


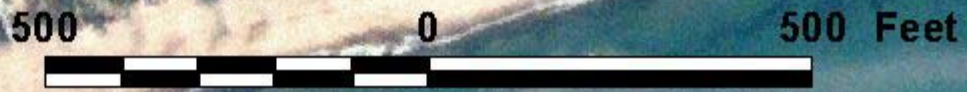
Palazzolo v. Rhode Island, et al.

A legal analysis of the case from the Rhode Island Superior Court to the U.S. Supreme Court and back again



EGRETS

 Palozzolo.shp

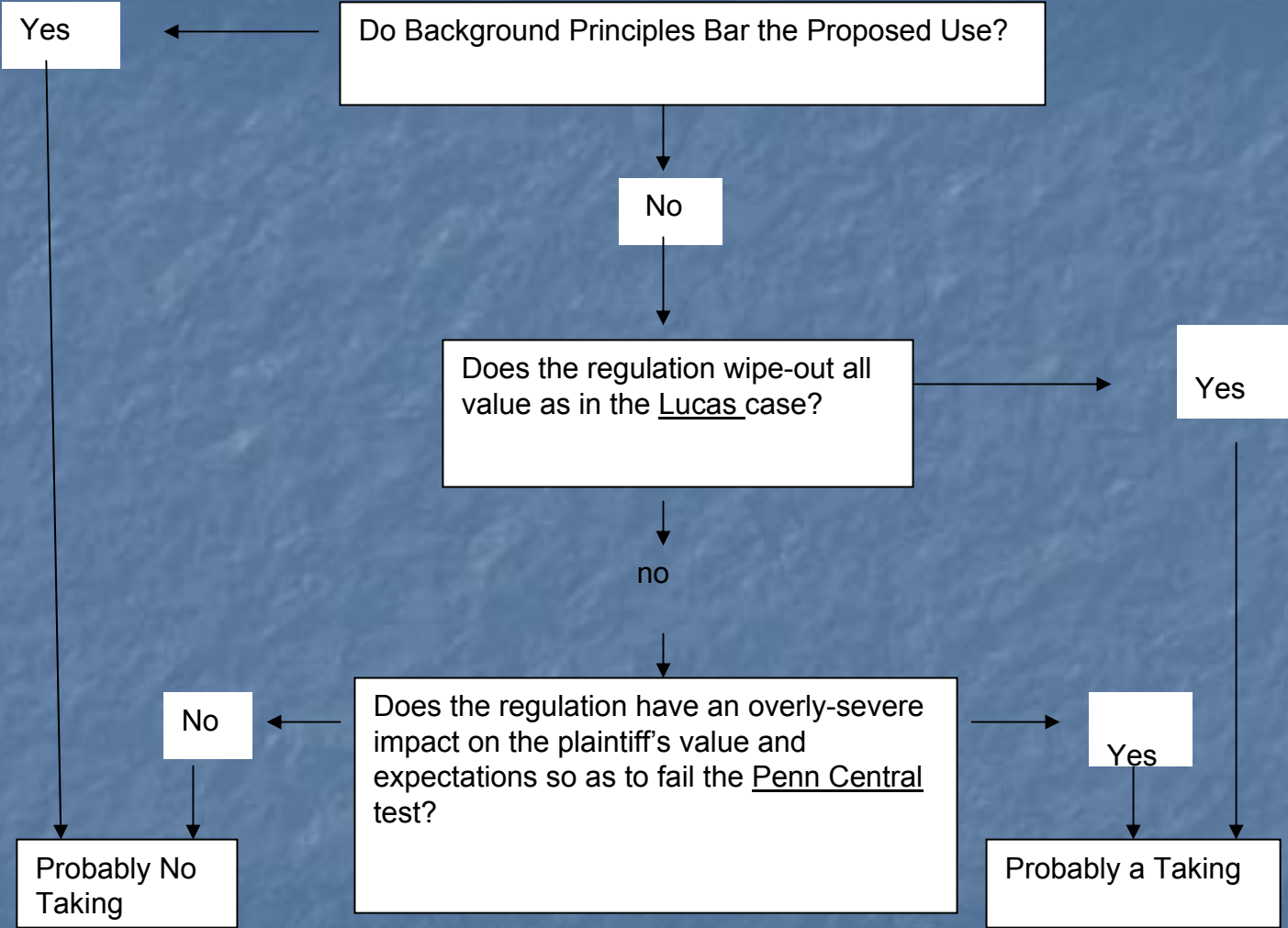


Palazzolo's claim: "taking"

The Fifth Amendment of the U.S. Constitution sets forth the elements of a takings claim:

"nor shall private property be taken for public use, without just compensation."

