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**Blogging on Land Use Law: Another Legal
Research Tool on the Internet**

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March 2008

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ZONING AND PLANNING LAW REPORT

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BLOGGING ON LAND USE LAW: ANOTHER LEGAL RESEARCH TOOL ON THE INTERNET

Patricia E. Salkin

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Introduction

In the December 2005 issue of Zoning and Planning Law Report, I published an article entitled, "Research Land Use Legal Issues on the Internet." That article was well received and many readers sent me e-mails indicating that they were setting up the sites identified as "favorites" on their Internet browsers. The next evolution in Internet-based land use law research is the blog. Having recently started my own land use blog (at <http://lawoftheland.albanylaw.edu>), I am amazed at the breadth of information available on these sites, the level of intellectual and practical discussion and advice that can be gleaned, and the chance to "test" your arguments and theories in cyberspace.

The term "blog" is derived from "web log," and it is basically a website where entries are made in journal style and displayed in a reverse chronological order.

Sometimes blogs about the law are referred to as "blawgs." Blog entries typically provide commentary on a particular subject. There are literally hundreds if not thousands of law related blogs out there. These blogs might be maintained by leading law firms, leading practitioners and advocates, or they may be the musings of students, retirees, or anyone else with access to the Internet. Many law firms are using blogs as a form of business development. Sometimes these blogs report only on firm cases, and other times they track trends and cases that are of interest to their current and potential clients. Blogs maintained by interest or advocacy groups tend to report on only those cases supportive of their point of view, or they may limit their discussion of a case to narrow issues that advance the sponsor's agenda. The caveat in the 2005 article remains the same in the case of blogs—read up on who the author is so that you are sure the informa-

tion is coming from a reliable and valid source. In addition, many blogs provide citations or links to the actual cases, reports and regulations discussed. Follow these references and read the original sources before citing as authority in a brief.

The ABA Journal maintains an online directory of Law blawgs at <http://www.abajournal.com/blawgs/>. A site called “Blawg” was created in 2002 to index law related blogs (see <http://blawg.com>). According to this site, in 2002 there were 57 law blogs identified, and while the site doesn’t offer a current count, the number increases every day. According to <http://USLaw.Com>, there are now over 1,000 law related blogs. This site offers a directory of law blogs according to subject matter, including environmental law and real estate and property law (see http://www.uslaw.com/law_blogs). What follows is a selection of informative blogs on land use law that should serve as a starting point for the land use practitioner’s journey through cyberspace to both keep current on trends in the field and as places to begin free legal research on a variety of land use related topics.

A. Blogs on Land Use

Land use law blogs are hosted by law schools, legal publishers, law firms, and by individual lawyers not representing any entity. Some of the blogs are national in scope and some focus on land use law in a particular state. Interestingly, all three of the national scope blogs are written by law professors, while the state specific sites are maintained by law firms and/or practitioners in the specific state.

1. Blogs National in Scope

Law of the Land—<http://lawoftheland.albanylaw.edu>

This blog, started by the author in August 2007 and hosted by Albany Law School, is the most comprehensive site for current case law and regulatory developments in land use. Updated daily with postings on just reported land use cases, new executive orders and regulations, the site categorizes each posting for easy future reference. Most of the cases discussed are from state high courts and the federal courts. Select appellate court cases are also reviewed. Presently the site has postings organized into about 50 different subtopics allowing readers to find all cases dealing with adult uses, signs, takings, nonconforming uses, standing, etc. quickly. In addition, the blog provides readers with links to upcoming conferences as well as a “blogroll” so that readers can view other related blogs without having to leave the site. Law of the Land also maintains an area with other links of interest, directing readers to websites that contain relevant land use law information. Occasionally book reviews and information about significant new reports are also posted.

Readers have the option of “subscribing” to the blog so that an email notification is received when new postings are available. Feed subscription is also an option. Readers are encouraged to comment on postings, creating a dialogue among practitioners, academics and the public interested in specific holdings or the rationale a court may have used in reaching its decision.

