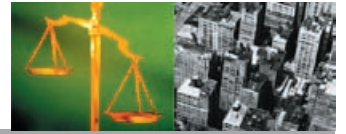


Planning & Law



APA

American Planning Association | Planning and Law Division Newsletter

Winter 2006

News, Announcements and Information

From the Chair and Editor



HIn this issue of the Newsletter, we are privileged to present articles from two distinguished land use attorneys—Lora Lucero, AICP, and Michael M. Berger. Lora practices in New Mexico, is a member of the APA's Amicus Curiae Committee, and edits *Planning and Environmental Law*. Michael, who practices out of southern California, focuses on land use appeals and has argued four important takings cases before the United States Supreme Court.

The point-counterpoint style of this edition of the Newsletter is unlike our usual single feature article format. The genesis of this approach is as follows: in the September, 2005, edition of *Planning and Environmental Law*, Michael wrote an article in which he criticized the Amicus Committee's position in several cases. Lora, who frequently reports on the Amicus Committee's work for the PLD Newsletter, believed it was important to respond publicly to Michael's strong remarks, and prepared a detailed explanation of the APA's position. Rather than re-print Michael's original article, we offered him the opportunity to write a counterpart to Lora's response, which he graciously accepted.

Lora and Michael have written thoughtful, engaging pieces that are sure to keep your attention. We are fortunate that they have taken the time to contribute their views on this important issue, and we believe you will agree.

—Eric M. Braun

EBRAUN@KENNEDYCOVINGTON.COM

—Bryan W. Wenter

BRYAN.WENTER@BINGHAM.COM

Announcing the 2006 APA Planning and Law Division Survey

The Planning and Law Division received valuable input from many members through last year's survey. We now seek your input again to tailor PLD's services to the desires and interests of our membership.

Please take a moment to take the survey. Completion of the survey should take approximately ten minutes of your time. To make the survey more accessible and effective, it is available online at: www.hostedsurvey.com/takesurvey.asp?c=APAPla162527

The deadline to complete the survey is **March 20th**.

Thank you for taking this year's membership survey. We hope that it will continue to be a valuable tool for PLD improvement.

PLD Newsletter Now All-Electronic

As a reminder, we've eliminated mailed hard copy editions of the PLD Newsletter and it's now distributed digitally only. Notice of each issue is emailed to every PLD member, with a link enabling members to access the designed version of the Newsletter. In addition, a text only version is available on the

Planning and Law Division website. Make sure your member profile with APA is up to date in order to ensure receiving the Newsletter and other division communications. To update your email address or other contact information, go to the APA website, <https://www.planning.org/myprofile/>.

Call for Articles

Send us your proposals for articles for future issues of the Newsletter. Be creative; think beyond the ordinary and propose an interview, a Q&A with a panel of differing viewpoints, or something else our membership is not likely to find anywhere else. Submit your ideas to the Editor.



CHAIR

Eric Braun

919.466.1263

EBRAUN@KENNEDYCOVINGTON.COM

CHAIR-ELECT

Nicole Lacoste, AICP

410.528.5546

LACOSTEN@BALLARDSPAHR.COM

SECRETARY-TREASURER

Brad Torgan, AICP

916.653.6884

BTORGAN@PARKS.CA.GOV

NEWSLETTER EDITOR

Bryan Wenter

925.975.5329

BRYAN.WENTER@BINGHAM.COM

MARLIN SMITH

WRITING COMPETITION

Alan Weinstein

ALAN.WEINSTEIN@LAW.CSUOHIO.EDU

LEADERSHIP COMMITTEE

CO-CHAIRS

Nicole Lacoste

410.528.5546

LACOSTEN@BALLARDSPAHR.COM

Bryan Wenter

925.975.5329

BRYAN.WENTER@BINGHAM.COM

Others of Interest

APA AMICUS

COMMITTEE CHAIR

Patty Salkin

PSALK@MAIL.ASU.EDU



Please address correspondence on section membership, subscriptions, or address changes to:

Planning & Law Division
American Planning Association
122 South Michigan Avenue, Suite 1600
Chicago, IL 60603-6107



Please address articles, letters, or inquiries about the Newsletter contents to the addresses listed above.

