Docket No. 20-323

The Supreme Court of the United States

John Barth,
Petitioner
v.
City of Peabody,
Respondent and Defendant

On Petition for Writ of Certiorari
to the First Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Although appearing pro se, the Petitioner knows these areas of law well, and is able to brief and argue the issues competently.

Questions Presented for Review

1. Did municipal denial of permission to rebuild a home effect a taking of private property, where an *ex post facto* ordinance prohibited all other economically viable uses?

What compensation is to be made for consequent damages?

2. Did acts of the defendant violate the Plaintiff right to Equal Protection of Law, where residential use was allowed to continue on adjacent properties, all similar in non-conformance with the *ex post facto* ordinance?

3. Should this Court review *de novo* to avoid bias upon remand? Did appeal require a trial transcript, where none of the issues required consideration of trial process, except due process denial by perjuries now in separate litigation?

PARTIES

1. Plaintiff John Barth is the owner of land at 4 Lynn Street, Peabody, Essex County, Massachusetts (Peabody Assessor Map 102 Lot 255 shown in Appendix C and Exhibits 6-8 and 42-49), hereinafter "property of Plaintiff" or "subject property".

Although appearing pro se, the Petitioner is well versed in these areas of law, and is able to brief and argue the issues in a competent manner.

2. Defendant City of Peabody is a municipality of Massachusetts in Essex county, hereinafter designated "city".

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52. *Quinn v. Bd. of Cty. Commissioners for Queen Anne's Cty*, 862 F.3d 433, 443 (Maryland 2017) page 30

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Orders Entered

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Other Authorities

It is the unjust judge, that is the capital remover of landmarks, when he defineth amiss, of lands and property... Nothing doth more hurt in a state, than that cunning men pass for wise... Persons that are full of sinister tricks and shifts, whereby they pervert the plain and direct courses of courts, and bring justice into oblique lines and labyrinths.
-Francis Bacon, Essays

Here let those reign, whom pensions can incite,
To vote a patriot black, a courtier white,
Explain their country's dear-bought rights away,
And plead for pirates in the face of day.
-Samuel Johnson, London, 1738

The United States has been... a government of laws, and... will cease to deserve this... if the laws furnish no remedy for the violation of a vested legal right.
- John Marshall, Marbury v. Madison, 1803

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.
- Louis Brandeis, Olmstead v. U.S., 1928

Jurisdiction

Jurisdiction of the United States Supreme Court is conferred by Article III §§ 1,2 of the Constitution of the United States; 28 USC §2106 confers jurisdiction to modify or reverse any judgment or order of court brought for review.

This petition is brought under the Civil Rights Act (42 USC §§1983 to 1986), for violation by the defendant of rights of the Plaintiff guaranteed by the Constitution of the United States, including his right against the taking of property without just compensation (Amendment V); his right against deprivation of property without due process of law (Amendment XIV §1), and his right to equal protection of the laws (Amendment XIV §1). The statutes of Massachusetts, M.G.L. Ch. 40A and 79, are unconstitutional as applied to deny the Plaintiff relief from these violations.

The federal courts have jurisdiction under 28 USC §1331 of the claims herein of violations of rights guaranteed by the US Constitution; and under 28 USC §1343(1-3) of all claims herein of deprivations of civil rights in violation of 42 USC §§ 1983-1986; and under 28 USC §1332 of all claims herein, as Plaintiff is a resident of Maine, whereas the municipal defendant is an entity of Massachusetts.

The First Circuit Court of Appeals falsely affirmed the incorrect decision of the Massachusetts District on June 15, 2020. This petition is timely brought within 90 days thereof, per Rule 13.1 of the Rules of the Supreme Court.

Provisions of United States Constitution

Amendment V:

"No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV Section 1:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes of the United States

42 USC §§ 1983 to 1988 (Civil Rights Act) (pages 3, 13, 48)

Statutes of Massachusetts

G.L. Chapter 40A (zoning; exemptions)
§§ 6, 10, 17 et al (pages 3, 10, 37)

G.L. Chapter 79 (taking of private property)
§§ 6, 7B, 10, 12, 14, 16, et al (pages 3, 13, 34, 37)

Ordinance of the defendant City of Peabody

Zoning ordinance §§1.5.1 (special permit "variance"), 1.5.1 (exemption) and 1.5.4 & 6 (time limits) (pages 10, 15)

Statement of the Case with Pertinent Facts

1. A dwelling upon the subject property of Plaintiff was constructed c. 1800 AD, a farm or village dwelling of log frame construction beside Tapley Brook. Nearby lots are derived therefrom, and structures were built there later. Over two centuries this property (4 Lynn St, Map 102 lot 255) and the adjacent properties (2 and 6 Lynn St.) became "nonconforming" with ex post facto City zoning ordinances, but residential use continued (Exh. 30-32), and continues now on both adjoining properties (Exh. 30-38).

2. The subject property was foreclosed and vacant in 2009-2011. Neighbors alleged health concerns, city officials issued orders falsely, the lack of response from prior owner FHLMC outraged them, and they assured neighbors of its future use for their parking. City officials stated that renovation was prohibited, issued a demolition order, and the structurally sound antique structure was demolished 4/9/2011.

3. Plaintiff had studied constitutional and land use law on behalf of a charity, and knew that zoning nonconformities have no effect upon the title right to rebuild a home. He needed a residence near Boston to continue his engineering work despite medical problems limiting commuting time, had the unique circumstances to use the land (knowledge of related law, permitting and construction skills, and cash to build), and no others made offers, so Plaintiff acquired the lot 9/8/2011 (Exh. 9) at a minimal price. But the value to such a buyer was the full value of a residential lot near Boston. Plaintiff proceeded rightfully with his plan to replace the former dwelling, fortunate to recover his working ability.

4. Plaintiff promptly had a site plan drawn showing the proposed site features. The home was designed to be "no more nonconforming" (Exh.7, 8, 43-45, 47, App. C) (within the former home footprint, with no other nonconformities) and therefore exempt from zoning requirements per MGL. Ch. 40A §6.

5. Plaintiff applied 9/26/2011 for a building permit to replace the demolished home, which was denied by the city. Despite echoing the Ch. 40A §6 exemption in its own

§1.5.1, the city zoning ordinance §1.5.1 requires a "special permit" or "variance" from its Dimensional Controls (Exh. 41) from its Zoning Board of Appeals (ZBA), as noted in the permit denial letter (Exh. 11 10/14/2011).