Land Use Prof Blog—http://lawprofessors.typepad.com/land_use/

Written by Stetson University College of Law Assistant Professor Paul Boudreaux, this blog is focused on current events related to land use law, urban planning, and how land use regulations affect day to day activities. Recurring topics include urban design, transit-oriented development, sprawl, affordable housing, green building, and other smart growth topics. The blog also includes posts on international urban planning trends and commentary on news stories and legal developments. Part of the Law Professor Blog Network sponsored by Thomson-West, this blog began in March 2006. The site is searchable, and it offers readers links to select planning related organizations as well as places that offer free general legal resources. Readers can subscribe either by e-mail or feeds. Posts are made to this blog nearly daily.

Property Prof Blog—<http://lawprofessors.typepad.com/property/>

This blog is edited by Professor D. Benjamin Barros, Visiting Associate Professor of Law (2007-08) at Catholic University School of Law and Associate Professor of Law at Widener University School of Law. A contributing editor for the blog is Professor of Law Alfred L. Brophy of the University of Alabama School of Law. A part of the Thomson West Law Professor Blog Network, Property Prof Blog has been in existence since October 2005, focusing on current events in property law and providing links to news articles and other posts. Postings are also often made about new legal research, directing readers to legal articles and blog postings by law professors from around the country. Readers may subscribe via e-mail or various feeds. The blog is searchable and is updated several times per week. Although not limited to land use matters, many of the postings do focus on planning and zoning and other topics of interest to land use practitioners.

2. State Specific Blogs

a. California

Abbott & Kindermann Land Use Law Blog—<http://blog.aklandlaw.com/>

This blog is published by the California law firm of Abbott & Kindermann, based in Sacramento, and it is

dedicated to land use, environmental, and real estate law in California. Readers can subscribe through e-mail or through several different feeds. The blog is searchable, is updated several times per month, and offers readers a directory of topics for previous postings in areas including attorney's fees; the California Environmental Quality Act; climate change; the Endangered Species Act; exactions and impact fees; local government issues; planning, zoning, and development; the California Subdivision Map Act; takings and inverse condemnation; water quality, wetlands, and the Clean Water Act; and water supply issues. Links are provided to various California governmental agencies involved in aspects of land use law and other legal blogs (not just limited to land use and environmental law), and postings are also made about upcoming conferences and events.

Land Use News—<http://landusenews.blogspot.com/>

Written by Dotty LeMieux, a political consultant and land use attorney in California, this blog is dedicated to land use, tree law, property and boundary issues, and general environmental topics. The blog focuses largely on California current events. The blog began in May 2005 and readers can subscribe via feeds. The blog is occasionally updated, generally twice per month.

b. Florida

Florida Law Use Law—<http://flalandlaw.blogspot.com/>

This blog is written by a Robert Lincoln, a leading land use attorney in Florida who focuses on land use issues and land use litigation with the firm of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A. Lincoln also brings his experience as a planner and planning law professor to his blog entries. The blog focuses on case analyses, including postings on recent decisions with practice notes interspersed throughout. Postings are also categorized for ease of reference. The blog began in 2003 and new posts appear several times per month. Readers may subscribe by feed.

c. Hawaii

Hawaii Land Use Law—<http://hilanduse.blogspot.com/>

This blog is written by Jesse K. Souki, a land use attorney in Hawaii specializing in land use, zoning, and environmental law. The blog focuses on local municipal land use issues in Hawaii's counties and cities. Entries are posted about recent cases, bills and resolutions, and related news. Common topics include administrative law, affordable housing, land use law, local government regulations, the National Environmental Policy Act and the State Environmental Policy Act, and zoning. All of the posts are categorized by topic, and the blog also includes links to Hawaii zoning ordinances, state and lo-

cal laws and administrative rules, and judicial resources. The blog began in June 2007 and can be subscribed to by e-mail feeds. The blog is updated roughly twice per week.

d. New York

New York Zoning and Municipal Law Blog—<http://blog.szlawfirm.net/>

Started in 2005 and published by Silverberg Zalantis, LLP, a law firm in White Plains, NY, this blog focuses on New York cases that affect local governments and municipalities, with an emphasis on zoning related issues. The site also offers information on adverse possession, eminent domain, and environmental law. A new section on the blog focuses on the Religious Land Use and Institutionalized Persons Act, and provides information on New York cases and developments. Readers may subscribe through multiple feed sources or by e-mail. The land use portion of the blog is updated periodically when new cases of interest to the editor are decided. Sometimes this occurs more than once a month and other time spans between postings may be longer.

