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**ANNUAL UPDATE ON  
MISSOURI LAND USE CASES**

**PRESENTED TO THE  
MISSOURI MUNICIPAL ATTORNEYS' ASSOCIATION  
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**STEPHEN P. CHINN**

**ANDREA G. BOUGH**

**PUBLIC LAW GROUP**

**STINSON MORRISON HECKER LLP**

## SYNOPSIS OF CASES

### SUPREME COURT OF THE UNITED STATES

#### I. *Stop the Beach Renourishment, Inc. v. Fl. Dep't of Env'tl. Prot.*, 130 S.Ct. 2592 (2010).

- A. Background: After unsuccessfully challenging a decision of the Florida Department of Environmental Protection which granted a permit, pursuant to the state's Beach and Shore Preservation Act to restore eroded beach, nonprofit corporation formed by owners of adjoining beachfront property brought action in Florida state court to challenge the project. The Florida District Court of Appeals reversed and remanded the agency's decision and certified to the Florida Supreme Court the question of whether the Act unconstitutionally deprived property owners of littoral rights without just compensation. Answering the question in the negative, the Florida Supreme Court quashed the remand and denied rehearing.
- B. Facts: Florida owns in trust for the public the land permanently submerged beneath navigable waters and the foreshore. The mean high-water line is the ordinary boundary between private beachfront, or littoral property, and state-owned land. Littoral owners have, *inter alia*, rights to have access to the water, to use the water for certain purposes, to have an unobstructed view of the water, and to receive accretions and relictions (collectively, accretions) to the littoral property. An accretion occurs gradually and imperceptibly, while a sudden change is an avulsion. The littoral owner automatically takes title to dry land added to his property by accretion. With avulsion, however, the seaward boundary of littoral property remains what it was: the mean high-water line before the event. Thus, when an avulsion has added new land, the littoral owner has no right to subsequent accretions, because the property abutting the water belongs to the owner of the seabed (ordinarily the State).

Florida's Beach and Shore Preservation Act establishes procedures for depositing sand on eroded beaches (restoration) and maintaining the deposited sand (nourishment). When a project is undertaken, the State entity that holds title to the seabed sets a fixed "erosion control line" to replace the fluctuating mean high-water line as the boundary between littoral and state property. Once the new line is recorded, the common law ceases to apply. Thereafter, when accretion moves the mean high-water line seaward, the littoral property remains bounded by the permanent erosion-control line.

Respondents the city of Destin and Walton County sought permits to restore 6.9 miles of beach eroded by several hurricanes, adding about 75 feet of dry sand seaward of the mean high-water line (to be denominated the erosion-control line). Petitioner, a nonprofit corporation formed by owners of beachfront property bordering the project (hereinafter Members) brought an unsuccessful administrative challenge. Respondent the Florida Department of Environmental Protection approved the permits, and this suit followed. The State Court of Appeal concluded that the Department's order had eliminated the Members' littoral rights (1) to receive accretions to their property and (2) to have their property's contact with the water remain intact. Concluding that this would be an unconstitutional taking and would require an additional administrative requirement to be met, it set aside the order, remanded the proceeding, and certified to the Florida Supreme Court the question whether the Act unconstitutionally deprived the Members of littoral rights without just compensation. The State Supreme Court answered "no" and quashed the remand, concluding that the Members did not own the property supposedly taken. Petitioner sought rehearing on the ground that the Florida Supreme Court's decision affected a taking of the Members' littoral rights contrary to the Fifth and Fourteenth Amendments; rehearing was denied.

- C. Holding: The Supreme Court, Justice Scalia, held that the Florida Supreme Court did not engage in an unconstitutional taking of littoral property owners' rights to future accretions, and to contact with the water, by upholding State's decision to restore eroded beach by filling in submerged land.

