

## Highlights

### August 2026 Edition

Highlights for August, 2026 *Subdivision Law and Growth Management*

**California Court of Appeal determined project properly considered “horizontal mixed use” within meaning of general plan and zoning ordinance.** In *Citizens Against Market-place Apartment/Condo Development v. City of San Ramon*, 120 Cal.App.5th 132 (April 24, 2026), a citizens group brought two petitions for writ of mandate and declaratory relief. The citizen’s group challenged the city’s approval of a mixed-use development project at a shopping center site. The city had determined that the project was exempt from environmental review under the categorical exemption for in-fill development. The Superior Court, Contra Costa County, denied both petitions, entered judgment in favor of the city and the developer, and awarded costs to the city. The citizens group appealed.

The Court of Appeal affirmed, holding that the project was not inconsistent with the general plan’s policy objective to “encourage” joint redevelopment of the shopping center site and neighboring site pursuant to a “master plan” if “feasible.” Also, it was held that the project was properly considered “horizontal mixed use” within the meaning of the general plan and zoning ordinance.

**California Court of Appeal found EIR for general plan did not have to analyze site-specific environmental impacts of potential development for listed site.** In *Committee for Tiburon LLC v. Town of Tiburon*, 118 Cal.App.5th 259 (February 2, 2026), an environmental organization filed a petition for writ of mandate. It challenged the adequacy of a program-level Environmental Impact Report (EIR) prepared by the town under the California Environmental Quality Act (CEQA) for a general plan update. The challenge was based on the failure to analyze specific environmental impacts of developing housing on one of 17 sites identified in the general plan’s housing element that would accommodate the town’s projected regional housing needs. The Superior Court, Marin County, granted the environmental organization’s petition, and the town appealed. On appeal, the Court of Appeal reversed and remanded, holding that the EIR for the general plan did not have to analyze site-specific environmental impacts of potential development for listed site if local govern-

ment was updating its general plan and housing element site inventory, and no specific housing project had been proposed for that site.

**Colorado Supreme Court held developer could not use citizen initiative power to evade PUD amendment process.** In *Kavanaugh v. Telluride Locals Coalition Petitioners' Committee*, 591 P.3d 39 (June 15, 2026), the developer of a planned unit development (PUD) subdivision, which subdivision was subject to a PUD agreement with the town, brought an action against the town. The developer sought a declaration that the developer's proposed ballot initiative was legislative in nature, and thus, the developer's attempt to rezone an undeveloped lot it owned designated as common space to allow for the lot's development was a proper subject for a citizen ballot initiative. The District Court, San Miguel County, determined that the developer's rezoning attempt was not legislative in nature. The town's motion for summary judgment was granted and the developer's motion for summary judgment was denied. The developer appealed. The Court of Appeals reversed and the town's petition for certiorari review was granted. The Colorado Supreme Court held that the amendment of the PUD agreement to rezone the lot was administrative, and not legislative, in character. Therefore, the developer could not use citizen initiative power to evade the PUD amendment process.

**Colorado Court of Appeal determined county's assessment of impact fee did not violate developer's substantive due process right.** In *Carroll Partners LLC v. Board of Commissioners of Pitkin County*, 592 P.3d 156 (April 30, 2026), the property developer brought an action against the county board of commissioners. The property developer sought declaratory judgment and a permanent injunction precluding the county from assessing \$948,544.18 employee housing impact fee on the developer's project that involved demolition and reconstruction of a single-family home. The District Court, Pitkin County, granted the county's motion for summary judgment and denied the developer's motion for summary judgment. The developer appealed and the Court of Appeals affirmed, holding that the impact fee statute authorizes counties to impose impact fees on any project significant enough to require a development permit. Moreover, the developer's project, which required development permit, fell within scope of impact fee statute. Finally, the county's assessment of impact fee did not violate the developer's substantive due process right.