New York Times City Room: Land Use and Planning—<http://cityroom.blogs.nytimes.com/category/land-use-and-planning/>

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Part of the New York Times online, this blog allows readers to comment on stories related to land use and planning run in the New York Times. The majority of these articles deal with ongoing projects in the New York City Metropolitan area. New posts occur several times per month and readers may subscribe via feeds.

B. Blogs on Environmental Law and Climate Change

Many blogs are devoted to various aspects of environmental law. What follows are some select blogs that contain information of particular interest to land use lawyers. One quick way to find more environmental law blogs is to visit those blogs that are linked to the blog you are reading. Also included in this section are references to select blogs on climate change, a topic gaining interest among land use practitioners.

Environmental Law Prof Blog—http://lawprofessors.typepad.com/environmental_law/

This blog is written by Professor of Law Susan L. Smith of Willamette University College of Law, who has written a wealth of published articles on environmental law issues. The blog began on May 25, 2005, and focuses on environmental news, opinion articles discussing recent cases, and new technologies. A part of the Thomson West Law Professor Blog Network, the site is searchable. The archive is arranged topically, and includes posting on such issues as agriculture, air quality, climate change, energy, land use, legislation and law, mining, sustainability, toxic substances, and water resources. The blog is international in scope, although many posts are national in nature. The site also contains links to all of the law school-based environmental law programs and clinics, links to some specialized environmental law reviews and journals, and links to select other environmental law blogs. Recently a section on environmental justice was added. New posts appear several times per week, and readers may subscribe both via e-mail and through feeds.

Green Building Law—<http://greenlaw.blogspot.com/>

The Green Building Law blog is written by Shari Shapiro, an associate attorney with Obermayer Rebmann Maxwell & Hippel LLP in Philadelphia, PA, and a LEED accredited professional. She is also the head of the firm's Green Building initiative. This blog originated in March 2005 and focuses on current events and current state and federal legislative activities related to green building and its interaction with the law. Although lawyers have been slow to become accredited LEED professionals, attorneys involved in the land development process are increasingly aware of the need to better understand certification standards for their clients' projects. Entries are

also made on subjects such as sustainable development and energy policy. The blog is updated several times per month and readers may subscribe either by e-mail or feeds.

Pennsylvania Brownfields and Environmental Law—<http://pabrownfieldsenvironmentallaw.foxrothschild.com/>

This blog, published by the law firm of Fox Rothschild LLP and edited by M. Joel Bolstein, discusses developments in Pennsylvania brownfields and Pennsylvania environmental law. Topics discussed include low risk sites, Special Industrial Area (SIA) agreements, and the Hazardous Site Clean-up Act (HSCA). The posts largely discuss legislative and policy current events surrounding brownfield cleanup and redevelopment, but some case discussion appears as well. The blog is updated 2-3 times per month and readers can subscribe by either multiple feeds or e-mail.

Warming Law—<http://warminglaw.typepad.com>

The premier blog on everything to do with climate change and global warming, it is described on the site as "... a place for people who write about, think about, or wonder about how the third branch of government, the judiciary, is addressing one of the most urgent environmental issues of our time." Maintained by Tim Dowling of the Community Rights Counsel, the blog contains all of the pleadings and decisions in the seminal *Massachusetts v. EPA* case, a collection of lower court cases dealing with climate change and global warming, commentaries, and links to dozens of climate change, environmental law, and land use law blogs.

C. Blogs on Eminent Domain

Perhaps due in part to the public reaction to the decision in *Kelo*, there seem to be a large number of blogs dedicated to eminent domain, inverse condemnation and property rights. Not included in this listing are blogs from dozens of smaller and/or state-specific advocacy organizations whose mission it is to track, expose and/or fend off eminent domain attempts. The Pacific Legal Foundation's blog described below, offers links to some of these organizations. What follows are select blogs worth checking out.