APA's Amicus Committee Focuses on Issues with Community-Wide Impact

by Lora Lucero, AICP

This was certainly a banner year for APA in the United States Supreme Court.

Not only did APA, through its amicus committee, file more briefs with the "Supremes" this past term than it has previously, but its arguments were both persuasive and accepted by the Court. Planning & Law Division members have certainly read plenty about *Kelo v. City of New London*, 125 S. Ct. 2655 (2005); *Lingle v. Chevron USA*, 125 S. Ct. 2074 (2005); *San Remo Hotel, LP v. City and County of San Francisco*, 125 S. Ct. 2491 (2005); and *City of Rancho Palos Verdes v. Abrams*, 125 S. Ct. 1453 (2005). A very good compilation of these decisions, APA's amicus briefs, and commentary about each has recently been published by APA. Check out — "The Four Supreme Court Land-Use Decisions of 2005: Separating Fact from Fiction," Planning Advisory Service Report Number 535 by sending an email to PASREPORTS@PLANNING.ORG.*

As the staff liaison to the amicus committee, I want to respond to a criticism leveled by one commentator who calls APA the "governments' apologist" in these cases. See, Michael M. Berger, *Planning and Environmental Law*, September 2005. But before I do, a public "Thank You" must be extended

to the members of the amicus committee and the brief writers who have tirelessly contributed hundreds of hours to APA this year. The Chair is Patricia Salkin, Director of the Government Law Center at Albany Law School. The other members of the amicus committee are Vivian Kahn, FAICP (Oakland, California); Richard Lehmann, AICP (Madison, Wisconsin); Deborah Rosenthal, AICP (Irvine, California); Nancy Stroud (Boca Raton, Florida); and Edward Sullivan (Portland, Oregon). The brief writers on these four cases were Professor Tom Merrill (Columbia Law School) and John Echeverria (Georgetown University) on the *Kelo* brief; Professor Tom Roberts (Wake Forest School of Law), Ed Sullivan and Carrie Richter (both from Garvey, Schubert, Barer in Portland, Oregon) on the *Lingle* brief; Richard Ruda (State and Local Legal Center) on the *Rancho Palos Verdes* brief; and Tim Dowling (Community Rights Counsel) on the *San Remo Hotel* brief. There are many others, too many to list, who assisted the amicus committee this year; but they each deserve a big "Thank You" as well.

Now for my pet peeve — the inflammatory label "governments' apologist" that does so little to advance legitimate debate. The same critic thinks that APA is the "hired gun for

local government" because "it seems there is nothing that local government can do that the APA doesn't support — no matter how outrageous or injurious." He continues "[t]he APA knee-jerkily files briefs asking the Supreme Court to support the government action du jour." See, Michael M. Berger, "State and Local Planning Programs Have Had Quite an Impact; Perhaps It Is Time for a Rest" Chapter 16 — Planning Reform in the New Century.

This criticism misconstrues the essential role of the amicus curiae, appropriately named "friend of the court," and not "friend of the petitioner" or "friend of the respondent." The amicus curiae are supposed to assist the court, not to be cheerleaders for one party or another. Certainly APA is an advocate with a special interest and a special message for the Court, just as are all of the organizations that file amicus briefs, but APA does not advocate for the government. APA advocates for good planning, for the tools necessary to carry out and implement good planning, for the processes that support good planning, and for the beneficiaries of good planning — the community and its citizens. No other professional organization represents the interests of planners and the planning profession in the courts.

While the Institute for Jus-



tice, the Cato Institute, and other so-called private property rights groups advocate for property owners and private property rights, APA advocates for the rights of the community and the public-at-large. The property rights groups prefer to cast the debate as being government versus property owner, but as planners we know the debate must focus on the bigger picture — the community.