Two core principles of Florida property law intersect in this case. First, the State as owner of the submerged land adjacent to littoral property has the right to fill that land, so long as it does not interfere with the rights of the public and the rights of littoral landowners. *See Hayes v. Bowman*, 91 So.2d 795, 799-800 (Fla.1957) (right to fill conveyed by State to private party); *satte ex rel. Buford v. Tampa*, 102 So. 336, 341 (1924) (same). Second, as we described *supra*, at 2598 - 2599, if an avulsion exposes land seaward of littoral property that had previously been submerged, that land belongs to the State even if it interrupts the littoral owner's contact with the water. *See Bryant [v. Peppe]*, 238 So.2d 836, 837, 838-39 (Fla. 1970).] The issue here is whether there is an exception to this rule when the State is the cause of the avulsion. Prior law suggests there is not. In *Martin v. Busch*, 93 Fla. 535, 112 So. 274 (1927), the Florida Supreme Court held that when the State drained water from a lakebed belonging to the State, causing land that was formerly below the mean high-water line to become dry land, that land continued to belong to the State. [*Id.* at 287]; *see also Bryant* at 838-39. "The riparian rights doctrine of accretion and reliction," the Florida Supreme Court later explained, "does not apply to such lands." *Brown* at 839 (quoting *Martin* at 288 (Brown, J. concurring)). This is not surprising, as there can be no accretions to land that no longer abuts the water.

*Stop the Beachrenourishment, Inc. v. Fl. Dep't of Envtl. Prot.*, 130 S.Ct. 2592, 2611 (2010).

D. Justice Scalia delivered the opinion of the Court with respect to Parts I, IV, and V, concluding that the Florida Supreme Court did not take property without just compensation in violation of the Fifth and Fourteenth Amendments.

Justice Scalia joined by Chief Justice Roberts, Justice Thomas, and Justice Alito concluded in Parts II and III that if a court declares that what was once an established right of private property no longer exists, it has taken that property in violation of the Takings Clause.

Justice Kennedy, joined by Justice Sotomayor, agreed that the Florida Supreme Court did not take property without just compensation, but concluded that this case does not require the Court to determine whether, or when, a judicial decision determining property owners' rights can violate the Takings Clause. If and when future cases show that the usual principles, including constitutional ones that constrain the judiciary like due process, are inadequate to protect property owners, then the question whether a judicial decision can effect a taking would be properly presented.

Justice Breyer, joined by Justice Ginsburg, agreed that no unconstitutional taking occurred here, but concluded that it is unnecessary to decide more than that to resolve this case. Difficult questions of constitutional law, *e.g.*, whether federal courts may review a state court's decision to determine if it unconstitutionally takes private property without compensation, and what the proper test is for evaluating whether a state-court property decision enacts an unconstitutional taking-need not be addressed in order to dispose "of the immediate case." [citation omitted] Such questions were better left for another day.

**UNITED STATES COURT OF APPEALS**  
**EIGHTH CIRCUIT**

**I. *St. Charles Tower, Inc. v. Kurtz*, No. 10-2412 (8th Cir. filed June 28, 2011).**

A. *St. Charles Tower, Inc.* filed suit against Franklin County, Mo., and Franklin County's Board of Zoning Adjustment after they declined to issue *St. Charles Tower* a conditional use permit to construct a

cell-phone tower in Franklin County. Before trial, the parties agreed to a consent judgment that required the issuance of the conditional use permit, as well as "any other permits necessary for St. Charles tower to begin construction...." Trustees of a homeowners' association (Intervenors) sought to challenge the consent judgment on the grounds that it violated state law. The district court allowed the parties to intervene but denied their challenges to the consent judgment. The Intervenors appealed.

B. Holding: "Parties can settle their litigation with consent decrees, [but] they cannot agree to disregard valid state laws." The consent judgment's remedy – compelling the issuance of the conditional use permit without regard to the procedures specified in the Land Use Regulations – violated state law. Section 32 of the Land Use Regulations required that all actions of the Board be taken by a concurring vote of four-fifths, and Section 81 required that any decision of the Board "regarding an issuance or revocation of a conditional use permit shall be reduced to writing and the written decision shall state the board's finding and conclusions, as well as supporting reasons or facts...." The case was reversed, the consent judgment vacated, and the case remanded to the district court for further proceedings.

## **II. *Pub. Water Supply Dist. No. 3 of Laclede Cnty., Mo. v. City of Lebanon*, 605 F. 3d 511 (8th Cir. 2010).**

A. Background: Rural water district brought action against nearby city, alleging that the city was illegally providing water and sewer services to customers within the district's boundaries. The District argued that the City, in providing services to the customers, violated the requirement of 7 U.S.C. § 1926(b) that "the service provided or made available through the District shall not be curtailed or limited."

B. Holdings:

1. The City did not violate the law by continuing to provide service to customers it began serving before district obtained federal loan; and
2. The statutory phrase "the service provided or made available" included only the type of service financed by a qualifying federal loan.

