

Applicant Number



08176

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MULTISTATE PERFORMANCE TEST

## *In re Harrison*

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**In re Harrison**

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**FILE**

**Barbour, Lopez & Whirley**  
Attorneys at Law  
788 Washington Blvd.  
Abbeville, Franklin 33017

**MEMORANDUM**

**To:** Examinee  
**From:** Esther Barbour  
**Date:** February 24, 2015  
**Re:** Daniel Harrison matter

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Last year, our client Daniel Harrison bought a 10-acre tract (the Tract) of land in the City of Abbeville from the federal government, which had used the property as an armory and vehicle storage facility. The Tract is currently zoned for single-family residential development. Harrison applied for a rezoning of the property for use as a truck-driving training facility, but the City has denied the application.

Harrison wants to know whether he can pursue an inverse condemnation case seeking compensation from the City based on the denial of his rezoning application. Inverse condemnation is a legal proceeding in which a private property owner seeks compensation from a governmental entity based on the governmental entity's use or regulation of the owner's property.

Please draft a memorandum to me identifying each of the inverse condemnation theories available under Franklin and federal law and analyzing whether Harrison might succeed against the City under each of those theories. Note that there has been no physical taking, so do not address that issue. Do not prepare a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

**Barbour, Lopez & Whirley**

**MEMORANDUM TO FILE**

**From:** Esther Barbour  
**Date:** February 23, 2015  
**Re:** Summary of interview of Daniel Harrison

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Today I met with Daniel Harrison regarding a 10-acre Tract he bought from the federal government. He provided the following background information about the Tract's zoning, its prior use, and his plans for development.

- From 1978 to 2014, the Franklin National Guard operated an armory and vehicle storage building on the Tract. The buildings and parking lot are located on approximately three acres, and the remaining seven acres are undeveloped, heavily sloped, and wooded.
- In 1994, the City of Abbeville enacted an R-1 (single-family residential) zoning ordinance, restricting development to single-family housing and prohibiting all commercial and industrial uses on the Tract.
- The Guard operated the armory and storage building without objection from the City until March 2014, when the property was decommissioned and the Guard began looking for buyers. The buildings were (and still are) in good shape, but they contain levels of asbestos and lead paint that may pose environmental hazards if the buildings are renovated or demolished.
- The Tract borders a City park and baseball field and is near the municipal airport. The area surrounding the Tract has had very little residential growth since the 1960s.
- In June 2014, Harrison purchased the Tract from the Guard through a bid process for \$100,000 (about \$10,000 per acre), intending to use the existing Guard buildings for commercial purposes. He believed that the Tract was "grandfathered in" and not subject to the 1994 residential zoning ordinance.

- There were several other bids on the Tract, ranging from \$20,000 to \$88,800. Harrison anticipates that the City will point to his winning bid and the other bids submitted as proof of the Tract's value. However, the other bids were made before the City rejected Harrison's proposed non-residential use of the Tract, and Harrison believes that the other bidders bid on the Tract believing (as he did) that the zoning ordinance would not be enforced.
- Harrison also believes that it is not feasible to develop the Tract for residential use (see attached emails).
- In August 2014, Harrison negotiated a lease of the Tract to a truck-driving school. After negotiating the lease, Harrison contacted the City and was informed that the City intended to enforce the residential zoning ordinance.
- He then submitted an application to the City's Planning and Zoning Board requesting that the zoning of the Tract be changed from R-1 (single-family residential) to C-1 (general commercial/industrial) to allow the Tract to be used as a truck-driving school.
- The Board recommended approval of the rezoning application, but the Abbeville City Council voted unanimously to deny it.
- At the Council meeting, some Council members were concerned about the proximity of the Tract to a park; one suggested that with a special-use permit, the property could be used for a church, medical or dental clinic, business office, or day-care center. Harrison believes that these other uses are not feasible because the Tract is in a remote area of the City with little traffic and no growth, and because of the prohibitive cost of renovating the existing structures for such non-industrial uses.
- Harrison wants to keep the Tract, but he's very concerned about losing money on it. The Tract would be worth \$200,000 if used for industrial purposes (see attached appraisal). But because the City denied his rezoning application, the Tract is not producing and will not produce any income. Harrison estimates that if the Tract is not rezoned, he will lose between \$10,000 and \$15,000 per year due to maintenance, taxes, insurance, and deterioration.