REGULATORY TAKINGS FLOW CHART



Case History

RI Superior Ct to hear case (April 2004)

Case remanded to RI Supreme Ct (2001)

United States Supreme Court (2001)

Rhode Island Supreme Court (2000)

Rhode Island (wa Cty) Superior Court (1988)--- Palazzolo files
suit

CRMC Denies Application (1986)

Application refiled with CRMC (1985)

CRMC Denies application

Application Filed with CRMC (1983)

Palazzolo becomes owner of land (1978)

RI and federal govt impose regulations re: filling in
wetlands (1965-1977)

U.S. Supreme Court

reviewed the RI Supreme Court's ruling that a claim by the owner of a property that includes 18 acres of wetlands was not ripe for judicial review because of a failure to apply for “less ambitious” uses for his property after CRMC rejected his earlier proposals to fill wetlands and to build a beach club.

The U.S. Supreme court was presented with the following questions:

- Whether a regulatory takings claim is categorically barred whenever the enactment of the regulation predates the claimant's acquisition of the property;
- Where a land-use agency has authoritatively denied a particular use of property and the owner alleges that such denial per se constitutes a regulatory taking, whether the owner must file additional applications seeking permission for “less ambitious uses” in order to ripen the takings claim; and
- Whether the remaining permissible uses of regulated property are economically viable merely because the property retains a value greater than zero.

U.S. Supreme Court held, in a 5-4 decision, that: (1) claims were ripe for adjudication; (2) acquisition of title after the effective date of the regulations did not bar regulatory takings claims; and (3) Lucas claim for deprivation of all economic use was precluded by undisputed value of portion of tract for construction of residence.

Status of “takings” after *Palazzolo*

- “partial takings” theory—a regulatory action may be found to be taking, even though it doesn’t cause the level of economic diminution in property value necessary to find a taking under the per se test in *Lucas*
- No defined rule that a takings plaintiff must ripen its claim by first applying to the regulatory agency for the project upon which its takings claim is subsequently litigated
- Erodes the widely accepted rule that a claimant may not assert a taking based upon a reg that was in place before the property was acquired

RI Supreme Court

Directed by the US Supreme Court to examine Palazzolo's "takings" claims under the *Penn Central* test:

Court must examine the economic impact of the regulation on the claimant, interference with reasonable investment-backed expectations, and the character of the government's actions

RI Supreme Court concluded that a remand of the case to the Superior Court for the mandated *Penn Central* analysis was necessary

RI Supreme Court cont'd

Before remanding to the Superior Ct, Supreme Ct directed Parties' Counsel to submit memos answering the following:

- 1) The need for a survey of the Palazzolo property in respect to that portion thereof which is below the mhw line in tidal effect;
- 2) Information regarding the initial purchase price of the property by Shore Gardens, Inc.;
- 3) The proceeds and/or other consideration received by SGI when 6 of the parcels were sold from the original lands purchased; and
- 4) The relevance of the Public Trust Doctrine as described in *Greater Providence* to the reasonable investment-backed expectations of Palazzolo

State's response

Remand is unnecessary

- A tidal survey has already been done (in the record);
- The deed is admitted into the record establishing merely nominal consideration;
- Since the record already reveals land uses by SGI, the precise revenue realized is unimportant; and
- The Public Trust Doctrine as described in *Greater Providence* defeats any claim of expectations

State's Case

Strongest arguments:

1) Nuisance (scientific argument)

Legal Test under *Lucas*: “the degree of harm to the public lands and resources, or adjacent private property, posed by the claimant’s activities, the social value of the claimant’s activities and their suitability to the locality in question.”

RI Law: “A public nuisance is an unreasonable interference with a right common to the general public: it is behavior that unreasonably interferes with the health, safety, peace, comfort or convenience of the general community.”