## **III. *USCOC of Greater Mo. v. City of Ferguson, Mo.*, 583 F.3d 1035 (8th Cir. 2009).**

A. Background: A wireless telecommunications service provider, which sought to construct a communications tower on a commercial parking lot, brought action against the City, alleging that City violated its rights under the Telecommunications Act, and the Missouri and United States Constitutions by failing to act on its applications for zoning variances and a special use permit (SUP) within a reasonable period of time, and by denying them without substantial evidence in a written record. The district court granted the City's motion for summary judgment, and USCOC appealed.

B. Holdings:

1. The City Board of Adjustment did not violate the Telecommunications Act's requirement that local government decisions denying a request to construct a wireless communications facility be in writing by issuing its decision more than 30 days after voting to deny applications for variances (The Court found that it had no jurisdiction to decide this issue because USCOC failed to preserve the claim in its notice of appeal);
2. The Board's failure to provide a transcript of proceedings on variance applications did not violate the section of the Telecommunications Act requiring decisions of a local government to be in writing and supported by substantial evidence in a written record. USCOC claimed that the Board

failed to produce a written decision within 30 days of voting to deny its variance application, but this was not a requirement and was based on a misreading of the law. USCOC would have 30 days after a written decision was rendered by the Board – the Board had not issued a written decision yet.

3. Substantial evidence supported the Board's denial of applications for variances, and substantial evidence supported the city council's denial of a special use permit. Appellate court review of local government decisions under TCA is essentially deferential, and the party seeking to overturn a decision bears the burden of proving that it was not supported by substantial evidence.

5. The City's motion for summary judgment was affirmed.

**IV. *Sprint Spectrum, L.P. v. Platte Cnty., Mo.*, 578 F.3d 727 (8th Cir. 2009).**

A. Background: Telecommunications services provider brought action against county alleging that the county's planning and zoning commission violated the Telecommunications Act by denying its application for a special use permit to construct a telecommunications tower.

B. Holdings:

1. The commission's decision satisfied the Telecommunications Act's "in writing" requirement – a local zoning board need only provide an explanation that is sufficient to permit meaningful judicial review of whether the record contains substantial evidence to support the board's decision; and
2. The commission's decision was supported by substantial evidence contained in a written record – the tower's scale, its proximity to residences, and the surrounding environment made approval inappropriate in view of the considerations outlined in the Zoning Order.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF MISSOURI**

**I. *Phelps-Roper v. City of Manchester, Mo.*, 738 F. Supp. 2d 947 (E.D. Mo. 2010).**

A. Background: Church members brought action against city, challenging ordinance prohibiting pickets and protests within 300 feet of funeral or burial service. Specifically, Plaintiffs Shirley Phelps–Roper and Megan Phelps–Roper brought the action under 42 U.S.C. § 1983 against the City of Manchester, Mo., claiming that a Manchester city ordinance violated their First Amendment right to free speech. Plaintiffs were members of the Westboro Baptist Church in Topeka, Kansas, whose teachings include the beliefs that homosexuality is a grave sin and American society's acceptance of homosexuality prompts God's wrath. In order to express these beliefs, plaintiffs and other WBC members have picketed funerals for years, including more recently the funerals of American soldiers.

B. Holdings:

1. The church members had Article III standing to bring action;
2. The members were not collaterally stopped from bringing the action;
3. The ordinance was non content-neutral;

4. The ordinance did not serve significant government interest; and
5. The ordinance was not narrowly tailored to serve significant government interest.

**II. *Neighborhood Enters., Inc. v. City of St. Louis, Mo.*, 718 F. Supp. 2d 1025 (E.D. Mo. 2010).**

A. Background: a number of organizations (Applicants) constructed a sign/mural which contained the words "End Eminent Domain Abuse" inside a red circle and slash. The City of St. Louis Division of Building and Inspection issued a citation declaring the sign an illegal sign, and gave instruction for how to obtain a sign permit. Applicants applied for a permit, which was denied. Applicants brought a civil rights action in state court seeking declaratory judgment and preliminary injunction on allegations that municipality, its agencies, and agency officials interfered with their rights to free speech and due process in violation of First and Fourteenth Amendments. Applicants alleged that that the decision by the Board of Adjustment to deny their sign permit was illegal because the Board utilized a facially unconstitutional zoning code to limit their freedom of speech, and deprived them of equal protection under the law in violation of the Fourteenth Amendment. Defendants removed action on federal question grounds. Defendants then moved for summary judgment.

