



2019 Legislation

TAPA Spring Retreat

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Basic Rule of Lobbying

- There are no permanent friends...
- There are no permanent enemies...
- Except in those cases where there are...

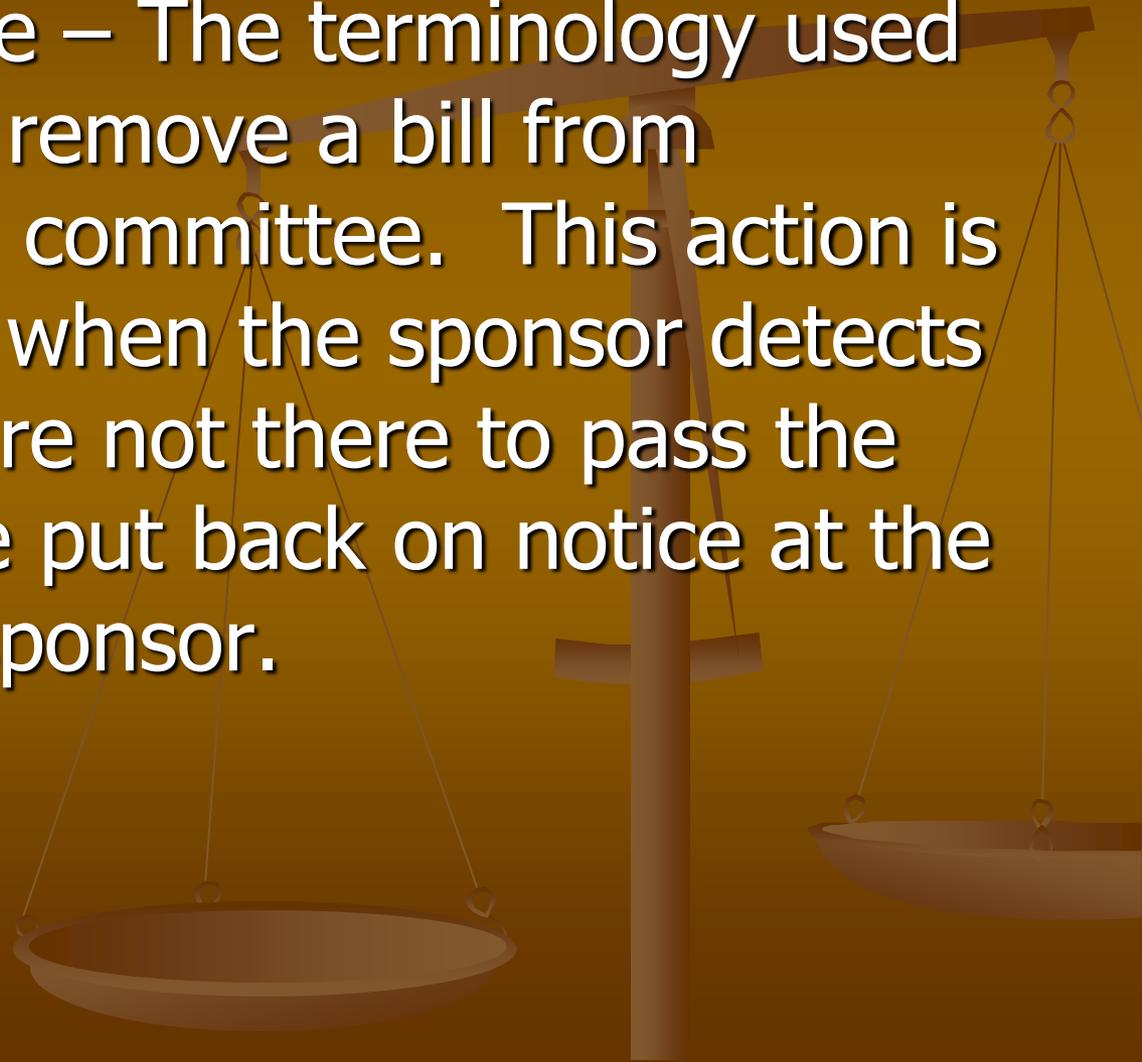


Some Basic Terminology

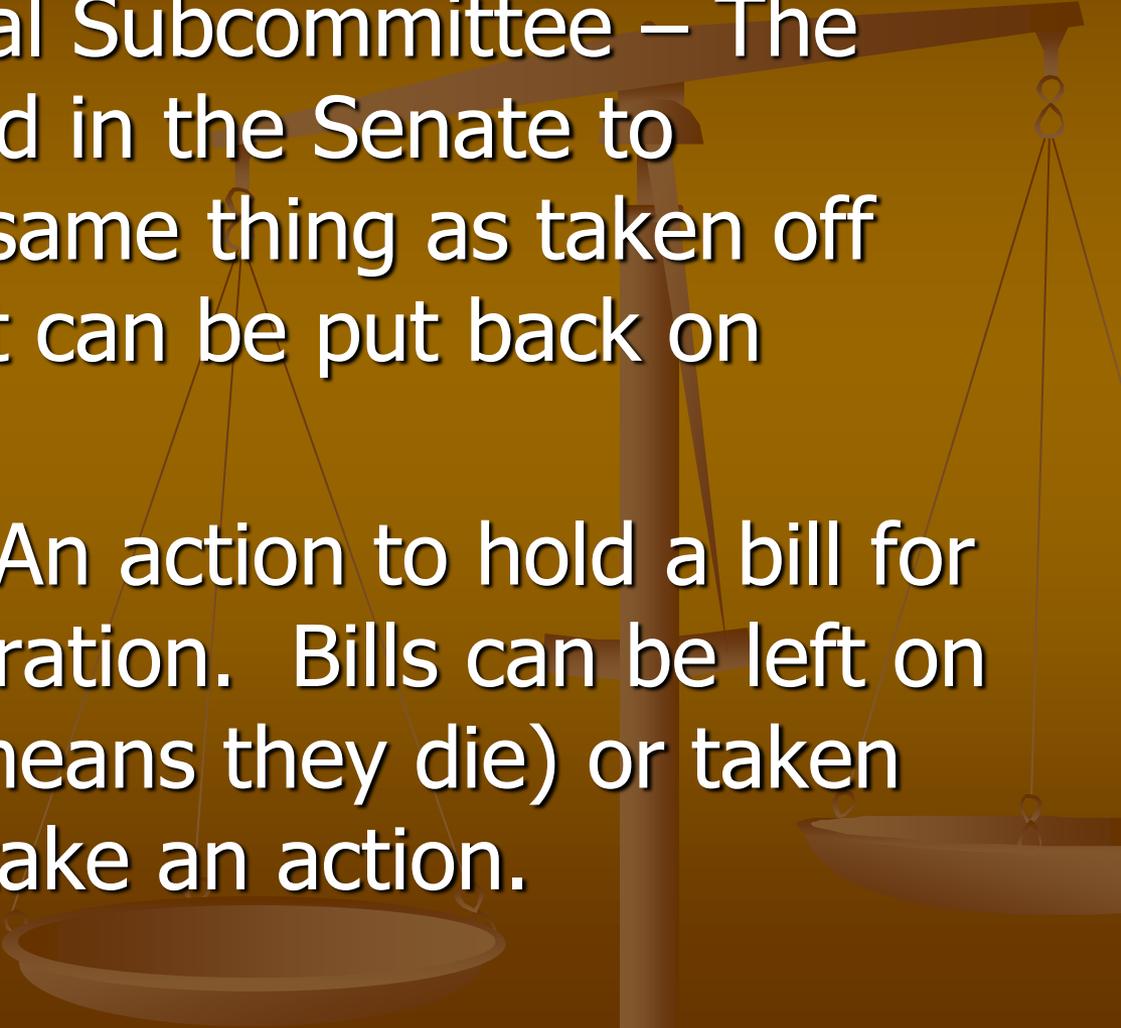
- Caption Bill – All bills filed must have a caption, and the body of the bill must be related to the caption. It is common practice now for legislators to file bills with broad captions that open up several sections of TCA and then file an amendment that changes the body of the bill but falls under the broad caption.

Some Basic Terminology

- Taken Off Notice – The terminology used in the House to remove a bill from consideration in committee. This action is generally taken when the sponsor detects that the votes are not there to pass the bill. Bills can be put back on notice at the request of the sponsor.



Some Basic Terminology

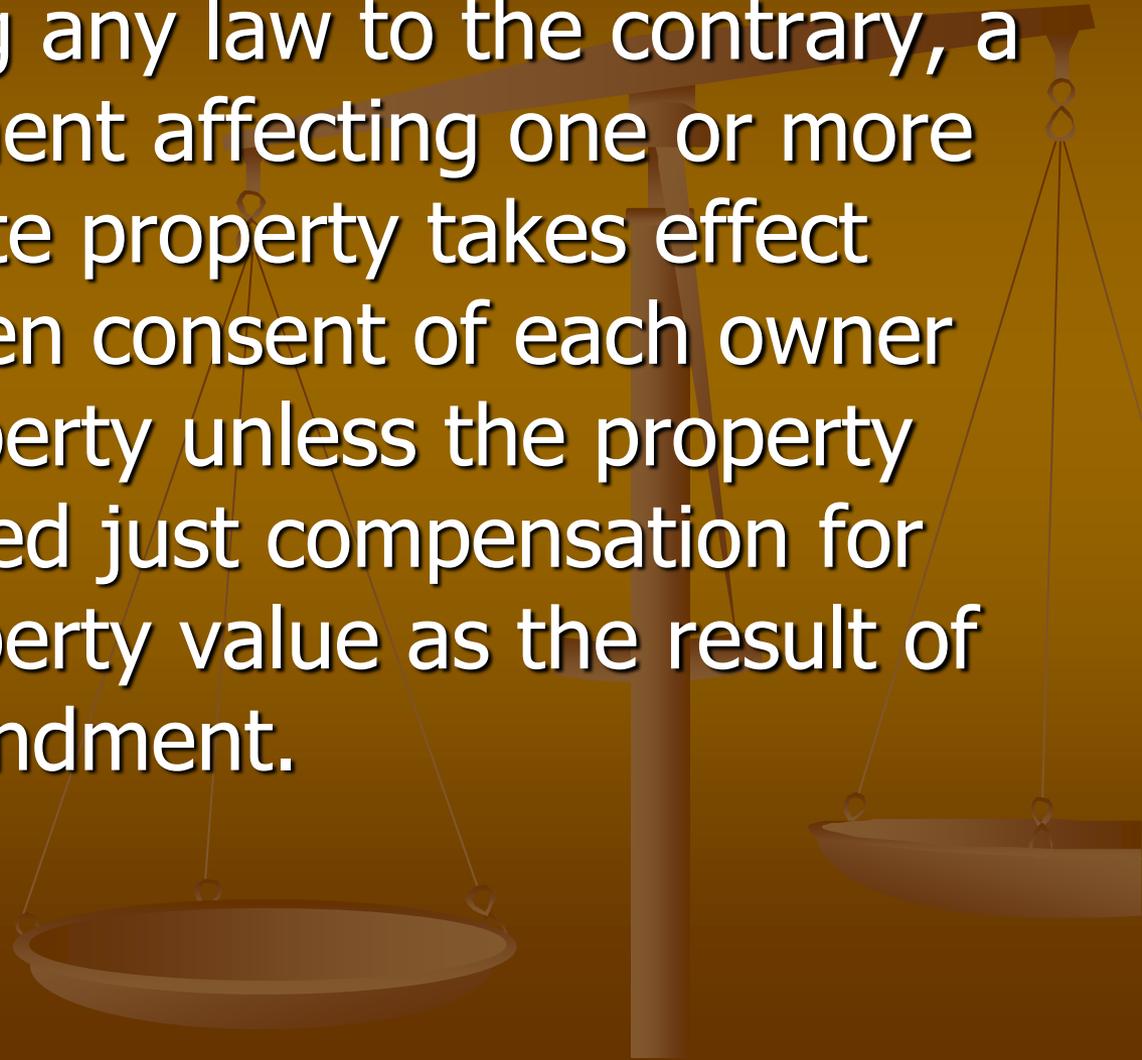
- Placed in General Subcommittee – The terminology used in the Senate to accomplish the same thing as taken off notice. Again, it can be put back on notice.
 - Held on Desk – An action to hold a bill for another consideration. Bills can be left on the desk (that means they die) or taken off the desk to take an action.
- 

SB 0521 by *Niceley / HB 0418 by *Marsh

- As introduced, requires property owner consent to **any amendments** to a county or city zoning ordinance that affects the property owner's property; requires notice to be provided **to each property owner by certified mail, return receipt** when the owner's property is subject to an amendment to the county or city zoning ordinance. - Amends TCA Title 13, Chapter 7.

Surprise, An Amendment

- Notwithstanding any law to the contrary, a zoning amendment affecting one or more parcels of private property takes effect only upon written consent of each owner of affected property unless the property owner is provided just compensation for any loss of property value as the result of the zoning amendment.

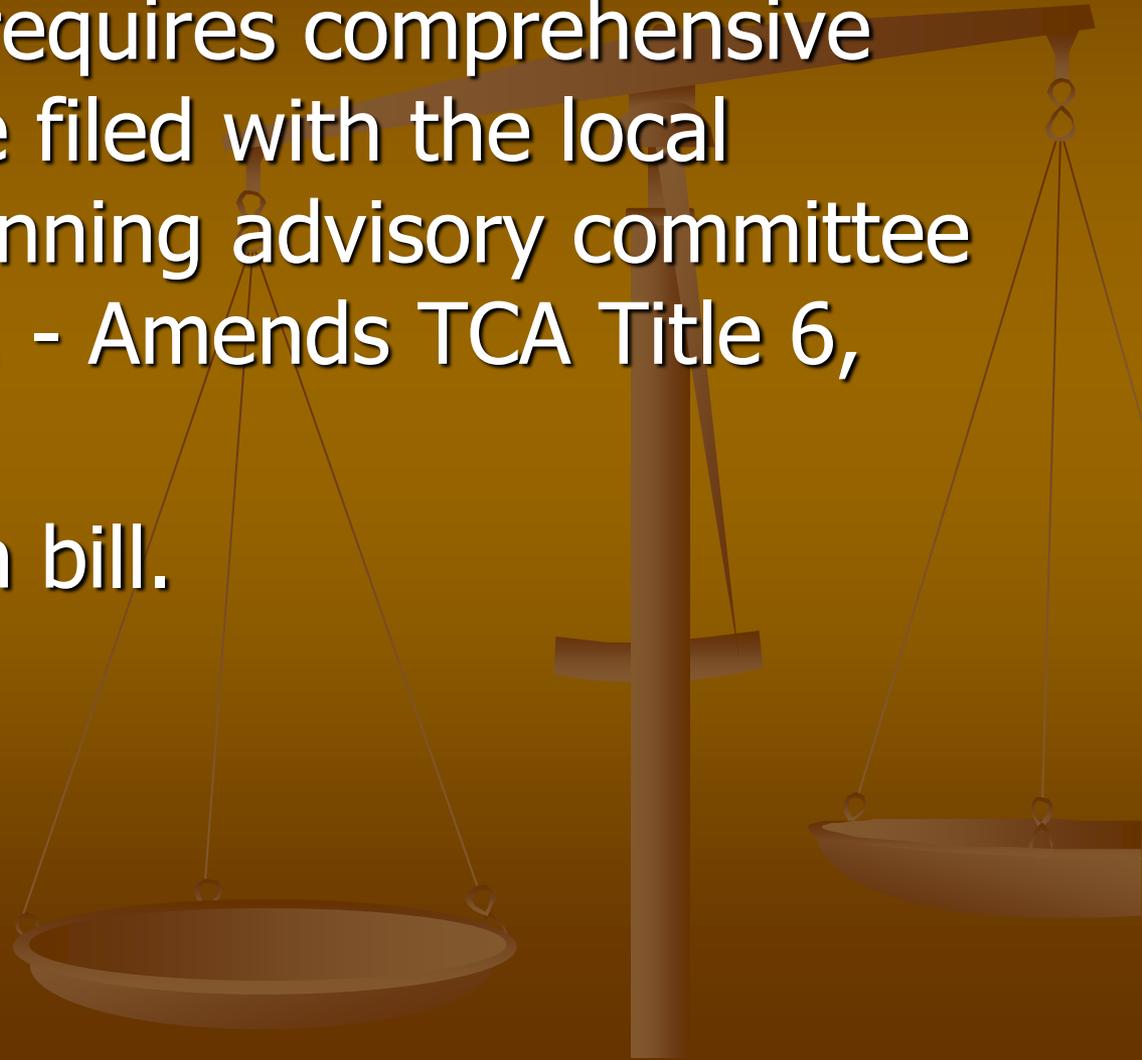


SB 0390 by *Briggs / HB 0155 by *Wright

- As introduced, requires the chief legislative body of a municipality to file the notice of intent required prior to adopting zoning ordinances for territory outside of the municipality with the county mayor by certified mail, return receipt requested. - Amends TCA Title 6, Chapter 51; Title 6, Chapter 58; Title 13, Chapter 7; Title 13, Chapter 3 and Title 13, Chapter 4.
- This is a caption bill

SB 0530 by *Briggs / HB 0717 by *Lafferty

- As introduced, requires comprehensive growth plans be filed with the local government planning advisory committee by July 1, 2021. - Amends TCA Title 6, Chapter 58
- This is a caption bill.



SB 1101 by *Dickerson / HB 0074 by *Jernigan

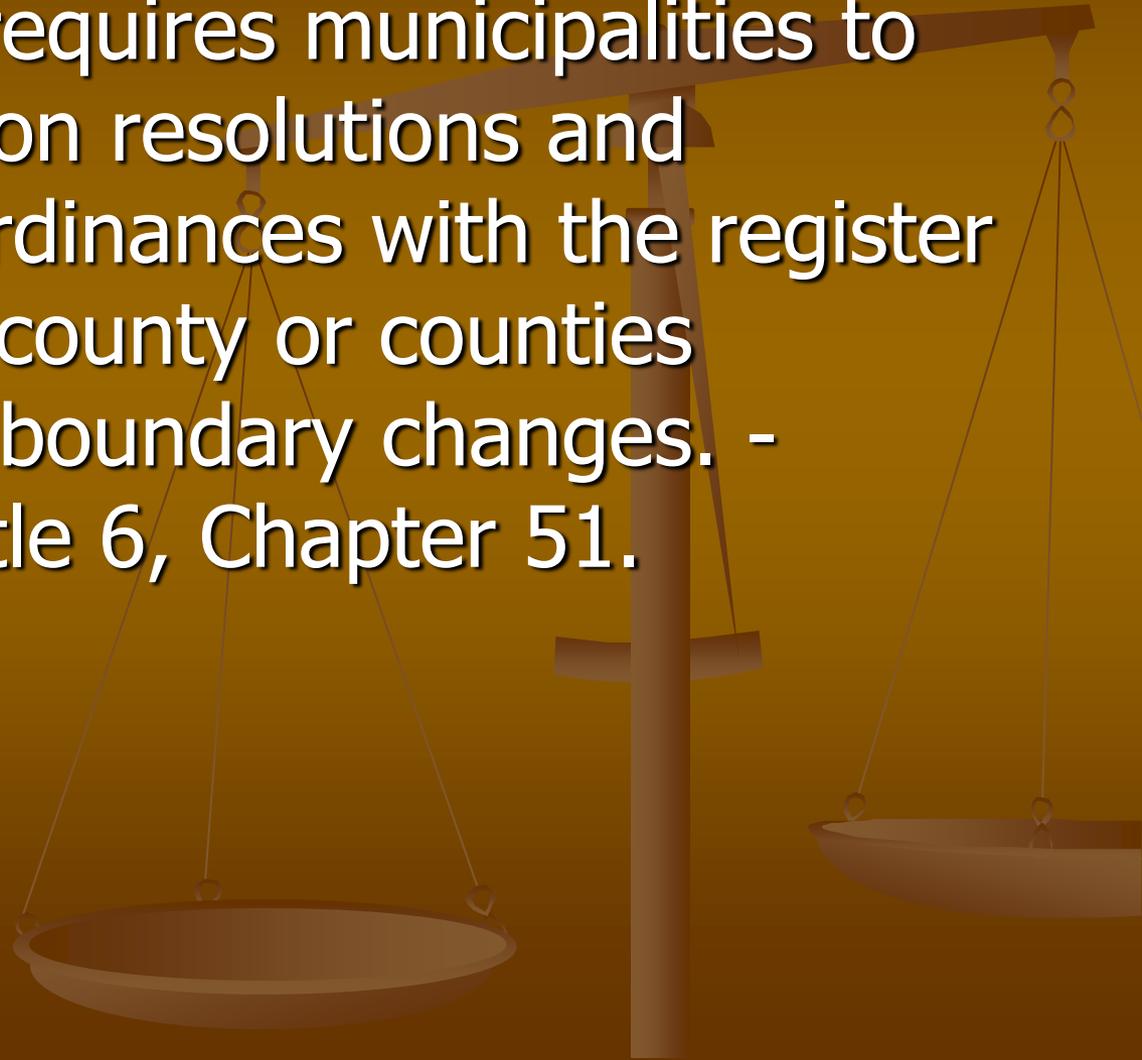
- As introduced, **creates an appeal process for decisions of a housing authority** regarding a transit-oriented redevelopment project to a legislative appeal board; requires votes on amendments to transit-oriented redevelopment plans within 60 days of submission; reduces the amount of administrative expenses that can be set aside from certain incremental tax revenues, from 5 percent to 3 percent. - Amends TCA Title 9, Chapter 23 and Title 13, Chapter 20.