State's Case cont'd

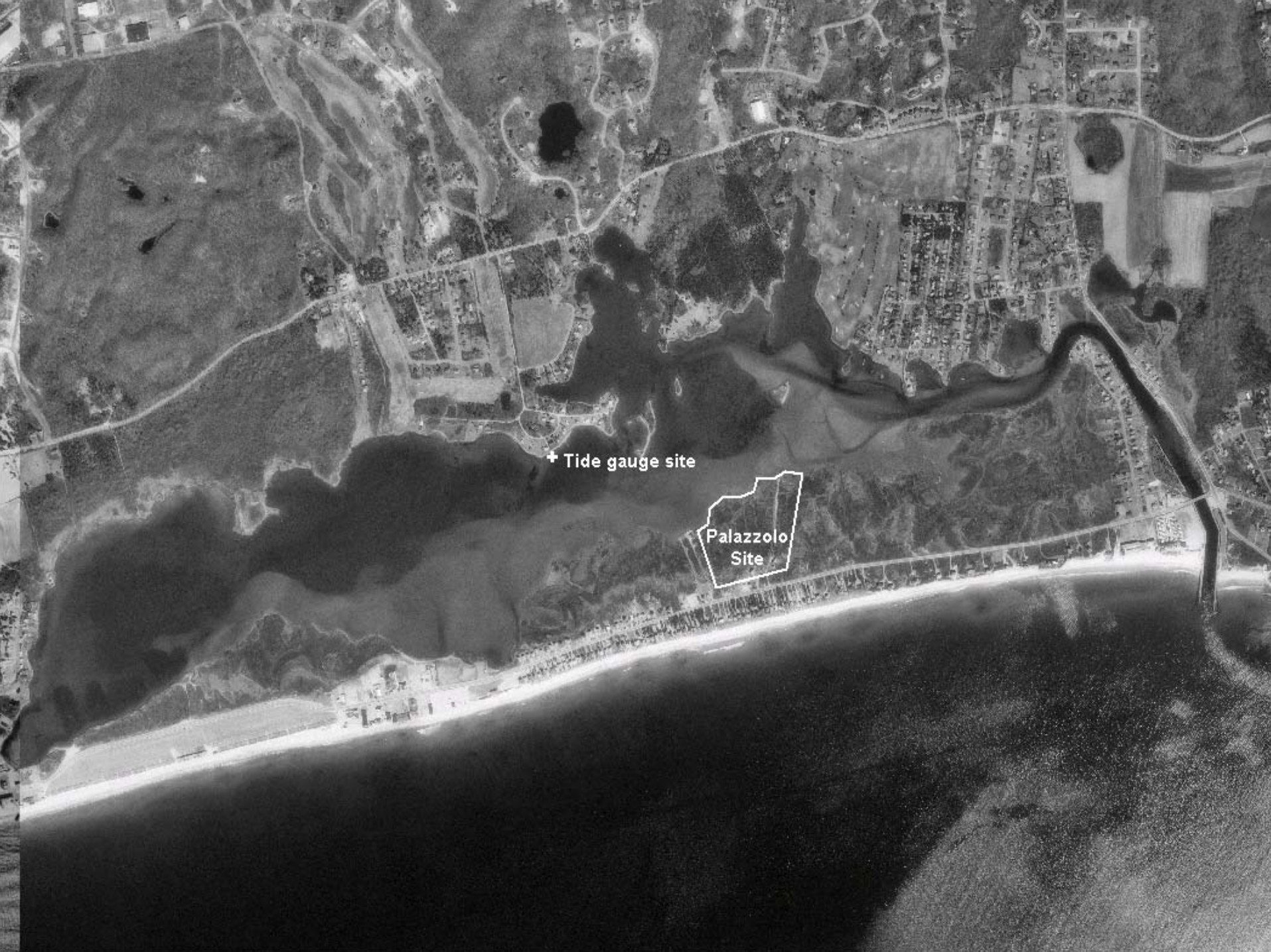
2) Public Trust

land is below the MHT line; intertidal

3) Lack of reasonable investment-backed expectations

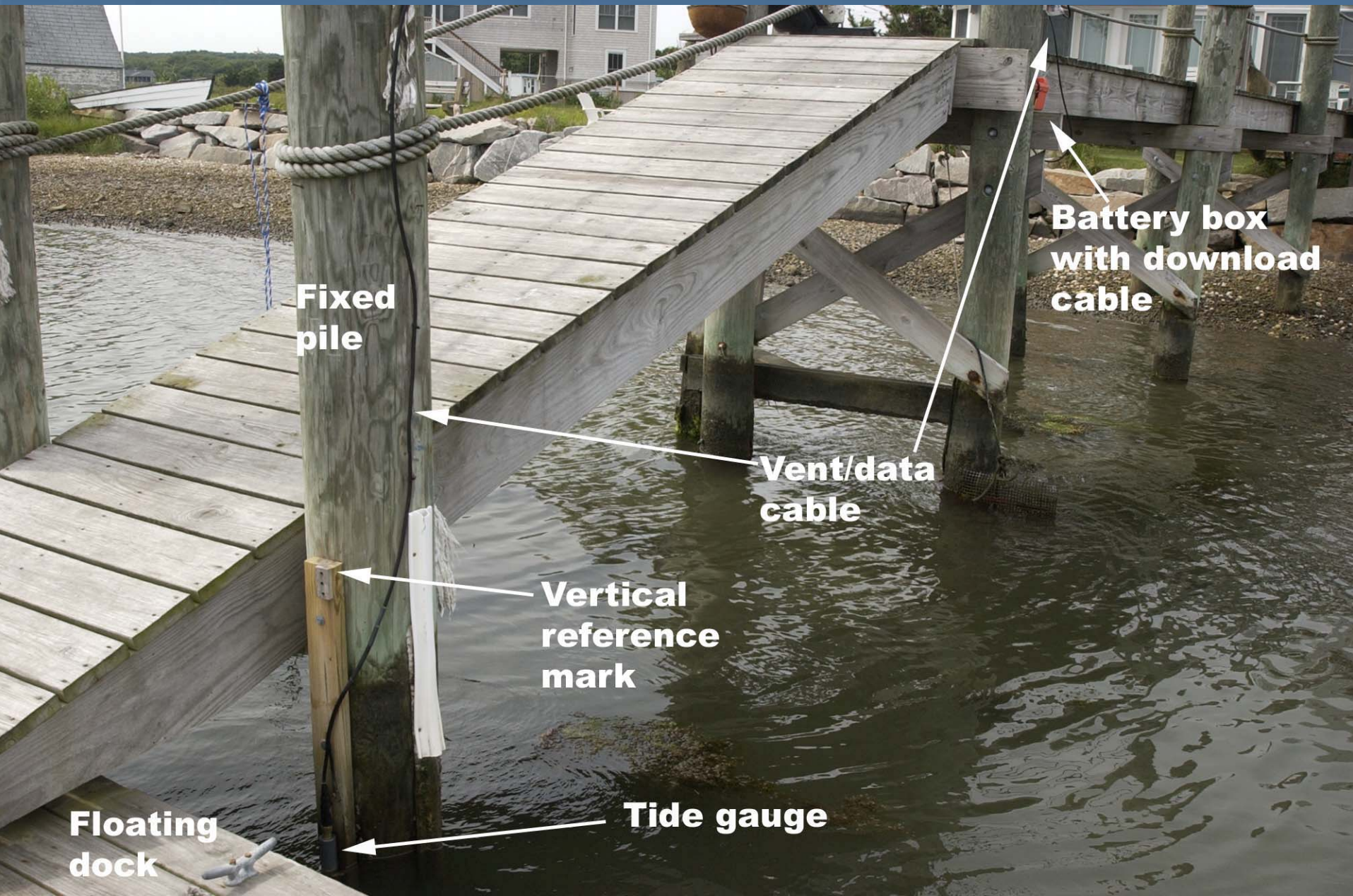
4) Average reciprocity of advantage

the presumption that a land-use reg of general applicability creates mutual value-enhancing benefits throughout the affected neighborhood and this presumption, unless countered, legally defeats the claim (i.e., zoning regulations *add value* to property)