What is the community, if not the citizens, the families, and, yes, the property owners who live there, as well as the future residents who may one day call the community home? This is the bigger picture, and we expect our city councilors, county commissioners, and appointed officials to make decisions in the community's best interest.

A strong public planning process is how we learn what is in the best interest of the community. So it should come as no surprise that when APA advocates for the community and good planning, we are often supporting the positions advanced by local governments charged with planning for their community's future.

But before we file an amicus brief, we carefully review the case to see whether there are issues of importance to the planning profession. The policy guides ratified by the APA Board of Directors serve as the lodestar for the positions we advocate. We certainly can't weigh in, in every case that's brought to our attention. And we don't want to file frivolous "me too" arguments and repeat arguments well briefed by the parties or other amici. But if we can advance an argument

that might help the court understand the issues from a different perspective than those advanced by either party, or if we can explain how the decision might impact planners and the planning profession, then APA's participation is warranted.

At the end of the day, perhaps the criticism leveled against APA's amicus participation is a reflection of our success. If APA's advocacy went unnoticed by the courts or our opponents, there might not be such criticism. APA made a difference in each of the four planning cases taken up by the Supreme Court this past term.

The *Kelo* case was about an important planning tool — eminent domain — that, APA argued, needs to be "used only in conjunction with a process of land use planning that includes broad public participation and a careful consideration of alternatives to eminent domain." In his decision for the majority, declining to ban the use of eminent domain for local economic development projects, Justice Stevens mentioned "planning," "plans," and "planner" more than 30 times. Without a doubt, Justice Stevens and the majority understood the importance of planning for com-

munity revitalization.

The planning issue at stake in the *City of Rancho Palos Verdes* case was whether Congress ever intended to put communities on the hook for potentially devastating financial awards to property owners who are successful in challenging state and local zoning and land use requirements under the Telecommunications Act. Can you imagine the chilling effect it would have on communities? Yes, certainly there are exam-

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ples of "bad" land use regulations, "bad" land use decisions, and "bad" land use regulators. The Telecommunications Act provides a remedy to the property owner in those cases, such as the special use permit that the City of Rancho Palos Verdes was required to issue. But Jus-

tice Scalia, writing for a unanimous court, agreed with the position advocated by APA that damages and attorneys fees are not remedies under the Telecommunications Act.

The *San Remo Hotel* case presented an issue of fairness, pure and simple. Should communities be forced to defend against takings claims in state court and, having won, be required to defend themselves again in federal court? APA argued that the property owner was not entitled to two bites at

the litigation apple! Fortunately, Justice Stevens, along with a unanimous court, agreed.

The important planning issue at stake in the *Lingle v. Chevron USA* case involved "process." Which branch of government (the legislature or the judiciary?) has the responsibility for passing laws and regulations to protect the public welfare and the community's interests. Again, a unanimous court, in a decision authored by Justice O'Connor, adopted the position advocated by the APA, the State of Hawaii and others, that the "substantially advances" test is not an appropriate test for a takings claim. The courts should not second guess the wisdom of the legislature in passing a law like the rent control law in Hawaii in the context of a takings claim. Perhaps we will see more due process claims as a result, as some have surmised. But takings jurisprudence has been greatly clarified to everyone's benefit.

Rather than throwing inflammatory labels in an effort to discredit APA's amicus positions, the debate would be greatly enhanced if critics took issue with the merits of APA's arguments. Public discourse on these issues deserve such debate.

*Excerpts from PAS Report 535 are included throughout this article.

Let me say this bluntly: in court — particularly the U.S. Supreme Court — APA acts as the handmaiden of government, supporting the position of whatever state or local planning agency has been challenged. I mean no disrespect to the hard-working members of APA’s amicus curiae committee. I do mean, however, to say things plainly. (An expanded version of these thoughts can be found in a recently published APA book edited by Professor Daniel Mandelker, FAICP, and entitled *Planning Reform in the New Century* (2005). My chapter — no. 16 — is entitled *State and Local Planning Programs Have Had Quite an Impact; Perhaps It Is Time for a Rest*. The book is available from Planners Press, \$49.95 in soft cover for APA members at: <http://www.planning.org/bookservice/description.htm?BCODE=APRN>. I appreciate that APA has a strong enough corporate ego to publish it.)