B. Holdings:

1. The denial of application for sign permit for wall design was not arbitrary nor capricious, unreasonable or unlawful;
2. Definition of "sign" in municipal zoning code did not infringe or impinge, facially or as applied, political speech;
3. Outside painting used to advertise, identify, direct and attract attention to alleged eminent domain abuse was political speech;
4. Zoning restriction prohibiting signs in excess of 30 square feet in residential neighborhood with frontage did not infringe or impinge, facially or as applied, on political speech;
5. Restriction was content neutral;
6. Aesthetics and traffic safety were significant governmental interests;
7. Restriction had been narrowly tailored to serve significant governmental interests; and
8. Restriction left open ample alternative channels for communication of information.

**III. *Day v. Robinwood West Cmty. Improvement Dist.*, 693 F. Supp. 2d 996 (E.D. Mo. 2010).**

A. Background: Registered voters and real property owners brought action against Robinwood West Community Improvement District (The District), alleging that The District's practices under the Missouri Community Improvement District Act (The Act) of granting voting power on the basis of real property ownership for board of director elections and permitting individuals to cast more than one vote were unconstitutional. The District is a political subdivision of the state of Missouri organized under The Act. The Act provides that property owners within a given area may vote to become a Community Improvement District, which can be organized as either a non-profit corporation or a political subdivision. When issues such as this came on the ballot in the area, registered voters

were entitled to one vote, while owners of real property in the District were entitled to an additional vote for each parcel of land that they owned. Plaintiffs brought suit and moved for partial summary judgment.

B. Holdings:

1. Missouri Community Improvement District Act as applied violated one person, one vote guarantee of Equal Protection Clause;
2. Missouri Community Improvement District Act did not facially violate Equal Protection Clause by diluting votes of resident registered voters;
3. Missouri Community Improvement District Act rationally extended right to vote to nonresidents who owned property within district without requiring property owners to meet United States citizenship and Missouri residency requirements applicable to registered voters; and
4. Missouri Community Improvement District Act's avoidance of age, incapacity, and crime-related voter-registration restrictions for nonresident property owners was irrational and arbitrary.

**IV. *USOC of Greater Mo., L.L.C. v. Vill. Of Marlborough, Mo.*, 618 F. Supp. 2d 1055 (2009).**

A. Background: Wireless telecommunications provider brought action against Village, seeking a declaratory judgment that would allow it to build a cell phone tower on an abandoned lot located in village, alleging that Village's zoning regulations violated the Telecommunications Act. The Village moved to dismiss all counts of plaintiff's complaint.

B. Holdings:

1. Provider failed to state a claim challenging Village's zoning regulations as violative of Telecommunications Act section forbidding a local government from imposing regulations that prohibited the provision of personal wireless services;
2. Provider stated a claim against village for violation of Telecommunications Act section requiring that a decision denying permission to build a cell phone tower be supported by substantial evidence;
3. Provider failed to state a claim for unreasonable discrimination under the Telecommunications Act;
4. Provider failed to state a claim for barrier of entry in violation of the Telecommunications Act;
5. Provider's failure to seek compensation through available state procedures did not render his equal protection and due process claims unripe;
6. Provider stated a claim for violation of its equal protection rights; and
7. Provider stated a claim for violation of its due process rights.

**MISSOURI STATE COURT DECISIONS**

**I. *City of Sullivan v. Sites*, 329 S.W. 3d 691 (Mo. 2011) (en banc).**

- A. Background: City brought action against trustee landowner seeking to enjoin landowner from using private septic system on trust property, and to require landowner to connect property to new city sewer line. Following trial, the Circuit Court, Crawford County, entered judgment in favor of the city. The landowner appealed.
- B. Holding: There was substantial justification for creating a class of new sewer connections, and thus the ordinance imposing higher connection fees for properties in a location that previously did not receive city sewer services was not an unconstitutional special law.