**MASTER APPRAISALS LLP**

3200 Barker Road  
Abbeville, Franklin 33020

Mr. Daniel Harrison  
1829 Timber Forest Drive  
Abbeville, Franklin 33027

January 9, 2015

SUBJECT: Market Value Appraisal for Harrison Tract

Dear Mr. Harrison:

Master Appraisals LLP submits the accompanying appraisal of the referenced property. The purpose of the appraisal is to develop an opinion of the market value of the fee simple interest in the property based on the highest and best use value of the property, if zoned for general commercial/industrial use. The appraisal is intended to conform to the Uniform Standards of Professional Appraisal Practice and applicable state appraisal regulations.

The subject is a parcel of improved land containing two buildings and a parking lot and consisting of an area of 10.0 acres or 435,600 square feet. The property is zoned R-1 (single-family residential) but has been used as a military armory and vehicle storage facility. The existing structures appear to be perfect for conversion to an industrial or training facility of some kind. That appears to be the highest and best use of the property, in its "as-improved" state. Thus, the appraisal assumes that the property will be used for industrial or training purposes.

**VALUE CONCLUSION**

**Appraisal Premise:** Market Value

**Date of Value:** January 6, 2015

**Interest Appraised:** Fee Simple

**Value Conclusion:** \$200,000 total (\$20,000/acre)

If you have any questions or comments regarding the information contained in this letter or the attached report, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,

**MASTER APPRAISALS LLP**



Margaret Jane Charleston  
Certified General Real Estate Appraiser  
Franklin Certificate # FR-053010

[Balance of APPRAISAL REPORT omitted]

## **January 19, 2015, Email Correspondence Between Harrison and Real Estate Agent**

**From:** Daniel Harrison<dharr@cmail.com>  
**To:** Amy Conner<amyc@abbeyillerealty.com>  
**Subject:** Development options for my land

Hi, Amy. Remember the 10-acre tract of land that I bought last year? I've been trying to get the tract rezoned as C-1 commercial so that I can lease it to a truck-driving school that wants to open a new training facility in Abbeville. The City Council denied my rezoning application and told me that the only development it will allow is single-family residential. Frankly, I just don't think anyone would want to live way down there. You've been a real estate agent for 15 years. What do you think?

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**From:** Amy Conner<amyc@abbeyillerealty.com>  
**To:** Daniel Harrison<dharr@cmail.com>

I agree. I don't think the land is suitable for residential development. Assume that you could build three houses per acre—that would be 30 homes on the 10-acre tract. Typically, it costs between \$15,000 and \$20,000 per lot to develop land for single-family housing, including grading the land and installing utilities and drainage systems. That's a reasonable investment if the land is near a business district because people will pay a premium to live close to work.

But your land is almost 45 minutes southeast of the business district. There are several single-family lots a few miles from your tract, priced at \$4,500 each, and they aren't selling. I think you'd be lucky to get \$5,000 per lot if you developed the land, assuming you could sell the lots.

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**From:** Daniel Harrison<dharr@cmail.com>  
**To:** Amy Conner<amyc@abbeyillerealty.com>

That's what I thought. I wasn't sure about the numbers, but I didn't think it was doable.... You've seen the tract — do you have any idea what it would cost to tear down the existing buildings and parking lot and clear the wooded areas of the tract?



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**From:** Amy Conner<amyc@abbevillerealty.com>  
**To:** Daniel Harrison<dharr@cmail.com>

In other deals I've worked on, I've seen it cost \$25,000 or more to demolish a building or parking lot. Here, the property has two buildings with likely environmental issues, and a parking lot and shrubs and trees to remove. You're probably looking at a minimum expense of \$75,000.

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**From:** Daniel Harrison<dharr@cmail.com>  
**To:** Amy Conner<amyc@abbevillerealty.com>

I just don't have that kind of money.... If I can't lease the land to the truck-driving school and I can't develop it for residential housing, what do you think it's worth in its current condition?