I was invited to write this piece as a counterpart to one by Lora Lucero. Apparently Ms. Lucero took umbrage at my comments about APA’s consistent amicus position favoring government regulation. I wish she had paid more attention to what I said, and can only ask the rest of you to buy the book (a shameless plug) and judge for yourselves. My greatest concern is her comment that, rather than “throwing inflammatory labels,” it would have been better if I “took issue with the merits of APA’s arguments.”

I thought that is what I had done, but let’s take a look at

the reasons why I concluded that APA has acted as a “government apologist” or “hired gun for state and local government.” (I understand from informal discussions with some of you that not all APA members support all of the organizational positions discussed hereafter. But we can only judge APA by its official actions.)

First, in all the land use cases decided on the merits by the U.S. Supreme Court since it began examining land use

and takings issues in earnest in 1978, APA has never filed an amicus brief that criticized state or local government action. Not once. Not ever. If someone can show me one, I will happily admit my error on the public stage of your choice. Whatever one may think of the theoretical posture of an amicus curiae, or “friend of the court” (rather than friend of a party), amicus briefs are generally filed by people with axes to grind, and APA’s briefs always denote that they are filed “in support of” whatever government agency is being challenged and seek a ruling in the government’s favor — regardless of the specific issues briefed by APA.

Second, it doesn’t seem to matter what the government action was, or how outrageous it was. APA links arms with the regulator and marches in support. Let’s start with what is perhaps the ugliest example, *City of Monterey v. Del Mon-*

te Dunes, 526 U.S. 687 (1999). That case is the paradigm of ugly government planning action. Don’t take my word for it; I represented the property owner. Long-time APA staff attorney Rodney Cobb used it as the archetype in his article *Land Use Law: Marred by Public Agency Abuse*, 3 Wash. U. J.L. & Pol’y 195 (2000). His conclusion: “most observers would agree [that] the agency should have known that its actions were not appropriate uses of their authority.”

planning process?) The property owner never sought anything close to the maximum density. The city put him through a planning wringer for five years, during which it considered — and formally rejected — five different projects with nineteen alternative site plans. He started with a proposal for 344 homes (not 1,000, but 344) and worked downward from there. The last rejected plan called for only 190 homes — less than 20% of what was called for on the city’s approved plans and zoning maps. The courts uniformly concluded that the city had no intention of allowing development and that the planning process had been a charade. Or, as Justice Scalia put it at oral argument, it looked as though the property owner was being “jerked around,” and at some point you begin “to smell a rat.”

City of Monterey would have been an ideal vehicle for APA to show its balance and its views about good planning by condemning the city’s actions and supporting the property owner. Or perhaps, if actually supporting a property owner was too much to swallow, then it might have presented itself as a truly neutral friend of the court, explaining that the city’s actions were simply beyond the pale and the planning community

APA’s Amicus Posture Needs Balance

“[F]or almost all actors in the land use law arena, hearing the facts of [that] case was similar to hearing fingernails scratching across a blackboard.”

What made everyone recoil from the facts in *City of Monterey* was that the case dealt with a parcel of land that, for many years, had been duly planned and zoned for high density residential use — a designation that would have permitted more than 1,000 homes. (If the city didn’t mean it, why did it plan and zone it that way? Is that “good planning?” Shouldn’t people be able to rely on the result that emerges from a lengthy

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could not support them. (U.S. Supreme Court Rule 37.3[a] allows an amicus brief to be filed “in support of neither party,” presumably to present an argument, but avoid supporting either side.) But what did APA do with that “fingernails on the blackboard” case? Did it tell the Supreme Court that the city’s action was outside the boundaries of acceptable planning behavior? That it did not represent “good planning?” That it was not — as the city’s lawyer told the Court — “typical” of the way the planning process works? No. It filed a brief in that case that said it was “in support of” the city and urged that the judgment in the property owner’s favor “should be reversed.” Asking the Court for a decision in Monterey’s favor — regardless of the specific arguments put forth in the amicus brief — was a mistake. And a missed opportunity to demonstrate even-handedness.