1. Nationally Focused Eminent Domain Blogs

The following blogs are national in scope, providing comments and information on caselaw and news around the United States. They tend to be less focused on purely state specific developments and provide a wealth of information and links.

Gideon's Trumpet—<http://www.gideonstrumpet.info>

Written by Gideon Kanner, Professor of Law Emeritus at the Loyola Law School in Los Angeles and editor of *Just Compensation*, a monthly periodical on the law of eminent domain, this blog provides a forum for discussion of takings of property by eminent domain and inverse condemnation and focuses on both current events in eminent domain and recent case decisions. Updated often since the blog was started in 2007, rather than a typical case review, the author offers insightful commentary on the holding in various cases across the country. A listing of other eminent domain and land use blogs is provided to readers on this searchable site.

inversecondemnation.com—<http://www.inversecondemnation.com/>

The blog, written by land use and appellate attorney Robert H. Thomas of Hawaii, is dedicated to recent developments and commentary on regulatory takings, eminent domain, inverse condemnation, property rights, and Hawaii land use law. The posts, updated several times per week, largely focus on recent case decisions dealing with this subject matter, as well as relevant news articles and other current events. Postings are categorized for easy access under more than a dozen topics including: development agreements, due process, regulatory takings, and vested rights. This blog also contains links to briefs in some of the higher profile takings and eminent domain cases, and it provides links to other resources including the oral arguments of the Hawaii Supreme Court. A section of links to other blogs on eminent domain and land use is provided, as well as information on books and upcoming conferences and programs. Readers may subscribe via feeds or e-mail.

PLF on Eminent Domain—http://eminentdomain.ty-pepad.com/my_weblog/

The Pacific Legal Foundation sponsors this blog which purports to provide “news from the front lines of the fight to defend America’s homes and businesses from the abuse of eminent domain.” Posts appear several times per week and focus largely on news articles discussing cases dealing with eminent domain. It also lists eminent domain cases which the PLF is involved in, upcoming events and lectures on eminent domain, and videos on eminent domain abuse. The site offers links to articles about eminent domain abuse and videos highlighting eminent domain abuse. Links are also provided to other blogs that focus on eminent domain, as well as to the website of other advocacy organizations across the country that focus on this issue. Decisions from select eminent domain cases are available on the blog, as are the briefs submitted in the *Kelo* case. The blog was started in June 2006 and readers may subscribe by feeds.

2. State-Focused Blogs

A number of state-focused eminent domain blogs exist. What follows are two examples, one from New Jersey

where there is a continuing hotbed of activity in this field, and the other from Michigan which provides information on Indiana and Ohio in addition to Michigan.

New Jersey Eminent Domain Law—<http://www.njeminentdomain.com/>

Published by William Ward, a New Jersey attorney with Carlin & Ward, this blog focuses on current condemnation and redevelopment procedures and their impact on private property. In addition to cases, the blog posts cover news items, track happenings at the state government level, and alert readers to upcoming continuing education programs on eminent domain. Links are provided to several other eminent domain blogs as well as to blogs of other law firms. Updated about twice per week and searchable, the blog started in 2005. Readers may subscribe by several feeds or e-mail. Although it mainly focuses on New Jersey, it categorizes other postings into issues of international, national and regional significance.

National Eminent Domain Blog—<http://www.nationalemminentdomain.com/>

Published by Ackerman, Ackerman & Dynkowski P.C., a Michigan law firm that represents exclusively land owners, the blog focuses on eminent domain abuse and advocacy for reduced use of eminent domain for private development. The posts are current events and case studies on how local governments have used eminent domain for private development. While the posts typically deal with Indiana, Michigan, and Ohio current events, there are occasional national events posted. Links are provided to a few other eminent domain focused blogs. The blog has been in existence since January 2006 and readers may subscribe via feeds or e-mail. New posts appear several times per month.