**II. *St. Louis Cnty. V. Berck*, 322 S.W.3d 610 (Mo. Ct. App. E.D. 2010).**

A. Background: The St. Louis County Council passed Ordinance Nos. 21, 949 and 21,950 approving a Tax Increment Financing redevelopment plan and project known as Northpark. County filed a petition in Condemnation to condemn several parcels within the Northpark redevelopment, including property owned by Berck. Both parties filed exceptions to the amount awarded to Berck as damages resulting from the taking, and the County never paid the commissioners' award to either Berck or the clerk of the court. Berck filed suit for interest on the award. The County argued that the trial court lost jurisdiction to act when it did not acquire Berck's property within five years from the date that County approved the redevelopment plan. The Circuit Court, St. Louis County, granted property owner's motion to award interest for abandonment of action by county, and awarded property owner \$40,438.36 in interest. County appealed.

B. Holdings:

1. In a matter of first impression, statutory limitation that precluded trial court from allowing county's acquisition of property by condemnation more than five years after adoption of ordinance approving redevelopment did not deprive trial court of constitutionally vested subject matter jurisdiction over condemnation action;
2. In a matter of first impression, enactment of statutory provision that prohibited a county's acquisition of property by condemnation more than five years after adoption of an ordinance approving a redevelopment was not intended to vitiate the statutory protections given property owners under the Condemnation Chapter;
3. County abandoned its condemnation action; and
4. Circuit Court did not abuse its discretion in awarding \$40,438.36 to property owner after county abandoned condemnation action.

**III. *Morelock-Ross Properties, Inc. v. English Vill. Not-For-Profit Sewer Corp.*, 308 S.W.3d 275 (Mo. Ct. App. S.D. 2010)**

A. Background: Real estate developer brought action against not-for-profit sewer corporation for declaratory judgment determining that corporation had no right to collect impact fees and that collection of hook-up fees was excessive. Corporation counter-claimed for breach of contract and requested preliminary injunction.

B. Holding: Corporation was not prohibited from charging an impact fee or a hook-up fee that exceeded the fee corporation paid to the city.

**IV. *Rader Family Ltd. P'ship, L.L.L.P. v. City of Columbia*, 307 S.W.3d 243 (Mo. Ct. App. W.D. 2010).**

A. Background: Building owner brought inverse condemnation action against the city, seeking damages for injury to property caused by a sewer backup caused by restaurant grease in the sewer line. The Circuit Court, Boone County, entered judgment in accordance with jury verdict in favor of the city. The building owner appealed.

B. Holdings:

1. As a matter of apparent first impression, evidence of city's subsequent remedial measures was not admissible;
2. The Circuit Court acted within its discretion by excluding evidence regarding an unrelated citation that city received for sewer line back-up;
3. Expert testimony regarding value of building was inadmissible for purpose of forming a damages award but not for impeachment purposes; and
4. Modification of building owner's proffered verdict director jury instruction was warranted.

**V. *Highlands Homes Ass'n v. Bd. of Adjustment*, 306 S.W.3d 561 (Mo. Ct. App. W.D. 2009).**

A. Background: Subdivision association and several subdivision homeowners appealed a decision of the city board of adjustment granting two variances to landowner and telecommunications company, allowing them to construct a 95-foot disguised cellular support structure and an aboveground equipment storage facility to accompany tower. The Circuit Court, Boone County, affirmed Board's decision. Association and homeowners appealed.

B. Holdings:

1. Landowner and company were entitled to non-use variance from height restrictions in zoning ordinance; and
2. The Board did not abuse its discretion in granting non-use variance to allow construction of aboveground equipment shelter.

**VI. *JGJ Props., LLC v. City of Ellisville*, 303 S.W. 3d 642 (Mo. Ct. App. E.D. 2010).**

A. Background: Property owners filed action against city for a declaratory judgment that the city was required to rezone their properties from residential to commercial, and they also sought damages. The Circuit Court, St. Louis County, entered judgment in favor of city. The property owners appealed. The property owners argued that the City was estopped to deny the zoning request because of written and oral representations made by the City Planner, and the issuance of commercial building permits by the City. The property owners claim to have reasonably relied on these representations and the issuance of the permits when purchasing the parcels and making substantial improvements to them.

B. Holdings:

1. Property owners could not establish a private detriment that would rebut the presumption that continuation of present zoning was reasonable; and

2. The City was not “equitably estopped” to deny the requested rezoning of properties – the property owners did not satisfy the basic elements of estoppels, as well as the additional requirement that, when an estoppel claim is made against the government, the governmental conduct on which the claim is based must constitute affirmative misconduct.