6. Plaintiff promptly applied for the demanded variance, for hearing at the November 2011 city ZBA meeting, citing the constitutional issues, and wrote to the ZBA (Exh 10) on the constitutional, statutory (MGL Ch 40A §6, 10), and Zoning (1.5.1) provisions for variances by constitutional right. The ZBA thus knew that denial would constitute taking of property requiring just compensation, which at that point would have been land value plus initial design work.

7. Many city officials believed that, if Plaintiff obtained land at a low price, then somehow the city had a right to take it from him for the same price, or to take the property for purposes of others, or to destroy its value to the Plaintiff. City officials often cited the price paid by Plaintiff to recruit others to oppose his interests. But these notions have no basis in law, and are no less than rationales for crime.

8. Many efforts were made by city officials to force use of the subject property for parking to benefit an adjoining property owner. Contractors were encouraged to charge many times their reasonable and customary fees for services to Plaintiff, and multiple fees for multiple city proceedings were sought, despite statutory exemptions. The city building department, ZBA, and conservation commission unlawfully required costly procedures from which home rebuilding is exempt by statute, and demanded six successive home designs including four complete engineering designs, many months of work to comply with ex post facto law, hiring surveyors and an environmental consultant, and attending many meetings far from Plaintiff's home in Maine. Plaintiff made these investments with the assurance of law that this "reasonable investment-backed expectation of value" [9, 7] cannot be lawfully denied. Such improvement costs (Exh. 21) are part of the property value to be compensated.

9. To discourage the theory evident among city officials, that it could seize property for no more than the lowest price ever paid, Plaintiff advised the ZBA (Exh 10) that "just compensation" means fair market value, whereupon the defendant city reduced its sworn assessed value of the land by more than 97 percent from $112,200 to $3,200 (Exh 20, 30-38) while increasing the assessed value of both adjacent parcels in the same prior use. This falsification of the public record by defendant city clearly shows intent to take, and admission of taking, substantially all value of the property, and is an act of perjury under MGL Chapter 66 §§5A, 6, 16. Defendant city also fraudulently altered the construction dates of adjacent structures in 2014 to make them appear as old as the demolished home, despite their obvious late 19th and mid 20th century construction. If the 2014 city assessments of adjacent parcels are fair, the 2014 FMV of the land is $139,440, over 43 times the tampered assessed value, to which is added the development investment, to form the "reasonable investment-backed expectation of value" upon which compensation is based. Fair market value is higher.

10. Every stated objection was overcome by the investments of the Plaintiff. The plans met all regulations, the city engineer approved, most neighbors approved of the new home, and Plaintiff obtained Conservation Commission approval 5/7/2012 (Exh. 13).

11. The present city zoning ordinance Use Table (Exh. 40 for zone R1A) permits only Residential, Educational, Church, and Agricultural uses. All of these require structures, except Agricultural use, which is uneconomic in small isolated lots (Accessory use requires a permitted principal use). Present zoning Dimensional Controls yard dimensions leave no area for structures on the small subject property (Exh. 11, 14, 41-42). This lot has no use permitted under the zoning ordinance except continuation of prior residential use. Therefore denial of continued residential use would take "all or nearly all value" of the lot plus development costs.

12. At its meeting 7/16/2012, upon motion to approve the application for variance, the ZBA voted with three in favor, which under MGL 40A is not sufficient to

approve a motion before a ZBA with five members, and defendant city thereby unlawfully denied the variance it had unlawfully demanded to replace the home on the subject property, as its Chairman then stated. Plaintiff petitioned for compensation by demand following the vote, but the hearing was closed without such action. The notice to Plaintiff of denial of variance (Exh 14) proves public taking of the residential principal use of the subject property by defendant.

13. The failure of defendant to award damages concurrent with the act of taking or petition of Plaintiff is in violation of MGL Ch 79 §§ 6, 7B, and 10, and of his rights to just compensation and equal protection guaranteed by the U.S. Constitution, Amendment V and XIV, and thereby in violation of the Civil Rights Act 42 USC §§1983-1988.

14. MGL Chapter 79 §14 provides that the owner of property taken by government may demand compensation in the Superior Court of that county. Accordingly Plaintiff filed civil action ESCV-2012-01454-A for compensation 8/2/2012 in Superior Court for Essex County in Salem, Massachusetts.

15. The subject property is located in the part of Salem that later became Peabody. The Essex court there succeeded the court of the Salem Witchcraft Trials of the 1640s, in which property was taken by means of false accusations and both political and judicial corruption, as reflected in Nathaniel Hawthorne's House of Seven Gables. The Essex court embodies the organized crime subculture of Peabody.

16. Compensation was denied without cognizable argument by the Salem (Essex) Court, appealed to the Massachusetts Court of Appeals; and appellate review by the Supreme Judicial Court (state court of last resort) was denied.

17. The case was brought to the U.S. District Court for Massachusetts as case 15-13794. The corrupt magistrate Bowler, now a defendant in related action for perjury, denied Motions for Summary Judgment without cognizable argument by falsifying every standard of judgment, and instructed the jury with false statements of law to deny rights of the plaintiff guaranteed by the United States Constitution.

18. That decision was appealed to the First Circuit court of appeals which erroneously and corruptly affirmed, claiming absurdly that absence of a trial transcript prevented judgment of claims and facts completely unrelated to the trial process.

19. These facts establish a pattern of willful abuse of office and refusal by defendant city officials to grant mandated statutory exemptions from approval procedures. The defendant is principal in the first degree by commission, solicitation, protection, and ratification, and accessory before and after the fact, in tort and abuse of office by its officials against the Plaintiff, with intent to seize the subject property and to violate his Constitutional rights.

20. The acts of defendant city were made with knowledge and intent to deny the Plaintiff due process of law in the deprivation of his property, to deny him equal protection of law relative to others similarly situated; to deny him just compensation for public taking of his private property, to solicit and ratify crime and tort of adjacent property owners and tenants to seize and use Plaintiff property for their benefit, and to injure the Plaintiff financially.

21. The 97% assessed value reduction of the subject property by defendant city in falsified but sworn assessment records for 2010-2012, while showing a rise in land value of adjacent parcels in the same use over that period, admits defendant intent to take, and belief that it had taken, substantially all of the value of the subject property, which is now taken.

