

Highlights

May 2025 Edition

Highlights for May, 2025 *Subdivision Law and Growth Management*

1. **Federal court determined that regulation of subdivisions by municipal planning commissions did not violate property owner's rights.** In 68V BTR Holdings, LLC v. City of Fairhope, 737 F.Supp.3d 1222 (S.D. Ala. 2024), the United States District Court for the Southern District of Alabama held, among other issues, that the enactment of statutes authorizing the creation of municipal planning commissions, and authorizing them to regulate subdivisions beyond their corporate limits, did not infringe upon the protected property rights of a property owner. The property owner had applied for approval to construct multi-occupancy housing in an area within the city's planning jurisdiction and those applications had been denied.
2. **California Court of Appeal addressed urban in-fill exemption to CEQA.** In West Adams Heritage Association v. City of Los Angeles, 106 Cal.App.5th 395 (2024), objectors sought to set aside the city's determination that a proposed residential housing development project near the state university was exempt, as an urban in-fill development, from environmental review under the California Environmental Quality Act (CEQA). The California Court of Appeal held that concern about noise and music from rooftop decks was not a significant environmental effect impeding application of the urban in-fill exemption. The unusual-circumstance exception to the urban in-fill exemption did not apply. The city needed to determine, under current law, whether the project was consistent with the redevelopment plan before granting the urban in-fill exemption. The zoning ordinance, not the redevelopment plan, set the maximum allowable density for the project. The state density bonus law preempted any additional requirements in the redevelopment plan for granting a density bonus.
3. **Requirements of California Environmental Quality Act (CEQA) and the Subdivision Map Act (SMA) addressed by California Court of Appeal.** In Santa Clarita Organization etc. v. County of Los Angeles, 105 Cal.App.5th 1143 (2024), an environmental group filed a petition for writ of mandate against the

county and the project applicant. The environmental group sought an order directing the county to vacate approval of a residential housing development plan. It was alleged that there were violations of the California Environmental Quality Act (CEQA) and the Subdivision Map Act (SMA). The California Court of Appeal held that causes of action alleging procedural violations of the CEQA were not subject to the SMA's 90-day summons requirement. Moreover, the CEQA claims challenging the adequacy of the mitigation measures imposed as a condition of approval of vesting tentative tract map were subject to the SMA's 90-day summons requirement.

4. **Idaho Supreme Court found that comprehensive plan is not legally controlling zoning law.** In *Veterans Park Neighborhood Association, Inc. v. City of Boise*, 564 P.3d 350, 2025 WL 259177 (2025), a neighborhood association petitioned for review of the city council's decision which reversed the city planning and zoning commission's initial denial of an application for a conditional use permit (CUP) and granting a CUP for a relocated, non-downtown shelter facility for persons experiencing homelessness. The Idaho Supreme Court observed that a comprehensive plan is not a legally controlling zoning law. Rather, it serves as a guide to local government agencies responsible for making zoning decisions. In this case, it was held that council complied with the Local Land Use Planning Act (LLUPA) requirement of identification and application of express CUP criteria. The council's grant of the CUP was arbitrary and capricious and based on unlawful procedure. The city code did not authorize the council to conduct a de novo review of the commission's denial of the CUP. The council's written reasoned statement was inadequate under the LLUPA. The association suffered prejudice to its substantial due process rights. Remand for invalidation of the council's actions, and not for adoption of an adequate reasoned statement, was warranted. The association was not entitled to statutory attorney fees as a prevailing party on appeal.
5. **The Illinois Supreme Court concluded that fees did not constitute road improvement impact fees.** In *Habdab, LLC v. County of Lake*, --- N.E.3d ---, 2024 IL 130323, 2024 WL 4847454 (2024), a developer brought a declaratory judgment action against a county and a village. The developer sought a determination that it was not obligated to pay highway improvement fees under an intergovernmental agreement between the county and the village as a condition of annexation. The developer claimed that the fees did not meet the requirements set forth in the Road Improvement

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Impact Fee Law. When the case reached the Illinois Supreme Court, it was held that the fees did not constitute road improvement impact fees that would be required to comply with Road Improvement Impact Fee Law. The essential nexus existed between the intergovernmental agreement's fee condition, which allegedly burdened the developer's rights under the takings clause, and the legitimate state interest of minimizing traffic congestion. This nexus supported a finding that the condition did not violate the unconstitutional conditions doctrine. Finally, rough proportionality existed between the alleged burden on the developer's rights under the takings clause and the harm sought to be remedied. Therefore, the condition did not violate the unconstitutional conditions doctrine.