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**From:** Amy Conner<amyc@abbevillerealty.com>  
**To:** Daniel Harrison<dharr@cmail.com>

Not much. Maybe a few hundred dollars an acre. But that's about it.

# LIBRARY

**Franklin Constitution, Article I, Section 13**

No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person . . . .

**United States Constitution, Fifth Amendment ("Takings Clause")**

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Newpark Ltd. v. City of Plymouth**  
Franklin Court of Appeal (2007)

This appeal involves an inverse condemnation claim in which a developer (Newpark Ltd.) contends that the City of Plymouth's denial of its rezoning application effected an unconstitutional regulatory taking of property. We affirm the trial court's judgment against the developer.

The property at the center of this dispute consists of 93 acres of land acquired by Newpark for \$930,000 (\$10,000 per acre). The tract is located in an area zoned "SF-E" (single-family residential development). The area has been zoned for one-acre-minimum lots since 1967. The tract was used primarily for pastureland at the time of purchase. While Newpark was unaware that the tract was zoned for one-acre-minimum lots when it signed the purchase contract, it was aware of the zoning by the time of closing.

In August 2000, after closing on the tract, Newpark applied for a zoning change to allow the development of 325 single-family lots on the 93 acres with a density of approximately 3.5 units per acre. The City Council considered and denied the application. Newpark then sued the City,

seeking damages for inverse condemnation.<sup>1</sup> The trial court found in favor of the City, and this appeal followed.

At the outset, we note that the fact that the zoning restriction had already been enacted when Newpark bought the tract does not bar it from bringing a takings action against the City, regardless of whether Newpark had notice of the restriction. Unreasonable zoning regulations do not become less so through the passage of time or title. *See Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) (rejecting argument that post-zoning purchasers cannot challenge a regulation under the Takings Clause).

The Takings Clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, prohibits the government from taking private property for public use

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<sup>1</sup> Inverse condemnation occurs when the government takes private property for public use without paying the property owner, and the property owner sues the government to recover compensation for the taking. Because the property owner in such situations is the plaintiff, the action is called *inverse* condemnation because the order of the parties is reversed as compared to a direct condemnation action where the government is the plaintiff who sues a defendant landowner to take the owner's property.

without just compensation. *Id.* A taking can be physical (e.g., land seizure, continued possession of land after a lease to the government has expired, or deprivation of access to the property owner), or it can be a regulatory taking (where the regulation is so onerous that it makes the regulated property unusable by its owner). See *Soundpool Inv. v. Town of Avon* (Franklin Sup. Ct. 2003). The constitutionality of a regulatory taking involves the consideration of a number of factual issues, but whether a zoning ordinance is a compensable taking is a question of law.

The state of Franklin's prohibition against taking without just compensation is set forth in Article I, Section 13, of the Franklin Constitution and is comparable to the Takings Clause of the United States Constitution, despite minor differences in wording. See *Sheffield Dev. Co. v. City of Hill Heights* (Franklin Sup. Ct. 2006). Therefore, Franklin courts look to federal cases for guidance in these situations.

The United States Supreme Court recently clarified the types of regulatory taking: (1) a total regulatory taking, where the regulation deprives the property of all economic value; (2) a partial regulatory taking, where the

challenged regulation goes "too far"; and (3) a land-use exaction, which occurs when governmental approval is conditioned upon a requirement that the property owner take some action that is not proportionate to the projected impact of the proposed development (e.g., a developer is required to rebuild a road but the improvements are not necessary to accommodate the additional traffic from the proposed development). *Lingle v. Chevron*, 544 U.S. 528 (2005).<sup>2</sup>

Here, Newpark does not argue that the City has physically taken its property, nor does it assert a partial regulatory taking or a land-use exaction. Thus, we need only consider the first type of regulatory taking: whether the City ordinance restricting development of Newpark's land to one-acre-minimum lots constitutes a total regulatory taking.