SB 1101 Amendment

- The bill was amended in subcommittee to remove language of the legislative appeal board meeting once per quarter, language of time requirements when the appeal board is voting on amendments, and language of specification of incremental tax revenues set aside for administrative expenses if there is a tax increment financing of \$1,000,000 or more.

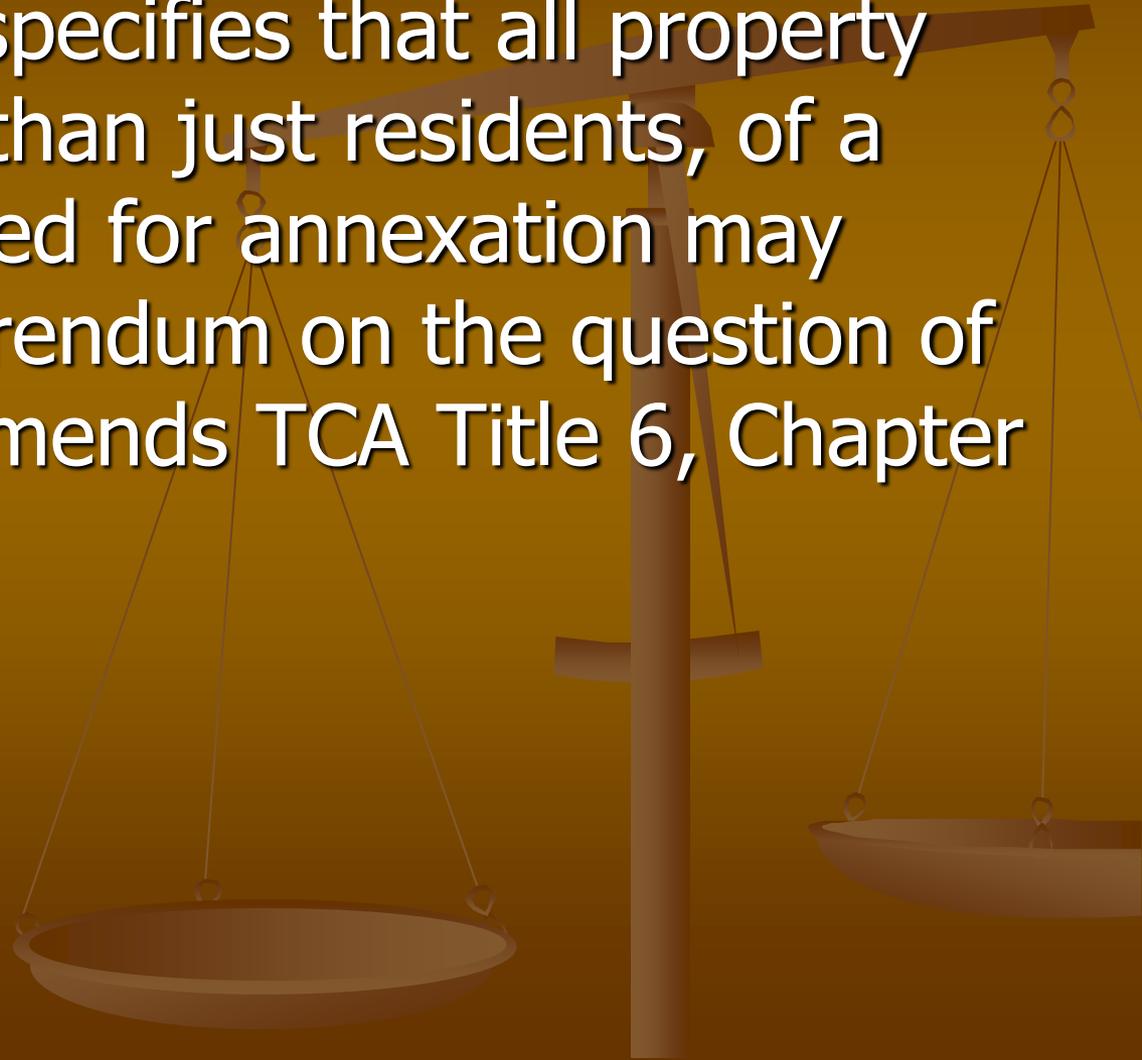
SB 0359 by *Haile HB 0362 by *Cochran

- As introduced, requires municipalities to record annexation resolutions and deannexation ordinances with the register of deeds in the county or counties affected by the boundary changes. - Amends TCA Title 6, Chapter 51.



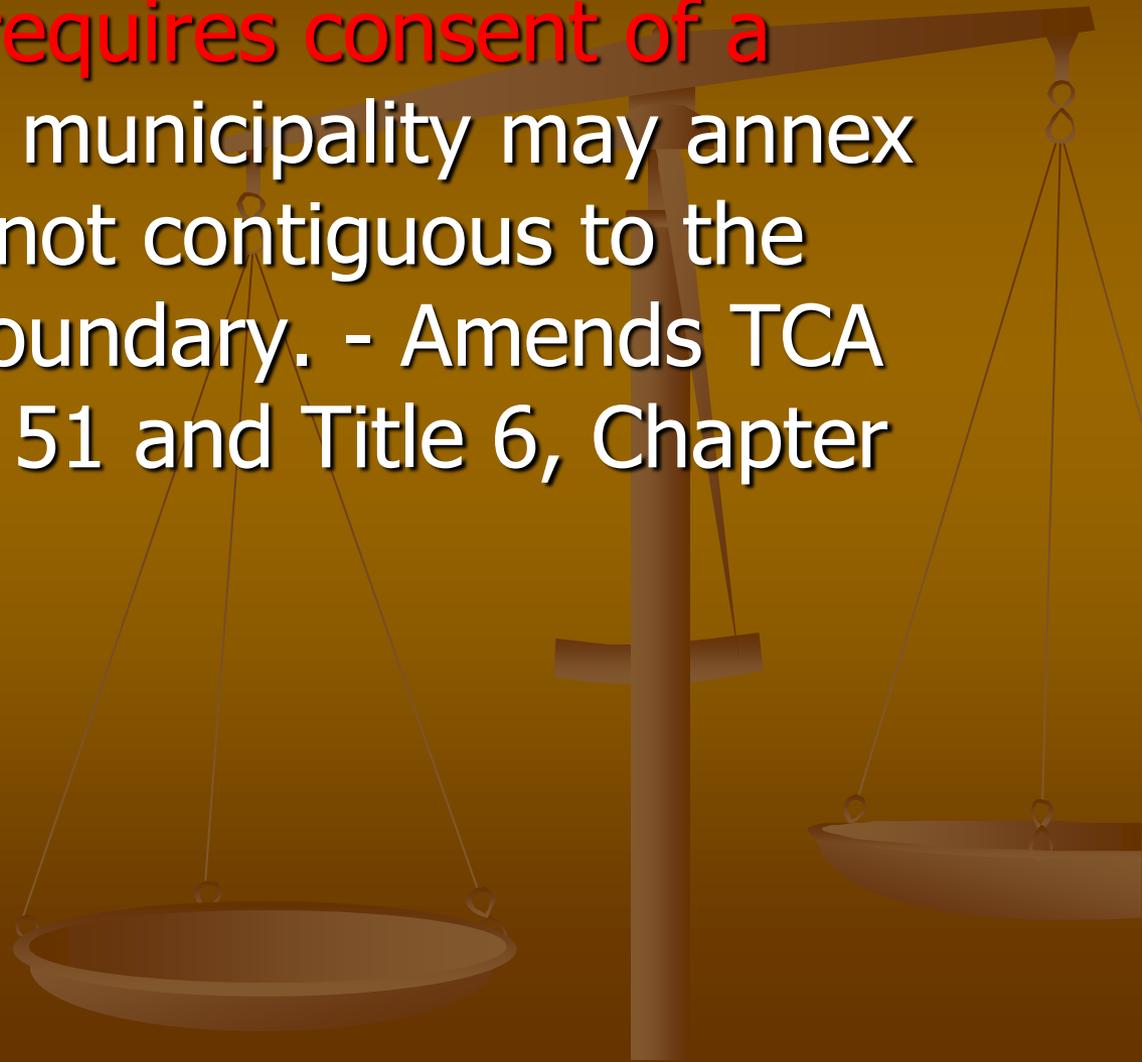
SB 0557 by *Johnson / HB 1089 by *Whitson

- As introduced, specifies that all property owners, rather than just residents, of a territory proposed for annexation may vote in the referendum on the question of annexation. - Amends TCA Title 6, Chapter 51, Part 1.

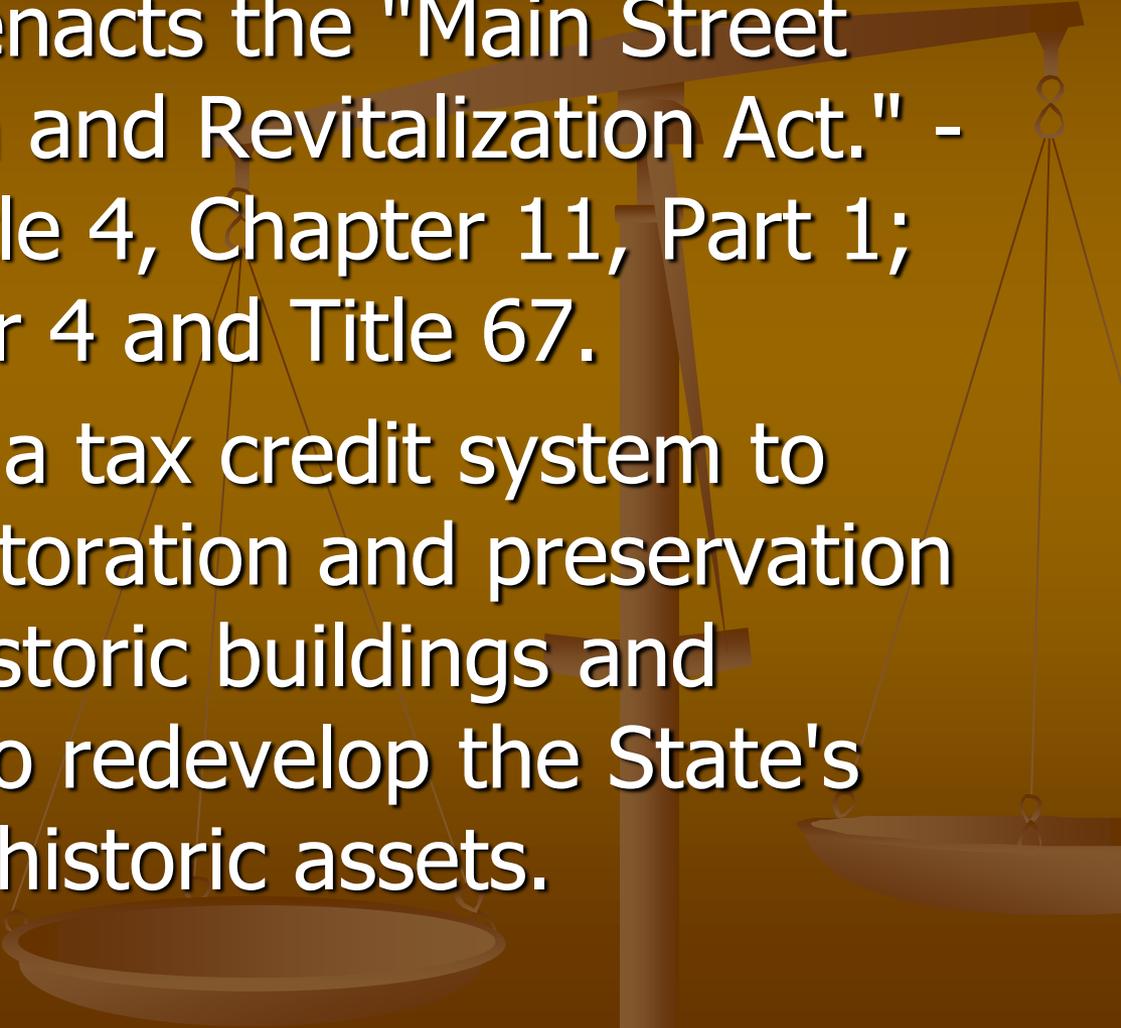


SB 0715 by *Watson / HB 0853 by *Carter

- As introduced, **requires consent of a county** before a municipality may annex territory that is not contiguous to the municipality's boundary. - Amends TCA Title 6, Chapter 51 and Title 6, Chapter 58.



SB 1053 by *Watson / HB 1063 by *Vaughan

- As introduced, enacts the "Main Street Historic Tourism and Revitalization Act." - Amends TCA Title 4, Chapter 11, Part 1; Title 56, Chapter 4 and Title 67.
 - This bill creates a tax credit system to facilitate the restoration and preservation of the State's historic buildings and structures and to redevelop the State's most important historic assets.
- 

SB 1071 by *Dickerson / HB 0275 by *Freeman

- As introduced, requires the agency, by no later than March 1 each year, to submit a report relative to the implementation of any amended policies designed to improve the agency's blight elimination program to the state and local government committee of the senate and the local government committee of the house of representatives. - Amends TCA Title 4; Title 7; Title 13 and Title 68.

SB 1363 by *Yager / HB 1357 by *Calfee

- As introduced, defines the county seat, if the county seat is an incorporated municipality, as the principal city for purposes of county and city consolidation, if the largest city by population in the county fails to adopt a consolidation resolution within 90 days of the county's adoption of a consolidation resolution. - Amends TCA Title 7.

SB 0178 by *Gardenhire / HB 0165 by *Hazlewood

- As introduced, requires TDEC or local governments that place moratoriums on connections to public sewer systems to grant permits for the installation of subsurface sewage disposal systems; requires permit holders to discontinue service to subsurface sewage disposal systems and connect to public sewer systems within 90 days of the moratorium being lifted. - Amends TCA Title 68, Chapter 221, Part 4.

SB 178 Amendment

- The bill prohibits the commissioner of TDEC from denying a permit for subsurface disposal if (A) a moratorium is in place or (B) if the applicant submits documentation that the applicant cannot connect, or has been delayed from connecting, to the public sewer system because of the moratorium. The potential future obligation to connect to the public sewer system must be disclosed by the seller to the purchaser.

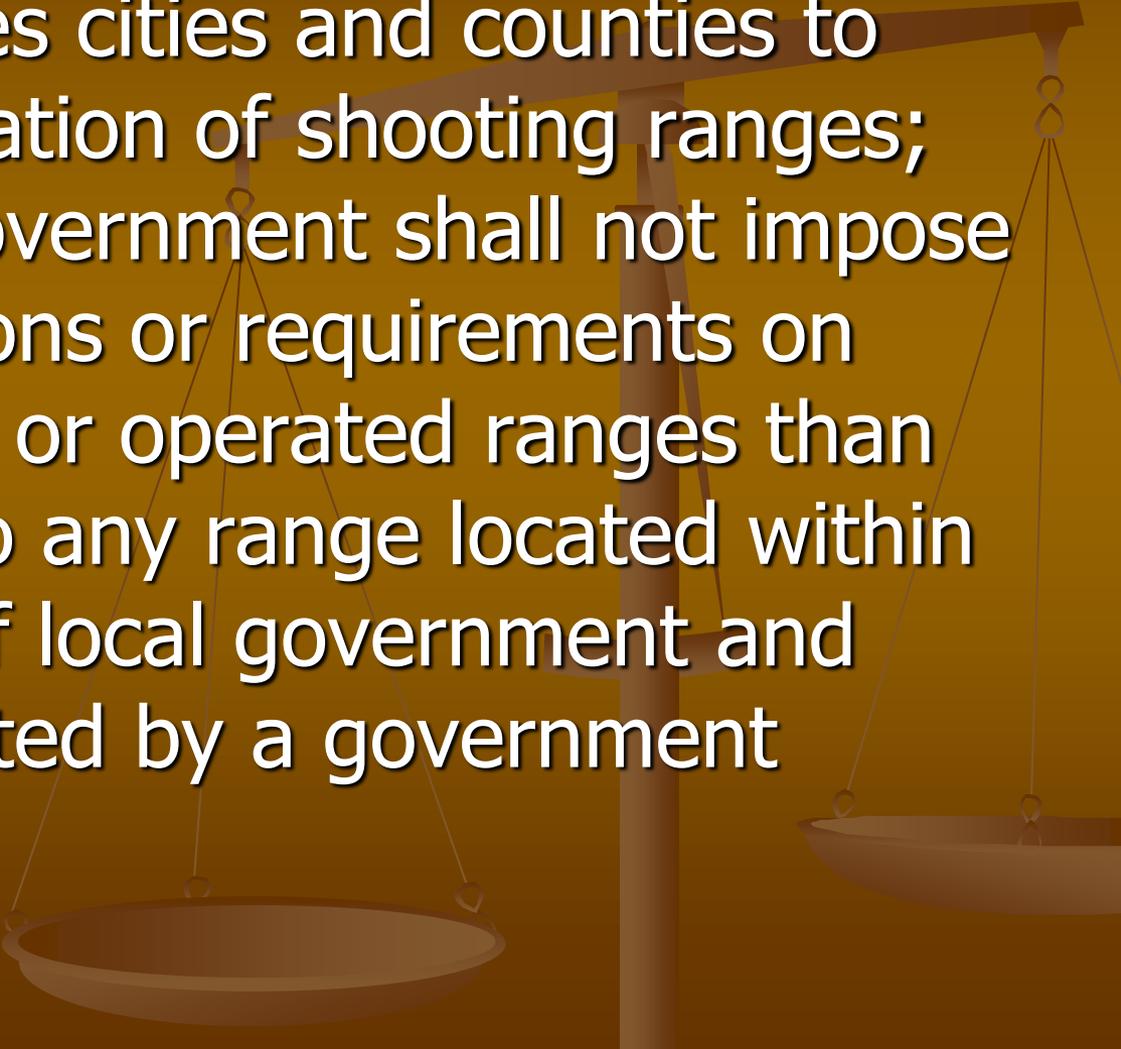
SB 0355 by *Gardenhire / HB 0327 by *Howell

- As introduced, requires brownfield redevelopment projects to be sites located in mid-size and small counties; clarifies square footage qualifications for a project to include all facilities taken together; prohibits allocations to the corporation engaged in the project continuing past maturity of the original bond or obligation, which can be no longer than 30 years. - Amends TCA Title 7, Chapter 53.

