has been undue interference with their investment-backed expectations.

[Regarding the public purpose], the Subsidence Act differs from the Kohler Act in critical and dispositive respects. With regard to the Kohler Act, the Court believed that the Commonwealth had acted only to ensure against damage to some private landowners' homes. Here, by contrast, the Commonwealth is acting to protect the public interest in health, the environment, and the fiscal integrity of the area. The Subsidence Act is a prime example that "circumstances may so change in time as to clothe with such a [public] interest what at other times would be a matter of purely private concern."

The second factor that distinguishes this case from *Pennsylvania Coal* is the finding in that case that the Kohler Act made mining of "certain coal" commercially impracticable. In this case, by contrast, petitioners have not shown any deprivation significant enough to satisfy the heavy burden placed upon one alleging a regulatory taking. For this reason, their takings claim must fail.

Lucas v. South Carolina Coastal Council

Supreme Court of the United States

112 S.Ct. 2886 (1992)

Scalia, J. In 1986, petitioner David H. Lucas paid $975,000 for two residential lots on the Isle of Palms in Charleston County, South Carolina, on which he intended to build single-family homes. In 1988, however, the South Carolina Legislature enacted the Beachfront Management Act, which had the direct effect of barring petitioner from erecting any permanent habitable structures on his two parcels. A state trial court found that this prohibition rendered Lucas's parcels "valueless." This case requires us to decide whether the Act's dramatic effect on the economic value of Lucas's lots accomplished a taking of private property under the Fifth and Fourteenth Amendments requiring the payment of "just compensation."

Prior to Justice Holmes' exposition in *Pennsylvania Coal v. Mahon*, it was generally thought that the Takings Clause reached only a "direct appropriation" of property, or the functional equivalent of a "practical ouster of [the owner's] possession. Justice Holmes recognized in *Mahon*, however, that if the protection against physical appropriations of private property was to be meaningfully enforced, the government's power to redefine the range of interests included in the ownership of property was necessarily constrained by constitutional limits.

Nevertheless, our decision in *Mahon* offered little insight into when, and under what circumstances, a given regulation would be seen as going "too far" for purposes of the Fifth Amendment. We have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property.

The second situation is where regulation denies all economically beneficial use of the land.

We have never set forth the justification for this rule. Perhaps it is simply, as Justice Brennan suggested, that total deprivation of beneficial use is, from the landowner's point of view, the equivalent of a physical invasion.

It is correct that many of our prior opinions have suggested that "harmful or noxious uses" of property may be proscribed by government regulation without the requirement of compensation. For a number of reasons, however, we think the South Carolina Supreme Court was too quick to conclude that that principle decides the present case.

The transition from our early focus on control of "noxious" uses to our contemporary understanding of the broad realm within which government may regulate

without compensation was an easy one, since the distinction between "harm-preventing" and "benefit-conferring" regulation is often in the eye of the beholder. It is quite possible, for example, to describe in *either* fashion the ecological, economic, and aesthetic concerns that inspired the South Carolina legislature in the present case.

When it is understood that "prevention of harmful use" was merely our early formulation of the police power justification necessary to sustain (without compensation) *any* regulatory diminution of value; and that the distinction between regulation that "prevents harmful use" and that which "confers benefits" is difficult, if not impossible, to discern on an objective, value-free basis; it becomes self-evident that noxious use logic cannot serve as a touchstone to distinguish regulatory "takings"—which require compensation—from regulatory deprivations that do not require compensation.

Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with. This accords, we think, with our "takings" jurisprudence, which has traditionally been guided by the understandings of our citizens regarding the content of, and the state's power over, the "bundle of rights" that they acquire when they obtain title to property.

Where "permanent physical occupation" of land is concerned, we have refused to allow the government to decree it anew (without compensation), no matter how weighty the asserted "public interests" involved, though we assuredly *would* permit the government to assert a permanent easement that was a pre-existing limitation upon the landowner's title. We believe similar treatment must be accorded confiscatory regulations, i.e., regulations that prohibit all economically beneficial use of land: Any limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership.

We emphasize that to win its case South Carolina must do more than proffer the legislature's declaration that the uses Lucas desires are inconsistent with the public interest. Instead, as it would be required to do if it sought to restrain Lucas in a common-law action for public nuisance, South Carolina must identify background principles of nuisance and property law that prohibit the uses he now intends in the circumstances in which the property is presently found. Only on this showing can the State fairly claim that, in proscribing all such beneficial uses, the Beachfront Management Act is taking nothing.

[Note: In a settlement, the state purchased the lots from Mr. Lucas, and then resold them to a developer for $785,000 (Fischel, 1995b, p. 61).]

Case Links

Kelo v. City of New London:

http://www.law.cornell.edu/supct/search/display.html?terms=Kelo%20v.%20New%20London&url=/supct/html/04-108.ZO.html

Penn Central Transportation Co. v. City of New York:

http://www.law.cornell.edu/supct/search/display.html?terms=Penn%20central&url=/supct/html/historics/USSC_CR_0438_0104_ZO.html