Third, *City of Monterey* was only one of a substantial group of APA Supreme Court amicus failures. APA backed the losing side in *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), *Suitum v. Tahoe Regional Planning Commission*, 520 U.S. 725 (1997), and *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) among others. Thus, I reject Ms. Lucero’s suggestion that criticisms like mine are merely “a reflection of our [APA’s] success.” 2005 may have been a wildly “successful” amicus

year for APA, but the mess in Monterey was hardly an APA success story. Nor were any of the other cited cases. My complaint about APA’s position is not that its arguments sometimes succeed, but that it supports government actions that are antithetical to the common good.

Part of my dispute with APA may lie in differing views of the common good. I do not believe it is in the general public interest in our constitutional system of government for the state to wield its power to compel individuals to fund projects for the rest of us to enjoy by requiring them to maintain open space or animal or plant sanctuaries on private property at their own expense. I think that all of us ought to underwrite those projects (including preservation) undertaken for the general good if we really believe it ought to be done. (Is environmental protection good? Sure. Put it on the ballot and the public will vote wildly in favor every time. Change the ballot question to a bond issue to have the public absorb the cost of protection and the numbers will change radically. Does that justify foisting off the full cost onto individuals who happen to own

the “wrong” land at the wrong time? If “we” collectively don’t want to fund it, perhaps we don’t really want it.) Lest it be forgot, the Bill of Rights was adopted to protect individuals against the government acting on behalf of the polity, not the other way around. Theft, petty or grand, and regardless of the perpetrator, is not a good thing. Nor is it justified by even the purest of motives.

Fourth, *Suitum* and its aftermath presented APA in a strange light. In that case, the Tahoe Regional Planning Agency fought strenuously to keep an 80-year old widow from using her small residential lot and then even from litigating her complaint about that prohibition on the merits. APA candidly — and rightly — told the Court that the current ripeness

rules (the progeny of *Williamson County Reg. Plan. Commission v. Hamilton Bank*, 473 U.S. 172 [1985]) are unfair and abuse the rights of landowners. Confusingly, however, APA concluded its argument in that brief by urging the Court to rule in the agency’s favor. But that’s not the worst of it. When Congress decided to address the ripeness issues in proposed legislation that would have permit-

ted 5th Amendment takings suits to be brought in federal court, the sponsors told Congress about APA’s persuasive *Suitum* arguments. APA’s response? Its president wrote to Congress to “repudiate” the very things APA had solemnly told the Supreme Court. Was it just coincidence that the “repudiat[ion]” supported the position urged by state and local government?

Fifth, the *Williamson County* rule thus supported by APA required the property owner to use the “variance” process in order to plan the development of a 676-acre tract with a golf course and 736 home sites. Even if you like using the discrete variance tool for such a massive job (and that’s what the Supreme Court did, contrary to any normal understanding of the variance concept), is it “good planning”? And is it also “good planning” to mandate that procedure after the project has already been approved multiple times and the developer has already spent more than \$3.5 million and dedicated the golf course to the county? (Need I mention that the county’s actions drove the developer into insolvency? That’s why *Williamson County*’s adversary was Hamilton Bank — the lender — not the developer.)

Contrary to mythology popular in some precincts, property owners loathe *Williamson County* not because they want to sue municipalities twice about the same issue and they think *Williamson County* stands in their way, but because they want to do so once — in a court of their choosing (whether state or federal

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2006 APA National Conference Session Proposals

PLD is sponsoring three sessions at this year's National Conference in San Antonio, Texas. The titles of the three sessions are Fair Housing Laws and Planning Decisions; Exactions and Takings Law; and Riverkeeper Organizations. Those sessions and others of interest to the membership will be highlighted and described in greater detail in the second annual Conference Newsletter, which will be distributed early next month. Additional information is also available in the Preliminary Program recently distributed by APA.

