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### **The Takings Clause**

The takings clause of the fifth amendment prevents government taking, either physical or regulatory, for public use, without giving just compensation for the property taken.

#### Gov action

Here, the city Council amended a zoning ordinance to rezone a city block. The city's regulation constitutes government action, and therefore regulatory taking laws apply.

#### Physical Taking

A physical taking is when the government appropriates land for an authorized public use. Here, the City ordinance allowing the re-zone is responsible for Property Owner's AB&C moving or losing value.

#### Regulatory taking & Just Compensation

A regulatory taking is a government regulation or ordinance which denies the property owner all or substantially all of the value of the property. A regulatory taking requires government action, and a denial of all or substantially all of the property's value. In determining whether just compensation has been given, the court will look to the value of the property before the taking versus after the taking, whether there were reasonable, investment-backed planned uses, and the value of alternative uses. The compensation must be given before the taking in order to be constitutionally sound.

#### Public use

Public use is broadly defined, and includes any action resulting in a benefit to the public, even if the property is granted to a non-governmental 3rd party. The

definition is so broad, that virtually any public activities satisfy the public use requirement. For example, California courts have even implied that the public appropriation of the Oakland A's could potentially be a public use because the public enjoys sporting activities). Here, the city ordinance rezoned one city block from commercial to residential for the purpose of reducing traffic hazards to children who walk in that neighborhood. Reducing traffic in a pedestrian-heavy neighborhood benefits the public because it is a safety precaution, and therefore satisfies the public use requirement.

These standards set the framework for whether property owners below received or were due just compensation.

### **1. Property Owner A**

The court will find that a taking occurred if Owner A was denied all or substantially all of the value of the commercial property. A taking will not be found if there is an alternate use for the property.

Here, Owner A owned a large and popular restaurant, and was told he could no longer continue that use. Owner A will argue that Commercial property is worth significantly more than residential property, and that re-location is often fatal for restaurants because of the need for developing a reputation and patron base in a new location. While the facts are silent as to the value of the restaurant lot, the fact that the restaurant is large and popular indicates that the lot is valuable as a restaurant location. the zoning ordinance reduces the property use to residential meaning a single-family home or possibly duplex would be permitted on a restaurant sized lot. Because this does not deny Owner A all uses of his property, this is not a full taking. However, Owner will argue that he was asked to leave the property within 3 months. it is unclear whether Owner had to leave the property completely or just move the restaurant ("time to move in an orderly fashion" is ambiguous). if the former, he has a stronger argument that a taking

occurred and that there was no just compensation if Owner is no longer permitted on his property.. If the latter (which we will assume) because alternate uses as residential property are available, Owner A's loss of his restaurant do not amount to a taking.

Therefore, the ruling as to Owner A was likely correct because there is an alternate use for his property (assuming the 3 months meant to move the restaurant and not vacate the property completely).

Application for Variance/ Nonconforming Use Permit

Owner A should apply for a variance from the ordinance or obtain a non-conforming use permit, in order to preserve the restaurant. Owner A should argue that as a thriving local business, and source of local tax revenue, it's value to the neighborhood should not be overlooked because of traffic congestion, and that an alternate measure such as wider sidewalks and bikepaths would satisfy the children's safety concerns.

**2. Property Owner B**

Just compensation requires the government to compensate for reasonable investor-backed expectations for the value of the property taken.

Here, Property owner B spent 1 million on engineering and marketing studies on his undeveloped lot in good faith. In order to be a reasonable investment backed expectation, it depends on what property owner B intended to do with the property and how much the property was worth before the zoning ordinance. However, City will argue that this ordinance applied to onely city block, and property owner b's property cannot be enormous because it is one of at least 3 (ABC) properties on the clock. City would be justified in inferring that 1 million in research and marketing studies, before breaking ground is not reasonable. Property owner B will argue that in neighborhoods like Manhattan, 1 million is not unreasonanble as an engineering /marketing study expense before breaking

ground on an undeveloped lot. Property owner B will further argue that his plans are investor-backed, because ordinarily developers do not undergo millions in marketing and engineering research if there is not a large development planned for the property.

Therefore, assuming B can show his 1 million was reasonable as part of an investor-backed plan for the lot, the court erred as to Owner B. B might also make an application for a variance.

### **3. Property Owner C**

The standard for a regulatory taking requires that the ordinance reduced all or substantially all of the property value.

Here, Property owner C experienced a 65% reduction in value because of the ordinance. This is not a strong argument for Owner C because 65% is not "all or substantially all" of the property value. While Owner C is justifiably unhappy about the reduction in value, s/he is left with 45% of the original value and may engage in other uses which comply with the new residential zoning ordinance.

As such, the ruling as to Owner C is likely correct.

### **Conclusion**

Based on the reasoning above, the rulings as to Owner B was likely incorrect because his project appears to be investment-backed, and assuming it is reasonable for the neighborhood. The ruling as to Owners A & C were not because there were alternate uses and because the remaining 45% was not substantially all of the property.

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**END OF EXAM**