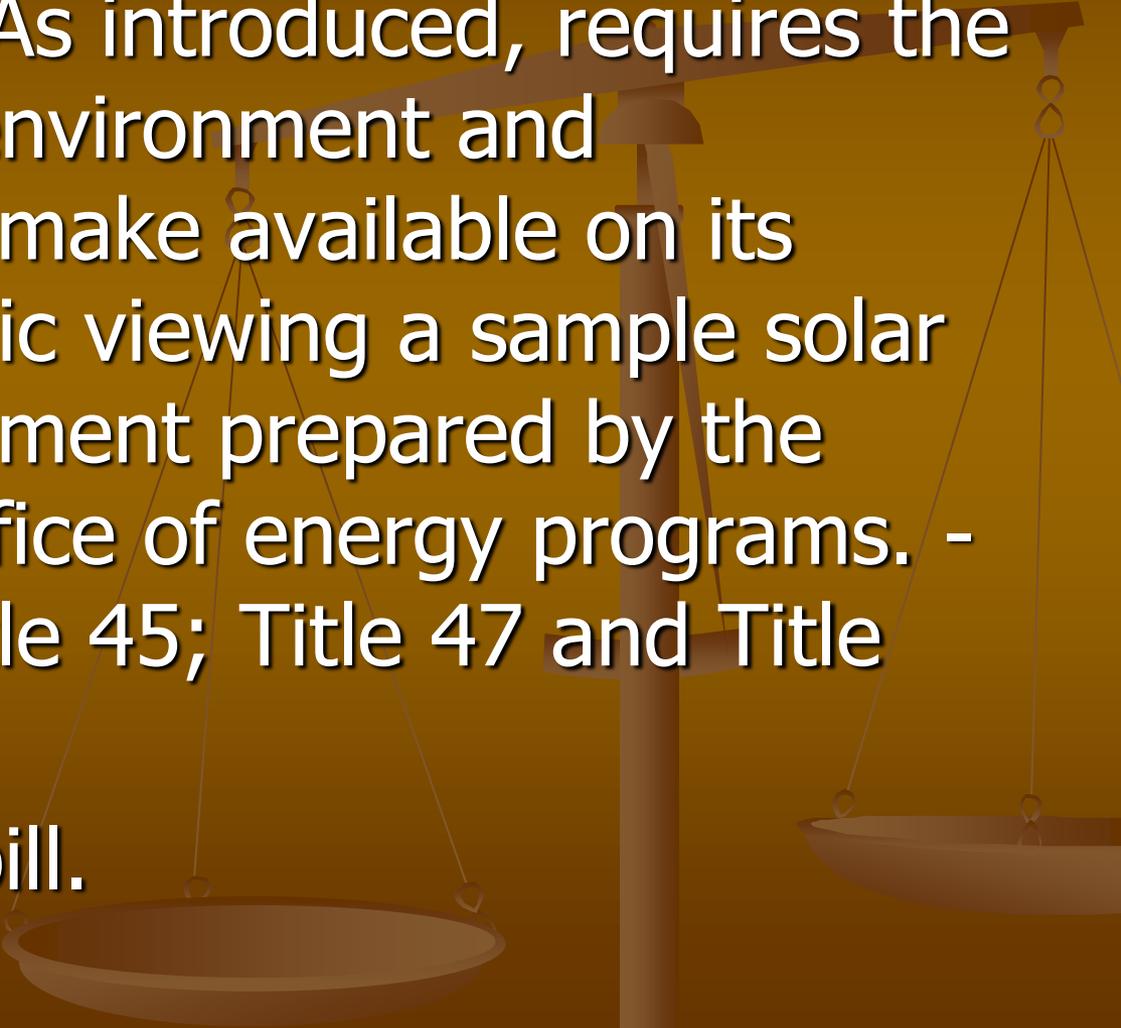
SB 0446 by *Bell / HB 0187 by *Reedy

- Firearms and Ammunition - As introduced, enacts the "Second Amendment Civil Rights Act of 2019"; confers private rights of action upon a person to challenge government regulation of gun or sport shooting ranges. - Amends TCA Title 39, Chapter 17.
- A government entity shall not enact, have, or enforce ordinances, rules, regulations, or policies that prohibit the ownership, construction, or operation of privately owned or operated gun or sport shooting ranges.

SB 446 Amendment

- It now authorizes cities and counties to regulate the location of shooting ranges; however, the government shall not impose greater restrictions or requirements on privately owned or operated ranges than are applicable to any range located within the same unit of local government and owned or operated by a government entity.
- 

SB 1429 by *Bailey / HB 1290 by *Farmer

- Real Property - As introduced, requires the department of environment and conservation to make available on its website for public viewing a sample solar easement instrument prepared by the department's office of energy programs. - Amends TCA Title 45; Title 47 and Title 66.
 - Yep, a caption bill.
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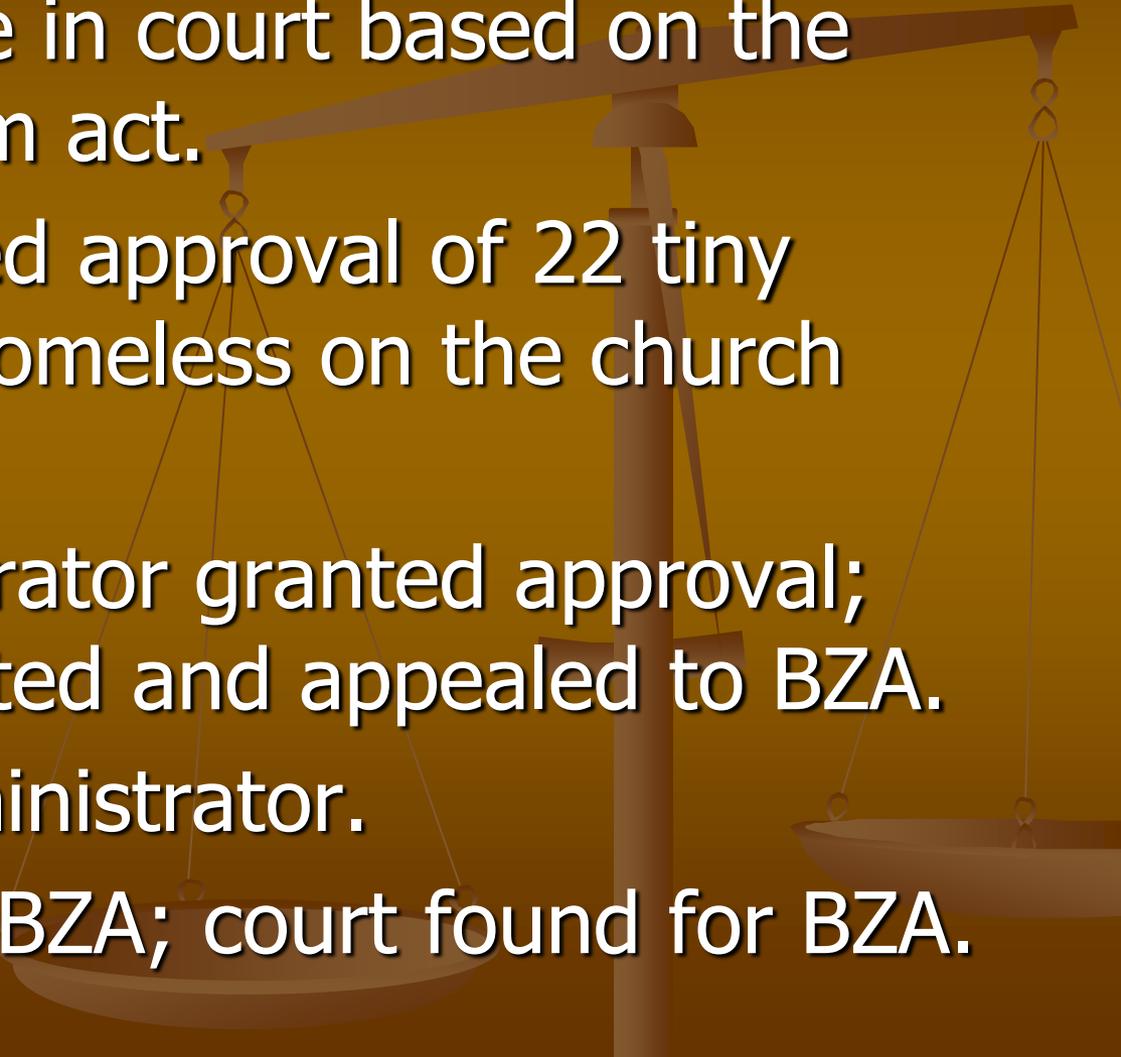
The Amendment

- This amendment restricts the ability of homeowner associations to decide whether to allow rental of homes in the governed neighborhood. The amendment not only requires 100% vote of ALL property owners in an HOA to prohibit leasing, but also requires an accounting of any vote regarding rental, including the language of the ballot issue. If the rental is prohibited by a 100% vote, any property already rented would be able to continue to rent as long as the property is conveyed to a legal entity. It appears that the bill as amended would benefit out of state house rental companies.

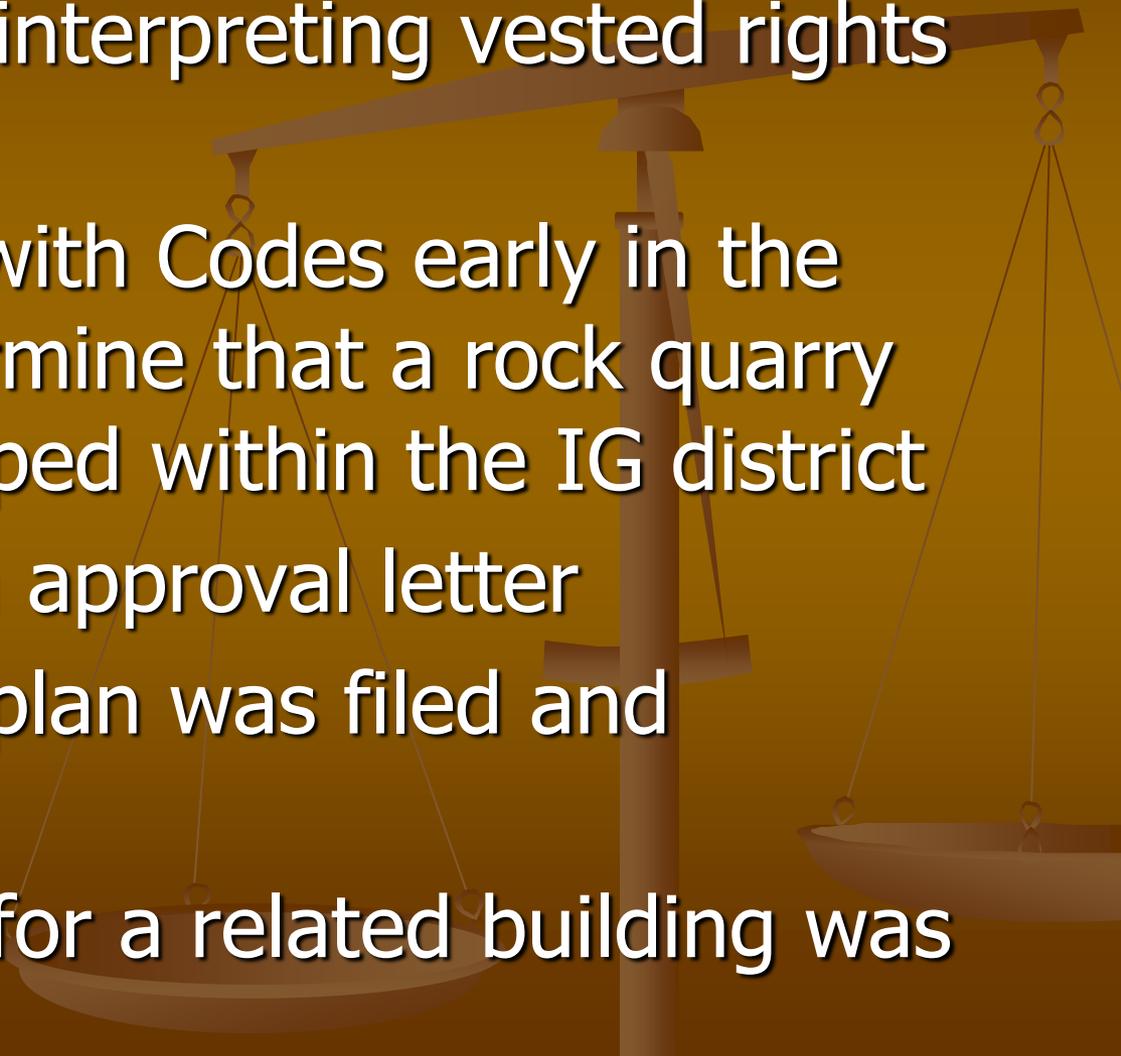
- Some Recent Court Cases



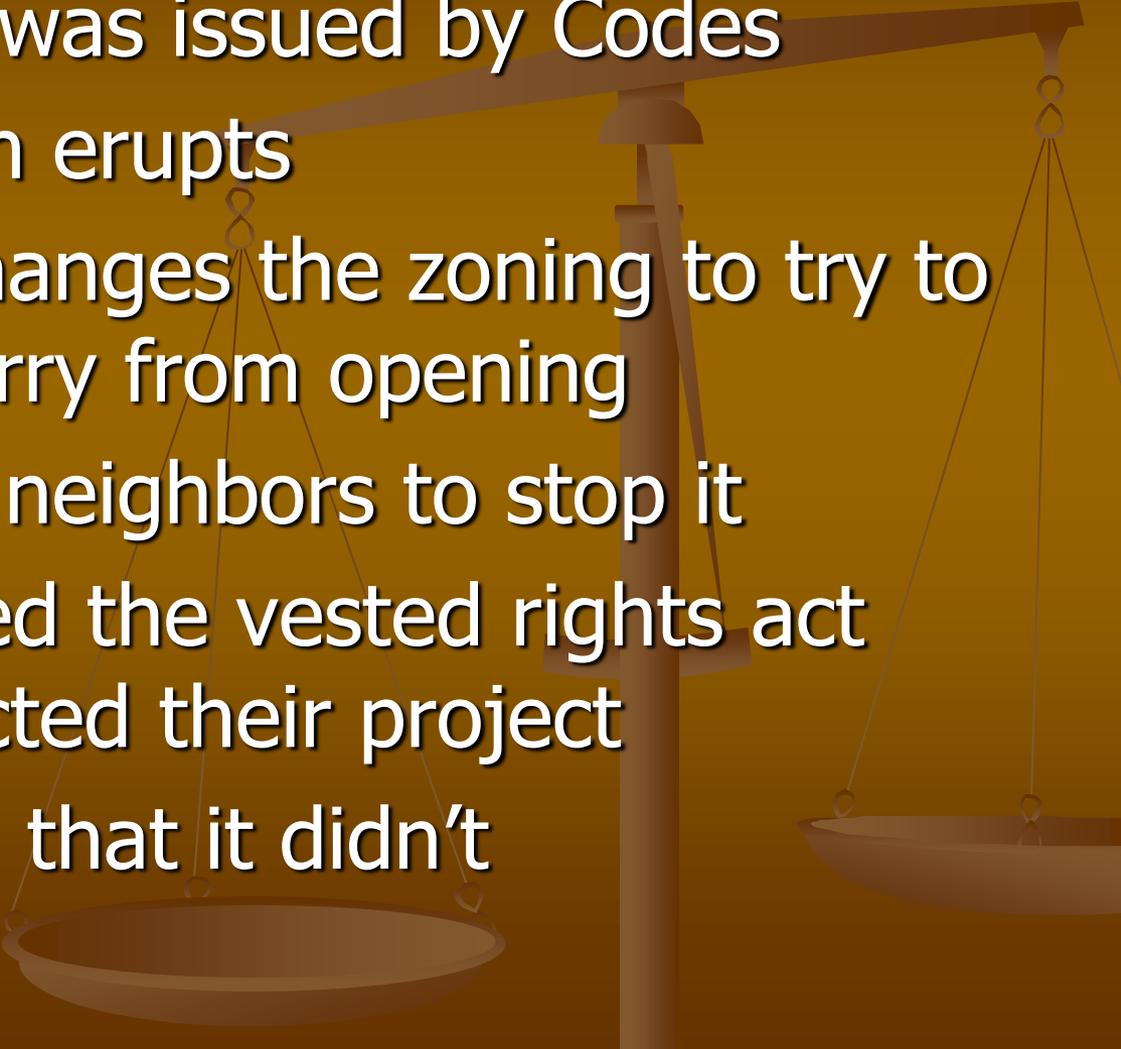
Ward v Metro Board of Zoning Appeals

- First zoning case in court based on the religious freedom act.
 - Church requested approval of 22 tiny homes for the homeless on the church property.
 - Zoning administrator granted approval; neighbors objected and appealed to BZA.
 - BZA upheld administrator.
 - Neighbors sued BZA; court found for BZA.
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Neighbors of Old Hickory v Industrial Land Developers

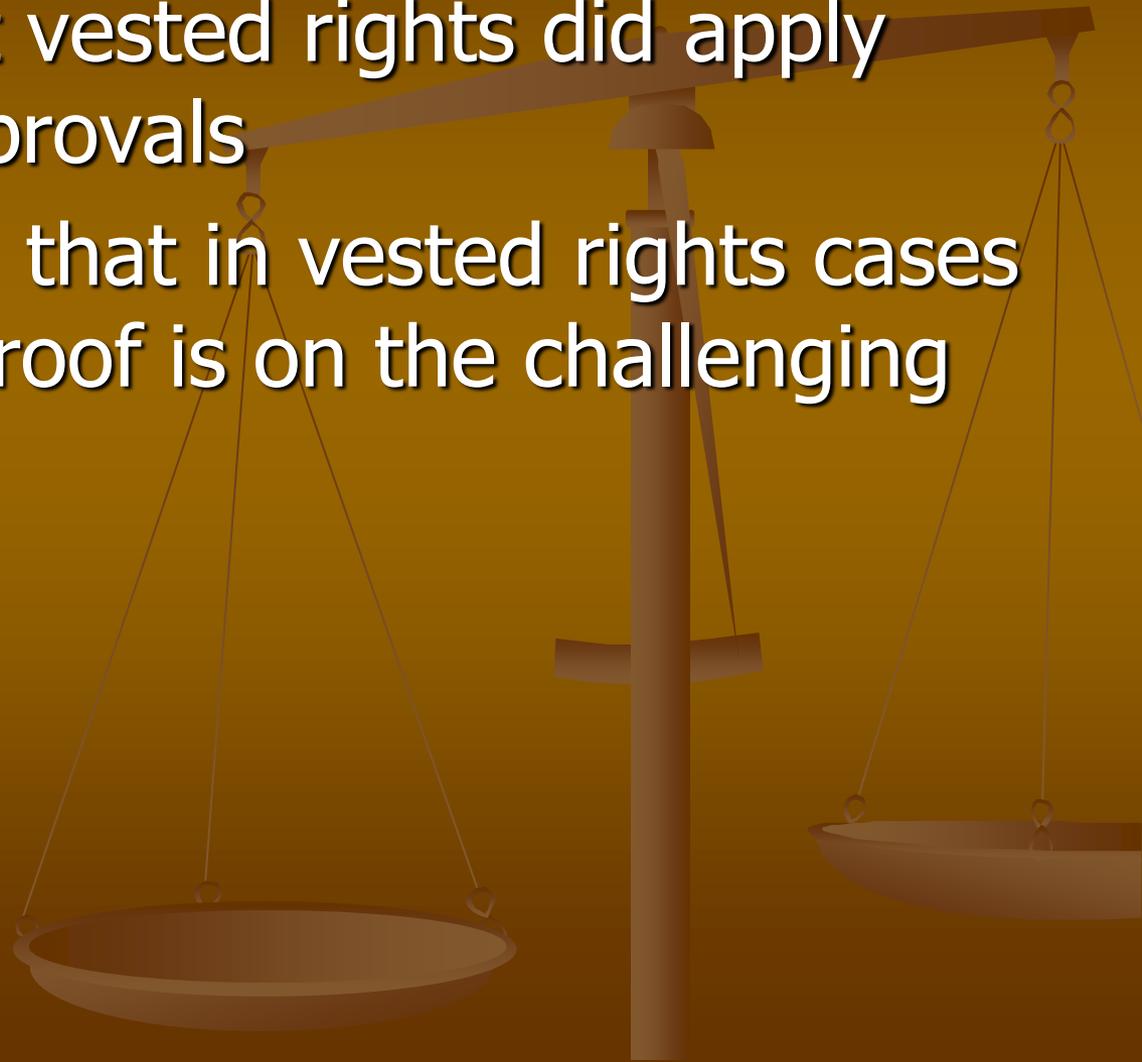
- First court case interpreting vested rights act
 - Developer met with Codes early in the process to determine that a rock quarry could be developed within the IG district
 - Codes issued an approval letter
 - A development plan was filed and approved
 - Building permit for a related building was issued
- 

