

LANDOWNERS HAVE THE “RIGHT” TO USE THEIR PROPERTY IN THE SAME MANNER THAT IT WAS BEING USED AT THE TIME IT WAS PURCHASED. ANY OTHER USE OF THE PROPERTY IS NOT A “RIGHT” BUT SUBJECT TO THE WISHES OF THE COMMUNITY THROUGH THE DECISIONS OF ELECTED OFFICIALS, PLANNING AND ZONING LAWS.

COURT CASES THAT HAVE DETERMINED LANDOWNER “RIGHTS” WHEN IT COMES TO THE USE OF PROPERTY.

Constitution of the United States

The 5th Amendment

“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.”

The 14th Amendment

“No State shall deprive any person of life, liberty, or property, without due process of law.”

Court Cases

Goldblatt v. Hempstead¹ (concerning a town’s right to pass ordinances that effect a property owner’s use of property, even if the ordinance decreases the existing use of the property)

The Town of Hempstead enacted an ordinance regulating mining within its limits (dredging and pit excavation). The new ordinance did not allow mining below the water table. Goldblatt claimed that it prevents them from continuing their business and therefore “takes” their property without due process (violation of 14th Amendment).

The court found that “the fact that the ordinance deprives the property of its “most beneficial” use does not render it an unconstitutional taking if it is otherwise a valid police regulation.

The court found that the ordinance was “legal, valid, and a proper exercise of the town’s police power.”

¹ 369 U.S. 500, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962)

HFH, LTD. v. Superior Court of Los Angeles County² (Does a down-zoning that reduces the “potential” use of vacant land constitute a “taking” under the 5th and 14th Amendments?)

HFH bought undeveloped “agriculturally zoned” land in the City of Cerritos contingent on the seller getting “Commercial Zoning” on the parcel. Commercial zoning was granted and the sale went through. Five years passed without HFH applying for any permits or developing the land. The City placed a moratorium on more intensive uses of the area by temporarily rezoned it as “agricultural”. HFH decided to sell the property to Diversified Associates conditional upon it being zoned back to “Commercial”. The city rejected the application and instead rezoned the land to “Single Family Residential”.

HFH sued, claiming that through the zoning laws, the City had reduced the value of their property from \$388,000 (their purchase price based on a Commercial zoning) to \$75,000 (the market value based on single family residential). The court found that HFH had no case to ask for compensation for a wished-for profit or wished-for use. The land was still undeveloped.

Morse v. County of San Luis Obispo³ (Do landowner’s have a vested right based on existing or anticipated zoning ordinances?)

The court held that,

“Plaintiffs are apparently attempting to recover profits that they might have earned if they had been successful in getting their land rezoned to permit subdivision into small residential lots, but landowners have no vested right in existing or anticipated zoning ordinances.”

Carter v. Harper⁴ (Limits on the rights of landowners)

In one of the earliest cases testing zoning law, a landowner was not given a permit for a non-conforming use in a zoned residential area. A court case was filed claiming that the owner was “unconstitutionally deprived of their property.”

² 15 Cal. 3d 508 (1975)

³ supra, 247 Cal.App.2d 600, 55 Cal.Rptr. 710

⁴ 182 Wis. 148 (1923)

The court found that, “although one owns property, he may not do with it as he pleases any more than he may act in accordance with his own personal desires.” “Incidental damages to property resulting from governmental activities, or laws passed in promotion of the public welfare are not considered a taking of the property for which compensation must be made.”

Metro Realty v. County of El Dorado⁵ (Landowner’s right)

“A purchaser of land merely acquires a right to continue a use instituted before the enactment of a more restrictive zoning. Public entities are not bound to reimburse individuals for losses due to changes in zoning, for within the limits of the police power ‘some uncompensated hardships must be born by individuals as the price of living in a modern enlightened and progressive community.’”

⁵ (1963) 222 Cal.App.2d 508, 518, 35 Cal.Rptr. 480, 486.../ 247 Cal.App.2d at pp. 602-603/ 55 Cal.Rptr. at p. 712