A total regulatory taking occurs when a property owner is called upon to sacrifice *all* economically beneficial uses in the name of

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<sup>2</sup>The Franklin Supreme Court recognizes a fourth type of regulatory taking in situations where a regulation does not "substantially advance" a legitimate governmental interest. In *Lingle*, the United States Supreme Court rejected the "substantially advances" formula under federal constitutional law. Its continuing validity is still an issue under Franklin law, but the parties have not raised it. Thus, we need not determine whether the "substantially advances" test remains valid in a regulatory takings case under the Franklin state constitution.

the common good. This type of regulatory taking was first articulated by the United States Supreme Court in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). A *Lucas*-type total regulatory taking is limited to the extraordinary circumstance when no productive or economically beneficial use of the land is permitted and the owner is left with only a token interest.

Newpark contends that the only way to achieve an economically productive use of the property is for the City to allow single-family development of some type. This argument not only mischaracterizes the zoning ordinance but also misapplies the *Lucas* test upon which the argument is premised. The SF-E zoning *does* permit the development of a single-family residential subdivision, albeit in one-acre-minimum lots. The appraisal experts for both parties testified that, due to market conditions and the current zoning, the cost to develop one-acre lots would exceed the potential for revenue. The City's appraiser testified that the highest and best use of the property is to hold the property for the future.

Although the testimony established that the development would not be profitable under current conditions, the absence of profit

potential does not equate with impossibility of development. To the contrary, the takings clause does not require the government to guarantee the profitability of every piece of land subject to its authority, although lost profits are a relevant factor to consider in assessing the value of property and the severity of the economic impact of rezoning on a landowner.

The City's expert testified that the property's value is approximately \$5,000 per acre. Newpark's expert testified that the property is worth \$2,000 per acre. Both experts testified that Newpark paid more for the property (\$10,000 per acre) than it is worth. The court reasonably concluded that Newpark had assumed certain risks attendant to real estate investment. But such risks have no place in a total takings analysis because the government has no duty to underwrite the risk of developing and purchasing real estate. Although investment-backed expectations are relevant to a *partial* regulatory taking analysis rather than a total taking analysis, we note that when such expectations are measured, the historical uses of the property are critically important. Here, the zoning always required one-acre-minimum lots, and the historical use of the property was farmland.

Newpark's expert testified that the value of the property, if capable of being developed, is \$25,000 per acre. Expert testimony on both sides provides a range of value for the property in an undeveloped state from \$2,000 to \$5,000 per acre. Newpark claims that the \$2,000 constitutes no value at all.

We do not read *Lucas* to hold that the value of land is a function of whether it can be profitably developed. To the contrary, the economic viability test "entails a relatively simple analysis of whether value remains in the property after governmental action." *Sheffield*. The appropriate *Lucas* inquiry is whether the value of the property has been completely eliminated. The deprivation of value must be such that it is tantamount to depriving the owner of the land itself. *Id.*

Newpark also argues that the property is valueless because if it cannot be developed as a residential subdivision, it will remain vacant, with a value equivalent to that of parkland. The fallacy of this approach is that it equates the lack of availability of a property for its most economically valuable use with the condition of being "valueless." Although the regulation in *Lucas* precluded the development of oceanfront property, the property still had value. The owner could

enjoy other attributes of the property: he could picnic, camp, or live on the land in a mobile trailer. The owner also retained other valuable property rights—the right to exclude others and to alienate the land. *Id.* (Blackmun, J., dissenting); see also *Wynn v. Drake* (Fr. Sup. Ct. 2003) (no taking when zoning left owner with only recreational and horticultural uses). Here, the court could reasonably conclude that the property retains residual uses and therefore some value.

Newpark's insistence that it is virtually impossible to find a tract of land without value is instructive. The fact that a piece of land will rarely be deemed utterly lacking in economic viability is consistent with the *Lucas* limitation of such claims to extraordinary circumstances. Here, because the property has a value of at least \$2,000 per acre, we conclude that those extraordinary circumstances are not present. Because the ordinance does not completely eliminate the property's value, there has been no unconstitutional taking.<sup>3</sup>

Affirmed.

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<sup>3</sup> We note that a necessary result of a taking under these circumstances—had Newpark prevailed—would be that upon payment of adequate compensation, the City would own the property. Thus, had Newpark prevailed in its claim for inverse condemnation, Newpark would have been required to transfer title of the property to the City.