Neighbors v Industrial Land

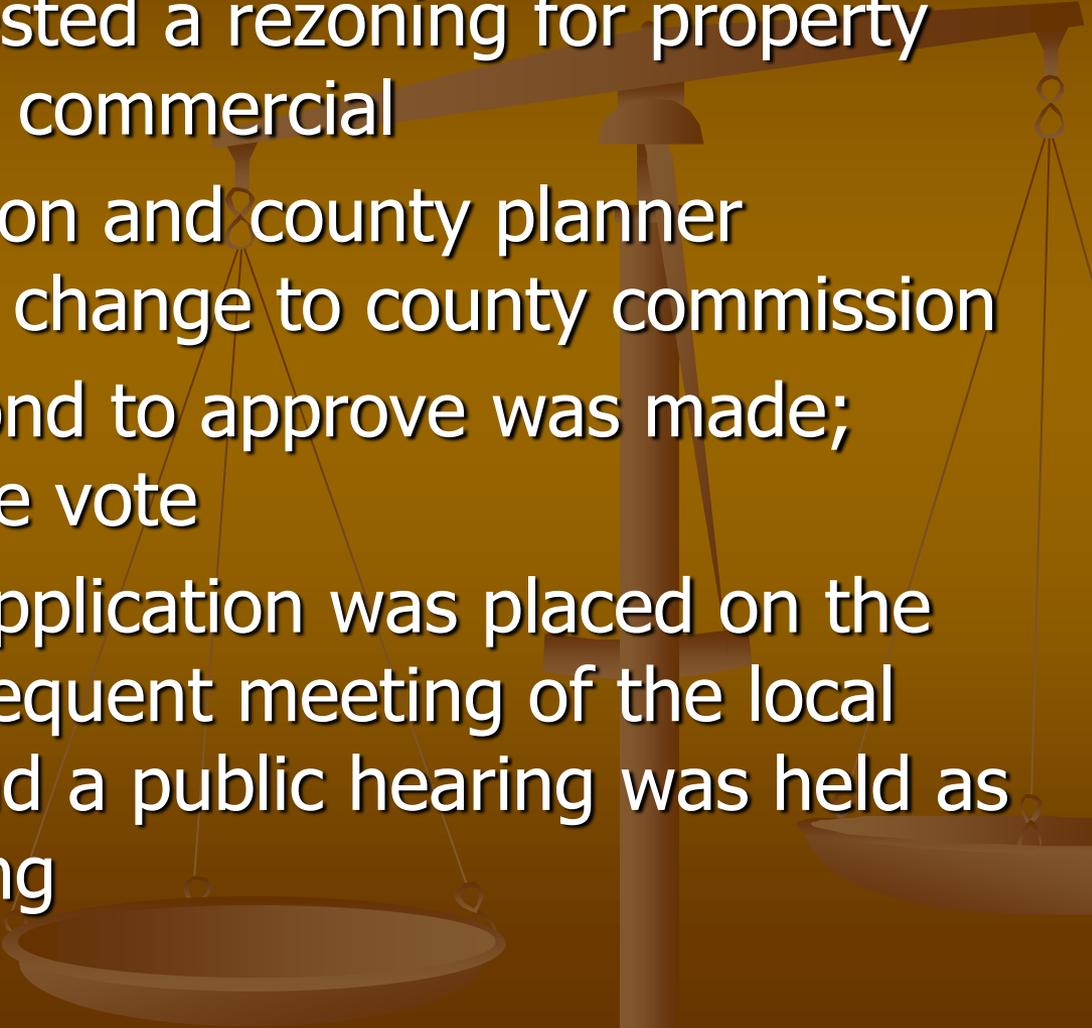
- U and O permit was issued by Codes
 - Public opposition erupts
 - Metro council changes the zoning to try to prevent the quarry from opening
 - Lawsuit filed by neighbors to stop it
 - Developer argued the vested rights act applied & protected their project
 - Plaintiffs argued that it didn't
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Neighbors v Industrial Land

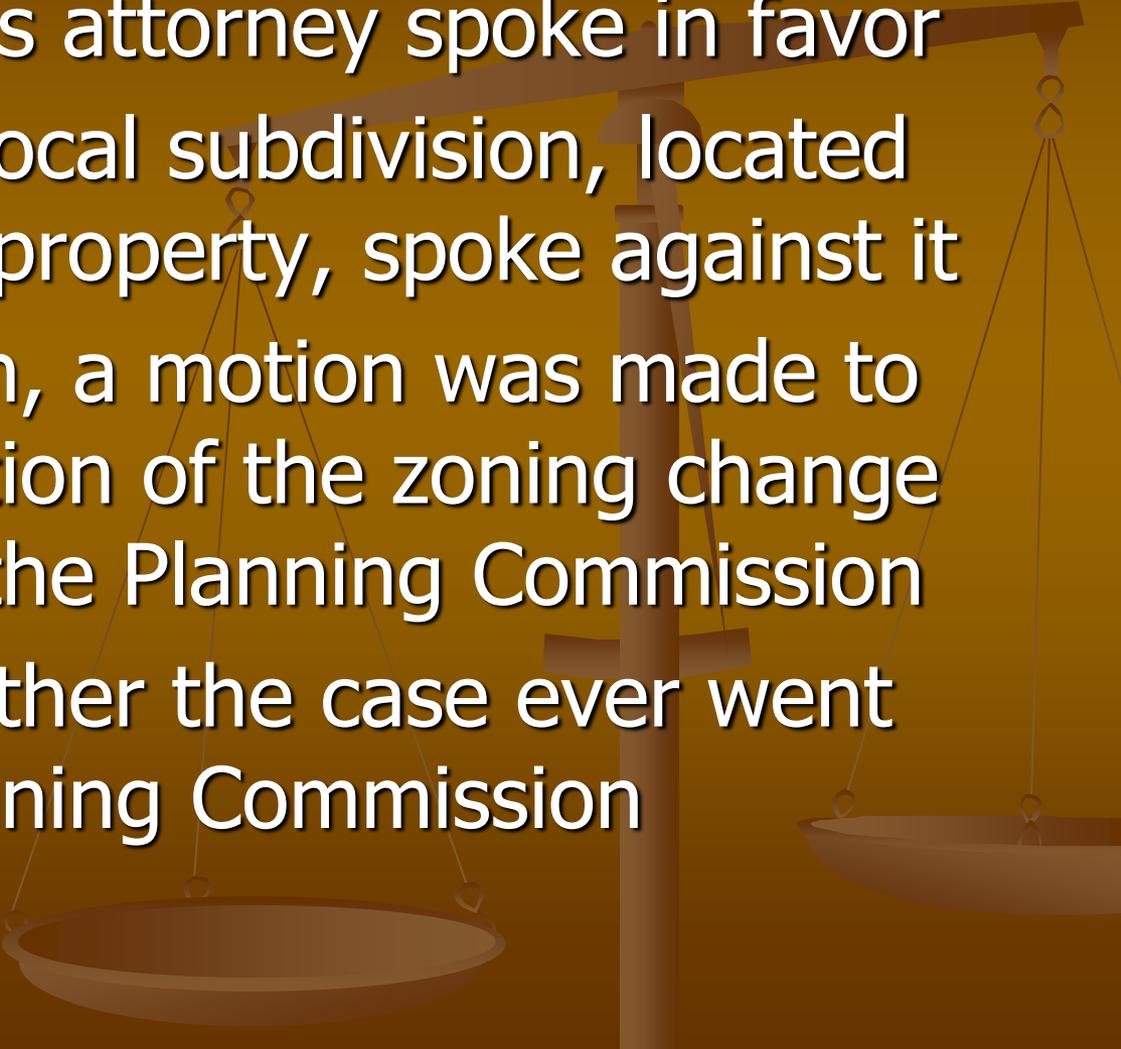
- Court ruled that vested rights did apply based on all approvals
- Court also ruled that in vested rights cases the burden of proof is on the challenging party



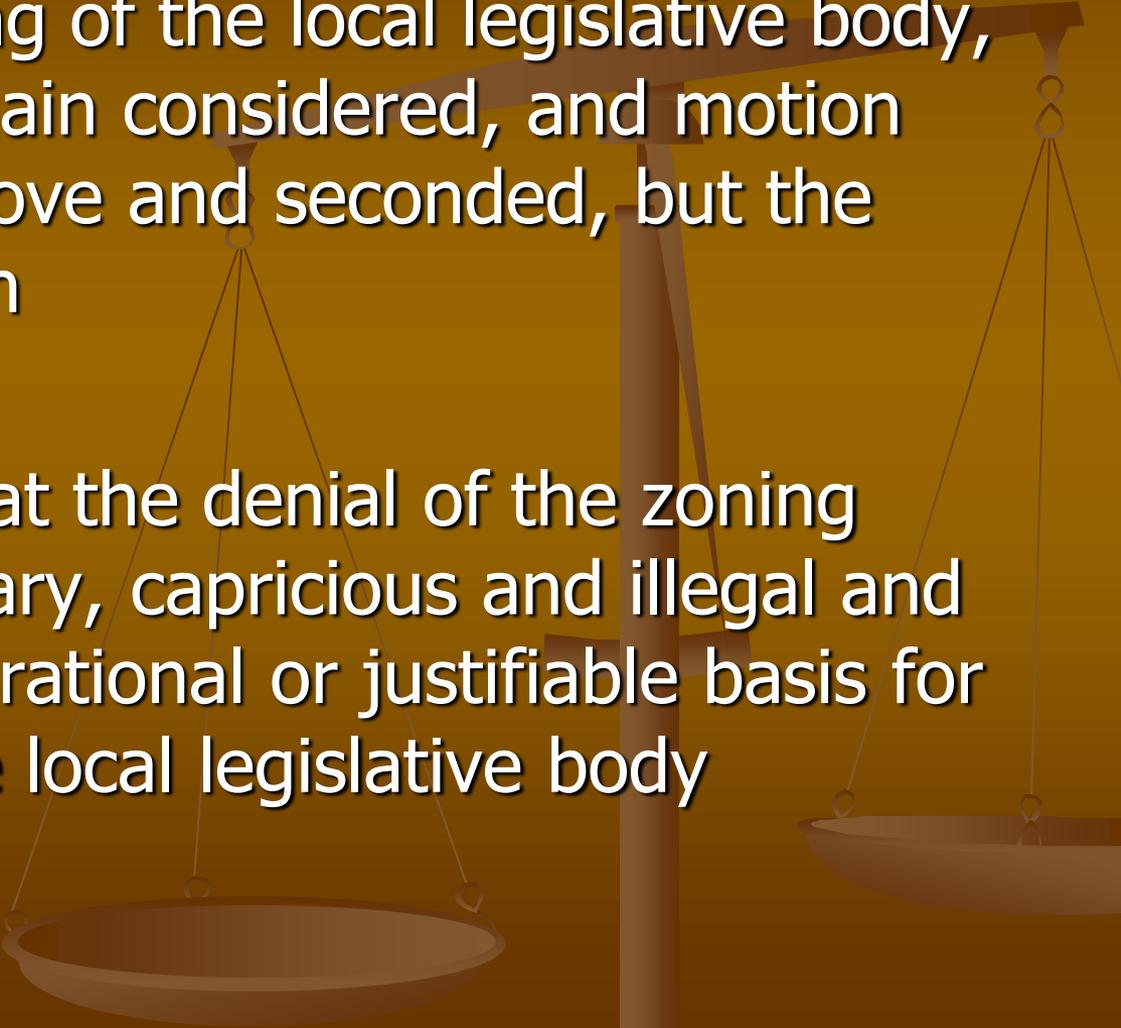
Cunningham v. Bedford County

- Landowners requested a rezoning for property from residential to commercial
 - Planning commission and county planner recommended the change to county commission
 - A motion and second to approve was made; motion failed in the vote
 - Surprisingly, the application was placed on the agenda for a subsequent meeting of the local legislative body and a public hearing was held as part of that meeting
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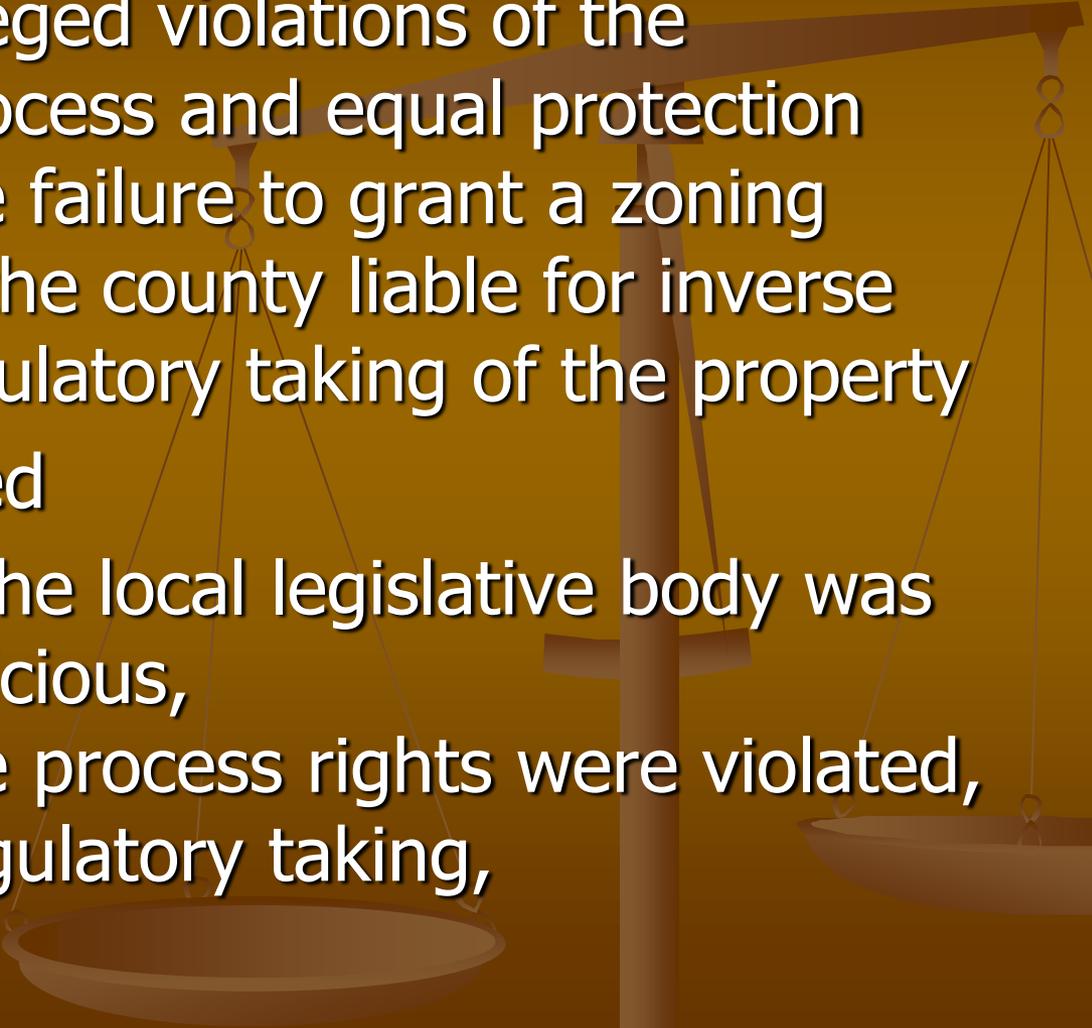
Cunningham cont'd

- Applicant and his attorney spoke in favor
 - A resident of a local subdivision, located adjacent to the property, spoke against it
 - For some reason, a motion was made to defer consideration of the zoning change and remand to the Planning Commission
 - It's unclear whether the case ever went back to the Planning Commission
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Cunningham cont'd

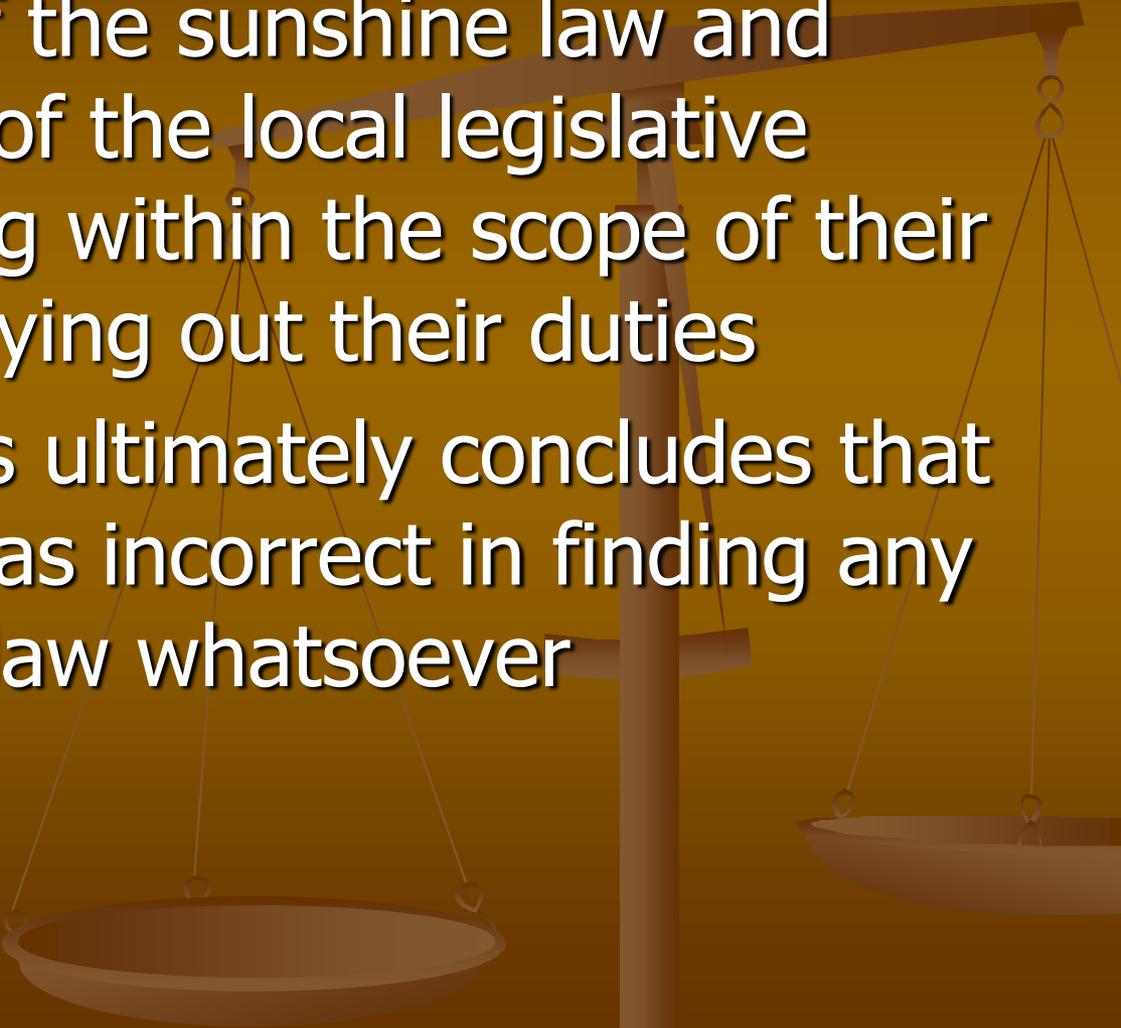
- At the next meeting of the local legislative body, application was again considered, and motion was made to approve and seconded, but the motion failed again
 - Now to court
 - Plaintiff alleged that the denial of the zoning change was arbitrary, capricious and illegal and that there was no rational or justifiable basis for the decision of the local legislative body
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Cunningham cont'd

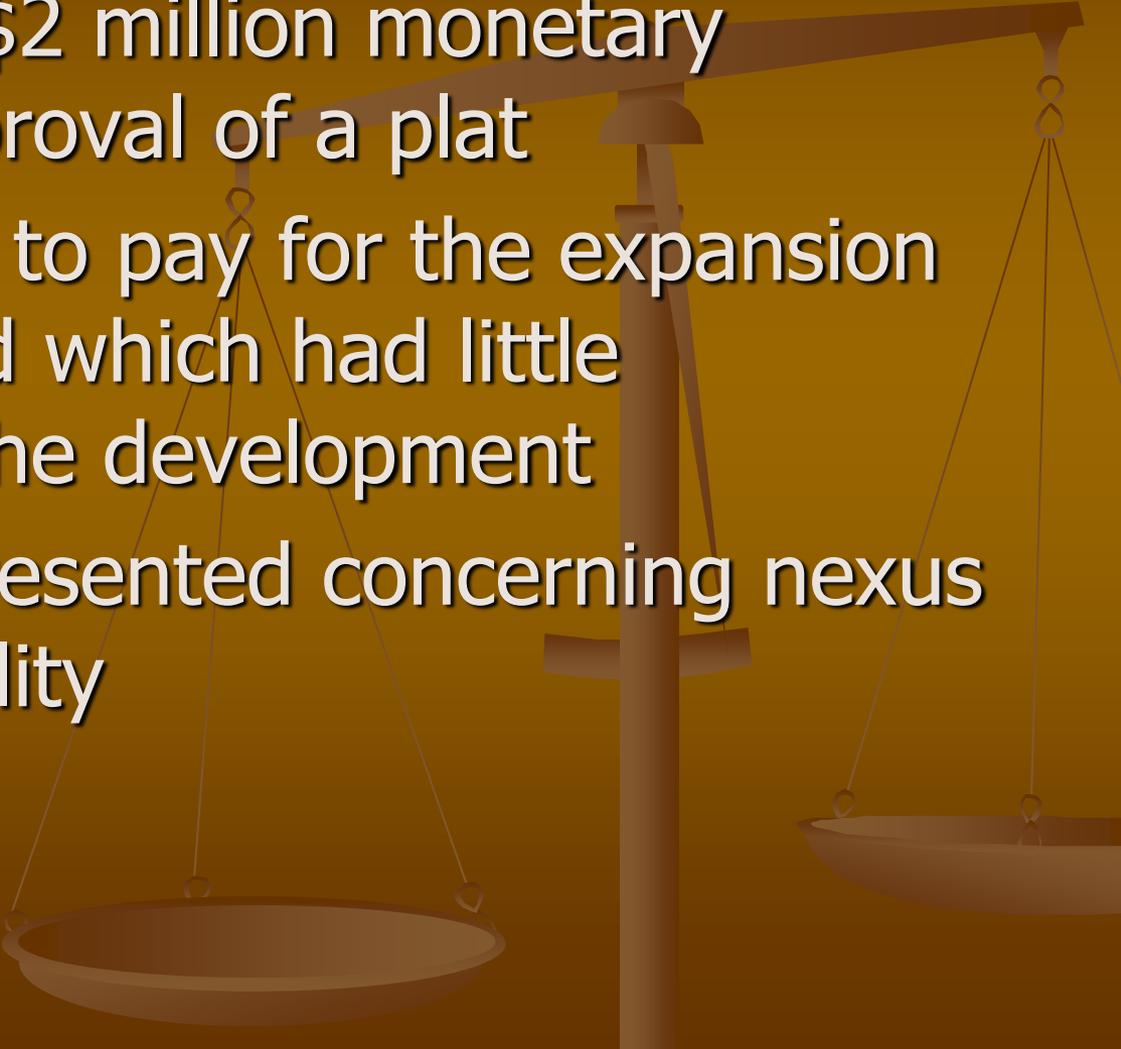


- Complaint also alleged violations of the applicant's due process and equal protection rights and that the failure to grant a zoning change rendered the county liable for inverse condemnation/regulatory taking of the property
- The trial court ruled
 - the decision of the local legislative body was arbitrary and capricious,
 - the plaintiffs due process rights were violated,
 - there was no regulatory taking,

