Unit 7 Constitutional Limitations

Regulatory Takings: Condemnation, Regulation and Impermissible Takings of Private Property
5th Amendment Takings Clause

- “nor shall private property be taken for public use, without just compensation.”
  - Public use
  - Just compensation
Public Use

• All governmental uses of property
• Private, for profit, public utilities
• Urban renewal
Just Compensation

• Fair Market Value (FMV)
• The price that a willing buyer would pay a willing seller
Eminent Domain in NC

- Power conferred solely by General Assembly
- Condemnors
  - Public
  - Private
Eminent Domain Procedure

• No prior offer to purchase required
• Notice
• Institution of action
  – Service of summons & complaint
  – Deposit with the court
• Answer by defendant
Eminent Domain Procedure

- Determination of damages & other issues
  - Commissioners used if sole issue is compensation
  - Trial *de novo* from findings of commissioners
- Vesting of title
  - Quick take
  - Standard
Inverse Condemnation

- No legal action by public entity
- Corresponds to the torts of trespass or nuisance
- Physical v. nonphysical
- Attorney fees available (NC)
U.S. Supreme Court Decisions

- Physical invasion
- Regulatory takings
  - Usually, but not necessarily, nonphysical
U.S. Supreme Court Decisions

• Lucas v. S.C. Coastal Council (1992)
• Dolan v. City of Tigard (1994)
• Nollan v. California Coastal Commission (1987)
• Loretto v. TelePrompter Manhattan CATV Corp. (1982)
Other cases

NC Law

- Exactions
  - Meets need created by developer
  - Commensurate benefit to development
  - Schools & general road improvements forbidden in N.C.
NC Law

• No state equivalent of Takings Clause
• NC cases more generous than federal
• Partial takings
  – Calculation
    • FMV before less FMV after
  – Offsets
Summary of limitations on federal & state power

- Constitutional
- Statutory
- Institutional
Constitutionality of Zoning

- Uniform scheme
- No spot zoning
- No guarantee of highest & best use