**Florida District Court of Appeal granted petition for writ of mandamus.** In *City of Tampa v. Liberty Hospitality*

## HIGHLIGHTS

Management, LLC, 431 So.3d 552 (March 6, 2026), the property owner filed a petition for writ of certiorari. The property owner sought review of the city council's denial of a rezoning request in which the owner proposed to rezone the property for use as a hotel and sought a change to regional-impact ordinance. The Circuit Court, Hillsborough County, dismissed for lack of subject matter jurisdiction. The owner petitioned for writ of mandamus. The District Court of Appeal granted the petition for writ of mandamus. It was held that the separation of powers clause in the Florida Constitution does not apply to local governmental entities and officials. Also, a city council, including one holding a quasi-judicial hearing on a rezoning petition, is not a "court" within meaning of constitutional provision prohibiting the establishment of municipal courts. Furthermore, the statute containing general provisions governing the exercise of municipal powers, pursuant to the framework set out in the constitutional provision conferring broad home rule powers to municipalities, does not prevent a municipality from taking quasi-judicial action in ruling on a rezoning request. Moreover, even if the city charter prohibited the city council from exercising judicial power, the council's decision on the owner's rezoning request was a quasi-judicial decision rather than an exercise of judicial power. Finally, the fact that the statute providing procedures for the rezoning of a parcel of land did not specifically refer to the city's power to conduct "quasi-judicial" process, hearings, or actions did not mean that the city was unable to take quasi-judicial action on the owner's rezoning request.

**Georgia Court of Appeals found evidence sufficient to support finding of no express dedication and county acceptance of road.** In *Cobb County v. Sotis*, 931 S.E.2d 221 (June 1, 2026), a landowner brought a declaratory judgment action against the county. She sought a declaration that the property serving as her driveway was not a county road and requested the county sign a corrective quitclaim deed. The Superior Court, Cobb County, granted summary judgment for the landowner and the county appealed. The Court of Appeals affirmed, holding that the evidence was sufficient to support the finding that there was no express dedication and county acceptance of the road.

**Georgia Court of Appeals held that trial court had jurisdiction to consider arguments invoking constitutionality of zoning ordinance.** In *Alpha Land Partners, LLC v. City of Alpharetta*, 379 Ga. App. 35 (March 10, 2026), the property owner filed a petition for review of the denial of an application for a conditional use permit for the property owner's land. The property owner asserted arguments that the trial court construed to

be constitutional challenges to the underlying zoning ordinance. The Superior Court, Fulton County, affirmed denial of the permit application, dismissing property owner's constitutional challenges to the ordinance and instead ruling on the merits. The property owner appealed. On appeal, the Court of Appeals reversed in part, vacated in part, and remanded with direction. It was held that the property owner appropriately challenged the denial of the permit application via petition for review. The trial court had jurisdiction to consider arguments invoking the constitutionality of the zoning ordinance. The trial court's error in refusing to consider the constitutional challenges required reversal and remand. Finally, the Court of Appeals would not reach the challenge to the sufficiency of the evidence and would instead vacate part of trial court's order affirming denial and direct the trial court to reconsider the issue in light of the resolution of the constitutional challenges.

**Iowa Supreme Court found that neighbors and Department of Natural Resources (DNR) entitled to personal service.** In *Streeter v. Dunn Trust* Dated May 20, 2005, 37 N.W.3d 1 (May 15, 2026), a neighboring trust landowner filed a quiet title action concerning the unpaved portion of the road within the area that had been dedicated to the public, naming only the unknown claimants as defendants and providing notice solely by publication. The District Court, Dickinson County, entered default judgment in favor of the trust. The neighbors filed a petition to vacate the judgment. They argued that they, the State of Iowa, or both were entitled to personal service of the lawsuit. The District Court initially vacated the judgment. However, upon reconsideration, the District Court dismissed the petition to vacate and restored the default judgment quieting title in the trust. The landowners appealed. The Iowa Supreme Court reversed and remanded. It held that the neighbors were entitled to personal service. Additionally, the Department of Natural Resources (DNR) potentially had jurisdiction over the road. Thus, it was entitled to personal service.

**Iowa Supreme Court determined wind energy developer failed to establish that county board of supervisors acted illegally when adopting ordinance.** In *Worthwhile Wind LLC v. Worth County Board of Supervisors*, 34 N.W.3d 782 (April 24, 2026), a wind energy developer brought a declaratory judgment action against the county, seeking declaration that it had vested rights to complete a wind energy project. The wind energy developer claimed the county enacted a new ordinance regulating wind turbines in bad faith. It also alleged the new ordinance was arbitrary, capricious, unreasonable, and contrary

## HIGHLIGHTS

to public policy. Following a bench trial, the District Court, Worth County, entered judgment for the developer and the county appealed. The Supreme Court reversed and remanded. It was held that the developer lacked any vested right to a commercial wind turbine project in an unzoned area of the county. It was also determined that the developer failed to establish that the county board of supervisors acted illegally when adopting the ordinance. The Supreme Court further found that the express reference to “a wind energy company” that had “obtained easement rights from several land owners” in the county resolution imposing a moratorium on further wind projects did not establish that the county board acted for an improper purpose when later adopting the ordinance. Finally, the developer failed to establish that the restrictiveness of the new ordinance regulating commercial wind farms showed that the county board acted for an improper purpose when adopting the ordinance.