## **Venture Homes Ltd. v. City of Red Bluff**

Franklin Court of Appeal (2010)

Appellant Venture Homes Ltd. owns two apartment buildings in the City of Red Bluff. After the City rezoned adjacent land, Venture sued the City, alleging that the rezoning had reduced the value of its property. The trial court granted the City's summary judgment motion. We affirm.

### **Background**

In 1999, upon application of developer Austin Inc., the City created Planned Unit Development No. 12 (PUD 12). (A PUD is an alternative to traditional zoning containing a mix of residential, commercial, and public uses.) PUD 12 is a 195-acre mixed-use development, consisting of multi-family housing, shopping centers, and office buildings. The original development plan allowed a maximum of 900 apartment units to be built on the site. Austin built two apartment buildings, containing 800 units, which Venture subsequently purchased in 2002. Austin retained ownership of the remaining land in PUD 12.

When Venture bought the 800-unit apartment complex, it assumed that only

100 additional apartment units could be built in PUD 12. Because Venture thought that a 100-unit apartment building would be too small to be commercially viable, and because Venture believed that the City needed Venture's consent to allow additional apartment units in PUD 12, Venture assumed that it effectively had 100 additional units in reserve for future expansion of the two apartment buildings that it had purchased.

However, in April 2006, at Austin's request, the City carved out an area from PUD 12 and rezoned it. Austin then filed an application for creation of a new PUD within the boundaries of PUD 12. After public hearings, the City passed an ordinance creating PUD 30, an eight-acre tract zoned for 350 additional multi-family units.

### **Discussion**

Venture alleges that creation of PUD 30 gives rise to a claim for inverse condemnation under the Franklin Constitution. Venture does not claim that its



property was physically invaded or that the City's zoning regulations eliminated all economically beneficial uses of its property. Rather, Venture argues that the City's creation of PUD 30 amounted to a partial regulatory taking for which Venture should be compensated.

#### **A. Partial Regulatory Takings Test**

A partial regulatory taking may arise where there is not a complete taking, either physically or by regulation, but the regulation goes "too far," causing an unreasonable interference with the landowner's right to use and enjoy the property. *See Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978). Because the Franklin Constitution's takings clause is similar to the Takings Clause of the Fifth Amendment to the United States Constitution, we look to federal law to analyze Venture's takings claims. *See Newpark Ltd. v. City of Plymouth* (Franklin Ct. App. 2007).

For a partial regulatory taking to occur, the governmental regulation must, at a minimum, diminish the value of an owner's property. Not every regulation that diminishes the value of property, however, is a taking.

There is no bright-line test for determining whether a partial, *Penn Central*-type regulatory taking has occurred. Whether a regulation goes "too far" requires a factual inquiry using the following guiding factors: (1) the economic impact of the regulation, (2) the extent to which the regulation interferes with the property owner's reasonable investment-backed expectations, and (3) the character of the governmental action. *Sheffield Dev. Co. v. City of Hill Heights* (Franklin Sup. Ct. 2006) (citing *Penn Central*).

Our goal is to determine, after analyzing and balancing all relevant evidence, whether a regulatory action is the functional equivalent of a classic taking in which the government directly appropriates private property, such that fairness and justice demand that the burden of the regulation be borne by the public rather than by the private landowner.

Our analysis must not be merely mathematical. Rather, while applying the balancing test, we must remember that purchasing and developing real estate carries with it certain financial risks, and it is not the government's duty to underwrite those risks.

***(1) Economic Impact of the Regulation***

The first *Penn Central* factor, the regulation's economic impact on the property owner, is undisputed for the purpose of this appeal. Venture presented expert testimony that the value of its apartment properties was reduced from \$65.6 million to \$62.9 million. The City stipulated to Venture's figure for purposes of this appeal. While significant in absolute terms, this diminution in value of \$2.7 million reflects a loss of only about 4%.

The City cites several cases that suggest that such a small diminution in value is rarely if ever held to be a taking. The City claims that because Venture's loss was a small part of its property's value, Venture failed to show that creation of the new PUD unreasonably interfered with its use of the property. Although this one factor is not dispositive, the City is correct when it asserts that the small relative amount of Venture's loss weighs heavily against Venture's claims.