Cunningham Cont'd

- – no violation of the sunshine law and
 - the members of the local legislative body were acting within the scope of their authority in carrying out their duties
 - Court of Appeals ultimately concludes that the trial court was incorrect in finding any violation of the law whatsoever
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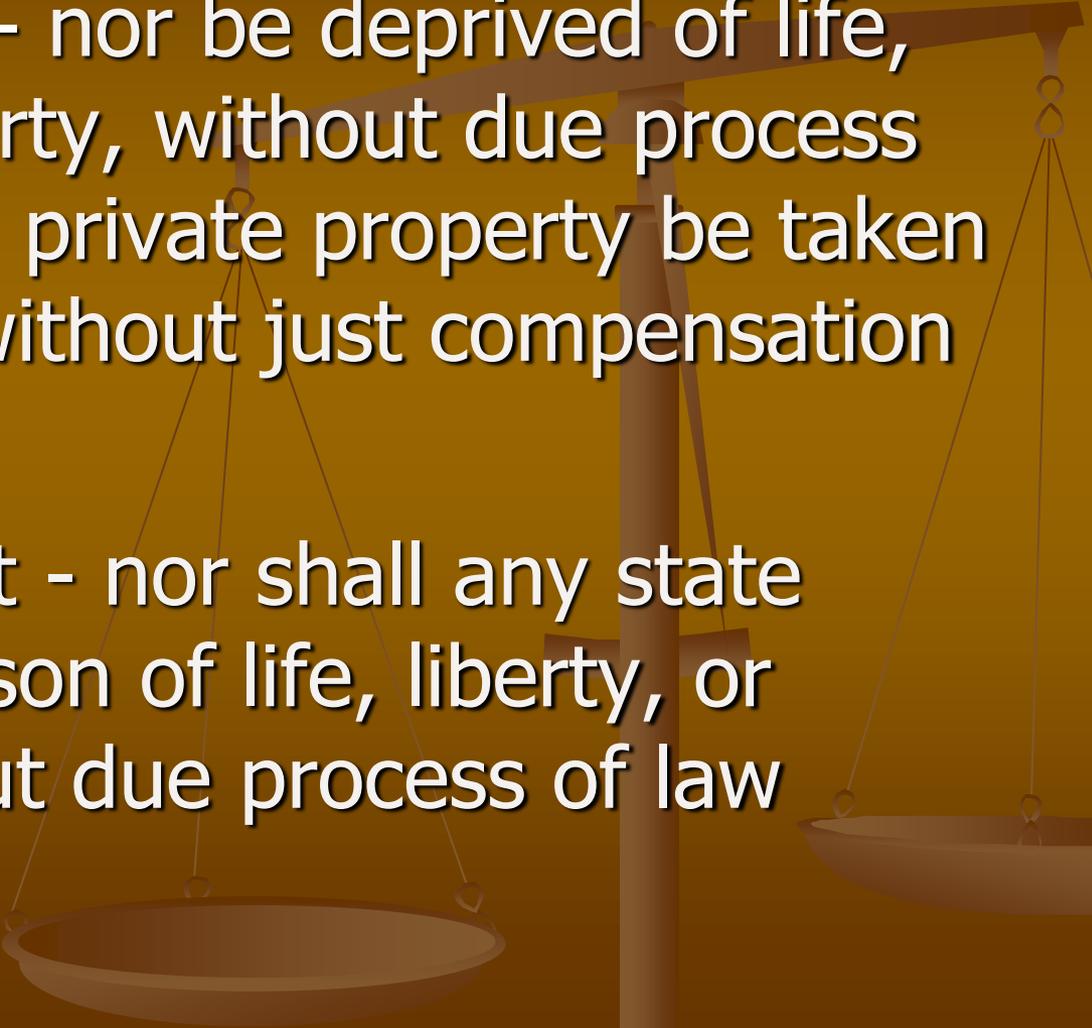
Drees v City of Brentwood

- City required a \$2 million monetary exaction for approval of a plat
 - The money was to pay for the expansion of a nearby road which had little relationship to the development
 - No proof was presented concerning nexus and proportionality
 - City lost
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A Look at Takings Law



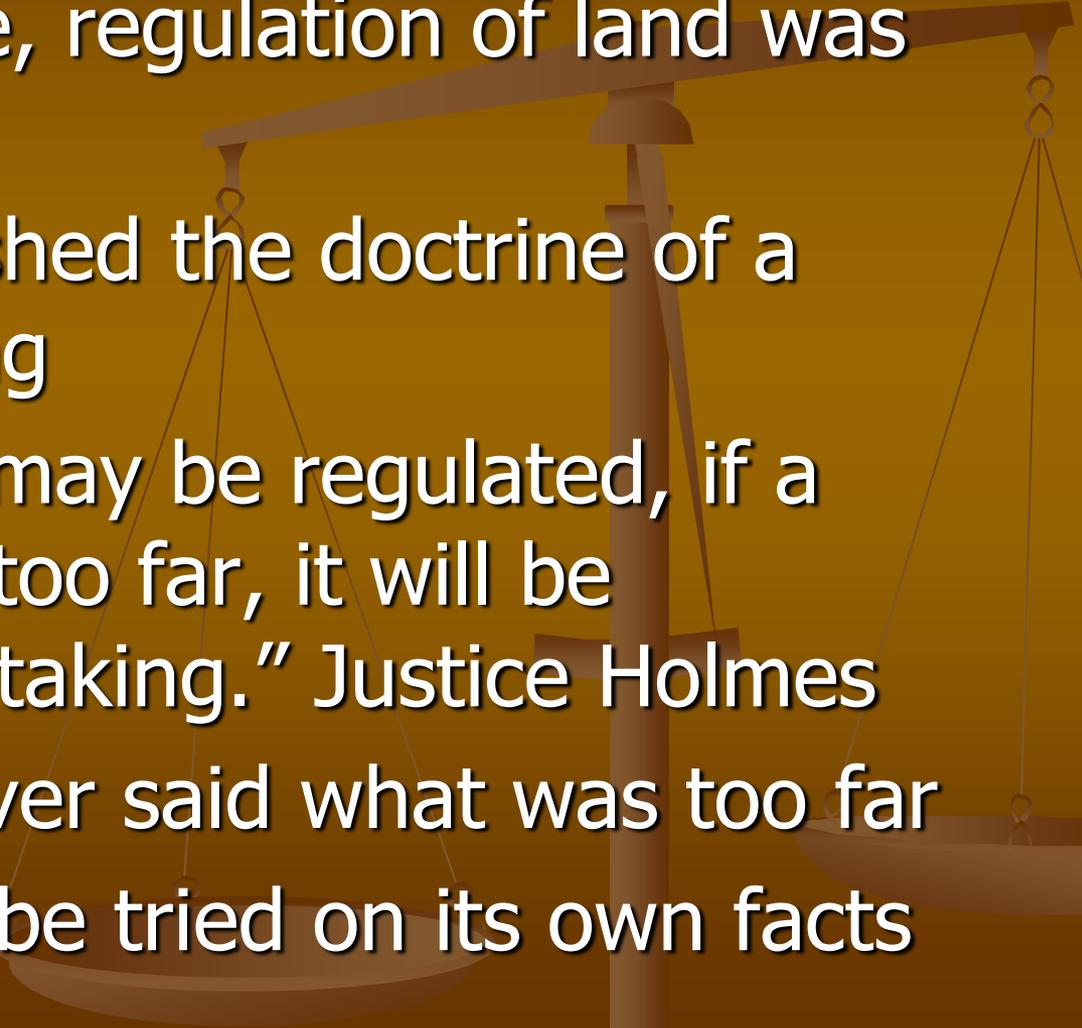
Constitutional



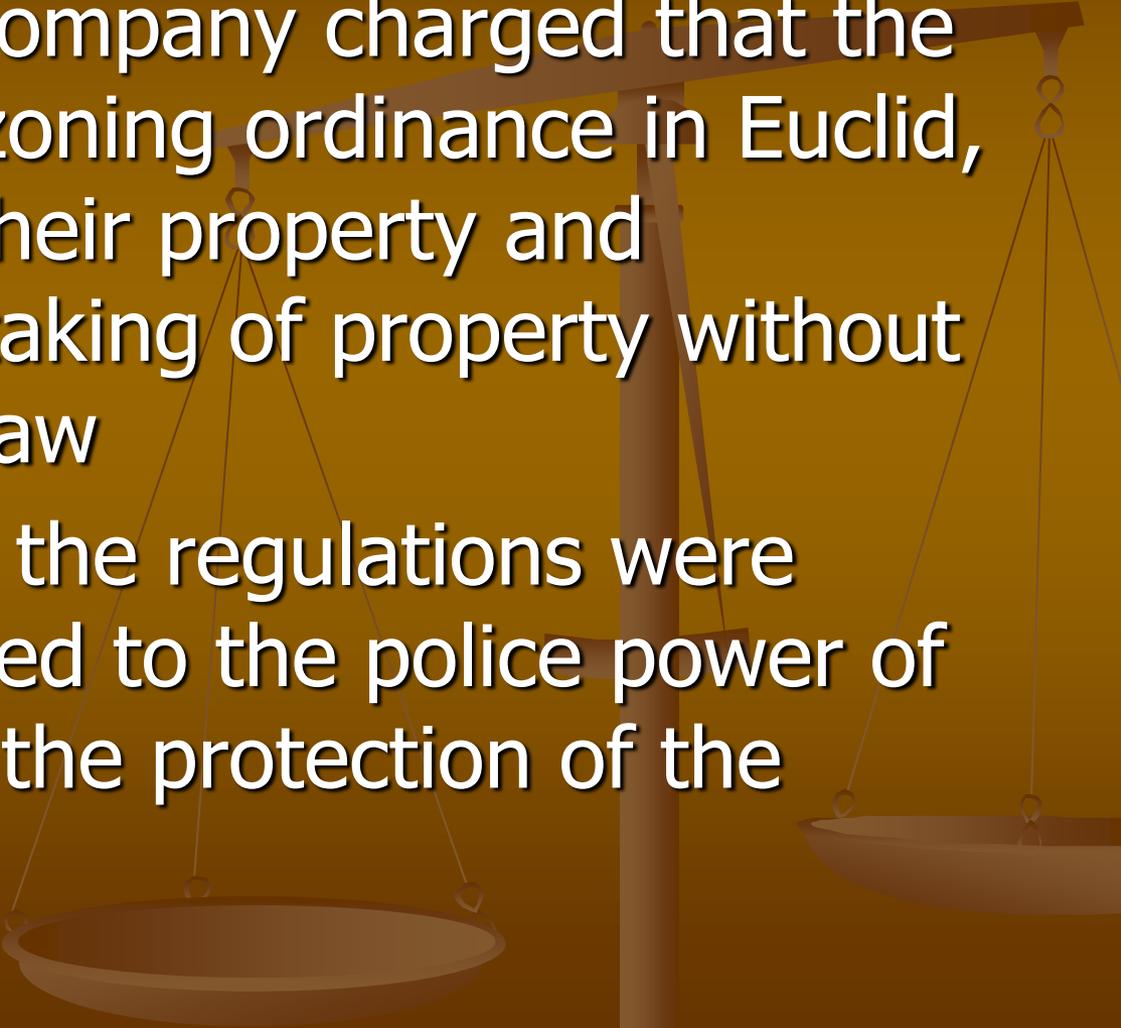
- 5th Amendment - nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation
- 14th Amendment - nor shall any state deprive any person of life, liberty, or property, without due process of law

Pennsylvania Coal v. Mahon

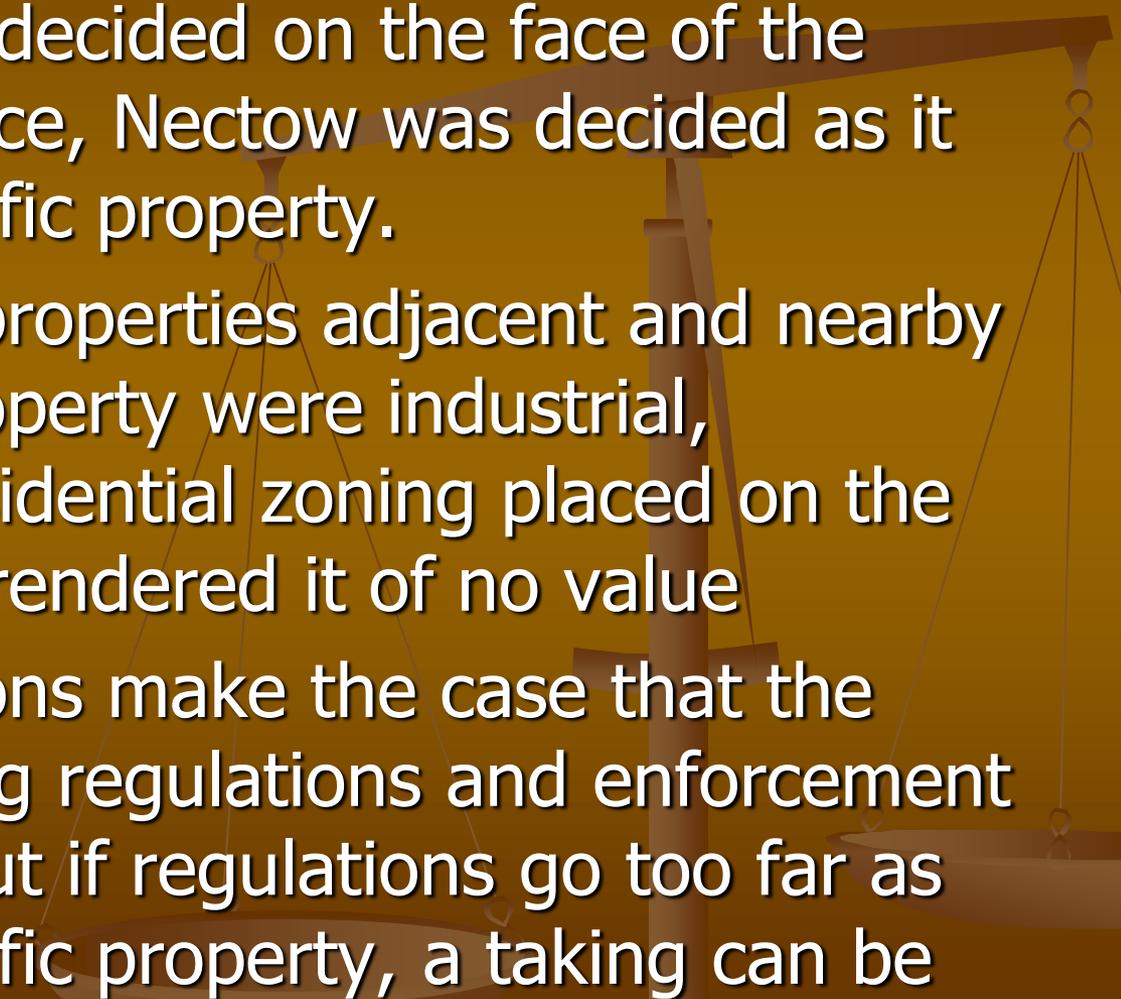
1922

- Prior to this case, regulation of land was not a taking
 - Decision established the doctrine of a regulatory taking
 - “while property may be regulated, if a regulation goes too far, it will be recognized as a taking.” Justice Holmes
 - However, he never said what was too far
 - Each case must be tried on its own facts
- 

Euclid v. Ambler 1926

- Ambler Realty Company charged that the newly adopted zoning ordinance in Euclid, Ohio devalued their property and amounted to a taking of property without due process of law
 - Court ruled that the regulations were reasonably related to the police power of government for the protection of the public welfare
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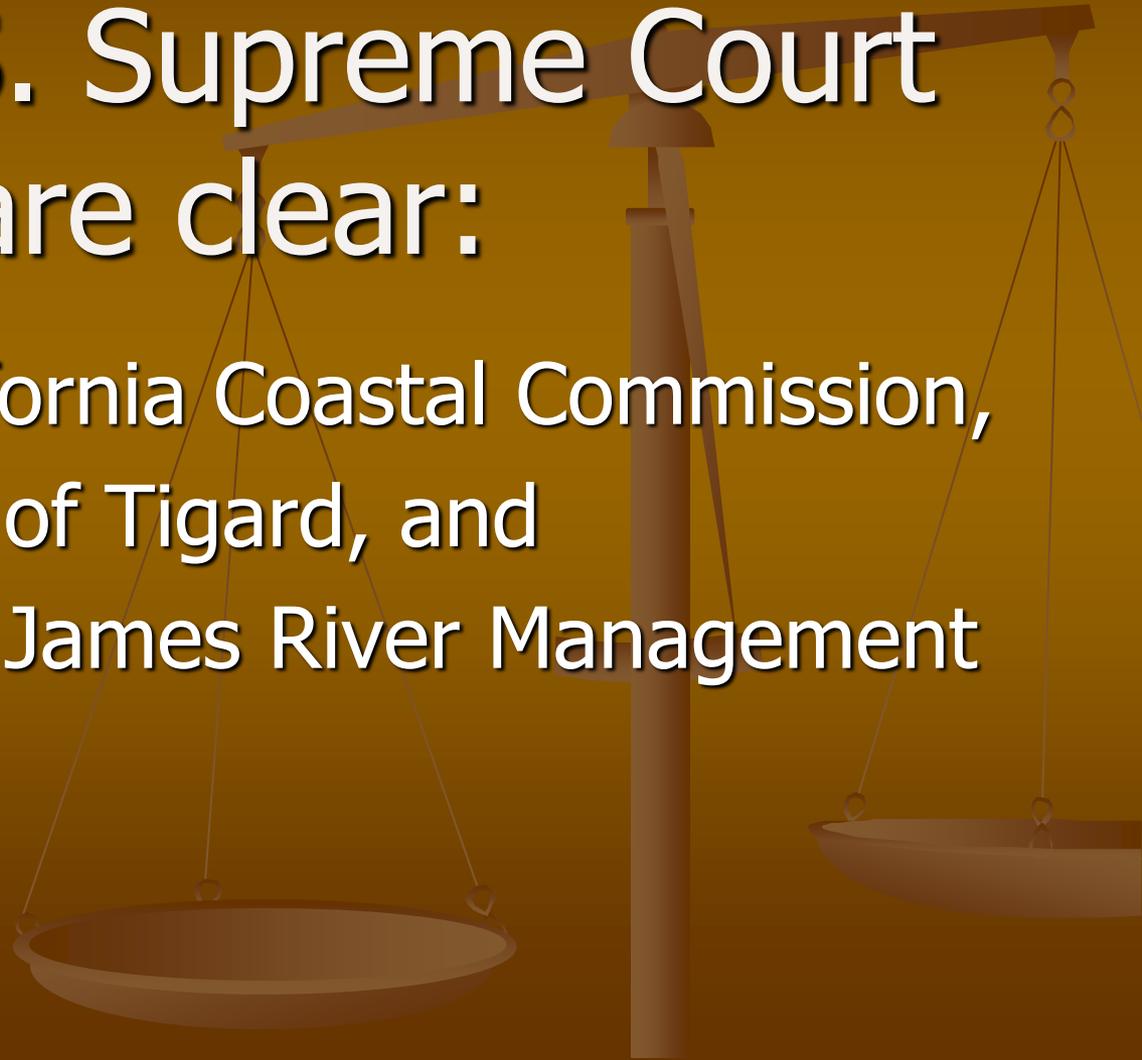
Nectow v. City of Cambridge 1928