**Louisiana Court of Appeal held parish council’s denial of cemetery owner’s subdivision and rezoning applications not arbitrary and capricious.** In *Restlawn Park Cemetery, Inc. v. Parish of Jefferson*, --- So.3d ---, 2026 WL 962487 (April 9, 2026), the cemetery owner sought a writ of mandamus against the parish council to compel approval of its subdivision and rezoning applications to allow construction of a funeral home on the cemetery property. The cemetery owner alleged that the council’s denials were arbitrary and capricious. The District Court, 24th Judicial District, Jefferson Parish, denied and dismissed the petition. The cemetery owner appealed. The Court of Appeal affirmed, finding that the parish council’s denial of cemetery owner’s subdivision and rezoning applications was not arbitrary and capricious.

**Louisiana Court of Appeal decided council had legislative discretion to accept or reject application for conditional use permit.** In *Henderson-Chandler v. City of New Orleans*, --- So.3d ---, 2026 WL 730390 (March 13, 2026), the zoning applicant petitioned for judicial review of the city council’s denial of an application for a conditional use permit to convert her property to a civil rights museum. The District Court, Orleans Parish, granted the petition after a hearing. The city and its council filed a suspensive appeal. The Court of Appeal reversed and held that the council had legislative discretion to accept or reject application. Also, the record supported the conclusion that the council could have had concerns for public health, safety, and welfare in mind when it voted not to move forward with the application. Finally, one councilmember’s failure to disclose a potential conflict of interest did not render the council’s decision not to move forward on the application arbitrary, capricious, or

an abuse of discretion.

**Louisiana Court of Appeal reversed and vacated BZA decision due to procedural errors.** In *Pilotland Neighborhood Association v. City of New Orleans, Board of Zoning and Adjustments and Encampment, LLC*, --- So.3d ----, 2026 WL 608123 (March 4, 2026), a neighborhood association and residents brought a petition for judicial review. They challenged the city board of zoning adjustments' (BZA) decision to grant a developer's variance requests for waiver of the zoning ordinance's two-acre lot minimum and 75-space parking lot minimum to build a multi-family housing complex. The Civil District Court, Orleans Parish, entered judgment affirming the BZA's decision granting the variance. The association and residents appealed. On appeal, the Court of Appeal reversed judgment. The BZA's decision was vacated and remanded. It was held that the BZA procedurally erred in granting the board member's reconsideration motion and holding a second vote on the developer's variance requests.

**Maine Supreme Judicial Court ruled planning board acted within authority when waiving street standards in town's land use and development code.** In *Andrews v. Town of Kittery*, 358 A.3d 1182 (July 9, 2026), the owner of land on the same road as a proposed subdivision sought judicial review of the town planning board's approval of a conservation subdivision application submitted by the applicants. The landowner argued that the planning board exceeded its authority by waiving street design standards in the town's land use code and that such waivers constituted zoning variances that only the board of appeals could grant. The Superior Court, York County, affirmed the planning board's decision and the owner appealed. The Supreme Judicial Court held that the planning board acted within its authority when it waived street standards in the town's land use and development code.

**Maine Supreme Judicial Court determined planning board's decision not arbitrary and capricious.** In *Mick Land Development, Inc. v. Town of South Berwick*, 358 A.3d 1135 (June 2, 2026), the subdivision developer brought an action seeking review of the town planning board's decision to approve the subdivision conditioned on the switch of the subdivision's proposed primary and emergency access roads. Following remand for further findings of fact and conclusions of law, the Superior Court, York County, affirmed the board's decision. The developer appealed and the Supreme Judicial Court affirmed. It was held that the board had the authority under the subdivision ordinances to condition approval of the subdivision on the road

## HIGHLIGHTS

switch. The ordinance was not an unlawful delegation of legislative power. The conditional approval was supported by substantial evidence, and the decision was not arbitrary and capricious.