6. **The Kentucky Supreme Court found that Board of Adjustment did not exceed legislatively granted powers.** In *Boone Development, LLC v. Nicholasville Board of Adjustment*, --- S.W.3d ----, 2024 WL 3929009 (2024), a property developer sought judicial review of a final decision of the city Board of Adjustment. The property developer requested a declaration that it did not have to build a road extension and bridge over a stream crossing between the developer's property and adjacent land. The Kentucky Supreme Court held, among other things, that the Board of Adjustment did not exceed its legislatively granted powers and did violate the procedural due process rights of the developer.
7. **Louisiana Court of Appeal found in favor of city-parish consolidated government's action in choosing lot for drainage project.** In *Glomax, LLC v. Lafayette Consolidated Government*, 362 So.3d 639 (2024), the city-parish consolidated government had filed a petition to expropriate a lot for construction of drainage project. The government identified sites in flood-prone areas in the parish where detention ponds might prove beneficial in reducing flooding. Hydraulic studies were performed to determine if ponds would prove beneficial in reducing flooding. The government selected a lot over a park after considering contour maps, hydraulic studies, and piping schematics required for both locations. The Louisiana Court of Appeal found that the city-parish consolidated government's action in choosing the property owner's lot over an adjacent park for construction of detention ponds was not one that was unreasonable or done in haste, without adequate determining principle.
8. **The New Jersey Superior Court, Appellate Division, determined that new ordinance did not apply to submission made before new ordinance**

enacted. In *Hoboken for Responsible Cannabis, Inc. v. City of Hoboken Planning Board*, --- A.3d ----, 480 N.J. Super. 357, 2024 WL 5241563 (2024), a non-profit corporation challenged the city planning board's resolution, which had granted the retailer's conditional use application to operate adult micro cannabis retail business in an existing mixed-use building. The city planning board had exempted the retailer from a new ordinance restricting any cannabis retailer from being located within 600 feet of a primary or secondary school. The Superior Court, Appellate Division held that the non-profit corporation and its president had standing as interested parties under the Municipal Land Use Law (MLUL). However, under the MLUL's Time of Application (TOA) Rule, the retailer's conditional use application was governed by ordinances in effect at the time of the retailer's submission to the cannabis review board. By way of further explanation, the retailer's submission to the city's cannabis review board, seeking endorsement so that the retailer could file a conditional use application to operate an adult micro cannabis retail business, was a complete application for development within meaning of the MLUL. Therefore, under the TOA of the MLUL, the city planning board was required to consider the retailer's conditional use application under the development ordinances in existence at the time of the retailer's submission to the cannabis review board. The new ordinance that became effective after such submission would not be applied. The cannabis review board, which fell within the MLUL's definition of a municipal agency, reviewed the retailer's application and deemed it complete before the new ordinance became effective.

9. **The New York Supreme Court, Appellate Division, held that planning board's decision sufficient to permit intelligent judicial review.** In *Ross v. Village of Fayetteville*, 233 A.D.3d 1466, 224 N.Y.S.3d 778 (2024), the petitioner brought an Article 78 petition against the village, its planning board, and developers, seeking to annul the board's determinations regarding redevelopment of a vacant manufacturing facility into a grocery store on property owned by the developers. The petition was dismissed and the petitioner appealed. The Supreme Court, Appellate Division affirmed, holding that the board's decision was sufficient to permit intelligent judicial review. Moreover, the board complied with the requirements of the State Environmental Quality Review Act (SEQRA) in issuing a negative declaration. The negative declaration under the SEQRA by the board was not arbitrary and capricious. The issuance of a special use permit for the project was not