Results of the Inaugural Planning and Law Division Fellowship

PLD would like to publicly congratulate its first ever Fellows, Erin E. Burg and Gwendolyn M. Allen. They were selected by the Fellowship Committee from a competitive group of applicants.

Erin is a joint degree student at the University of North Carolina, in its School of Law and Department of Regional Planning, where she is focusing upon sustainability and land use planning. Erin earned an undergraduate degree at the University of Wisconsin-Madison. Gwendolyn is a law student at the University of Maryland School of Law. She received a masters degree in urban planning and real estate development from Saint Louis University and an undergraduate degree from the University of Kansas.

The Fellowship Program was approved during PLD's business meeting at the 2005 National Conference in San Francisco. The Fellowships are important components of PLD's plans to enhance its membership and improve coordination with other organizations in the fields of planning and law. The Fellows are currently assisting in the preparation of a membership survey and the second annual Conference Newsletter. Erin and Gwendolyn will serve as Fellows for the remainder of the current school year.

In the summer of 2006, PLD will issue a call for applications for the next group of Fellows.

Amicus Committee Report

One of APA's functions is to provide legal support on matters of critical interest to the planning community. The Amicus Curiae Committee, which files "friend of the court" briefs in key federal and state court cases, is made up of a distinguished group of land use law experts and is staffed by well-known land use lawyer and planner Lora Lucero, AICP. Lora provided the following report; her reports are regular features of the PLD Newsletter.

Wetlands, billboards, and eminent domain all kept the APA Amicus Curiae Committee busy in January 2006. APA filed an amicus brief in the wetlands case to be heard February 21st in the U.S. Supreme Court. *Rapanos v. United States* (consolidated with *Carabell v. U.S.*). The issue is whether the reach of the Clean Water Act extends to non-navigable wetlands. APA believes it should and it does.

The APA Board of Directors adopted a policy guide on wetlands in 2002 that was incorporated throughout the brief. (www.planning.org/policyguides/wetlands.htm)

"Wetlands are complex and critical resources which should be protected, enhanced and restored, where feasible, in order to increase the quality and quantity of the nation's wetland resource base. The American Planning Association supports the goal of no net loss of the nation's remaining wetlands. This goal requires reasonable regulatory oversight of activities which may impact wetlands and a broad interpretation of 'navigable waters' to include isolated and non-navigable waters." www.planning.org/amicusbriefs/pdf/rapanos.pdf.

If you happen to be in Washington, DC on February 21st, stop by the United States Supreme Court to hear oral argument in this important wetlands case. And then let the rest of us know how the arguments went by sharing your thoughts in the next PLD newsletter. www.supremecourtus.gov/visiting/visiting.html

APA also filed two amicus briefs in January in cases involving the regulation of billboards, in the 11th Circuit Court of Appeals in *Tanner Advertising Group, LLC v. Fayette County, Alabama* (www.planning.org/amicusbriefs/pdf/tanner.pdf), and in the 6th Circuit Court of Appeals in *Prime Media, Inc. v. City of Brentwood, Tennessee* (www.planning.org/amicusbriefs/pdf/primemedia.pdf). The Tennessee, Alabama, Florida, and Georgia Chapters of APA joined National in filing these briefs. APA owes a

big "thank you" to Bill Brinton, Esq. (an attorney with Scenic America), and John Baker, Esq. (an attorney in Minneapolis) and Randal Morrison, Esq. www.signlaw.com for drafting top-notch arguments in both briefs.

Oral argument in the *MacPherson* case (Measure 37) was heard on January 10 in the Oregon Supreme Court. The following day, the Ohio Supreme Court heard oral argument in the City of Norwood eminent domain case. APA filed amicus briefs in both cases.