**VII. *City of Greenwood v. Martin Marietta Materials, Inc.*, 299 S.W.3d 606 (Mo. Ct. App. W.D. 2010).**

A. Background: City brought public nuisance, negligence, and declaratory judgment action against quarry owners after street used to haul crushed limestone failed. The Circuit Court of Jackson County entered judgment on a jury verdict for the city on the nuisance and negligence claims, and following a bench trial, entered judgment that the city ordinance restricting commercial traffic was valid and enforceable. The quarry owners appealed.

B. Holdings:

1. Allegations by city in its complaint sufficiently set forth a public nuisance claim;
2. Issue of whether quarry owners' use of city street to haul crushed limestone was unreasonable was for the jury;
3. Issue of whether use of public street interfered with a public right was for the jury;
4. Issue of whether use of street to haul limestone created a substantial interference with a public right was for the jury;
5. City ordinance restricting use of city's streets by commercial vehicles did not violate state statutes regarding highway access;
6. City's public nuisance and negligence claims were not compulsory counterclaims city was required to assert in federal action quarry owners brought against city; and
7. Issue of whether quarry owners willfully, intentionally and knowingly maintained a nuisance with reckless disregard for the safety of city residents, as required in order for city to be entitled to punitive damages, was for the jury.
8. As the jury could have reasonably decided the issues before it, the judgment was affirmed in all aspects, except as to the portion dealing with post-judgment interest. The case was remanded to the trial court for calculation of judgment on post-judgment interest.

**VIII. *State ex rel. Lee v. City of Grain Valley*, 293 S.W.3d 104 (Mo. Ct. App. W.D. 2009).**

A. Background: Property owner brought action seeking writ of mandamus to compel city to issue building permit. Following a bench trial, the Circuit Court, Jackson County, denied property owner's petition, and owner appealed.

B. Holdings:

1. Filing of application for building permit was insufficient to establish a vested right to continued application of prior zoning ordinance; and

2. Property owners failed to make an unequivocal showing that they were entitled to a building permit.

**IX. *Schrader v. Quiktrip Corp.*, 292 S.W.3d 453 (Mo. Ct. App. E.D. 2009).**

A. Background: Restaurant owner brought action against convenience store owner for negligent misrepresentation, easement interference, and trespass, alleging that convenience store owner caused city to remove parking lanes on adjoining street, thus depriving customers of access to restaurant. The Circuit Court of the City of St. Louis, dismissed owner's negligent misrepresentation claim, and entered summary judgment for convenience store owner as to easement and trespass claims. Restaurant owner appealed.

B. Holdings:

1. Restaurant owner failed to preserve negligent misrepresentation claim for appeal;
2. Convenience store owner did not deprive restaurant owner of easement of access; and
3. Convenience store owner did not commit trespass when it requested installation of turning lane.

**X. *Kindred v. City of Smithville*, 292 S.W.3d 420 (Mo. Ct. App. W.D. 2009).**

A. Background: Property owners who had granted city and school district an easement and right to enter upon their property for the purposes of installing and maintaining water and sewer pipes and lines brought action against the city for specific performance or breach of the easement contract, when city refused to allow them access to water and sewer lines so that property owners could develop 16 residential lots on their property. The property owners had granted the city the easement intending for it to serve the public's use and benefit, including the construction of utility lines for the Smithville School District. The easement agreement stated that the grantors would have the right to make connections to the water and sewer lines installed by the city without the payment of any fees to the city for the right to make such connections. Forty years after the easement agreement had been signed, the property owners sought access to the water and sewer lines, and this request was denied by the city. After a bench trial, the Circuit Court, Clay County, entered judgment in favor of property owners and ordered specific performance of the easement agreement. The city appealed.

B. Holdings:

1. City acted within the scope of its powers by permitting property owners, as consideration for easement, the right to make connections to water and sewer lines;
2. The easement agreement contained all the elements of a valid "deed," and therefore, it was not rendered void because a city official did not sign it; and
3. The agreement substantially complied with statute governing contracts with cities so as to render it enforceable by specific performance.
4. The judgment against the city was affirmed.