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- arbitrary and capricious. Even if the board committed a technical violation of the Open Meetings Law, there was not good cause warranting judicial relief.
10. **The New York Supreme Court, Appellate Division held that city council’s adoption of rezoning ordinance not illegal spot zoning.** In *Bennett v. Troy City Council*, 231 A.D.3d 1386, 219 N.Y.S.3d 800 (2024), a resident who lived adjacent to a site for the proposed construction of an apartment complex on a vacant, forested, 11-acre parcel brought an article 78 proceeding against the city council. The resident challenged the city council’s decision under the State Environmental Quality Review Act (SEQRA) that the project would not result in any significant adverse environmental impacts. The resident also challenged the city council’s adoption of an ordinance rezoning the site from single-family residential district to a planned development district. The action was dismissed and the resident appealed. The Supreme Court, Appellate Division held that the city council failed to take the required hard look before determining that the project would not result in any significant adverse environmental impacts. However, the city council’s adoption of the rezoning ordinance did not involve illegal spot zoning.
 11. **The North Carolina Supreme Court concluded that zoning ordinances concerning land-use buffers did not require buffer.** In *Arter v. Orange County*, 386 N.C. 352, 904 S.E.2d 715, 2024 WL 3909368 (2024), a landowner who operated a horse farm in a rural residential zoning district challenged the county board of adjustment’s determination that the county zoning ordinances concerning land-use buffers did not require a buffer between the landowner’s property and a road leading to new subdivision that was in the same zoning district. The Superior Court affirmed. The landowner appealed. The Court of Appeals affirmed and the landowner appealed. The North Carolina Supreme Court also affirmed, concluding that zoning ordinances concerning land-use buffers did not require a buffer.
 12. **The North Dakota Supreme Court held, as matter of apparent first impression, county may impose setback requirements as conditions on exercise of subdivision authority within organized township.** In *Cass County v. KNB Properties LLC*, 14 N.W.3d 914 (2024), the home rule county brought an action against the owners of parcels in the township. The home rule county alleged that the parcel owners had violated the county’s subdivision ordinance. The subdivision ordinance specified watercourse setbacks. The owners filed a counterclaim. They alleged selective

enforcement of the subdivision ordinance and sought a permanent injunction prohibiting the county from enforcing the ordinance against them. When the case reached the North Dakota Supreme Court, it was held that as a matter of apparent first impression, a county may impose setback requirements as conditions on its exercise of subdivision authority within an organized township. The county's subdivision authority was not implicated until the initial parcel was platted into two, the plats were recorded, and one of the two new parcels was conveyed. The proper remedy for the two parcels at issue being in violation of the subdivision ordinance was to void the conveyance of one of them. Thus, the two parcels would be restored to the original one.

13. **The Oregon Court of Appeals addressed zoning change requirements and exceptions.** In *Department of Land Conservation and Development v. Clackamas County*, 335 Or. App. 205 (2024), the county and a rural residential property owner appealed the decision of the Land Use Board of Appeals (LUBA). That decision found in favor of the Department of Land Conservation and Development (DLCD) and determined that a zoning change to a density higher than two acres or more required an exception to the statewide planning goal 14, which provided for orderly and efficient transition from rural to urban land use. The Oregon Court of Appeals affirmed, holding that the LUBA had the authority to reverse and remand the county's decision that the zoning map change did not require an exception to goal 14. The zone map change to rural residential property provided for increased density, thus requiring compliance with or exception to goal 14. The zone map change was an amendment of a land use regulation requiring compliance with or exception to goal 14, regardless of the Land Conservation and Development Commission's (LCDC) prior acknowledgment of county's comprehensive plan and land use regulations.
14. **The Texas Supreme Court ruled in trespass action between subdivision lot owners and cattle ranch owners.** In *Keenan v. Robin*, --- S.W.3d ---, 68 Tex. Sup. Ct. J. 361, 2024 WL 5249568 (2024), subdivision lot owners brought an action against owners of a cattle ranch which occupied the remaining subdivision lots. They alleged trespass by cattle, as well as a claim for malicious prosecution. They requested declaratory and injunctive relief regarding the ranch owners' erection of fences, gates, or other obstructions across subdivision streets. When the matter reached the Texas Supreme Court, it was found that the lot owner's declaration constituted some evidence that the cattle from

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the ranch trespassed on his subdivision lot. The lot owner did not establish past monetary damages from the alleged trespass. The subdivision plat of record established that the subdivision streets were dedicated as public rights of way. The ranch did not have any right to place fences or gate across subdivision streets. There was no evidence that the ranchers knew they did not own the subdivision area where the subdivision lot owner tore down a fence and a gate installed by the ranch when they reported the destruction to the sheriff.

15. **The Washington Supreme Court held that amended county ordinance did not comply with Growth Management Act (GMA).** In *King County v. Friends of Sammamish Valley*, 3 Wash.3d 793, 556 P.3d 132, 2024 WL 4231188 (2024), the county appealed the corrected determination by the regional panel of the growth management hearings board that most of the county ordinance that amended the land use code governing winery, brewery, and distillery facilities did not comply with the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA). Ultimately, the Washington Supreme Court held that the amendment did not comply with the GMA. Also, the determination of non-significance (DNS), which the county issued for amendment, did not comply with the State Environmental Policy Act (SEPA).