- While Euclid was decided on the face of the complete ordinance, Nectow was decided as it applied to a specific property.
 - Facts that other properties adjacent and nearby to the subject property were industrial, therefore, the residential zoning placed on the subject property rendered it of no value
 - These two decisions make the case that the adoption of zoning regulations and enforcement is not a taking, but if regulations go too far as applied to a specific property, a taking can be found.
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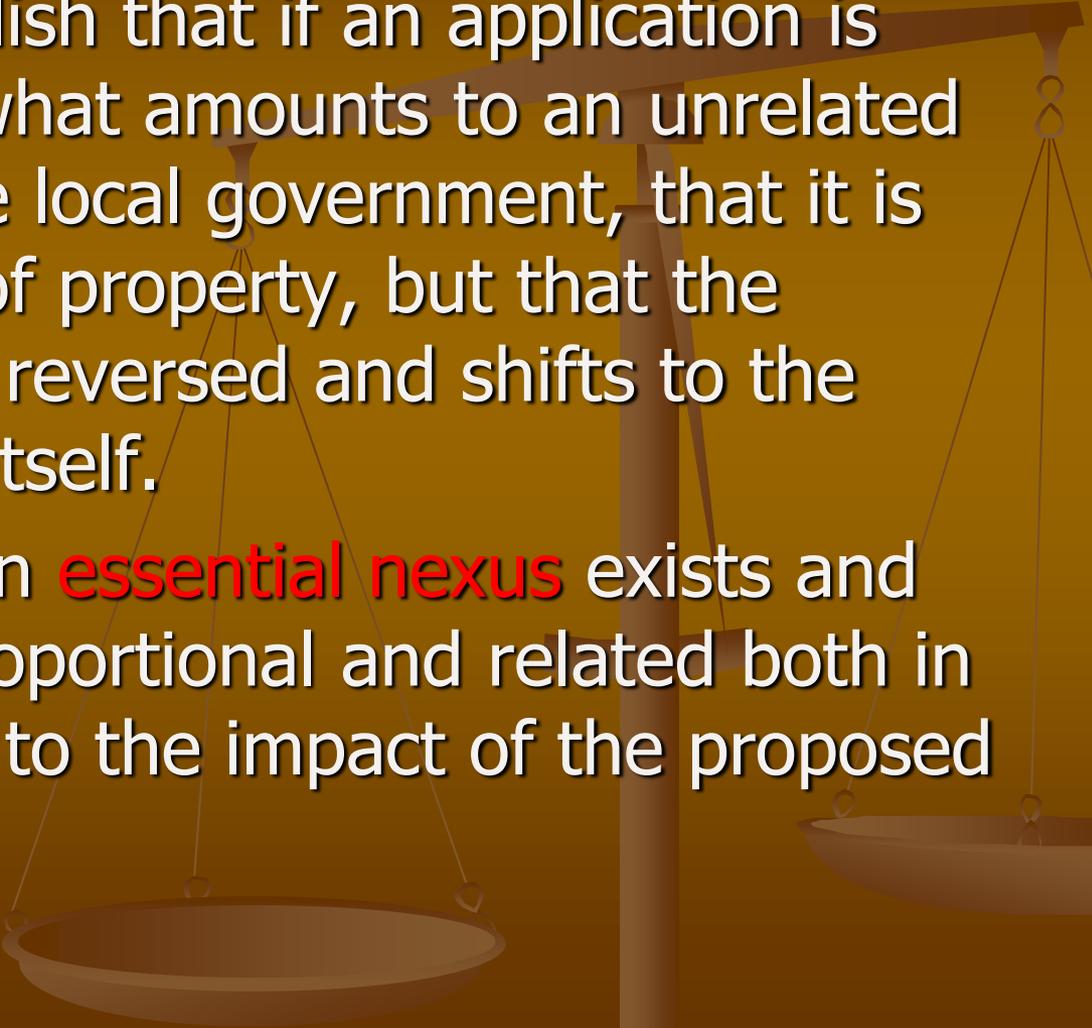
Exactions

- Three U. S. Supreme Court decisions are clear:

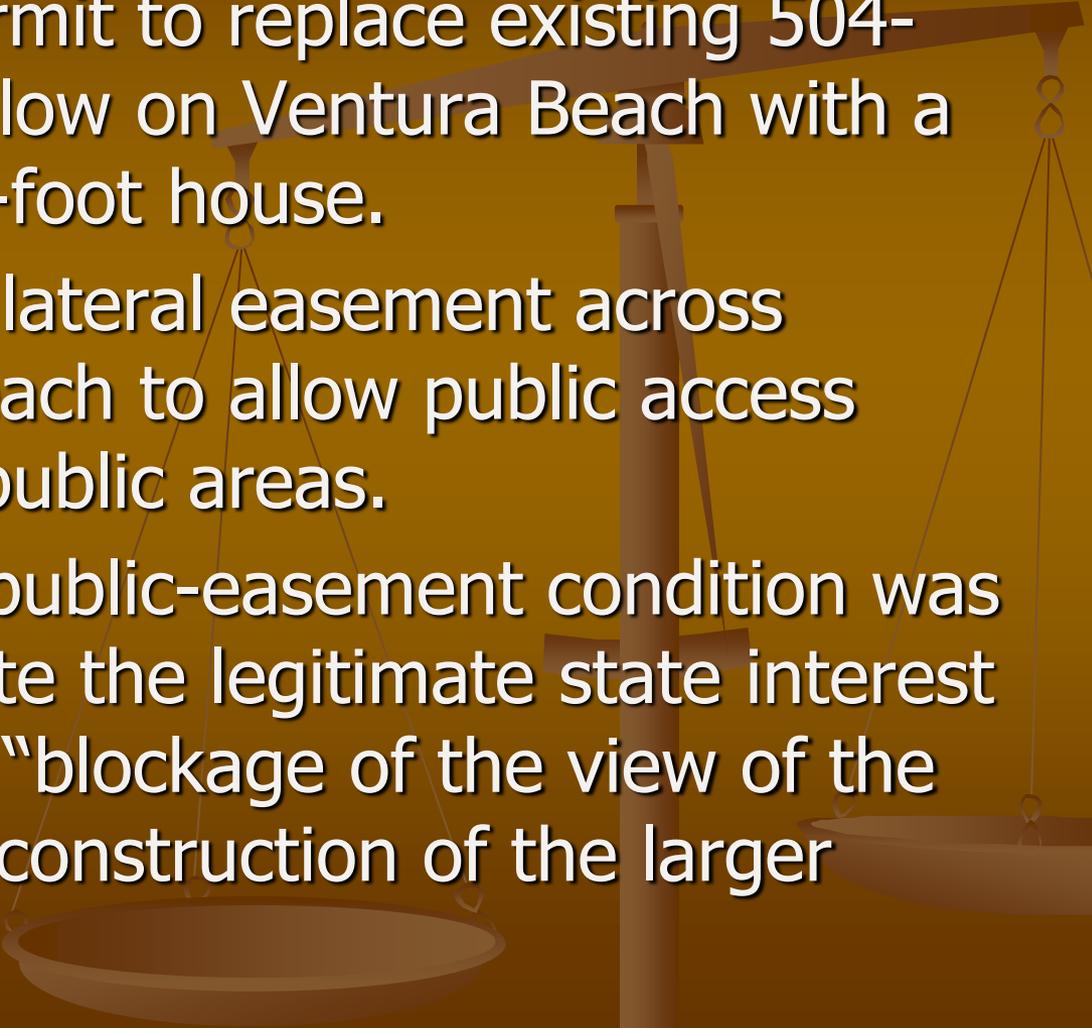
Nolan v California Coastal Commission,
Dolan v City of Tigard, and
Koontz v St. James River Management
Utility



3 Supreme Court Decisions

- They clearly establish that if an application is denied based on what amounts to an unrelated requirement of the local government, that it is not only a taking of property, but that the burden of proof is reversed and shifts to the local government itself.
 - Must then prove an **essential nexus** exists and the condition is proportional and related both in nature and extent to the impact of the proposed development.
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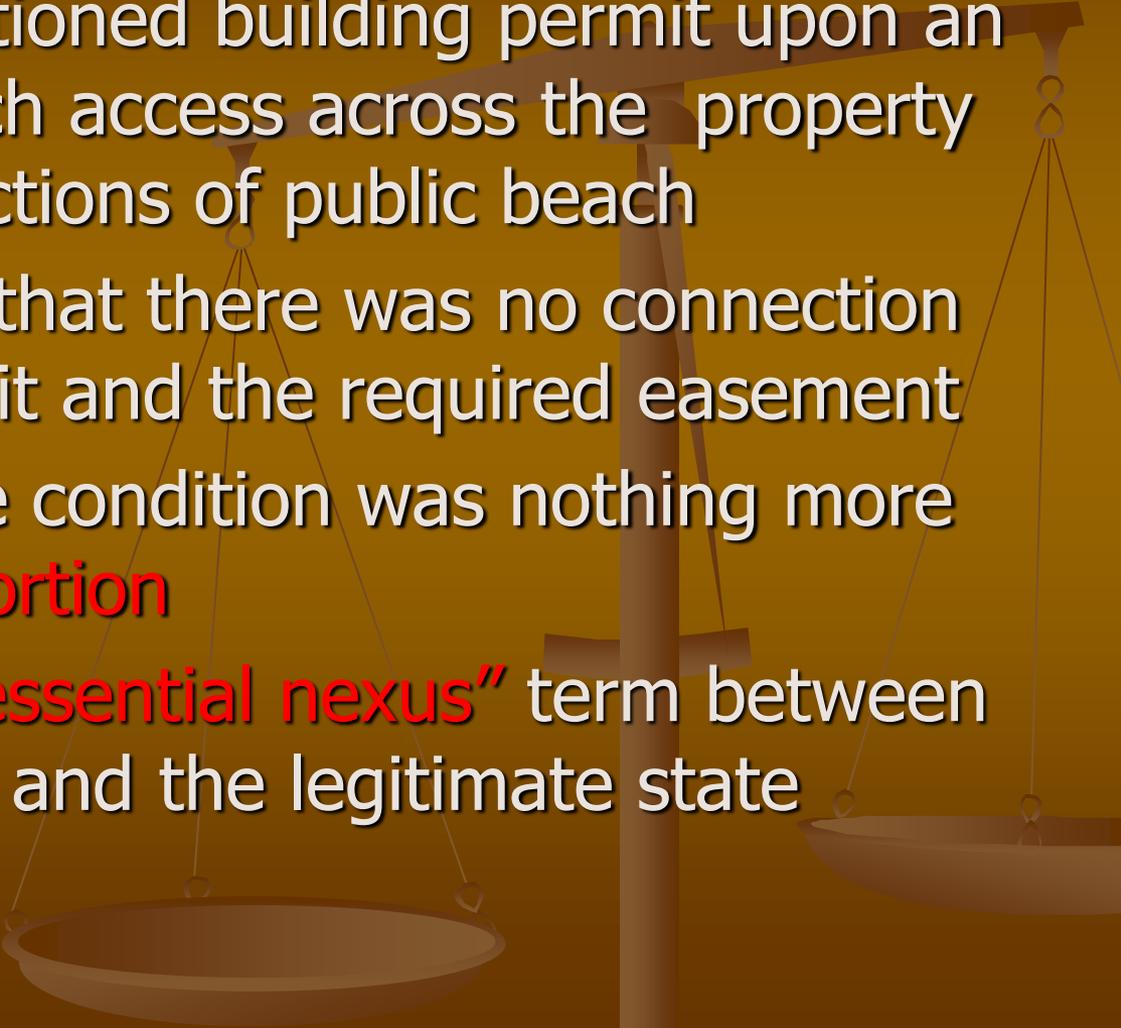
Nollan V. California Coastal Commission (1987)

- Nollans sought permit to replace existing 504-square-foot bungalow on Ventura Beach with a new 2,500-square-foot house.
 - Approval required lateral easement across Nollans' private beach to allow public access between existing public areas.
 - CCC asserted the public-easement condition was imposed to promote the legitimate state interest of diminishing the "blockage of the view of the ocean" caused by construction of the larger house.
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Nollan V. California Coastal Commission (1987)



Nollan v California Coastal Commission

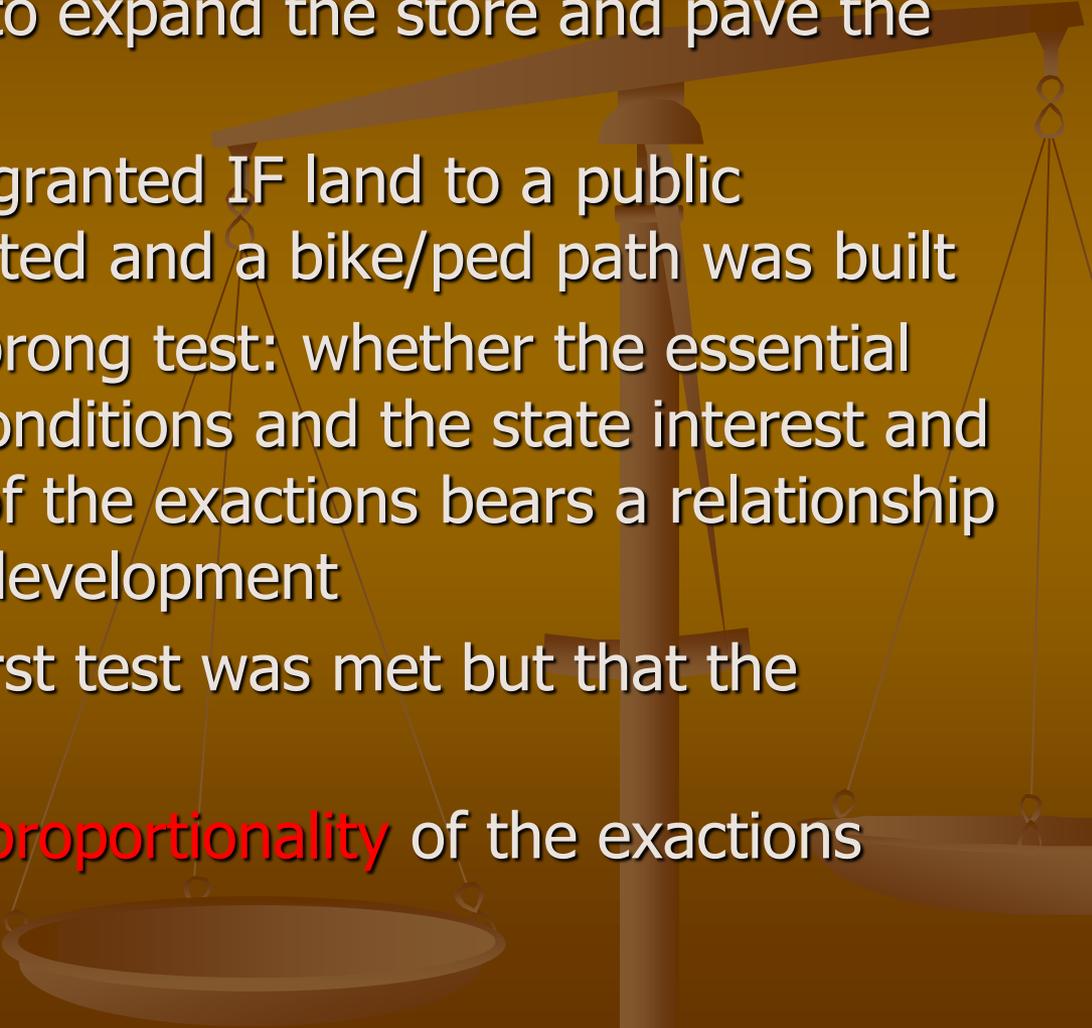
- Commission conditioned building permit upon an easement for beach access across the property to connect two sections of public beach
 - Court determined that there was no connection between the permit and the required easement
 - Court said that the condition was nothing more than a **plan of extortion**
 - Established the **“essential nexus”** term between a permit condition and the legitimate state interest
- 

Dolan V. City of Tigard (1994)

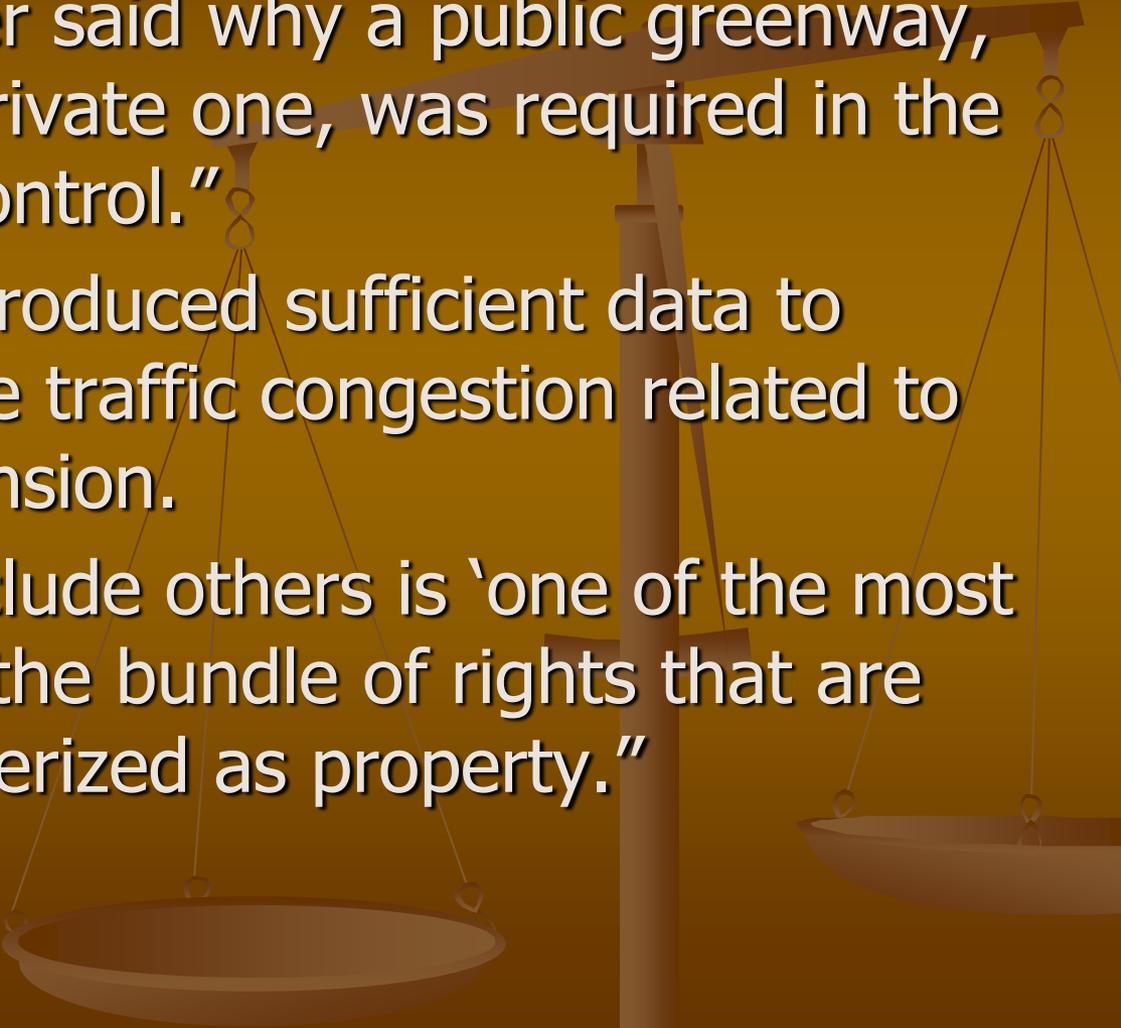
- Developer requested permit to expand store and pave gravel parking lot.
- City development code required:
 - Property to have minimum 15% open space & landscaping
 - Easement for public pedestrian/bicycle path in accordance with greenway plan
 - Dedication of land in 100-year floodplain for storm drainage improvements