**Maryland Appellate Court found determination that preliminary plan and site plan conformed to sector master plan's recommendation supported by substantial evidence.** In *Forest Grove Citizens Association v. Forest Glen Medical Center, LLP*, 270 Md. App. 61 (May 29, 2026), a citizens association, two individuals, and an environmental organization filed petitions for judicial review. They challenged the county planning board's resolutions approving a preliminary plan, a site plan, and a forest conservation plan for a proposed mixed-use redevelopment. The Circuit Court, Montgomery County, affirmed and the plaintiffs appealed. The Appellate Court affirmed, holding that the expiration of the developer's purchase contract did not extinguish the developer's authority to pursue the applications and approvals for the redevelopment. Substantial evidence supported the determination that the preliminary plan and site plan conformed to the sector master plan's recommendation. Moreover, substantial evidence supported approval of tree variance.

**Mississippi Court of Appeals determined that board's decision approving landowner's application to rezone property not "spot-zoning."** In *Feather v. City of Saltillo*, 432 So.3d 369 (March 31, 2026), property owners appealed the decision by the city's board of aldermen approving the neighboring landowner's application to rezone property from residential to commercial for development of fitness center. The Circuit Court affirmed the city's decision and the landowners appealed. The Court of Appeals affirmed and held that sufficient evidence existed to justify the board's decision approving the landowner's application to rezone the property from residential to commercial. Furthermore, the board's decision approving the landowner's application to rezone the property did not constitute "spot-zoning."

**New Jersey Supreme Court addressed requirements for use variances balancing test.** In *Monarch Communities, LLC v. Township of Montville*, --- A.3d ----, 2026 WL 2014522 (July 13, 2026), developers sought review of the zoning board's denial of their land development applications seeking use variances in separate actions in lieu of prerogative writs. The actions were consolidated. Following a bench trial, the Superior Court, Law Division, Morris County, reversed the zoning board's decision and remanded to the zoning board to consider conditions for approval of the applications. The zoning board appealed. The Superior Court, Appellate Division, affirmed. The zoning board

filed a petition for certification, and it was granted. The Supreme Court reversed and remanded. It was held that the balancing test governing inherently beneficial use variances explicitly requires applicants to show their proposals will not substantially impair the zoning plan and ordinance.

**North Carolina Supreme Court upheld class certification for home builders.** In *Wardson Construction, Inc. v. City of Raleigh*, 389 N.C. 140 (March 20, 2026), home builders brought an action against the city to challenge the capital facility fees which the city required them to pay as a condition of a development. The Superior Court, Wake County, granted the builders' motion for class certification. The builders' motion for summary judgment was also granted. The city appealed the class certification order directly to the Supreme Court. The Supreme Court affirmed, holding that the builders shared an interest in whether the city lawfully imposed capital facility fees which was identical for every member of the alleged class. The purported class of home builders who paid capital facility fees to the city was sufficiently numerous to support a class action. The named home builder adequately represented the interests of the alleged class. A determination that class action was superior method of litigation of the home builders' claims seeking refund of capital facility fees was reasonable.

**Ohio Court of Appeals determined equitable estoppel and laches not applicable.** In *Surber v. Greenville Township Board of Trustees*, --- N.E.3d ----, 2026 WL 971989 (April 10, 2026), a property owner filed an administrative appeal challenging the township board of zoning appeals' decision that he failed to obtain proper zoning permits for three buildings erected on his property. The Court of Common Pleas, Darke County, reversed the board's decision as to one building and affirmed the board's decision as to the other two buildings. The township board of trustees and related officials appealed, and property owner cross-appealed. The Court of Appeals affirmed in part and reversed in part. There was a preponderance of reliable, probative, and substantial evidence that the first building, used as an automotive repair shop, was not properly permitted. The second building did not qualify for agricultural exemption from zoning permit requirement. The third building did not qualify for agricultural exemption from zoning permit requirement. Equitable estoppel and laches did not apply. Finally, any error in striking affidavit from the record was harmless.

**Oregon Court of Appeals affirmed approval of application for redesignation and rezoning of 20-acre parcel.** In *Central Oregon LandWatch v. Deschutes County*, 347 Or. App.

## HIGHLIGHTS

287 (February 19, 2026), an objector petitioned for judicial review of the final order and opinion of the Land Use Board of Appeals (LUBA) affirming the county board of commissioners' approval of the property owner's application to redesignate and rezone 20-acre parcel from agricultural and exclusive farm use to rural industrial. The Court of Appeals affirmed, holding that the county was not required to conduct a site-specific, present-in-time evaluation of the property to demonstrate that redesignation and rezoning of the parcel was in compliance with the statewide planning goal regarding urban development.