22. The defendant has committed these unlawful acts with knowledge of the rights violated and of the injuries done, by choice among alternatives, and under color of state law.

23. Every such act of the defendant has been without the consent, against the will, and in violation of rights of the plaintiff, has injured him in the use and enjoyment and value of his property and investment in its improvement, and has injured him

in his income, ability to pursue his engineering work, and has thereby injured him in his future income.

24. The defendant city has also imposed an unconstitutional time limit (§1.5.4 and 6) of one or two years upon the rebuilding of homes not conforming with its ex post facto zoning ordinance, which expired during litigation, and the city is expected to apply that limit to deny use of the subject property if its earlier acts are found unconstitutional. Further, the city can obstruct, and intends to obstruct any building process at its discretion, without recourse by the Plaintiff. Beyond this, the city has by its unlawful acts encouraged and ratified acts of vandalism committed, and arson threatened by adjacent residents to prevent use of the land by the Plaintiff. Therefore mere annulment of the permit denials by city officials would be ineffective, and the matter would soon return to court with greater risk, damages, and legal complexity.

Reasons for Granting Certiorari

The district court judgment unconstitutionally denied compensation to the plaintiff, for "constructive" Taking of Property by applying an ex post facto zoning ordinance to prohibit rebuilding of a home, and by denying Compensation. It ignored the unconstitutional denial of Equal Protection of Law by defendant failure to apply that ordinance to adjacent properties. The judgment and its affirmation are repugnant to the Constitution, are based upon corrupt influence, and without ruling by this Court will set a poor precedent requiring later intervention.

Questions 1 and 2 deal with the "constructive" taking of private property and denial of equal protection of law. These questions merit certiorari due to conflict of the judgment under review with prior decisions of this Court per Rule 10(c.), and with decisions of the U.S. courts of appeals and state courts of last resort per rule 10(a) and 10(b).

Question 3 concerns prejudice of the court of appeals in the pretense that review required a trial transcript, and the necessity of de novo review to avoid prejudice upon remand.

Reasons for Certiorari for Question 1

1. Does municipal denial of permission to rebuild a home effect a taking of private property, where an ex post facto zoning ordinance prohibits all other economically viable uses?

This question is of critical importance in protecting private property where zoning ordinances enacted after home construction require larger lots.

Although Massachusetts law correctly exempts from zoning ordinances the rebuilding of homes after destruction, the state courts denied both the exemption and compensation, applying state law so as to nullify constitutional rights.

In district court, the Plaintiff made Motion for Summary Judgment, which was purely a matter of law, as the defendant had admitted the facts of property taking under both state and federal standards. There was no dispute as to the determinative facts, and no cognizable issue of law. The defendant objections consisted exclusively of cases in which a *proposed new land use* was denied, a body of law quite unrelated to denials of *established land use*, which violate *vested rights*. These were completely immaterial cases, and the defendant had no other objection. This law was fully explained to the district court, which denied summary judgment with extreme lies as to the standard of judgment on every point: the district court knew very well that it could not argue against the motion, had no intention of doing justice in a clear case, and had been motivated to commit abuse of public office.

The state and district court decisions contradict definitive rulings of this Supreme Court in several areas, as well as consistent rulings of lower federal and state courts. Without intervention by this court, this precedent for unconstitutional taking of private property would jeopardize the largest investment of millions of property owners, would nullify the Civil Rights Act and Amendments V and XIV, wasting substantial judicial resources in redundant litigation, and would necessitate later intervention by this Court.

Conflict With Rulings of this Supreme Court

This Supreme Court established the standard of review in this matter by summary of its prior judgments on public taking of private property in Palazzolo v. Rhode Island, 99-2047 (2001)[7]:

> "The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226 (1897), prohibits the government from taking private property for public use without just compensation. The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal "permanent physical occupation of real property" requires compensation under the Clause. Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 427 (1982). In

> Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 (1922), the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes' well-known, if less than self-defining, formulation, "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking." Id., at 415.
>
> Since Mahon, we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, see infra at 19-21, that a regulation which "denies all economically beneficial or productive use of land" will require compensation under the Takings Clause. Lucas, 505 U. S., at 1015; see also id., at 1035 (Kennedy, J., concurring); Agins v. City of Tiburon, 447 U. S. 255, 261 (1980). Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. Penn Central, supra, at 124. These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U. S. 40, 49 (1960).

The Court recognized that the Lucas [4] criterion of "all economically beneficial use" having been taken is met despite uses of minor value which may remain after the principal use is taken (in Lucas as in this case, uneconomic agricultural use remained when residential use was taken):

> Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest.

Therefore the Lucas [4] criterion is met in this case: because all uses of the subject property under the ex post facto zoning ordinance require structures (except the non-viable agricultural use), and no structures can be built on the lot under that ordinance, so that defendant denial of continuation of residential use denied "all economically beneficial use", despite uses of minor value which may remain. The

city decision to prohibit rebuilding of the former home therefore effected a taking of private property.

State Law Is Consistent With Federal Law

In James G. Cayon vs. City of Chicopee & another [3] the Massachusetts court ruled that:

> It is well settled that a taking of private property for which compensation must be paid is not necessarily restricted to an actual physical taking of the property. See Nichols, Eminent Domain (Rev. 3d ed.) Section 6.1. This rule has long been recognized in this Commonwealth. In Old Colony & Fall River R.R. v. County of Plymouth, 14 Gray 155 , 161 [6], we stated that private property can be "appropriated" to public use "by taking it from the owner, or depriving him of the possession or some beneficial enjoyment of it." Likewise, the Supreme Court of the United States has stated that "[g]overnmental action short of acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking." United States v. General Motors Corp. 323 U.S. 373, 378 [10]

Under the law of the United States and of Massachusetts, the defendant city denial of nearly all economic value of the subject property is a public taking of private property and must be compensated.

False Instructions to Jury on Takings Clause

The issues of federal law were fully briefed by the Plaintiff in his Memorandum of Law, Pretrial Memorandum, and Trial Brief, with a clear statement of federal law on each point, which was ignored by the district court magistrate.