D. Blogs on Social Justice and Community Development

The BICEP Bulletin—<http://bicepbulletin.blogspot.com/>

The BICEP Bulletin, Blog for Innovation in Community & Environmental Planning, is edited by George Jackson, a practitioner in environmental conservation, land use, and community development planning. The blog focuses on advocacy for modern research and implementation of best practices in community development, land use/environmental planning and policy, and concentrates on the geographic regions of the Great Lakes, Chesapeake Bay, and New England regions. Postings are categorized into more than a dozen topics including environment/conservation; land use; equity; and the Great Lakes. Links to about 10 other blogs on land use and environmental law are provided. The blog began in July 2007 and readers may subscribe via feeds or e-mail.

Community Benefits Agreements—<http://communitybenefits.blogspot.com/>

This new blog is written by Amy Lavine, a staff attorney at the Government Law Center at Albany Law School. Updated at least weekly, posts focus on news articles and information from interviews on issues relating to the developing area of law surrounding community benefits agreements (CBAs), as well as information regarding current developments with CBA negotiations and monitoring as they unfold. The blog has a comprehensive list of CBAs in effect across the country with details on each, and contains a listing and information on current CBA campaigns. Links are provided to the websites of many of the organizations advocating for and negotiating CBAs in the various states.

Conclusion

The notion of blogging is still new to the Internet and to the legal community. While often promoted as a method of marketing and business development for law firms, blogs can often provide useful insights for practitioners who can be almost instantly exposed to multiple viewpoints on land use laws and case decisions without leaving the privacy and comfort of their desk and computer. Just remember, if you join in the discussion by posting a comment, your clients and future clients can find what you said easily through the use of search engines. Professionalism is the best advice for comment etiquette. When using blogs to collect information, just as with hard-copy law reviews and books, be mindful of the person or organization posting the information to determine whether there is or could be bias in the description of the material and any accompanying analysis. There is an amazing wealth of information available for free for those who make the time to sort through the hundreds of available sites and wisely select those that would be of greatest interest and benefit. Hopefully this article not only provides you with some guidance and some blogs to explore, but it might inspire more bloggers on various aspects of land use law and community development.

RECENT CASES

Neighbors' appeal of order denying their challenge to zoning change and subdivision approval that allowed a commercial automobile auction facility to be built became moot when court could no longer grant effective relief.

Neighbors challenged the zoning change and subdivision approval that allowed a commercial automobile auction facility to be built next to their residential neighborhood. The facility included an auto auction building, body shop and detail shop, and typically housed 1,500 cars on the property. The city conditionally approved annexation of the property and the zoning change in April 2002; and, because one of the five lots was in the county, the county approved the subdivision application. In May 2002, the

neighbors appealed and sought a preliminary injunction; but five days after the city issued a building permit to the facility's owner, the trial court denied the preliminary injunction request, and the neighbors did not appeal. In July, the court granted summary judgment in favor of the city, concluding the "zoning change was part of a gradual and pervasive transition from agricultural use to entry-way commercial use." The project was completed in the fall of 2002. The neighbors appealed the summary judgment but conceded that the damage had already been done. Concluding there was no effective relief that could be granted, the Supreme Court of Montana dismissed the appeal. The court noted that the neighbors failed to appeal the trial court's denial of injunctive relief and they did not request that the zoning change and subdivision proceedings be stayed before those proceedings became final. (*Povsha v. City of Billings*, 2007 MT 353, 340 Mont. 346, 174 P.3d 515 (2007).)

Notice of public hearing that only alluded to generic "retail/office" units found deficient; developer's agreement to \$4,000 per-unit contribution for off-site improvements held to constitute an invalid condition.

Developer sought and obtained approval of numerous use and bulk variances from the zoning board of adjustment (ZBA) so that he could build a mixed-use project consisting of four buildings with 119 age-restricted apartments, two retail/office buildings, and another building with a 5,000 square-foot restaurant large enough to hold 168 seats. The use variances were required because the project was located on a 10.9-acre site zoned research and development (RD), a zoning district which prohibits residential housing and does not allow retail and restaurants on lots smaller than one hundred acres. In addition to the \$145,500 that the developer was required to pay into the transportation improvement district fund, the developer agreed to pay \$4,000 per unit (\$476,000) for offsite improvements to a public park.