**XI. *Stahlhuth v. SSM Healthcare of St. Louis*, 289 S.W.3d 662 (Mo. Ct. App. E.D. 2009).**

A. Background: When land is developed in St. Louis County, under certain circumstances, the County imposes a Traffic Generation Assessment (TGA) on the developer to offset some of the anticipated costs associated with an increase in automobile traffic generated by the development. The County then calculates any credits (TGA credits) to which the developer may be entitled for public road improvements the developer makes during its improvement of the land. In the early 1990s the Missouri Department of Transportation redesigned and widened Highway 141 near a parcel of land owned by Plaintiffs, and in exchange for Plaintiffs' conveyance, the County agreed to issue TGA credits to Plaintiffs. Plaintiffs brought action against developer seeking damages for breach of contract. The Circuit Court, St. Louis County, following bench trial, entered judgment for Plaintiffs, and the developer appealed.

B. Holdings:

1. Evidence was sufficient to support finding that developer's obligation to purchase landowners' TGA credits arose on dates county applied landowners' TGA credits against developer's TGA obligations;
2. TGA rate in effect on dates county applied landowner's TGA credits against developer's TGA obligations was not nullified and superseded by repeal of ordinance; and
3. Repeal of ordinance and enactment of new ordinance did not void original ordinance.

**XII. *Christ v. Metro. St. Louis Sewer District*, 287 S.W.3d 709 (Mo. Ct. App. E.D. 2009).**

A. Background: Homeowners filed a petition against municipal sewer district, alleging inverse condemnation, nuisance, and negligence, and alleging that sewer district allowed the sewer system to become blocked and the blocked main allegedly resulted in the backup of contaminated water into homeowners' residence, thereby causing damage. The Circuit Court, St. Louis County, granted summary judgment in favor of the sewer district, and the homeowners appealed. The homeowners argued that the trial court erroneously required evidence of elements of notice and duty in their inverse condemnation action. In addition, the homeowners argued that the trial court erroneously ruled that the undisputed facts showed heavy rain caused the alleged inverse condemnations.

B. Holdings:

1. Homeowners could not prove the element of causation, as required to recover on their claim for inverse condemnation against sewer district; and
2. Homeowners could not sustain a claim of inverse condemnation against sewer district based upon the alleged improper installation of a private lateral line. The record reflected that these lines were likely installed at the time the homes were constructed, and it is the homeowner's responsibility to remove the unauthorized private connections.

**XIII. *Bd. of Dir. of Richland Township v. Kenoma, LLC*, 284 S.W.3d 672 (Mo. Ct. App. S.D. 2009).**

A. Background: Township board of directors filed suit against property owner seeking to enjoin owner from building a hog feeding business on its property. The Circuit Court, Barton County, granted owner's motion for summary judgment. Board appealed.

B. Holding: Zoning regulations, as applied to property owner's hog feeding operations, impermissibly regulated farm structures in violation of township zoning statute.

**XIV. *Land Clearance for Redevelopment Auth. of City of St. Louis v. Inserra*, 284 S.W.3d 641 (Mo. Ct. App. E.D. 2009).**

A. Background: After city board of aldermen adopted an ordinance deeming landowner's property blighted, city redevelopment authority brought action to have property condemned. The Circuit Court, City of St. Louis, upheld the city board's determination and condemned the property. Landowner brought interlocutory appeal.

B. Holdings:

1. The determination of blight was not nullified by new state eminent domain statute; and
2. The evidence supported a finding that the landowner's property was an economic and social liability, warranting determination of blight.

**XV. *Meramec Valley R-III Sch. Dist. V. City of Eureka*, 281 S.W.3d 827 (Mo. Ct. App. E.D. 2009).**

A. Background: School district brought action against city, seeking to halt implementation of redevelopment under the Real Property Tax Increment Allocation Redevelopment Act on the basis that the redevelopment project was void from inception. The Circuit Court, St. Louis County, granted city's motion for summary judgment. The district appealed.

B. Holdings:

1. City established a predominance of blighting factors in redevelopment area resulting in economic liability;
2. City's ownership of part of redevelopment area or failure to previously redevelop portion of area did not estop city from seeking tax increment financing (TIF) redevelopment;
3. Redevelopment area was not subject to growth and development through investment by private enterprise and was not reasonably anticipated to be developed without adoption of a redevelopment plan;
4. Allegedly conflicting standards of review for summary judgment and the review of board of aldermen's determination did not preclude grant of summary judgment to city; and
5. Statutory TIF exclusion for greenfields did not apply.