The magistrate gave to the jury carefully-distorted instructions on each of the federal issues, using a single anomalous state decision, invoking ancient decisions long superceded, and inventing non-existent "principles of law," demanding that the jury decide the federal issues accordingly. The judge had been provided a definitive memorandum of law on each of these issues, and chose instead

to subvert the United States Constitution and the rights of its People, by inventing utterly false standards of judgment, asserting those as the law, and demanding that the jury act accordingly.

The jury was instructed to ignore the Fourth, Fifth, and Fourteenth Amendments of the Constitution, including the "self-executing" Takings clause of the Fifth Amendment, and the entire history and case law of civil rights law and of property takings, all of which were before that court in the Memoranda of Law.

Failure to Apply the State Standard

The instructions to the jury failed to apply the state standard of property taking, which is far more inclusive even than the federal standard, and is the correct standard of judgment in cases of state takings. In James G. Cayon vs. City of Chicopee & another [12] the court ruled that

> It is well settled that a taking of private property for which compensation must be paid is not necessarily restricted to an actual physical taking of the property. See Nichols, Eminent Domain (Rev. 3d ed.) Section 6.1. This rule has long been recognized in this Commonwealth. In Old Colony & Fall River R.R. v. County of Plymouth, 14 Gray 155 , 161 [6], we stated that private property can be "appropriated" to public use "by taking it from the owner, or depriving him of the possession or **some beneficial enjoyment** of it." Likewise, the Supreme Court of the United States has stated that "[g]overnmental action short of acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of **all or most** of his interest in the subject matter, to amount to a taking." United States v. General Motors Corp. 323 U.S. 373, 378 [10]

The state standard of taking of property is that the owner has been deprived of "some beneficial enjoyment" of it. That is the standard applicable to this case, which was ignored by the lower court.

False Statement of the Federal Standard

The instructions to the jury falsely stated (p.21) that *all property value* must be taken to constitute a taking of *any* private property:

THIS FORM OF TAKING IS LIMITED TO THE EXTRAORDINARY CIRCUMSTANCE WHEN NO PRODUCTIVE OR ECONOMICALLY BENEFICIAL USE OF THE LAND IS PERMITTED, IN OTHER WORDS, THE PROPERTY IS RENDERED ECONOMICALLY USELESS.

This statement has no basis in law whatsoever, is plainly false, and was clearly intended to throw the case to the defendant for bribes or other benefits.

In fact this Supreme Court in Palazzolo v. Rhode Island, 99-2047 (2001) [7] well summarized its prior judgments on public taking of private property:

> The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226 (1897), prohibits the government from taking private property for public use without just compensation. The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal "permanent physical occupation of real property" requires compensation under the Clause. Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 427 (1982). In Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 (1922), the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes' well-known, if less than self-defining, formulation, "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking." Id., at 415.
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> Since Mahon, we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, see infra at 19-21, that a regulation which "denies all economically beneficial or productive use of land" will require compensation under the Takings Clause. Lucas, 505 U. S., at 1015; see also id., at 1035 (Kennedy, J., concurring); Agins v. City of Tiburon, 447 U. S. 255, 261 (1980). Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. Penn Central, supra, at 124. These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U. S. 40, 49.

This Court also recognized that even the Lucas [4] criterion of "all economically beneficial use" having been taken is met despite uses of minor economic value which may remain after the principal use is taken (in Lucas as in this case, agricultural use remained when residential use was taken):

> Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest.

Citizens may not rob banks with impunity, with the defense that not everything was taken, that the bank property is still worth something, or that a dollar was dropped or a nickel thrown at the victim on the way out. No such principle has ever been applied in civil or criminal cases of property taking, nor in cases of federal or state property takings.

The criterion of property taking under US law is "all or most" of the property value, and this is indisputably met by the defendant taking of over 97 percent of the value of the subject land by its sworn admission, and over 99 percent of the value of the land plus development costs.

There is no question of fact or law, that the present case fully meets both the state and federal criteria of property taking. But the jury instructions deliberately contradicted case law, admitting that *immaterial case law* was substituted *at the request of the defendant.* The erroneous jury decision resulted from false instructions as to the law, on the primary issue of the case.

The jury instructions stated incorrectly that no property is taken unless it is all taken, exonerating the bank robber on the grounds that he dropped a nickel on the way out, and therefore took nothing. This egregious and ludicrous argument would never have been suggested had the property of the defendant or the magistrate had been taken.

The Plaintiff had in fact moved that, on that principle, the court take the property of the defendant and give it to the Plaintiff, and the court denied the

motion. The Plaintiff asked the court why it did not take 97 percent of the property of the defendant counsel, to find out what he really thinks about property taking, and no one could answer.

In stating its contradiction of state and federal law of property taking, the jury instructions admitted (footnote p.21) that it was based solely upon a *defendant request* to substitute a *single immaterial state case* for the entirety of state and federal case law:

> "DEFENDANT REQUESTS THE "ECONOMICALLY USELESS" LANGUAGE... WHICH THE LAW SUPPORTS."
> (citing *Giovanella* [1])

But of course *Giovanella* is a case of *proposed new uses* of land, and is utterly immaterial to the present case of denial of *established land uses.* These are completely different areas of case law, as fully argued by the Plaintiff in the Memorandum of Law. Established land use is an unconditional *vested right,* unlike proposed new land uses, which may conflict with a public interest.

The jury instructions falsely and absurdly stated (p. 21, citing Lucas) that over 95 percent of property value must be taken by government to constitute a taking of any private property.

> "A CATEGORICAL TAKING WOULD NOT APPLY EVEN IF THE DIMINUTION IN THE VALUE WERE 95% INSTEAD OF 100%"

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[1] *Giovanella v. Conservation Comm. Of Ashland,* 857 N.E. 2d, 451, 461 (Mass. 2006) [51]
This case concerns a *proposed new land use* and is immaterial to the present case. It also (1) ignored the state criterion of property taking and so had no validity under state law. It also (2) ignored modern case law and misstated even the antiquated *Penn Central* standard for property takings. Finally (3) the case tampered the definition of the subject property, adding an adjacent parcel to dilute the effect of taking all value of the subject lot, to conclude that not enough of the two lots was taken. This is an exercise in false legal argument, in addition to being immaterial to the present case of denial of *established land uses*. This citation further establishes the corruption of the district judge.

But in fact, in Palazzolo, the Supreme Court recognized that even the Lucas [4] criterion of "all economically beneficial use" having been taken is met despite uses of minor economic value which may remain after the principal use is taken:

> Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest.

