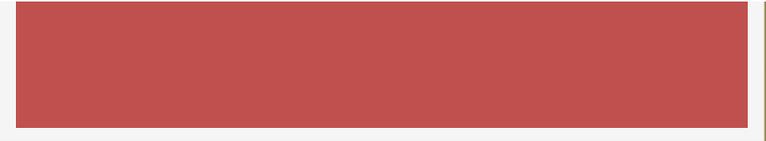




“A Game Effort”

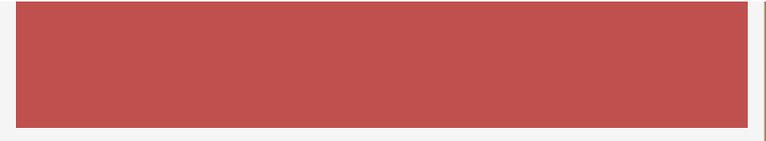
Jeffrey A. De Voe

Jeffery L. Hess



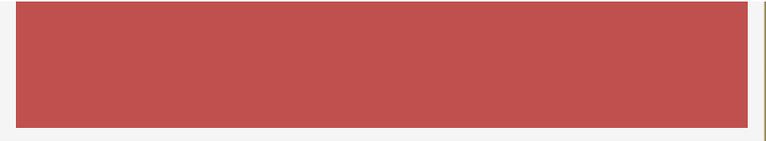
Leo Durocher...

“ I made a game effort to argue but two things were against me: the umpires and the rules.”



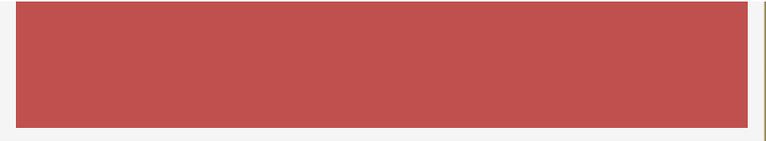
Abraham Lincoln...

“Don’t interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties.”



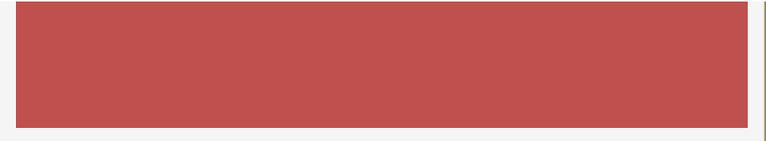
Abraham Lincoln...