Several residents and a watershed preservation advocacy group appealed. They argued that the approval should be overturned because the notice of the public hearing was deficient in several respects, and because the \$4,000 per unit contribution was an illegal exaction. The trial court rejected their challenge to the notice; but the court concluded that the developer had improperly agreed to pay the \$4,000 per unit as a condition of the approval of the variances and excised that condition.

The appellate court in New Jersey affirmed in part, vacated in part, and remanded. The court held that a typographical error in the notice was not a fatal defect; and the developer was not required to mail new individual notices advising that its application had been adjourned to a special meeting. However, the court ruled that the public notice was legally deficient for failing to

apprise the public about the “nature of the matters to be considered” as required by N.J.S.A. 40:55D-11, because the notice made no mention of the 168-seat restaurant and instead alluded only to generic “retail/office” units. The court noted that no members of the public attended the hearing at which the ZBA approved the project.

The appellate court affirmed the trial court’s ruling that the \$4,000 per unit contribution was an illegal exaction, in part because N.J.S.A. 40:55D-42 specifically limits off-tract monetary contributions to “the pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements located off-tract but necessitated or required by construction or improvements within the subdivision or development.” However, the appellate court did not think the donation was an “incidental” and “relatively minor” factor in the approval of the developer’s application that could merely be excised from the approval. Rather, the case should be remanded back to the ZBA to address the ramifications of that excision and to hold a supplemental public hearing. (*Pond Run Watershed Ass’n v. Township of Hamilton Zoning Bd. of Adjustment*, 397 N.J. Super. 335, 937 A.2d 334 (App. Div. 2008).)

Zoning ordinance requiring a mutual impact easement between neighbor and owner of a confined animal feeding operation as precondition to residential construction is not an unlawful delegation of legislative authority.

In 2002, a county enacted a zoning regulation that prohibited construction of single-family dwellings within one-half-mile radius of animal feeding and waste handling facilities. However, the regulation provided that if a mutual impact easement was signed and recorded holding the grantee (the owner of the facility) harmless from odor, smoke, dust, or other legal impacts associated with the facility, then a residence could be built within the one-half-mile setback.

The owner of a hog confinement facility had been in operation in the county since 1990. Just before the zoning regulation was adopted, the neighbor purchased the adjacent 195 acres with the intent of subdividing and selling smaller lots for residential development. In 2004, the neighbor sold one of the subdivided lots to someone who wanted to build a house. The neighbor acknowledged that an impact easement would be needed before the purchaser could receive a building permit from the county, but the owner of the hog confinement facility refused to grant the impact easement. The neighbor sued the county, arguing that the zoning provision requiring the impact easement was an unlawful delegation of legislative authority by putting the county’s governmental

regulatory power in the hands of private individuals. In effect, the owner of the hog confinement facility could make the determination of whether a house could be built next to his property. The seller also raised due process and equal protection arguments.

The trial court agreed with the seller’s arguments, but the Nebraska Supreme Court reversed. Citing *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526, 37 S. Ct. 190, 61 L. Ed. 472 (1917), the court noted a well-recognized, general rule for determining whether a consent provision violates the due process as an unlawful delegation of legislative authority.

If the action of a property owner has the effect of legislation in that the action creates the restriction or prohibition, then the ordinance or statute constitutes an unlawful delegation of legislative authority. But, if the consent is used for no other purpose than to waive or modify a restriction which the governing body has lawfully created and has provided for such a waiver or modification by those most affected, then the consent is regarded as being within constitutional limitations.

In the present case, the county prohibited residential dwellings within a certain distance of hog confinement facilities, but provided that if the owner of such a facility signed an impact easement and agreed to waive the zoning restriction, a house could be built. Thus, the Nebraska Supreme Court held the ordinance’s impact easement provision was not an unlawful delegation of legislative authority and was constitutional. (*Coffey v. County of Otoe*, 274 Neb. 796, 743 N.W.2d 632 (2008).)

Ninth Circuit declares city ordinance placing restrictions on street performers in entertainment zone to be constitutional.

Seattle’s “entertainment zone” encompasses roughly 80 acres in downtown Seattle and includes theaters, arenas, museums, exhibition halls, conference rooms, outdoor stadiums, and restaurants which attract nearly ten million visitors each year. The city has delegated its authority over this land to the Seattle Center Director which, in 2002, issued rules governing this area following an open process and public comment.