The jury instructions also stated falsely (p. 25) that

> THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT DOES NOT REQUIRE COMPENSATION WHEN A PROPERTY OWNER IS BARRED FROM PUTTING HIS PROPERTY TO A USE THAT IS PROSCRIBED BY EXISTING RULES OR REGULATIONS.

This statement incorrectly instructed the jury to ignore the determinative facts, that the defendant zoning ordinance was (1) enacted over two centuries after the residential land use was established, by its own admission, and was therefore an unconstitutional *ex post facto* law as applied; and (2) it was *specifically barred from such application* under Mass. law Chapter 40A.

Although the jury instructions later admit that Massachusetts law Chapter 40A specifically allows the rebuilding of a one or two-family house that is nonconforming with subsequent zoning ordinances as long as the rebuilding is *not more nonconforming* therewith than the original house, it falsely instructs the jury (p.28-9) that the proposed rebuilding was *more nonconforming* only because a second floor was added:

> "ADDING A SECOND STORY TO A PREEXISTING NONCONFORMING CARRIAGE HOUSE MAY INCREASE THE NONCONFORMING NATURE OF THE CARRIAGE HOUSE TO PRECLUDE THE PROPOSED RECONSTRUCTION."

But in fact the new height in this case (about 27 ft.) conformed with the 35-foot height restriction under the later zoning ordinance, so again the instruction was completely false. The Plaintiff was denied the right to introduce the state law or

zoning ordinance to show that the rebuilding was no more nonconforming than the original. Again false jury instructions caused the erroneous verdict.

The jury instructions incorrectly state (p. 34) that property is not taken by regulation where the regulation intends to "serve the common good" as do all regulations.

> "I INSTRUCT YOU THAT A TAKING IS MORE READILY FOUND WHEN THE GOVERNMENT INTERFERENCE WITH THE PROPERTY CAN BE CHARACTERIZED AS A PHYSICAL INVASION BY GOVERNMENT. IN CONTRAST, WHEN THE INTERFERENCE BY GOVERNMENT REGULATION ARISES FROM A PUBLIC PROGRAM THAT ADJUSTS THE BENEFITS AND BURDENS OF ECONOMIC LIFE TO PROMOTE THE COMMON GOOD, IT IS LESS LIKELY THAT THE CHARACTER OF THE GOVERNMENT ACTION WILL SUPPORT FINDING A TAKING." (citing [52])

But in fact all regulations are presumed to be intended to serve the common good. Issues of regulatory intent are considered when a *proposed new land use* is taken, but not in denial of *established land uses* where the Takings Clause of Amendment V is "self-executing." The federal law is correctly stated in the Plaintiff Memorandum of Law. Such jury instructions are incorrect, and the resulting erroneous jury decision cannot be allowed as a precedent.

> The jury instructions (p. 35) further stated incorrectly that
>
> "ZONING LAWS WHICH CONTROL DENSITY AND LIMIT OVER DEVELOPMENT ARE ANOTHER EXAMPLE OF GOVERNMENT REGULATION THAT SERVES THE COMMON GOOD BECAUSE THEY PRESERVE OPEN SPACES, AND ARE THEREFORE LESS LIKELY TO CONSTITUTE A TAKING."
>
> (citing [52, p.36] as follows)
>
> "in instances in which a state tribunal reasonably concluded that that the "health, safety, morals, or general welfare" would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests."

But again the cited case *Quinn*, an anomalous state case from Maryland, dealt with a *proposed new land use*, not an *established land use*, for which the state and federal standards are entirely different. The case is again *immaterial*, and the jury instruction is false.

Regulatory intent is material only in cases where a *proposed new land use* conflicts with that intent. The jury instructions incorrectly applied that criterion to the taking of *established land uses* in contradiction of the "self-executing" Fifth and Fourteenth Amendments. Such an assertion would directly subvert the Bill of Rights of the U.S. Constitution.

Here the district court substituted naive concepts and inapplicable criteria, ignoring the federal law before it in the Plaintiff Memorandum of Law, Pretrial Memorandum, and Trial Brief. Whether this was due to corruption, ignorance, or subconscious refusal to admit the necessary criteria of property taking, may be decided by others. But such jury instructions are obviously false, and the resulting false decision cannot be allowed to become a poisonous precedent; it must be reversed.

Conclusion

Prior decisions of this Court establish that the interest of prior owners of the subject property in the long-established residential use thereof, was not diminished by subsequent zoning ordinances, was conveyed to the Plaintiff at purchase thereof, and was destroyed by denial of those uses by the Defendant city, and comprised all or nearly all of the value of the subject property. By the prior decisions of this Court, the denial by defendant city of the residential use of the subject property permitted to continue on adjacent properties denied to the Plaintiff equal protection of law, and denied "substantially all" value and the "reasonable investment-backed expectation of value" thereof to the Plaintiff, and therefore constitutes a taking of private property, and must be compensated.

The district court rejected these prior decisions of this Supreme Court, put clearly before it verbatim as above, and chose instead to invent impossible criteria. These were willful attempts to subvert Constitutional rights. It is certain that the district and appeals court judges, subject to property taking by government, would jealously defend the very rights they would deny to the Plaintiff.

The district court judgment under review contradicts prior judgments of this Supreme Court, is repugnant to the Constitution of the United States, and will stand as a national precedent for blatantly unconstitutional seizures of private property, absent correction by this Supreme Court. Certiorari should be granted and the judgment reversed with just compensation specified. Plaintiff is prepared to argue these issues with civil rights law [30-38] and zoning cases [40-50].

Value Drop Admits Taking Nearly All Value

The 97% assessed value reduction of the subject property by defendant city in falsified but sworn assessment records for 2010-2012 (paragraph 9 above), while showing a rise in land value of adjacent parcels in the same use over that period, admits defendant intent to take, and belief that it had taken, "all or nearly all" and "substantially all" value, and "all economically beneficial use" of the subject property.

What is the Just Compensation Value?

This Supreme Court has held that the purpose of just compensation is to make the takee "whole," in U.S. v. 564.54 Acres, 441 U.S. 506, (1979)[11]

> "In giving content to the just compensation requirement of the Fifth Amendment, this Court has sought to put the owner of condemned property "in as good a position pecuniarily as if his property had not been taken." However, this principle of indemnity has not been given its full and literal force. Because of serious practical difficulties in assessing the worth an individual places on particular property at a given time, we have recognized the need for a relatively objective working rule. *** The Court therefore has

> employed the concept of fair market value to determine the condemnee's loss."

