

Confidentiality, Conflict and Public Citizenship:

Civil disobedience as long as the underlying conduct is not a crime/fraud can be assisted by an attorney.

Advice versus active participation.

Conflict of interest: representation of client and personal beliefs. Acting in personal capacity that conflict with client triggers a personal conflict of interest, concurrent conflict of interest, significant risk of material representation that lawyer's representation will be limited by personal beliefs of an attorney. Personal conflict of interest are not imputed to other attorney's in the firm.

Water Law/Colorado River Law

Nolan/Dolan

Exactions only when we actually take land, not regulate land.

Impact fee= reasonable relation or rational nexus to the improvements

Authority: express v. implies, level of government (statutory or home rule), plenary v. non plenary power, action has been preempted by higher level of government

Tax is a compulsory charge imposed for the purpose of generating revenue to defray the general expenses of government. Look at ad valorem or excise, general constitutional limitations, special constitutional limitations.

Fee ...see case below: fees can be imposed for quid pro quo, cover cost of program (like building permit fees), cover cost of your impact.

Nolan: no nexus between the condition and the original purpose of the building restriction b/c no nexus violates taking clause

Dolan: there must be rough proportionality but the exaction and impact

Three part test Nolan/dolan

Fee v. Tax see, Bloom v. City of Ft. Collins 794 p2 304. d

Use restriction for affordable housing is regulation and not an exactions.

Ad hoc fees imposed s subject to Nolan/dolan

Does not apply to fees imposed pursuant to legislatively imposed powers.

Koontz v. St Johns 570 US 595 (2013)

Proper impact fee:

Direct link between impact fee being imposed and development

Cost of the facility or improvement to be provided for

Equitable method to appropriate the cost among the developments that necessitated the expenditures

Provide clearly articulated and when possible detailed standards assessing the amount of the impact fee or exaction adopt and follow procedures

Segregate funds.

Community Choice Aggregation: local governments purchase electricity on behalf of the community while the local utility continues transmission and distribution. Leads to increase renewable energy supply.

Town of Vail: environmental impact report. Creates an invitation to exaction because it a case-by-case basis for implementation of mitigations.

Boulder County Wildfire Mitigation Plan.

Regulatory Issues and Climate Change in Rocky Mountain West:

Flooding, wildfire, urban heat island,

Flooding: build up, permeable ground floors, revised set backs from the floodplain. Construction size limit, (reasonable economic use of the property) , clustering, (we need to listen to the land about how and where to build), open space design allow open space requirements to allow some portion of the area to serve as temporary floodwater accommodation areas, FEMA Community Rating Systems to reduce flood insurance ratings,

Wildfire Planning:

Comp plan ( connect the information to other functional plans, where do you want to grow and where is the wildfire hazard map and how do they connect)

Subdivision regulations: plans on how they manage subdivision regulation to account for fire, fuel management/modification plan part of subdivision plan process, done before lots are purchased, phasing regs for wildfire mitigation,

Wildland urban interface code: standard for construction material and building requirements and vegetation management more, standards and codes all together

Vegetation management: property owner based

Setback/hillside protection ordinance: increase setbacks from steep slopes and combined with hillside and hazard protection objectives.

Site specific assessments: offer site specific assessments through voluntary or regulatory pathways can be combined with incentives for property owners.

Enforcement:

#### Recent Land Use Decisions in Colorado

City and County of Denver v. Burton: Homeless camping ban overturned, cruel and unusual punishment and 8<sup>th</sup> amendment. Government may not prosecute people for basic human needs of sitting, lying, sleeping in public. So long as there is a greater number of homeless individuals in a jurisdiction than beds in shelters. Martin v. Boise 920 F.3d 384.

Ordinances how are you going to enforce, safety/health, conduct etc.

Carousel Farms v. Woodcrest Homes, 442 P.3d 401 (Colo 2019): annexation agreement with Town of Parker, one owner objected, metro district did eminent domain action to force homeowner into the metro district, supreme court the fundamental and intrinsic nature of the taking was for a public benefit though most immediate reasons was to comply with pre annexation agreement with the Town.

Thompson Excavation v. Larimer County: conditional use approval for a mine application. Was approved earlier than came back to “refresh” the prior conditional use approval application. Approved, homeowners filed a 106. Rule 57 claim: whether or not one of the Commissioner’s had a conflict of interest in approving the decision. Homeowners never claimed a conflict of interest against any of the Board members because one of the Board members received a campaign contribution from the Thompson mine. Found that Commissioner refusal to recuse was a conflict of interest. US Supreme Court Case Caperton? Donor gave 3 million to an appellate judge campaign, that judge was sitting and reviewing the donor’s case. West Virginia case. Donation can create a bias because of the extreme donation even though there is no true bias. Caperton case party contribution has a significant impact disproportionate to how much was received and spent and how the money influenced the outcome of the election makes an irrefutable bias.

In Larimer the person made a 10K donation to the campaign and judge found that it was a big enough contribution to create a bias. They donated because the Republican Party solicited on behalf of the Commissioner.

Larimer county has an existing conflicts policy: quasi judicial officers are presumed to be impartial unless financial interest personal/business.

Historic preservation: must meet with owner of building that you are trying to designate as historical and board must be a resident of the jurisdiction.

Lakewood's growth ordinance: Passed in July. 1<sup>st</sup> case filed relating to the ordinance filed, white fence farm project, was it a pending project before the ordinance adopted.

State wide growth ordinance for the ballot?

City of Denver v. Burton

Lynall et al v. City of Denver.