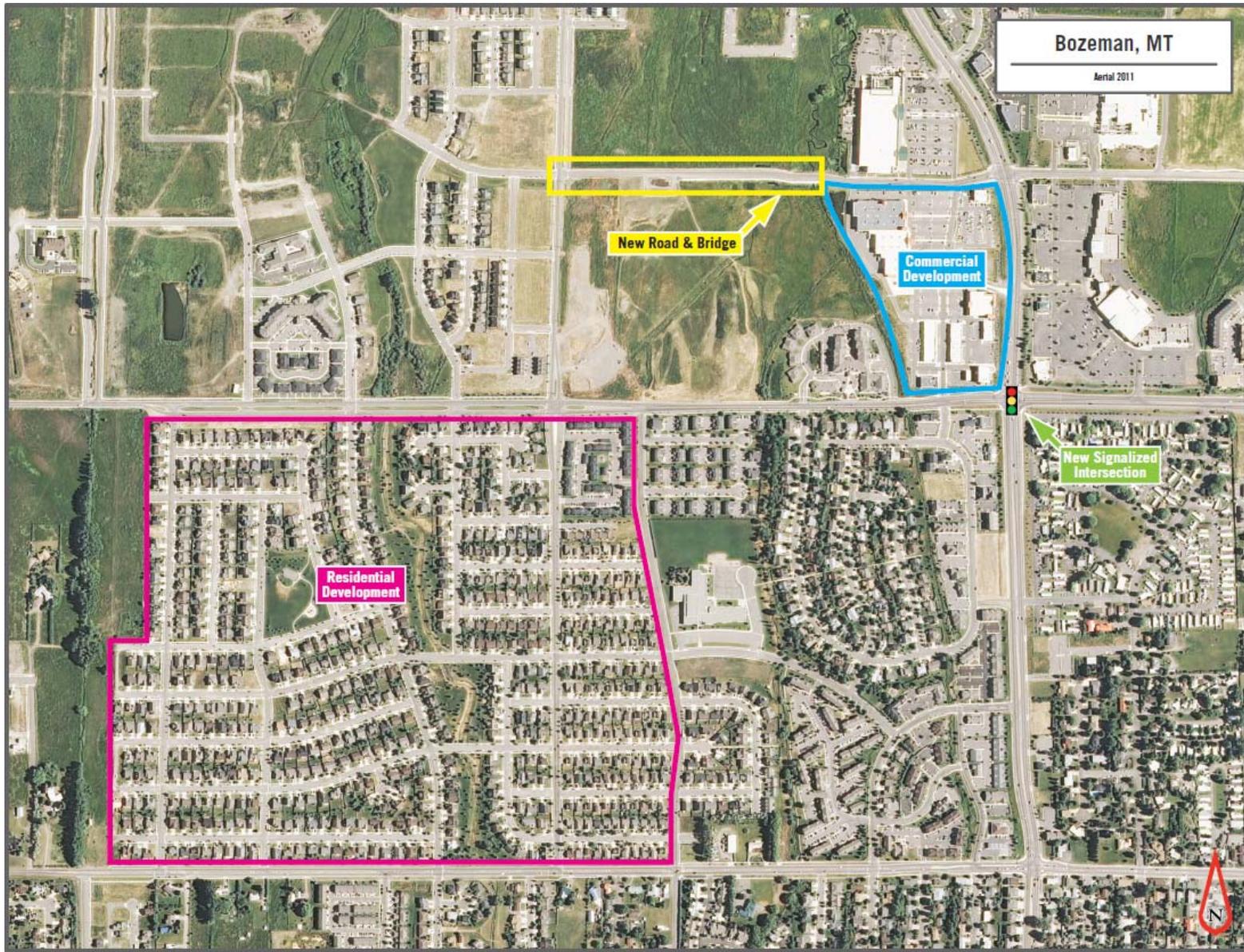
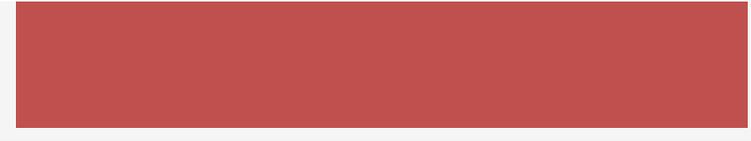
“America will never be destroyed from the outside. If we falter and lose our freedoms, it will be because we destroyed ourselves.”



.....nor shall private property be taken for public use, without just compensation. *Amendment V, Constitution of the United States of America*

.....nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws. *Amendment XIV, Constitution of the United States of America*





Koontz v. St. Johns River Water Management Dist., 133 S.Ct. 2586 (2013)

❖ Basic Facts:

- Developer seeks permission to develop wetland property, which requires offset of resulting environmental damage under FL law.
- Developer offers conservation easement on 75% of the property.
- District responds and requires:
 - Development size to be reduced and give conservation easement on resulting (larger) remainder, or
 - Hire contractors to make improvements to District property several miles away (and District will approve the project as proposed)

Koontz v. St. Johns River Water Management Dist., 133 S.Ct. 2586 (2013)

❖ Background re: *Nollan* and *Dolan*:

- Each conditioned a permit on relinquishment of a portion of the applicant's property (by requiring access easements).
- Established the rule that there must be a “nexus” and “rough proportionality” between the government's demand and the effects of the proposed land use.

Koontz v. St. Johns River Water Management Dist., 133 S.Ct. 2586 (2013)

❖ Holdings Below:

- Circuit Court held that the exactions exceeded *Nollan* and *Dolan* because the property was already degraded and the Developer's offer was adequate to mitigate under the FL law.
- District Court affirmed
- State Supreme Court reversed, rejecting the argument that the District's actions violated *Nollan* and *Dolan* because:
 - This case involved a denial (not a condition of approval), and
 - *Nollan* and *Dolan* do not apply to demands for money.

Koontz v. St. Johns River Water Management Dist., 133 S.Ct. 2586 (2013)

❖ Key Holdings:

- *Nollan* and *Dolan* apply even when permits are denied.
 - Avoids the “condition precedent” loophole.
 - Offer to approve a less ambitious project does not obviate the need to apply *Nollan* and *Dolan* to conditions imposed on the project actually proposed.
- *Nollan* and *Dolan* apply to monetary demands
 - Governmental ends must have an essential nexus and rough proportionality to the proposed use of the property at issue.
 - Taxes and user fees are not takings and do not fall within this analysis.