Dolan v City of Tigard

- Store owner wanted to expand the store and pave the parking lot
 - Conditional approval granted IF land to a public greenway was dedicated and a bike/ped path was built
 - Court applied a two-prong test: whether the essential nexus between the conditions and the state interest and whether the degree of the exactions bears a relationship to the impact of the development
 - Court held that the first test was met but that the second failed
 - There was **no rough proportionality** of the exactions
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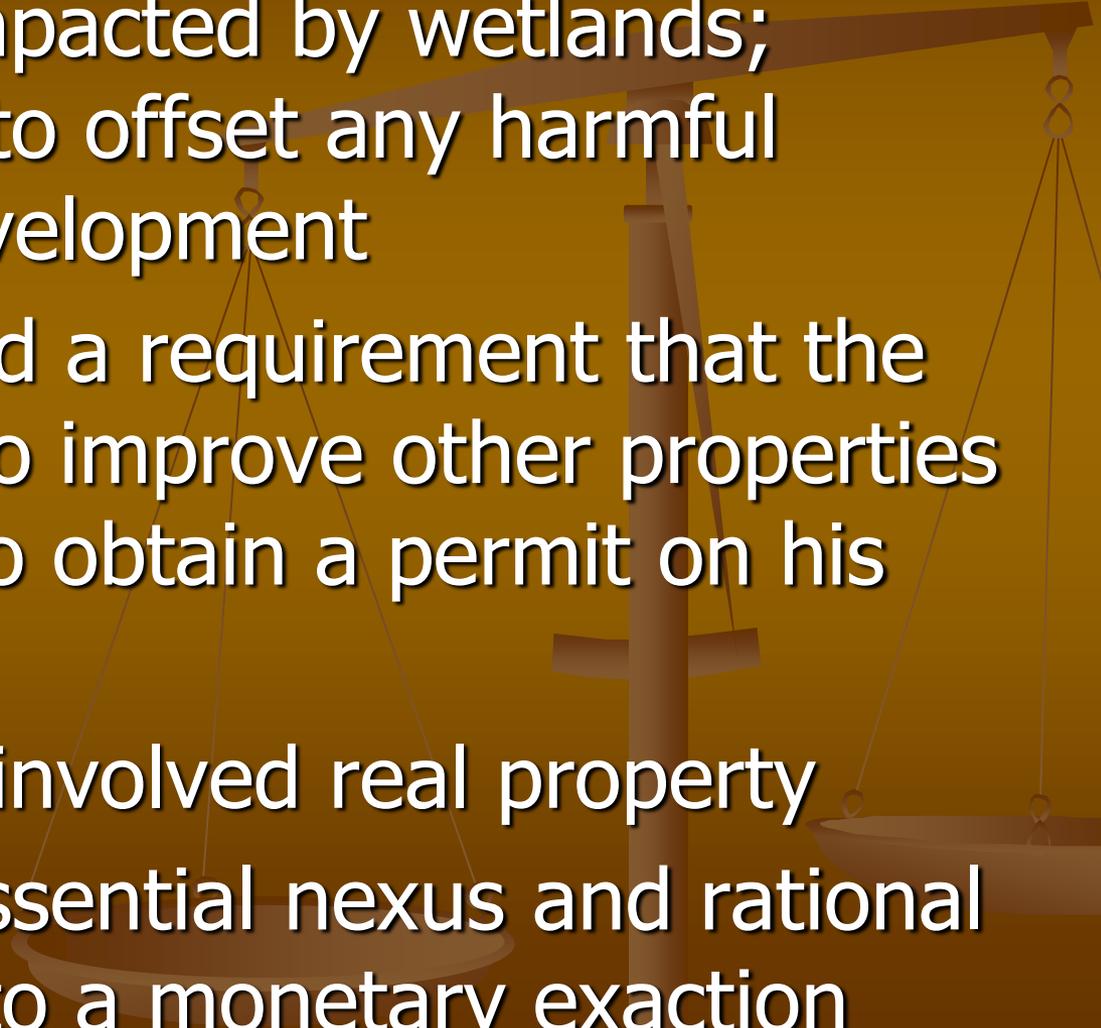
Dolan V. City of Tigard (1994)

- “The city has never said why a public greenway, as opposed to a private one, was required in the interest of flood control.”
 - The city had not produced sufficient data to show it would ease traffic congestion related to the business expansion.
 - “[The] right to exclude others is ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’”
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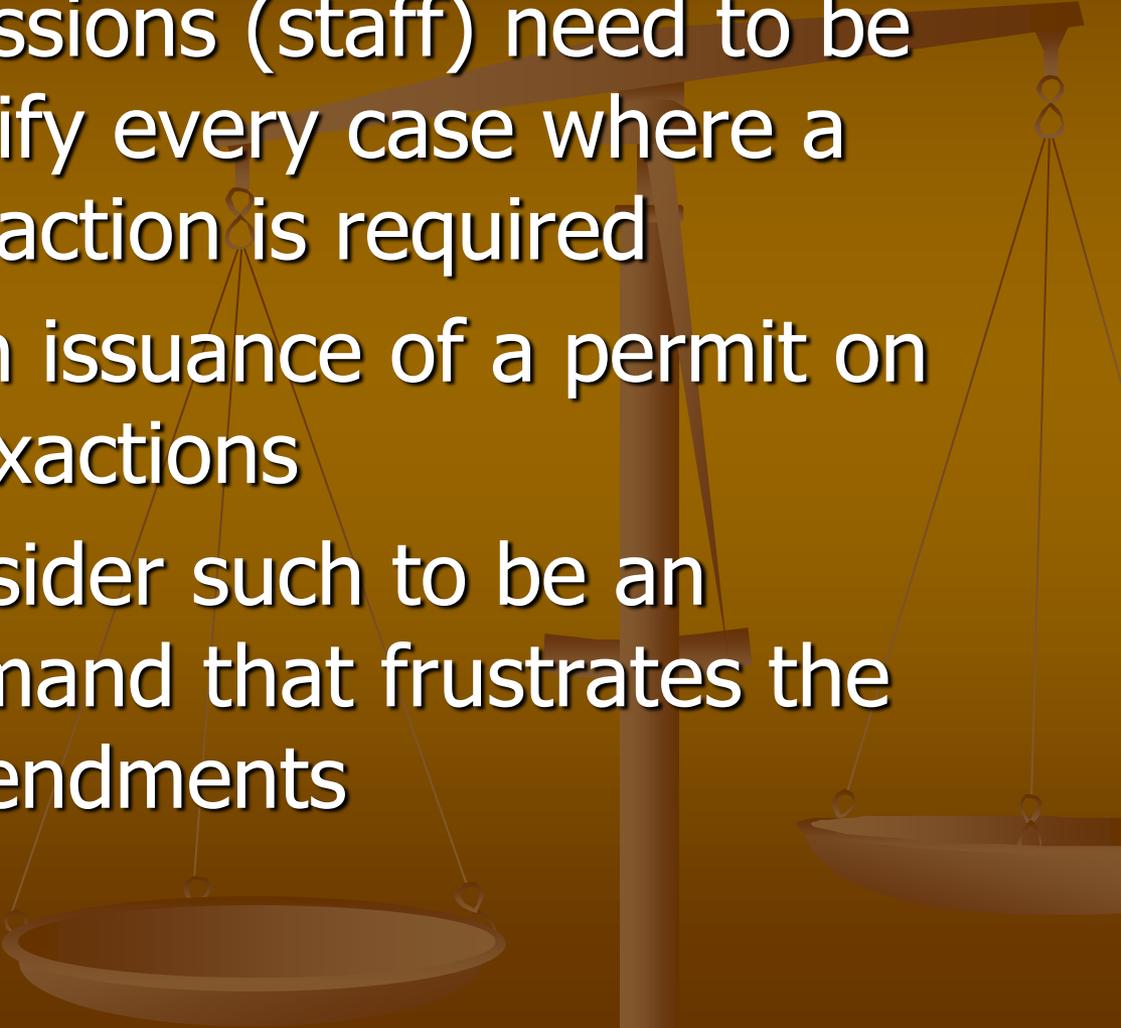
Dolan V. City of Tigard (1994)



Koontz v St. John's River Water Management District

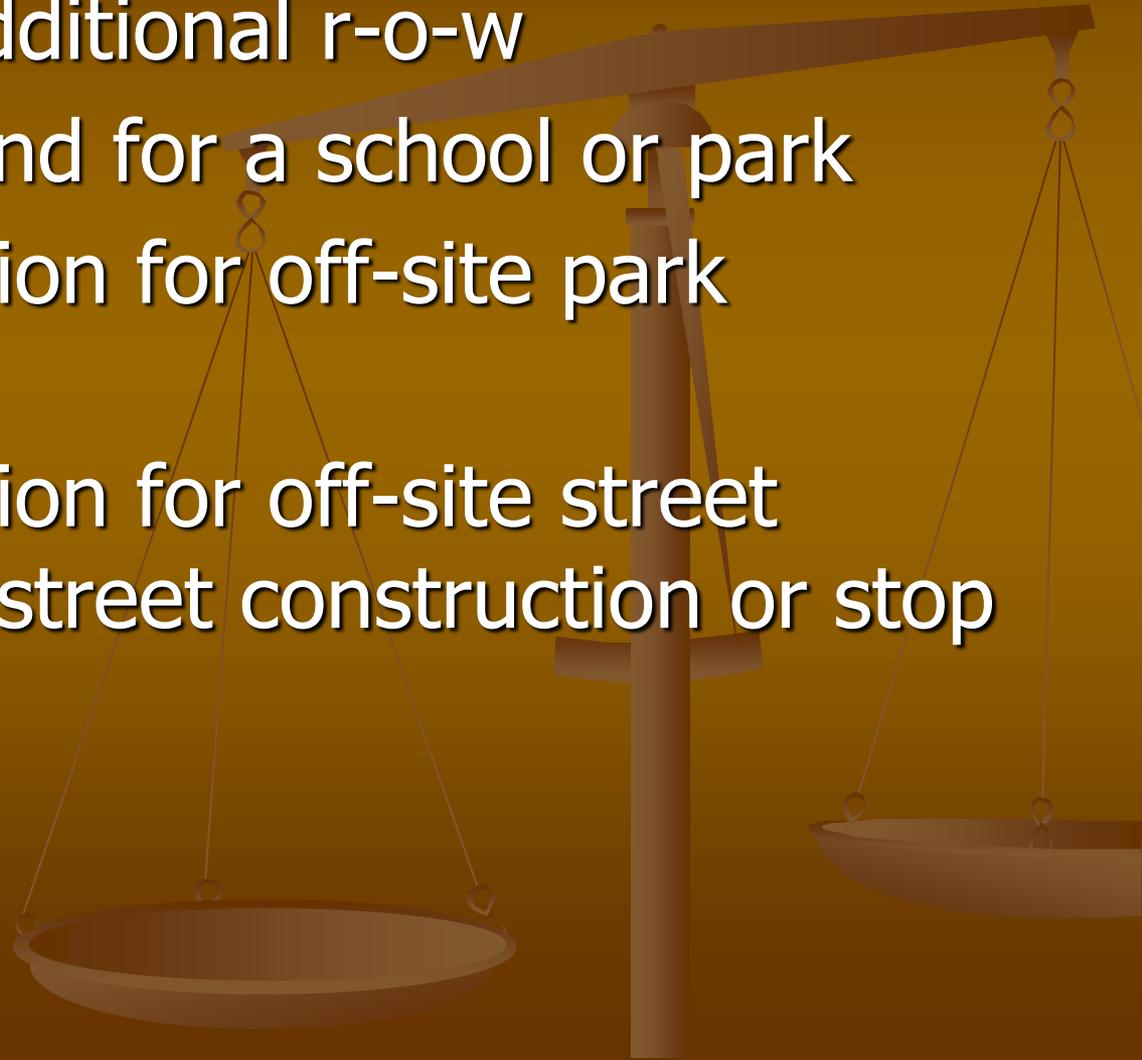
- Property was impacted by wetlands; district wanted to offset any harmful effects from development
 - Court invalidated a requirement that the developer pay to improve other properties as a condition to obtain a permit on his property
 - Nollan & Dolan involved real property
 - Court applied essential nexus and rational proportionality to a monetary exaction
- 

Effect on Planning

- Planning commissions (staff) need to be prepared to justify every case where a dedication or exaction is required
 - Do not condition issuance of a permit on dedications or exactions
 - Court could consider such to be an extortionate demand that frustrates the 5th and 14th Amendments
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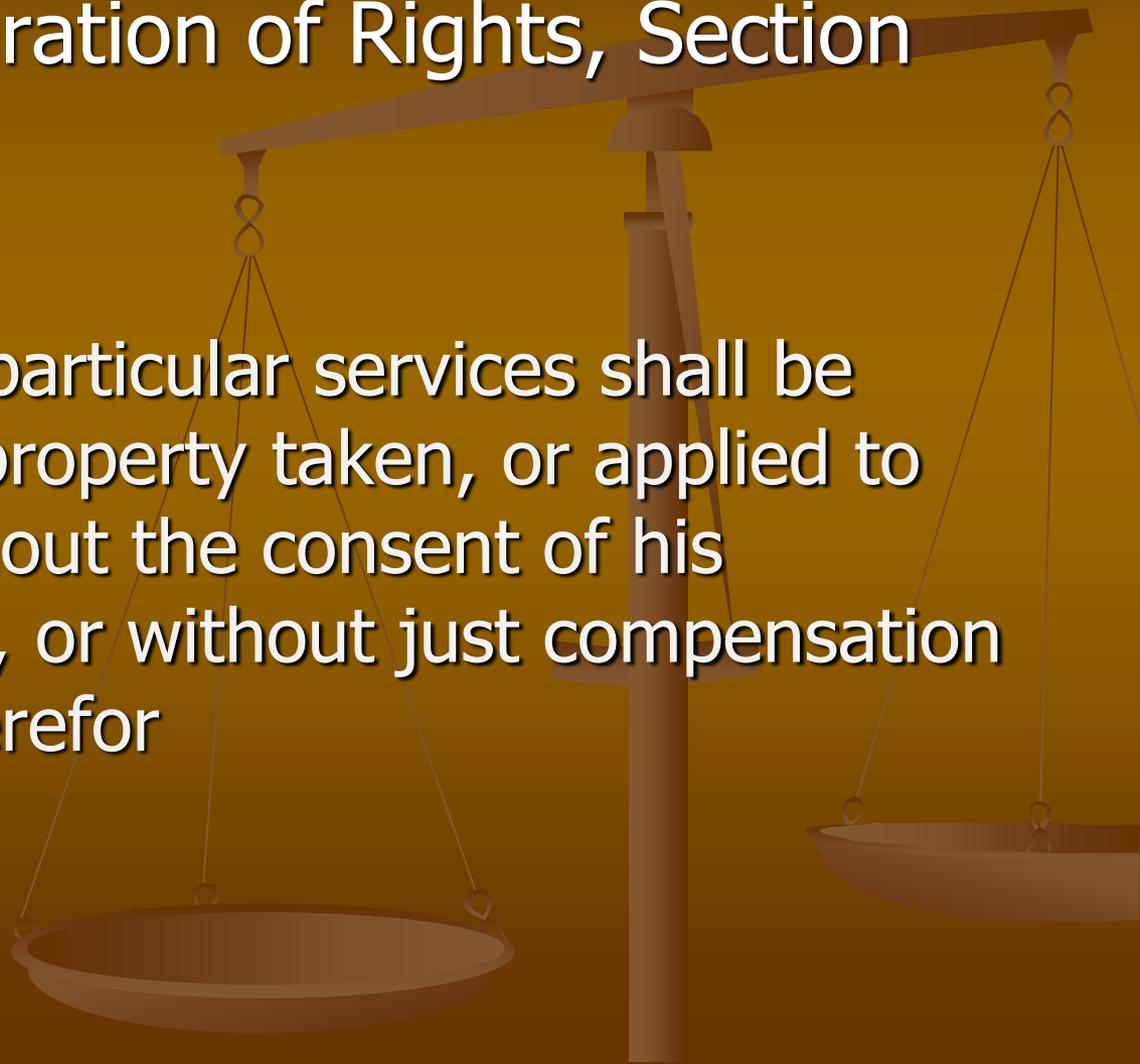
Examples

- Dedication of additional r-o-w
- Dedication of land for a school or park
- Monetary donation for off-site park improvements
- Monetary donation for off-site street improvements (street construction or stop lights)