To hear more about the work of the Amicus Curiae Committee, don't miss "APA in the Courts," a session in the Bettman Symposium at the APA National Conference in San Antonio, TX. Patty Salkin, Chair of the Amicus Curiae Committee, will be moderating the program Sunday morning (April 23). Robert Freilich (Los Angeles), Gary Powell (Cincinnati) and John Baker (Minneapolis) will be joining her.

Then on Sunday afternoon, Patty Salkin and David Callies will go head-to-head in a lively discussion about the *Kelo* case and its aftermath in the past 7 months. Professor Callies filed an amicus brief on behalf of a number of law professors in support of Suzette Kelo's position, while Dean Salkin filed an amicus brief on behalf of law professors who supported the City of New London. Come to the session prepared. You can read both amicus briefs (and the other 37 amicus briefs filed in *Kelo v. City of New London*) at www2.als.edu/faculty/psalkin/lul_eminent.html.

Call for Nominations

The Planning and Law Division will soon hold its elections. Additional information will be available shortly. Ballots will be distributed via e-mail, so be sure the information in your APA profile is up to date. Go to www.planning.org/myapa, enter your APA ID and password (or create a new one), and make any changes. The changes are effective immediately.

As the new leaders will take office at the Division Annual Business Meeting during the APA National Planning Conference in San Antonio, TX, April 2006, all candidates should be prepared to attend the conference.

PLD Website Update

PLD continues to build the Division's website at www.planning.org/planningandlaw/overview.htm. The Division's website includes archived issues of the Newsletter, minutes of PLD's business meetings, the Division's roster, an events listing, and other information of interest to Division members. Bookmark the site and use it as a resource. We encourage feedback about the PLD website and ask visitors to send suggestions, comments, and/or additional information to post on the site to Nicole Lacoste at LACOSTEN@BALLARDSPAHR.COM.

National, Regional Events Listing

You can make announcements of upcoming national and regional events of interest to PLD members by sending

them to the Editor. We're looking for events by the American Bar Association, Association of Collegiate Schools of Planning, state and regional APA chapters, law schools, and other similar organizations. Help us build the network of planners and lawyers concerned with planning law issues. (Note that by including an announcement here, PLD is not indicating its sponsorship or endorsement unless specifically stated.)

March 9-10, 2006

Rocky Mountain Land Use Institute hosts its 15th Annual Land Use Conference at the University of Denver Sturm College of Law. For more information, see www.law.du.edu/rmlui.

April 22-26, 2006

The American Planning Association will hold its annual conference in San Antonio, Texas. Information is available at www.planning.org.

April 10-12, 2005

The Institute of Municipal Law Officers holds its 2006 Mid-Year Seminar at the Omni Shoreham Hotel in Washington, DC. For more information see www.imla.org.

September 17-20, 2006

The Institute of Municipal Law Officers holds its 71st Annual Conference in Portland, Oregon. For more information see www.imla.org.

August 17-19, 2006

ALI-ABA hosts its Twenty-Second Annual Land Use Institute: Planning, Regulation, Litigation, Eminent Domain, and Compensation in Chicago, Illi-

nois. For more information, go to: www.ali-aba.org.

PLD Members Build Annotated On-line Resource List

In response to member requests for more information on resources to help keep abreast of planning law developments throughout the country, an annotated list of on-line planning law resources has become a regular feature of the Newsletter. We're relying on our members to build this resource by sending information on websites, listservs, on-line sources for statutes and cases, etc., to the Editor. When you do so, include a brief description of the site. Please note that including a resource in the Newsletter is not an endorsement by PLD of the site or the positions or opinions expressed therein.

Professor Dan Mandelker's "Land Use Law" website (ls.wustl.edu/landuselaw) is a core element of his land use law course at Washington University School of Law. It includes course materials, a variety of land use law related links (including statutes, ordinances, cases, and commentary). Not to be missed is the "Photos" section, which includes pictures from the sites of many important land use cases.

Findlaw (www.findlaw.com/casecode/). Findlaw provides access to federal and state constitutions, statutes, regulations, and published court opinions.