**South Carolina Court of Appeals did not find record evidence that preliminary subdivision plan satisfied land development regulations.** In *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, 447 S.C. 649 (April 15, 2026), an adjacent neighbor and her organization brought an action to challenge the county planning commission's approval of the developer's preliminary subdivision plan for 73-home cluster development. It was contended that the commission failed to provide written findings, lacked evidence that the plan satisfied the land development regulations, approved without fire department review, and violated due process rights. The Circuit Court, Greenville County, affirmed the planning commission's approval. The neighbor and organization appealed. The Court of Appeals reversed, holding that the commission's meeting minutes, meeting transcript, and "file material" did not provide a sufficient record to allow meaningful review of the commission's 5-4 approval of preliminary subdivision application. The evidence in the record did not support the determination that the proposed cluster development plan satisfied the county land development regulation's transportation criteria. Furthermore, the evidence in the record did not support the determination that the proposed cluster development plan satisfied the county land development regulation's criteria governing compatibility with the surrounding land use density. Also, the evidence in the record did not support the determination that the proposed cluster development plan satisfied the county land development regulation's environmental compatibility criteria.

**Vermont Supreme Court determined stipulation demonstrated intent to dedicate private land for public use.** In *Gerlach v. Town of Chittenden*, --- A.3d ---, 2026 WL 1833719 (June 18, 2026), property owners brought a declaratory judgment action against the town. They sought a declaration that the town had no rights in the right-of-way across their property. They also sought injunctive relief. The Superior Court, Rutland County, Civil Division, granted the town's motion for summary judgment

and the property owners appealed. The Supreme Court affirmed, holding that the stipulation between the town and the owners' predecessors demonstrated the predecessors' intent to dedicate private land for public use that bound the owners upon completion of certain conditions by the town.

**Virginia Court of Appeals upheld city's decision to rezone parcels from residential single-family to mixed-use planned unit development.** In *Garrett v. Roanoke City Council*, 87 Va. App. 785 (June 2, 2026), several neighbors brought an action against the city and developers. They sought a declaratory judgment and injunctive relief from the city's decision to rezone parcels from residential single-family to mixed-use planned unit development to enable construction of 24 townhomes. The Roanoke Circuit Court, sustained the defendants' demurrer and dismissed the complaint with prejudice. The neighbors appealed. The Court of Appeals affirmed. It was held that the planning commission had the implied authority to reschedule consideration of the rezoning application from one regularly scheduled meeting to another regularly scheduled meeting. Moreover, the planning commission reasonably exercised its implied authority when it rescheduled consideration of the rezoning application. The planning commission that rescheduled consideration of the rezoning application from one meeting to another was not required to comply with the advertising requirement of the statute which became effective after the first meeting but before the next. The developer's non-substantive changes in the rezoning application did not require the planning commission to readvertise its consideration of the application. The townhome development project satisfied the city zoning ordinance's definition of a mixed-use development or planned unit development. There was no conflict between the state land-use statute and the city ordinance authorizing a mixed-use planned unit development district. The city produced sufficient evidence of the reasonableness of its rezoning decision to make the question fairly debatable, such that its decision was not arbitrary and capricious.

**Washington Court of Appeals ruled on city's interpretation of zoning ordinances, as a matter of first impression.** In *Ladder Properties LLC v. City of Snoqualmie*, --- P.3d ---, 2026 WL 2017225 (July 13, 2026), a developer and a property owner brought an action under the Land Use Petition Act. They challenged the city's code violations issued after the property, which contained a single-family residence and an accessory dwelling unit (ADU), was converted to condominium ownership. The city filed a cross-petition seeking to uphold violations for zoning, sewer, and water codes based on condominium conversion. The

## HIGHLIGHTS

Superior Court, King County, dismissed the developer's and the property owner's petition and granted the city's petition, affirming the hearing examiner's decision on the zoning code violation, but reversing the hearing examiner's decision not to uphold the sewer and water code violations. The developer and the property owner appealed. The Court of Appeals reversed, holding that as a matter of first impression, the city's interpretation of its zoning ordinances to conclude that change in ownership violated the zoning ordinances amounted to an improper prohibition on the ownership of an ADU as a condominium unit. The city failed to establish that the developer violated the city sewer requirement when converting the property to condominium ownership. Conversion to condominium ownership did not violate the city water service regulation requiring separate meters and connections for residences.