The Court defined Fair Market Value (at 511) ("FMV") as

> "Under [the fair market value] standard, the owner is entitled to receive 'what a willing buyer would pay in cash to a willing seller' at the time of the taking"

Massachusetts courts have consistently upheld the federal standard of Fair Market Value as the measure of just compensation. In Mesag Aselbekian & others vs. Mass. Turnpike Authority 341 Mass. 398 (1960) [20]:

> "The measure of damages for the taking of land by eminent domain is the market value, at the time of the taking, of the land actually taken and the decline, attributable to the taking, in the market value of the owner's remaining land."

MGL Ch.79 §10 further provides for a *period* of damages:

> ...damages shall be assessed with respect to any parcel of property as of the date when such property was first injuriously affected...

In this case, the time of taking is a period from 2010 to 2012 during which numerous acts of the city damaged the market value of the subject property, when the prior owner and the city assessor were told by the city building official and others, that replacement of the former home would not be permitted, and including the period of demolition of the home in 2011 and subsequent repetitions of this restriction. The drastic 97% drop in the city assessor valuation of the subject property, relative to the adjoining properties allowed to continue in the same residential use, is shown in Exh. 20.

The rising land values of adjacent parcels in the same established use, assessed by defendant over the same period, prove that value of the subject property between them would in fact have risen, absent defendant acts. Scaled to the adjacent parcels (Exhibit 20 updated), the 2014 *assessed* land value should be $139,440. These assessor values are sworn by the defendant city to the state, and therefore admitted by defendant, and may serve as a lower limit upon Fair Market Value. Scaled to increases of *appraiser* values of adjacent properties, the 2015 FMV

of the land alone is $183,096 (Exhibit 20 updated). This should be adjusted to date of decision.

Damages Exceed The Land Value

This Supreme Court held in Palazzolo v. Rhode Island, 99-2047 [7] that ripeness of a takings claim requires completion of the permit process:

> "...a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law..."

The cost of obtaining permits required for construction is necessary to determine whether the use is permitted, and establishes "investment-backed expectation of value" [9] and ripeness of claim [7]. Just compensation therefore includes these costs of development prior to permit denials, as the value of improvements "pertaining to realty".

This cost of compliance processes and development of plans for final approval includes costs of survey, engineering, project planning, study of laws and regulations, travel, hearings, and other compliance activity. This is a large fraction of the land development cost, especially where permission of the Conservation Commission and Zoning Board of Appeals is required, and where the permit process complicates the design process. In cases such as this, of multiple permit processes and multiple redesigns, the permit process cost can exceed the construction cost. Written records are available.

The total permitting cost is $117,642 (Exhibit 21) and the estimated total litigation cost is $139,367. The total of damages *without* consequent damages is therefore $440,105.

The affirmed Superior Court judgment falsely claims that this, the admitted true value of the land, this enormous effort of engineering and permitting and

litigation, and this enormous loss of three years' engineering income, is merely an attempt to "turn his $1,000 land purchase into a 'takings' claim of $400,00 to $450,000." But in fact it is the state courts that have attempted to turn their utter dishonesty into a rationale for theft and an attack upon constitutional rights.

Consequent Damages

Consequent injury to Plaintiff includes loss of engineering income from the scheduled completion date of the home through collection upon final judgment, estimated at six years of his engineering income plus tax increments, another $840,000. Total *present* damages are $1,280,105 plus appreciation.

Plaintiff sought to rebuild the subject home because he must reside closer to his usual engineering work in Boston, due to employer requirements and a medical limit of one hour of commuting time. The Plaintiff could not obtain work afterward because his out-of-state address caused HR departments to refuse consideration of his applications, and made over 3,000 job applications until securing work in 12/2018. While in principle possible to rent an apartment in Massachusetts during the work week, the Plaintiff was unable to afford this before work was assured. After denial of residential use, the Plaintiff was soon impoverished by lack of work, and forced to use his entire savings, sell property, and take unemployment compensation. He finally obtained work only because a rare HR person was impressed with his charitable efforts.

The standard of just compensation is changing, in response to the inadequacy of compensation based only upon the interest taken, with current opinion in law schools favoring full indemnification of an owner in order to make the owner whole [60, 61].

Reasons for Certiorari for Question 2

2. Did acts of the defendant violate the Plaintiff right to Equal Protection of Law, where residential use was allowed to continue on adjacent properties, all similar in non-conformance with the *ex post facto* ordinance?

This question is of critical importance in protecting millions of home owners whose homes were built before zoning ordinances that now require larger lots. The state courts denied without cognizable argument both the MGL Ch. 40A §6 exemption of pre-existing home rebuilding from zoning ordinances, and the MGL Ch 79 §14 provision for compensation, so as to violate constitutional right. There is no significant dispute as to fact.

Please refer to Plaintiff *Memorandum of Law* section *Civil Rights Law* for the complete argument of denial of Equal Protection and Due Process of Law, as applied to this case.

The Equal Protection Clause of the 14th amendment prohibits a state or entity thereof from denying any person within its jurisdiction the same protection of the law accorded to others in like circumstances. This Supreme Court held in Yick Wo v. Hopkins, Sheriff [38] that distinct *application* of state law to a class of persons is unconstitutional if it lacks "a rational basis" related to a "legitimate state purpose." This Court held in Village of Willowbrook v. Olech (2000) [37] that adverse government action upon an *individual* without legitimate purpose violates the Equal Protection Clause.

Equal protection is relative to persons or properties "similarly situated" in relevant characteristics, but of course not identical, as no persons or properties are identical. Efforts to subvert this right typically insist upon an impossible degree of identity of circumstances.

In the cited case Lucas v. South Carolina Coastal Council. 505 U.S. 1003 (112 S.Ct. 2886) (1992) [4] the Court indicated that failure to deny the same uses to the

owners of land similarly situated (as with the adjacent properties here) establishes that the denied use was part of the title:

> Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with... The fact that a particular use has long been engaged in by similarly situated owners ordinarily imports a lack of any common-law prohibition ...So also does the fact that other landowners, similarly situated, are permitted to continue the use denied to the claimant.