Community Rights Counsel. CRC is a nonprofit, public interest law firm based in Washington, DC that provides strategic assistance to state and lo-

cal government attorneys in defending land use laws and environmental regulations. CRC's website (www.communityrights.org/legalresources/legalmain.asp) provides briefs filed by CRC, pending Supreme Court regulatory takings cases, Supreme Court opinions in key takings cases, and petitions for certiorari.

Pace Law School Land Use Law Center. The website for the Land Use Law Center (www.pace.edu/lawschool/landuse) provides a variety of resources, including an online data base and training and other materials for attorneys, planners, government officials, community leaders, and citizen groups.

News of PLD Members

A continuing feature of the Newsletter continues a feature is News of PLD Members. Help nourish PLD's grapevine by sending us news of our members — job changes, retirements, awards, appointments to boards and commissions, and the like. Send submissions to the Editor.

In December, Robert J. Sitkowski, AICP, AIA, returned to the Hartford, Connecticut office of Robinson & Cole LLP. Bob may be reached at RSITKOWSKI@RC.COM.

Volunteer Opportunities with PLD and Beyond

If you're interested in volunteering some time to PLD's work, get in touch with Eric Braun, Division Chair.

If you're working on an effort that would benefit from the volunteer efforts of your PLD colleagues, drop a note to the Editor.

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al), just like all other plaintiffs with federal constitutional claims are free to do. (By the way, some of the most scathing criticisms of *Williamson County* have come from AICP members, ranging from police power hawks like Dan Mandelker and Bob Freilich to more mild-mannered advocates like Dwight Merriam and John Delaney. Citations supplied on request.)

Sixth, in *Tahoe-Sierra*, the Supreme Court lauded “good planning,” as APA urged it to do, dubbing moratoria essential tools in the process. But is a decades-long moratorium “good planning?” Is it necessary? There are plaintiffs in that litigation (moms and pops on quarter-acre lots in subdivisions that had already been approved and begun — not large corporate owners of vast undeveloped tracts) who bought single-family lots in partially built-out subdivisions in the hills overlooking Lake Tahoe more than a quarter-century ago — and they are still prevented from using them for anything. Sorry, but whatever you want to call it, that isn’t planning. It is confiscation. If APA want-

ed to encourage good planning, it would have forthrightly told the Court that the only good moratorium is a short one that doesn’t deny the landowner all use during its existence. (See, e.g., the analysis by Dwight H. Merriam, FAICP & Gur-

don H. Buck, AICP, in *Smart Growth, Dumb Takings*, 29 *Environmental Law Rptr.* 10746, 10756 [Dec. 1999].)

Seventh, the vaunted development enabled by *Kelo v. City of New London*, 125 S.Ct. 2655 (2005) isn’t happening. No one wants to build the things the city planned, Pfizer Pharmaceuticals (the project was intended as an adjunct to the Pfizer development nearby) announced in 2002 that it didn’t need the five star hotel and condos the city envisioned for this site, and some areas of the project — including the area around Mrs. Kelo’s house — don’t even have

a plan (check it out; there is a blank area on the “plan”). They are essentially being land-banked. Seventy-three million dollars has been spent so far, with nothing to show for it but mounds of bad publicity. (The local newspaper reported recently that state government is no longer seen as a project supporter, Ted Mann, “Fort Trumbull: City Still Unsure Where Gov. Rell Stands On Plan,” *The Day*, Dec. 30, 2005, and a mediator is now being engaged to try to bring people together. Warren Richey, “Battle Over Property Rights Goes On, Despite Ruling,” *Christian Science Monitor*,

Jan. 4, 2006.) Why is it “good planning” to displace people from their inoffensive middle class homes just so someone else can live there eventually, assuming the city ever really gets around to doing some serious planning for the area?

I could go on, but my point is not that APA is always wrong. My point is that APA always supports the government — and that, at least, ought to make people (including, perhaps especially, its members) suspicious. The government may not always be wrong, but this much is certain: the government is not always right. Think about it.