***(2) Interference with Reasonable Investment-Backed Expectations***

The second *Penn Central* factor requires us to consider the extent to which the regulation has interfered with Venture's reasonable investment-backed expectations.

The record shows that the ordinance at issue caused minimal interference with Venture's *reasonable* investment-backed expectations.

Venture concedes that the only harm it has suffered is increased competition and a resulting diminution in the value of its property. The City has not rezoned Venture's property to prohibit a current or proposed use, nor has the City substantially altered the character of the surrounding land use. The City simply increased the number of multi-family units permitted within the original boundaries of PUD 12, which already included a significant number of multi-family units.

In *Sheffield*, the Franklin Supreme Court held that the existing and permitted uses of the property constitute the "primary expectation" of an affected landowner for purposes of determining whether a regulation interferes with the landowner's reasonable investment-backed expectations.

In creating PUD 30, the City has not altered the existing or permitted uses of Venture's property and therefore has not interfered with Venture's "primary expectation." Venture can continue to operate its 800-unit complex and can build an additional 100

units on its property, should it decide to do so.

***(3) Character of the Governmental Action***

The third *Penn Central* factor is the character of the governmental action. This factor is the least concrete and carries the least weight. This factor's purpose, when viewed in light of the goal of the takings test (to determine if the Constitution requires the burden of the regulation to be borne by the public or by the landowner) is to elicit consideration of whether a regulation disproportionately harms a particular property. If the rezoning was general in character, that weighs against the property owner, whereas if the rezoning impacted the owner's property disproportionately harshly, that weighs in the owner's favor that a taking did occur.

Venture asserts that the governmental action in this case targeted a small subsection of an otherwise cohesive PUD, thereby increasing competition for its apartment complex. Venture claims that the City created PUD 30 solely to satisfy Austin. The City disputes this and responds by citing language from the ordinance creating PUD 30 and public meeting minutes that suggest that the new

PUD was crafted to "create a more modern pedestrian-friendly and urban environment."

The issue is whether the City created PUD 30 for the public welfare or did so to benefit the private interests of Austin. Venture presented evidence that could lead a reasonable fact finder to conclude that one of the City's purposes, or perhaps even its primary purpose, for enacting the ordinance was to benefit Austin. That evidence does not preclude summary judgment for the City, however, because the other two *Penn Central* factors—particularly the first (the economic impact of the regulation)—weigh so heavily against Venture that, as a matter of law, there is no taking here.

**B. The "Substantial Advancement" Takings Test**

Venture also argues that the City's ordinance creating PUD 30 effects a taking of its property because the ordinance does not "substantially advance legitimate state interests." The United States Supreme Court rejected this test in *Lingle v. Chevron*, 544 U.S. 528 (2005). Prior to *Lingle*, the Franklin Supreme Court applied the "substantial advancement" test to state regulatory-takings claims, but it has not yet

addressed whether the test still applies in light of *Lingle*. Assuming that the test is still valid in Franklin, there was no taking under the “substantial advancement” test.

The “substantial advancement” test examines the nexus between the effect of the ordinance and the legitimate state interest it is supposed to advance. This requirement is not, however, equivalent to the “rational basis” standard applied to due process and equal protection claims. The standard requires that the ordinance “substantially advance” the legitimate state interest sought to be achieved rather than merely analyzing whether the government could rationally have decided that the measure achieved a legitimate objective.

The City asserts that the new PUD promotes a mixed-use, pedestrian-friendly, urban development that will enhance the quality of life of its citizens. Venture contends that the City’s stated goal is a pretext—that its real goal was only to benefit Austin by making Austin’s land more valuable. Even if that were true, however, we are not required to consider the City’s *actual* purpose. Instead, we look for a nexus between the effect of the ordinance and the legitimate state interest it is *supposed* to advance. The City

could reasonably have concluded that increasing housing density in a PUD already zoned for multi-family housing, shopping centers, and office space would advance the legitimate state interest of enhancing the quality of life of citizens by decreasing traffic, lowering commuting times, and encouraging citizens to walk. Accordingly, the creation of PUD 30 is not a taking under the “substantial advancement” test.

Affirmed.

# NOTES

# NOTES

## **MULTISTATE PERFORMANCE TEST DIRECTIONS**

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.