Therefore the right to maintain residential use, and to rebuild the home, was part of the value of the property conveyed to Plaintiff, and of all properties similarly situated. Denial of continuation of residential land use, while allowing it to continue on adjacent properties similarly situated, further denied Equal Protection of the law to the Plaintiff.

The defendant has not denied continuation of residential use of other properties similarly situated, such as both *adjacent homes* (Exh. 33-38b) that are also "similarly situated" in being "nonconforming" with *ex post facto* zoning ordinances, but they would not permit this *for the Plaintiff*. They have permitted rebuilding of homes for favored citizens, but despite the clarity of the laws and the complaint and argument by the Plaintiff, they refused to enforce the law *for the Plaintiff*, as is established upon public record.

Moreover, denial of permission to reconstruct nonconforming dwellings after damage was in violation of state law MGL Ch.40A which recognized that right to rebuild, and thereby rendered into law the absence of any "rational basis" related to a "legitimate state purpose" for doing otherwise. This denial of use of property was therefore selective and at the discretion of employees of defendant city, and clearly constitutes denial to the Plaintiff of the equal protection of law, in violation of the Equal Protection clause of the U.S. Constitution.

These acts made the defendant liable for the taking of substantial property without just compensation, and denial of equal protection of law.

Court Falsely Stated Law of Equal Protection

The right of citizens under Amendments V and XIV of the United States Constitution to Equal Protection of Law was violated by the defendant in denying the established use of the subject land, for nonconformity with dimension rules of a zoning ordinance unlawfully applied, while permitting the same use to continue on *both adjacent properties* with *identical nonconformity* with the inapplicable rules.

The jury instructions by the district court state falsely that Equal Protection cannot have been denied unless the government entity is shown to have acted with "malice" toward the victim.

> "NOW, IN ADDITION TO THESE TWO ELEMENTS, THE PLAINTIFF MUST PROVE THAT, COMPARED WITH OTHERS SIMILARLY SITUATED, HE WAS SELECTIVELY TREATED AND THAT SUCH SELECTIVE TREATMENT WAS BASED ON IMPERMISSIBLE CONSIDERATIONS SUCH AS RACE, RELIGION, INTENT TO INHIBIT OR PUNISH THE EXERCISE OF CONSTITUTIONAL RIGHTS, OR MALICIOUS OR BAD FAITH INTENT TO INJURE A PERSON."

In fact this Supreme Court held in Parratt v. Taylor, 451 U.S. 527 (1981) that section 1983 action does not require showing of a state of mind such as malice for liability [34].

> Section 1983, unlike its criminal counterpart, 18 U.S.C. 242, has never been found by this Court to contain a state-of-mind requirement. 2 The Court recognized as much in Monroe v. Pape, 365 U.S. 167 (1961), when we explained after extensively reviewing the legislative history of 1983, that
> "[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth [451 U.S. 527, 535] Amendment might be denied by the state agencies." Id., at 180.

Clearly this instruction to the jury was completely and deliberately incorrect and caused an erroneous verdict.

The jury instructions state falsely that Equal Protection requires comparison with treatment of persons or properties having identical circumstances with the subject property, rather than properties "similarly situated."

> "ZONING DECISIONS WILL OFTEN, AND PERHAPS ALMOST ALWAYS, TREAT ONE LANDOWNER DIFFERENTLY FROM ANOTHER. THEREFORE, IN A LAND-USE CASE SUCH AS THIS ONE, THE PLAINTIFF MUST SHOW BY Å PREPONDERANCE OF THE EVIDENCE AN EXTREMELY HIGH DEGREE OF SIMILARITY BETWEEN HIMSELF AND THE NEIGHBORS TO WHOM HE COMPARES HIMSELF."

The Plaintiff showed and properly argued (exhibits 1, 2, 6, 11, 13, 17, and Memorandum of Law, *Denial of Equal Protection of Law*) that the adjacent lots had non-conformities with zoning rules for distance from lot boundaries, passed after the property uses were established, as did the subject property, and that the same rules applied unlawfully to deny the same established use to the Plaintiff, were not applied to the adjacent properties. This wholly false instruction ordered the jury to make an erroneous decision to deny Equal Protection of Law.

The defendant has not denied continuation of established use of other "nonconforming" properties similarly situated, such as both *adjacent homes*, but denied this *for the Plaintiff*. They permit rebuilding of homes for favored citizens, but despite the clarity of the laws, and the complaint and argument, they refused to enforce the law *for the Plaintiff*, as established clearly by public record.

There is no more common abuse of public office than that of local authorities, either for personal aggrandizement, taking sides regardless of law in pursuit of private policy preferences, or for real or perceived gains to themselves or their political, religious, local, or other tribal group. The purpose of regulatory law is to correct such abuses.

When judges or magistrates show the same motives, winking and palavering at obvious and even admitted abuses, deliberately misstating the law and distorting trial process, they abuse their office in league with local officials, often seeking rewards as payments to themselves, their relatives, or operatives of their political party.

> The... United States has been... a government of laws, and... will cease to deserve this... if the laws furnish no remedy for the violation of a vested legal right. - *John Marshall, Marbury v. Madison, 1803*

Allowing such brazenly unlawful acts as faking up legal argument and instructions, and distorting trial process, is itself a brazen abuse of office, and an attack upon the Constitution and the People of the United States.

Denial of Equal Protection Relative to City

The district court went further to deny equal protection of law to the plaintiff, relative to the defendant.

The defendant throughout the state and federal proceedings made no defense of fact or argument, merely endlessly repeating an immaterial low recession-era price of the property, urging the absurd concept that property can be worth no more than the lowest price ever paid for it. The Plaintiff made two motions to show that the argument is false, and known by the defendant to be false. These motions demanded that, on the same principle, (1) the Plaintiff must be given all property of the defendant obtained for less than its present fair market value; and (2) that the defendant must be required to refund all property taxes ever paid to it, based on valuations in excess of the lowest amount ever paid for each property. These motions clearly employed the exact same sole argument used by the defendant, and both were denied by the district court without argument, because it knew that any argument would reveal its intent to deny equal protection, in using that principle to favor the defendant but not the Plaintiff.

The lower court denial of these motions constitutes admission that the defendant had no cognizable defense against the claim of property taking, and that the district court instructions to the jury were a deliberate abuse of office to deny equal protection of law.