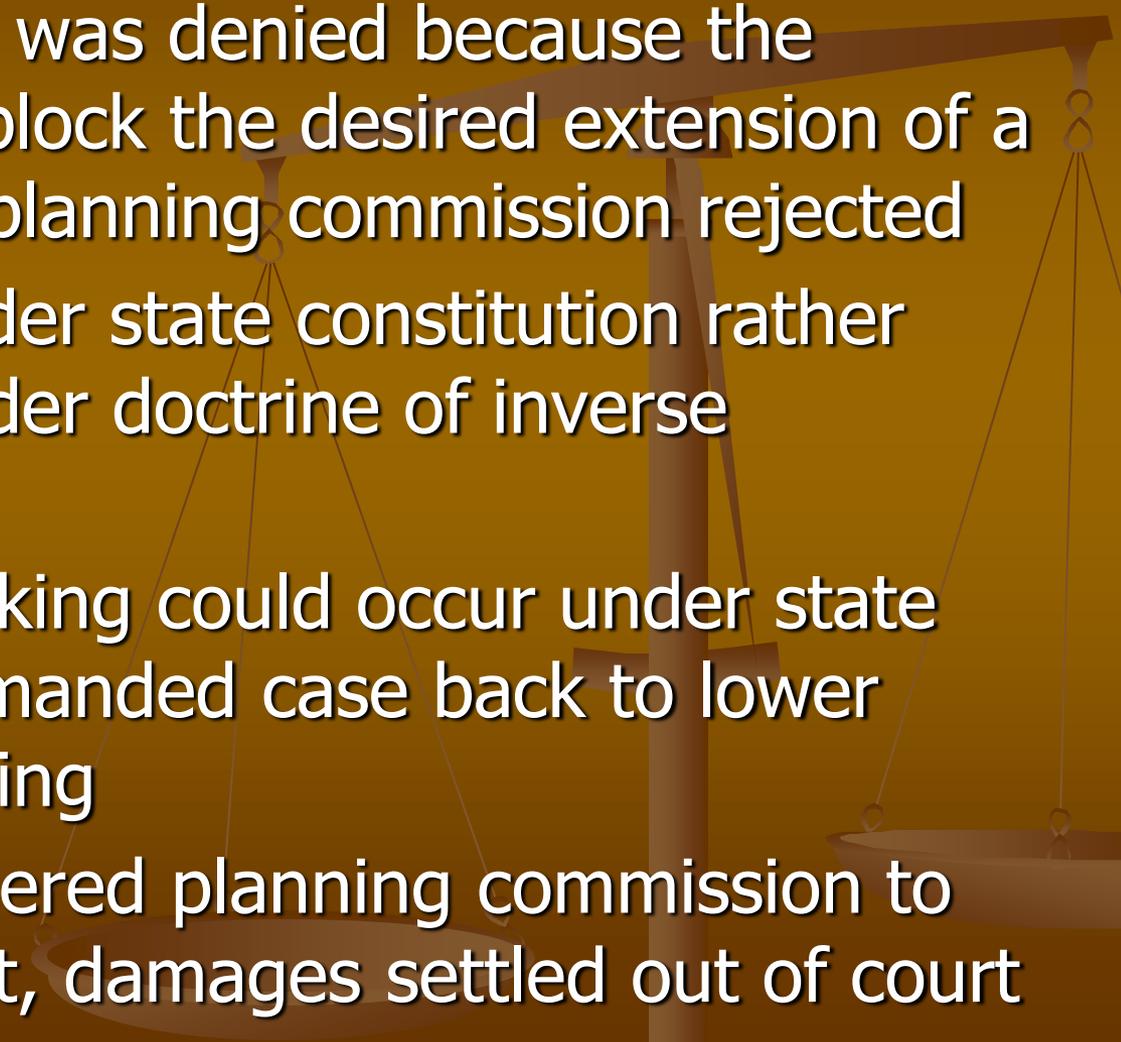


State Constitution

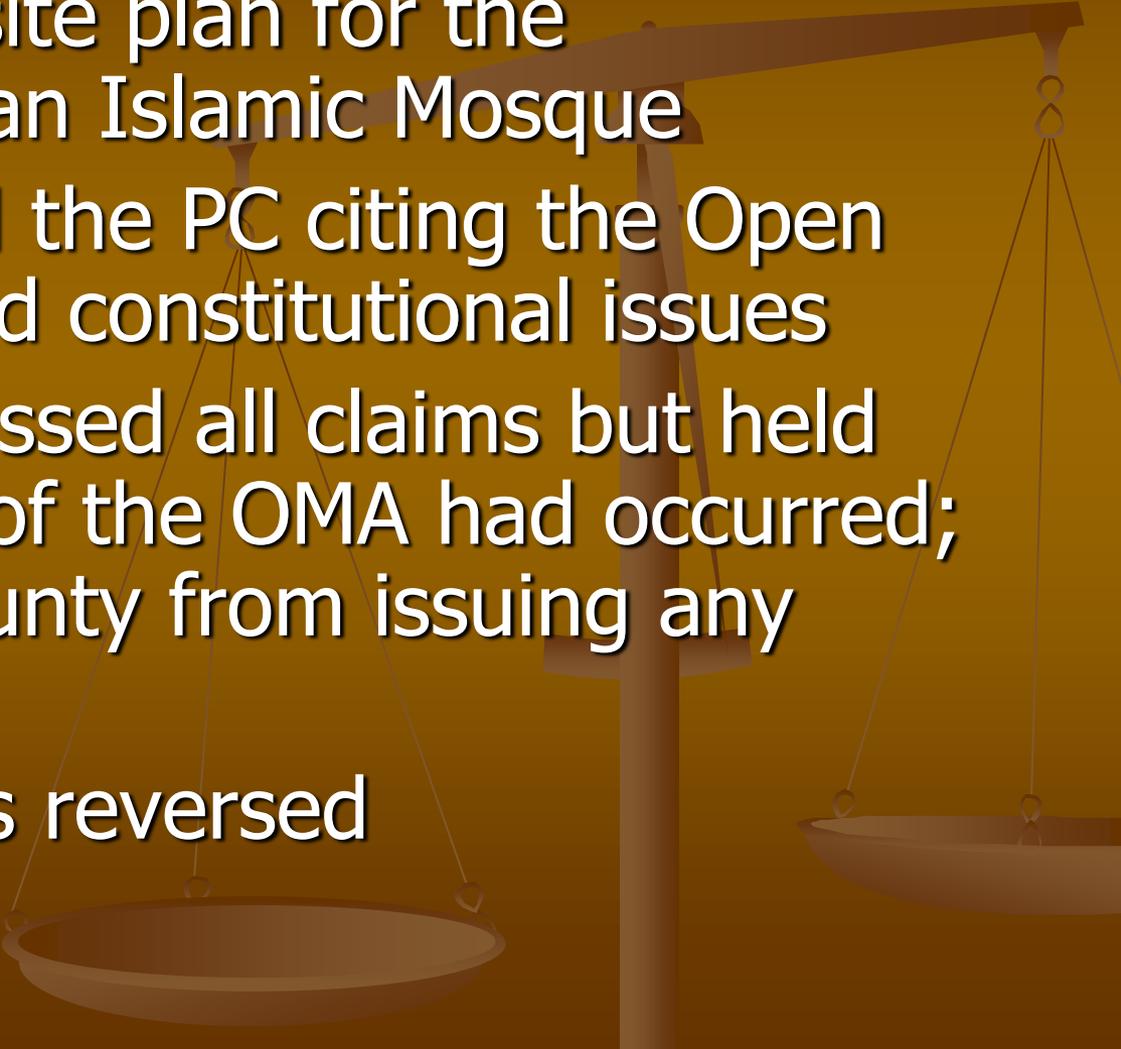
- Article I – Declaration of Rights, Section 21
 - That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor



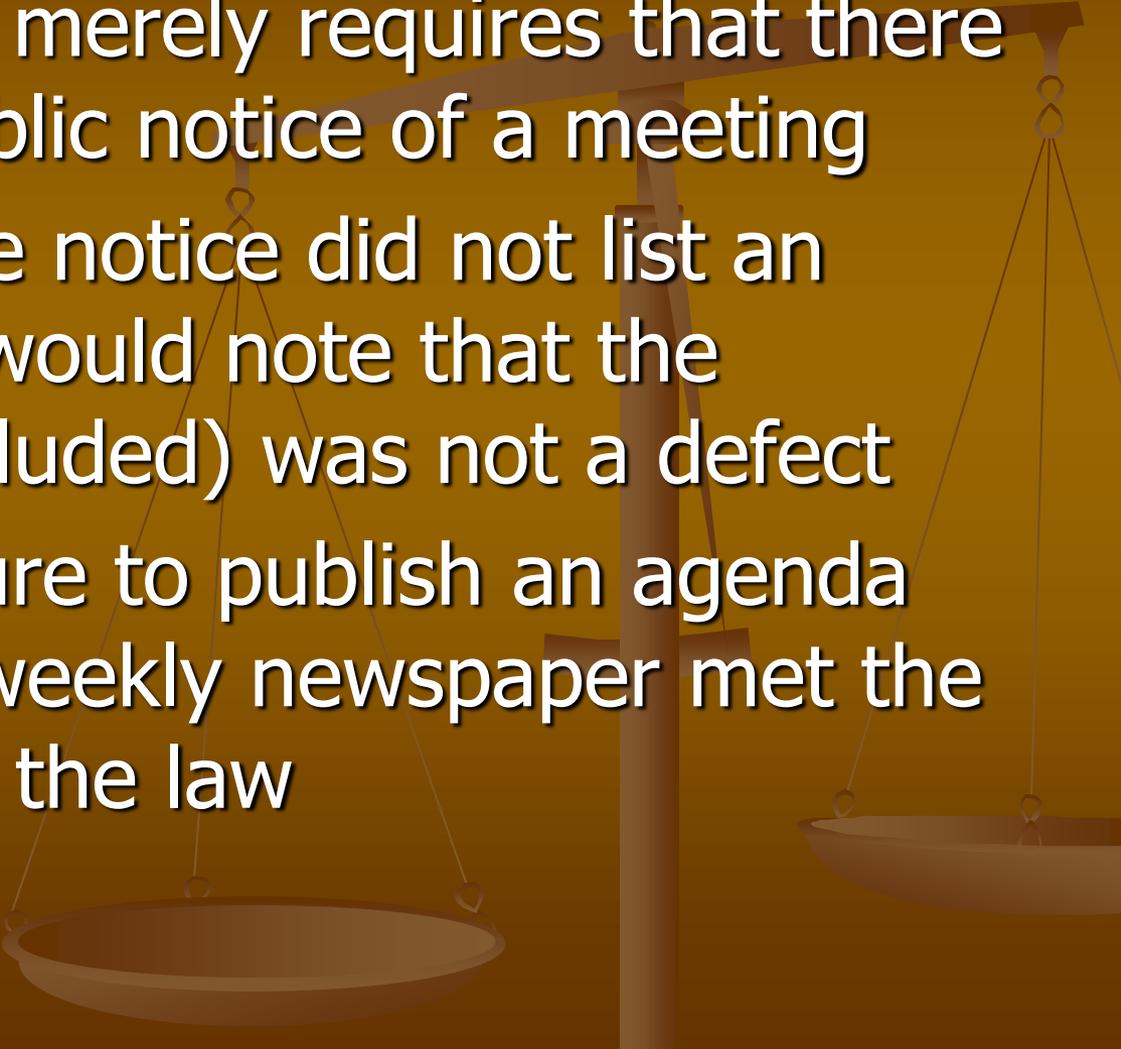
Phillips v Montgomery County

- Subdivision plat was denied because the location would block the desired extension of a state highway, planning commission rejected
 - Owner sued under state constitution rather than federal under doctrine of inverse condemnation
 - Court ruled a taking could occur under state constitution, remanded case back to lower court for rehearing
 - Lower court ordered planning commission to approve the plat, damages settled out of court
- 

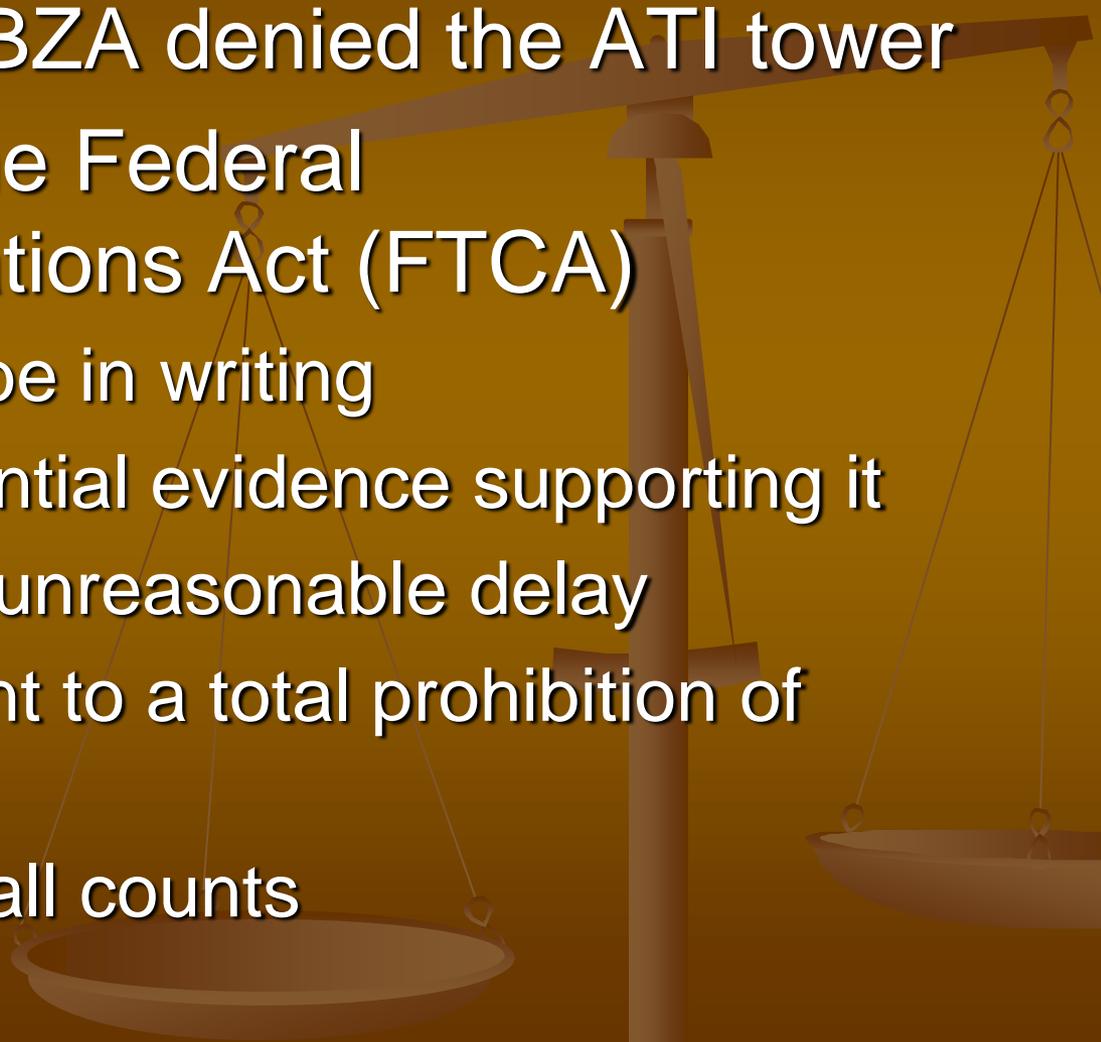
Fisher v Rutherford County Regional Planning Commission

- PC approved a site plan for the construction of an Islamic Mosque
 - Opponents sued the PC citing the Open Meetings Act and constitutional issues
 - Trial court dismissed all claims but held that a violation of the OMA had occurred; enjoined the county from issuing any further permits
 - Court of Appeals reversed
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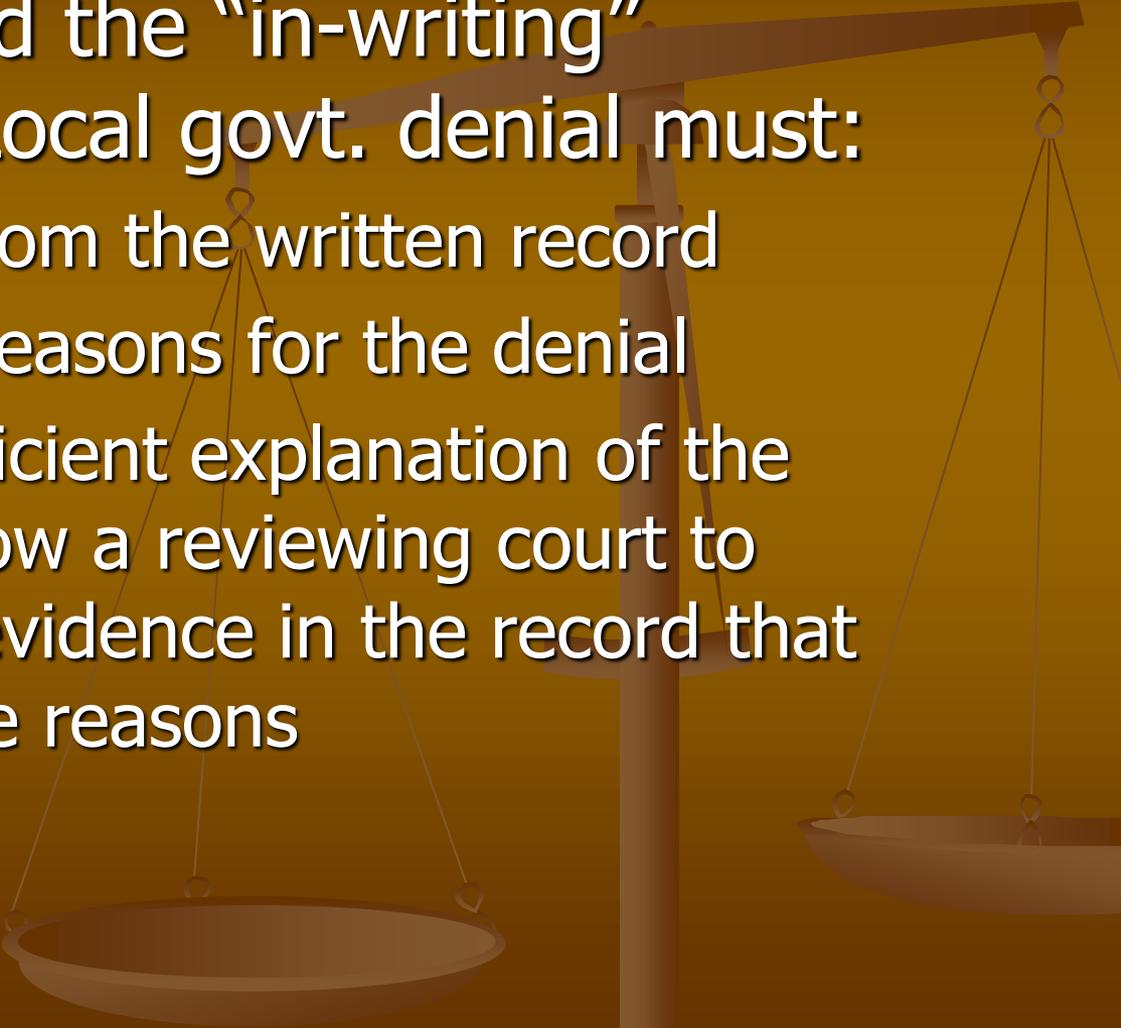
Fisher cont'd

- TCA § 8-44-101 merely requires that there be adequate public notice of a meeting
 - The fact that the notice did not list an agenda (which would note that the mosque was included) was not a defect
 - Conclusion: failure to publish an agenda and the use of weekly newspaper met the requirements of the law
- 

American Towers Inc. v Wilson County

- Wilson County BZA denied the ATI tower
 - Court applied the Federal Telecommunications Act (FTCA)
 - Decision must be in writing
 - Must be substantial evidence supporting it
 - Cannot be any unreasonable delay
 - Must not amount to a total prohibition of service
 - County lost on all counts
- 

ATI cont'd

- Court explained the “in-writing” requirement. Local govt. denial must:
 - Be separate from the written record
 - Describe the reasons for the denial
 - Contain a sufficient explanation of the reasons to allow a reviewing court to evaluate the evidence in the record that supports those reasons
- 

Reed v Town of Gilbert

- Affects most sign regulations in the country
- Focuses on 3 types of signs
 - Political signs
 - Ideological signs
 - Temporary directional signs
- Each type was regulated differently
- Court said this was content-based
- A real no no



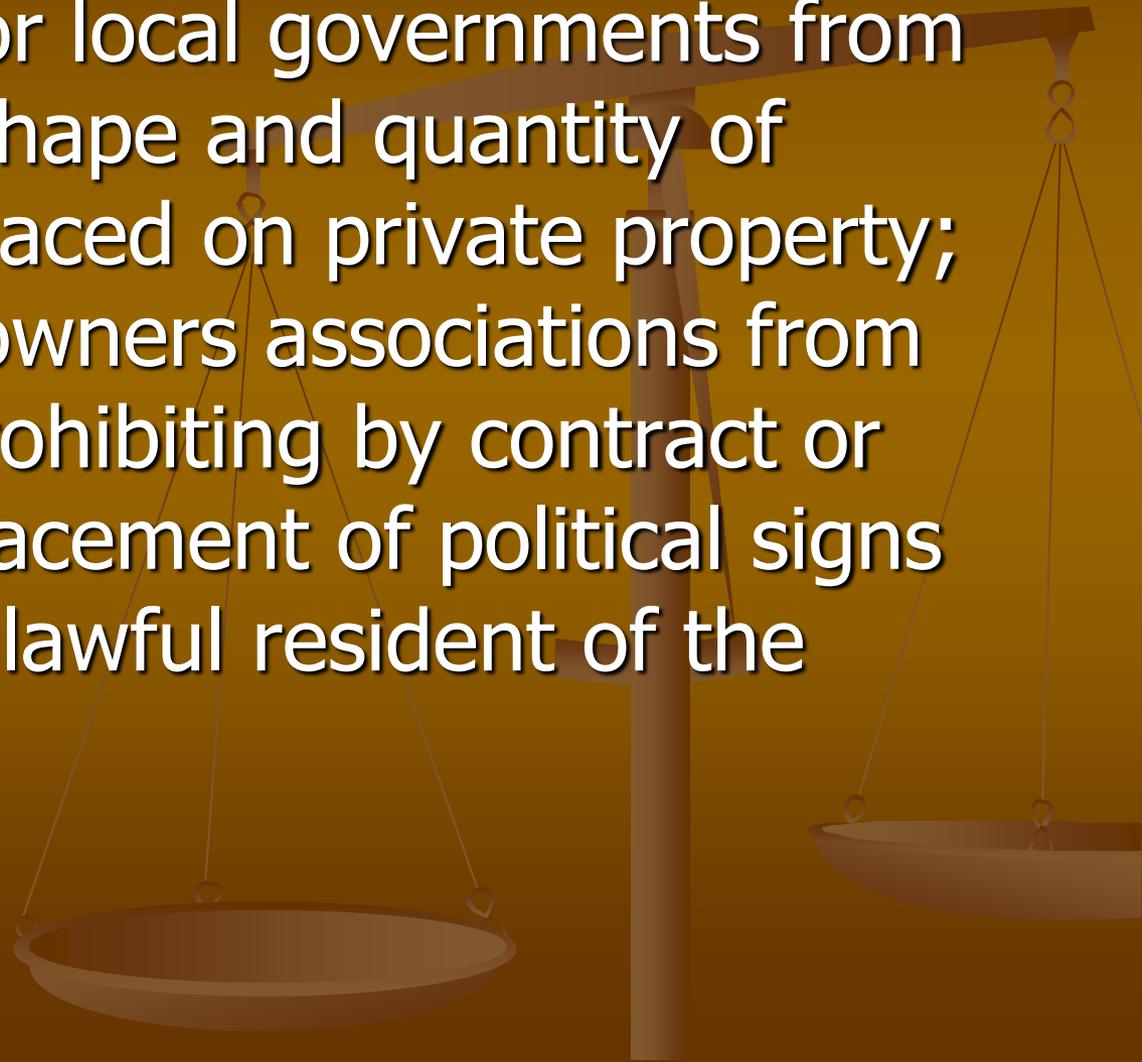
Valid Regulations after Reed

- Size
- Location
- Lighted or unlighted
- Static display or electronic
- Public or private property
- Commercial or residential
- Basic time, place & manner regulations



Public Chapter 294

- **Prohibits** state or local governments from regulating the shape and quantity of political signs placed on private property; **prohibits** homeowners associations from prospectively prohibiting by contract or covenant the placement of political signs by an owner or lawful resident of the association



B & B Enterprises v. City of Lebanon

- Denied for failure to comply with imposed conditions
- Must have a reason to reject based on failure to meet the published regulations
- Must record those reasons in the official minutes
- Must provide the official records to the court
- City lost