A street performer who had performed in the area since the 1980s, making balloons and “talking to his audience about his personal beliefs, especially the importance of reading books,” brought a facial and as applied challenge to five of the rules, alleging violations of the First and Fourteenth Amendments under 42 U.S.C.A. §1983: Rule F.1 required street performers to have a permit and badge; Rule F.2 set the terms of conditions of obtaining a permit; Rule F.3 barred active solicitation by street performers; Rule F.5 limited street performanc-

es to sixteen designated locations; and Rule G.4 forbid speech activities within 30 feet of a captive audience.

The district court granted summary judgment to the street performer, but the Ninth Circuit reversed on *de novo* review. Citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984), the court held that the city's rules were reasonable time, place, or manner restrictions under a three-prong test: (1) the rules were required to be "justified without reference to the content of the regulated speech;" (2) they had to be "narrowly tailored to serve a significant governmental interest," and (3) they had to "leave open ample alternative channels for communication of the information."

The court, citing *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989), concluded that each of the five rules was content-neutral and satisfied the first prong, because none of the rules was adopted as a result of a disagreement with the message the speech conveyed. Regarding the second prong, the court held that city's interest in protecting the public from the "chronic" territorial disputes between performers and threats to citizens by street performers constituted a valid governmental objective. The court found that the permit requirement was not overbroad, and the permit scheme did not grant the Seattle Center Director undue discretion that might raise issues of content censorship. Likewise, the requirement that street performers wear badges passed constitutional muster because it satisfies all three prongs of the test for a valid time, place or manner restriction.

With respect to the challenged restriction on soliciting donations, the court said the rule allowed ample alternative avenues for solicitation, expressly providing that:

[D]onations for performers may be accepted passively in an instrument case or other receptacle provided for that purpose by the performer. The receptacle may include a written sign that informed the public that such donations are sought.

In rejecting the challenge to the rule that confined street performers to "designated locations on the Seattle Center grounds," the court found that the sixteen available locations (a number of which were added pursuant to requests by street performers) provided ample opportunities.

The court also rejected the street performer's challenge to the rule forbidding speech activities within 30 feet of a captive audience. The court noted the "cap-

tive audience" doctrine does not require literal captivity or the inability to escape. The court noted that people standing in line to purchase tickets might be unable to avoid harassment from street performers without giving up their place in line. (*Berger v. City of Seattle*, 512 F.3d 582 (9th Cir. 2008).)

Members of organization advocating government reform have standing to seek to compel enforcement of city ordinance designed to curtail practice of awarding municipal contracts in exchange for political contributions.

After a city council refused to enact meaningful pay-for-play legislation which would have restricted certain political contributors from negotiating or entering into certain contracts with the city, the voters approved a similar measure on the ballot in November 2004. Prior to a June 2005 run-off election, an organization calling itself the People for Open Government (POG) filed a complaint to compel the Mayor and a Councilman to report to the City Council certain campaign contributions that allegedly violated the ordinance. According to the complaint, POG is an unincorporated, non-partisan political committee dedicated to the promotion of open, accountable, and transparent municipal government.

The trial court dismissed the complaint for lack of standing. The appellate court reversed. Noting that there was no language in the New Jersey Constitution limiting judicial review to actual cases and controversies, the court, citing *Triffin v. Somerset Valley Bank*, 343 N.J. Super. 73, 777 A.2d 993, 44 U.C.C. Rep. Serv. 2d 1200 (App. Div. 2001), concluded that the standing rules in New Jersey "serve to preclude actions initiated by persons whose relation to the dispute may be described as 'total strangers or casual interlopers,'" a "fairly low" threshold. In this case, the plaintiffs were personally involved with the unsuccessful effort to have the city council enact the pay-for-play legislation and then worked to get the measure on the ballot. The the court found that "[e]ach of the individual plaintiffs was a key player in that effort and, as a result, has an established and abiding interest in the effective enforcement of the ordinance." (*People For Open Government v. Roberts*, 397 N.J. Super. 502, 938 A.2d 158 (App. Div. 2008).)

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