Counsel's Corner

by Riele Morgiewicz, NYCOM Counsel

A New Development in Land Development Moratoria

On April 23, 2002, the United States Supreme Court handed down a much anticipated decision in the *Tahoe Sierra*[1] case. In its 6-3 decision, the Court upheld the Ninth Circuit's ruling that land use regulations which result in less than a complete elimination of value are not a *per se* taking of property requiring compensation under the Takings Clause of the U.S. Constitution, and required analysis under *Penn Central*.[2] This decision is considered a victory for any municipality that has adopted moratoria in order to better plan their community.

At issue in this case were two moratoria imposed by the Tahoe Regional Planning Agency (TRPA), totaling 32 months which began in 1985. These moratoria prohibited development in the Lake Tahoe Basin while a comprehensive land-use plan was formulated by TRPA for the area. At one time, Lake Tahoe was one of the clearest and purest lakes in the world due to its unique geographical placement and natural filtering system. Since the early 1900s, the Lake Tahoe area has become increasingly polluted, first from the runoff of silver mining operations and later from the buildup of homes in the area.

The Tahoe Sierra Preservation Council, a non-profit membership corporation that represented approximately 2000 owners of improved and unimproved real estate in the Lake Tahoe Basin, filed this suit alleging that TRPA's moratoria constituted a temporary or partial taking of property without just compensation. This case came to the Supreme Court as an appeal from the 9th Circuit which held that because the moratoria had only a temporary impact on the petitioners' land interest, no categorical taking had occurred. Th 9th Circuit further found that the *ad hoc* balancing approach of the *Penn Central* case, was the proper framework for analyzing whether or not a taking had transpired.

In a opinion delivered by Justice Stevens, the Court agreed with the Circuit Court's finding. The Takings Clause was designed to "bar the Government from forcing some people alone to bear burdens which, in all fairness and justice, should be borne by the public as a whole."[3] The Court refused to consider the property owners' reliance on *Lucas v. South Carolina Coastal Council*, due to the fact that *Lucas* applies only when a regulation deprives an owner of all economically beneficial uses of their land.[4]

In its opinion, the Court noted that it was not holding that the temporary nature of the land use restriction precluded a finding that it effected a taking; it was simply showing that the temporary nature of the restriction should not be given exclusive significance one way or another. This would have to be determined on a case by case basis. Therefore, rather than attempting to draft a new categorical rule, the Court illustrated that the interests of fairness and justice would best be served by continued reliance on the *Penn Central* approach. In support of this opinion, the Court offered the Fifth Amendment as a basis for drawing a distinction between physical takings, which require compensation, and regulatory takings for which no such language exists.

The Court also stated that moratoria relieve "added pressure to quickly resolve land-use questions, disadvantaging landowners and interest groups."[5] The Court further stated "(t)o the extent that communities are forced to abandon using moratoria, landowners will have an incentive to

develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill conceived growth." [6] For a copy of this case or more information on moratoria please contact the NYCOM legal staff.

Endnotes

1. Tahoe-Sierra Preservation Council Inc. v. Regional Planning Agency, No. 00-1167 (U.S. Apr. 23, 2002).
2. Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978).
3. Tahoe-Sierra Preservation Council Inc. v Tahoe Regional Planning Agency, No 00-1167 (U.S. Apr. 23, 2002).
4. 505 U.S. 1003 (1992).
5. Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency, No. 00-1167 (U.S. Apr. 23, 2002).
6. Ibid.