Conclusion

The district court decision contradicts definitive rulings of this Supreme Court in several areas, as well as consistent earlier rulings of Massachusetts courts. Without intervention by this court, this precedent for unconstitutional denial of equal protection of law jeopardizes the largest investment of countless home owners, nullifies the Civil Rights Act and Amendments V and XIV, and would waste substantial judicial resources in redundant litigation, necessitating later intervention by this Court.

Reasons for Certiorari for Question 3

3. **Should this Court review *de novo* to avoid bias upon remand?** Did appeal require a trial transcript, where none of the issues required consideration of trial process, except due process denial by perjuries now in separate litigation?

The court of appeals showed prejudice in ignoring groundless denials of summary judgment, and claiming that it could not review due to lack of a trial transcript, despite the documents provided (Instructions to Jury and Verdict Form). Only one of eight issues of appeal (perjuries at trial) involved other conduct of trial, and this is now in separate litigation. The court of appeals affirmed all district court errors on this absurd pretext, showing extreme prejudice. Therefore this matter would not be fairly handled on remand, and should be judged de novo by this Court.

Appellate Review Did Not Require Transcript

The decision of the appellate court stated that:

> At least twice Barth certified that transcripts were unnecessary to adjudicate this appeal; he then proceeded to advance claims focused on events at trial. Without the trial transcript, we cannot analyze Barth's arguments concerning the trial...

Study confirms that arguments concerning the trial are peripheral; none of the issues on appeal depended upon events at trial, beyond the trial documents provided. The primary issues on appeal (Brief p. 1) were:

1. Taking of Private Property Without Just Compensation
   Did acts of the defendant have the effect of violation of the right of the Plaintiff under Amendments V and XIV against the taking of private property, and to compensation for direct and consequent damages thereby inflicted?
2. Denial of Equal Protection of Law
   Did acts of the defendant violate the right of the Plaintiff to the Equal Protection of Law under Amendments V and XIV?
3. Denial of Due Process of Law (by the defendant)

Did acts of the defendant violate the right of the Plaintiff to Due Process of Law under Amendments V and XIV?

These were also the issues before the district court, and the documents provided there were entirely sufficient for summary judgment, as the defendant made no cognizable defense and did not address the principal facts presented in any objection. Those pre-trial documents were therefore sufficient for appellate review.

While a transcript might be useful in parallel proceedings for perjury of witnesses and defense counsel at trial, it is incidental to the issues appealed. The Appendix trial documents (Exhibits, Instructions to the Jury, and Verdict Form) as well as the original exhibits, were sufficient information for judgment upon appeal.

Apart from those documents, the argument of the Brief of Appellant considers the trial proceedings in only one of eight sections (D):

D. Lower Court Errors in Conduct of Trial
1. Unlawful Communication Between Defendant and Jury and Judge
2. Perjuries Proved at Trial

Section D does argue that *factors* in the jury decision include perjuries at trial, and unlawful communication between defendant, jury and judge. However, those factors are not at all necessary to the argument of the issues. The transcript may be interesting, but the argument does not require it.

The court of appeals showed prejudice in ignoring the groundless denials of summary judgment, and claiming that it could not review due to lack of trial transcript, despite trial documents provided (Instructions to Jury and Verdict Form).

The Plaintiff therefore moved and argued that the appeals court reconsider its decision in favor of de novo review of the very sufficient evidence and argument, which it declined. This decision and denial of reconsideration prove extensive prejudice of the First Circuit. Therefore this matter would not be fairly handled on remand, and should be judged de novo by this Court.

Conclusion on Certiorari

Under the law of the United States and of Massachusetts, title right to continued residential use of the subject property passed to the Plaintiff upon purchase thereof. The Massachusetts Zoning Act Ch. 40A specifically exempts the rebuilding of the former home there from local zoning ordinances. The ex post facto zoning ordinance of the defendant city prohibited all economically viable uses except continuation of the established residential use, which was permitted to continue on the adjoining properties similarly situated. Therefore the defendant unlawfully and unconstitutionally took substantially all value of the subject property by denying permission to rebuild the former home, as admitted by its sworn 97 percent reduction of assessed value thereof.

The defendant has thereby violated the Civil Rights Act (42 USC §§1983 to 1986), by violation of rights of the Plaintiff guaranteed by the Constitution of the United States, including his right against the taking of property without just compensation (Amendment V); his right against deprivation of property without due process of law (Amendment XIV §1), and his right to equal protection of the laws (Amendment XIV §1)

The district court argument in denial of motion for Summary Judgment, and its Instructions to the Jury and Verdict Form questions, are all surprisingly poor, falsely stating every standard of judgment, offering no cognizable argument contrary to the claim that "substantially all" value of the subject property was taken by defendant, and relying entirely upon two false citations. The statement of the First Circuit, and the district court judgment it affirmed, are nothing more than plainly unlawful excuses to take property without compensation, in violation of the Constitution.

The district court decision indicates prejudice against federally guaranteed rights, and at best unfamiliarity with the law of property takings, equal protection, and due process. The resulting conflict of its judgment with the long-established

standards of judgment of claims of property taking and denial of equal protection, require de novo review by this court, to preserve the Constitution and laws of the United States from a poisonous precedent.

The decisions issued in this case have sought to prevent enforcement of the Civil Rights acts, under excuses repugnant to the Constitution. Without intervention by this court, this precedent for unconstitutional taking of private property jeopardizes the largest investment of millions of Americans, nullifies the Civil Rights Act and Amendments V and XIV, and would waste substantial judicial resources in redundant litigation, necessitating later intervention by this Court.

The grave and pervasive conflicts of the judgment under review with the decisions of this Court and the U.S. courts of appeals call for certiorari: the judgment should be reversed, and specific compensation ordered to prevent nominal compensation on remand.

OATH

I hereby certify that all statements in the foregoing document are true and correct to the best of my knowledge and belief, and that service has been made in accordance with Rule 29 of the Rules of the Supreme Court, upon all parties hereto and upon the state of Massachusetts, as shown by the Proof of Service filed herewith.

Whereas the constitutionality as applied, of statutes of Massachusetts may herein be drawn into question, and neither Massachusetts nor any agency, officer, or employee thereof is a party hereto, 28 USC §2403(b) may apply.

For Petitioner:

_____

John S. Barth, pro se,
Petitioner and Plaintiff
Dated this _____ day of _____, 2015

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