+ Tide gauge site

Palazzolo
Site



**Fixed
pile**

**Floating
dock**

**Vertical
reference
mark**

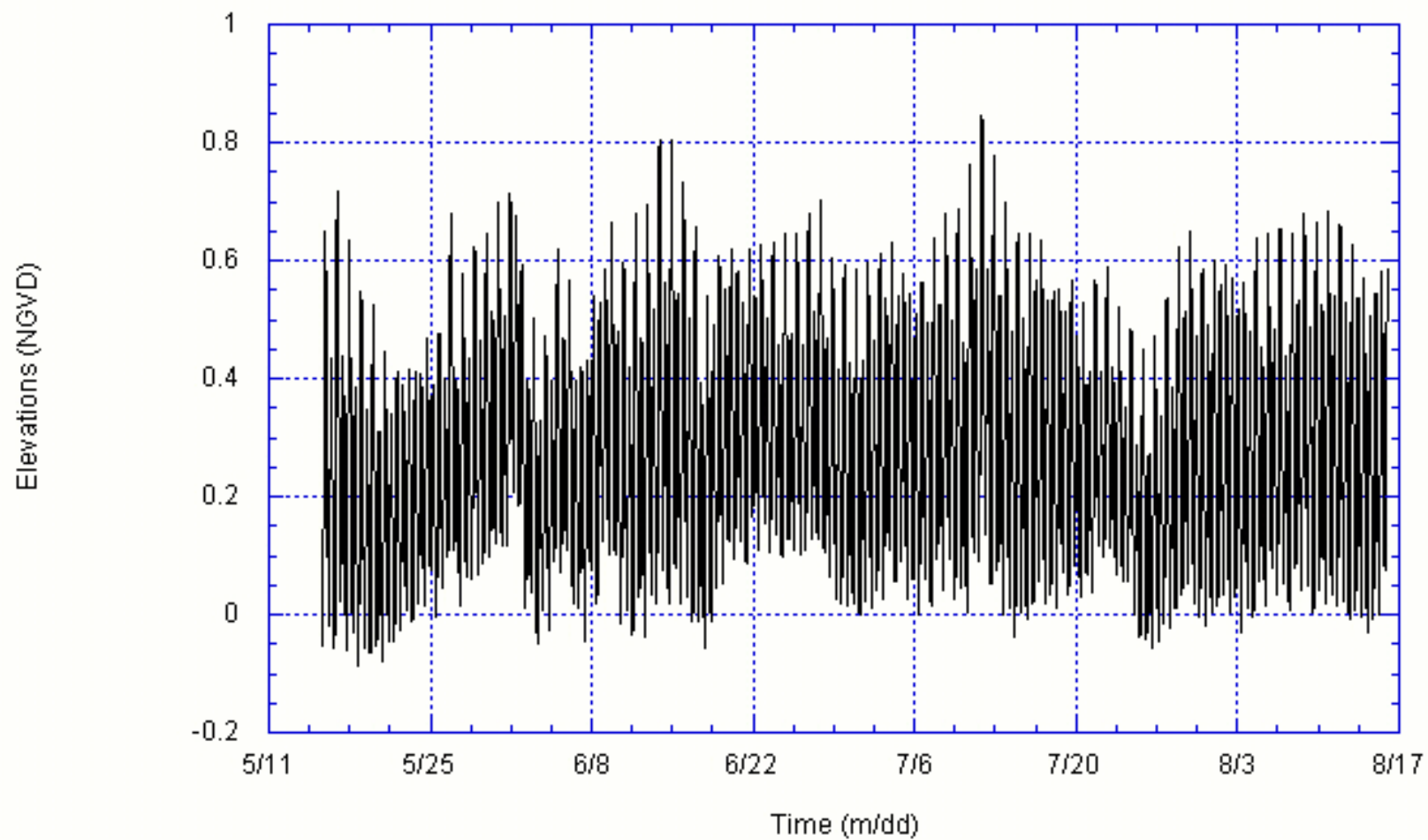
Tide gauge

**Vent/data
cable**

**Battery box
with download
cable**

Winnapaug Pond - time series observations 2003

Mean: 0.28 m NGVD



State's Case cont'd

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land is below the MHT line; intertidal

3) Lack of reasonable investment-backed expectations

4) Average reciprocity of advantage

the presumption that a land-use reg of general applicability creates mutual value-enhancing benefits throughout the affected neighborhood and this presumption, unless countered, legally defeats the claim (i.e., zoning regulations *add value* to property)

What is the fate of Plaintiff Palazzolo?

