

6)

===== Start of Answer #6 (1362 words) =====

10TH AMENDMENT

The 10th Amendment grants states the police power to act on behalf of the health, safety and welfare of its residents.

Here, the ordinance restricts a single block from commercial to residential whereby requiring that all current commercial owners cease commercial use within three months and prohibits new commercial businesses from use within that block. The purpose of the zoning ordinance is to protect the safety of children crossing the street within the block.

The state as an interest in protecting children from being hit by cars, its for the safety of the children.

Therefore the state was acting within its police power when it enacted the regulation.

1. Property Owner A, who owned a large and popular restaurant had no right to continue that use, and had time to move in an orderly fashion during the three-month grace

A. State Action

The Constitution applies to government and state action. In order for a party to bring a constitutional challenge, the claim must be against a state official or the government for a violation of a right under the constitution.

Here, the state passed a regulation that has injured the party.

Therefore State Action is present.

B. Standing

Standing requires that a party have an injury in fact, caused by the Defendant and redressability.

(i) Injury in fact

An injury in fact is one where the party has been injured economically or is in threat of imminent harm.

Here, Property A has been injured economically because his large and popular restaurant is being closed due to the zoning ordinance. Although he has three months to evacuate, he will argue that the threat is imminent, because its three months away. It is likely that the court would find that due to the imminent threat, the property owner has been injured.

Therefore an injury in fact is met.

(ii) Cause by Defendant

The defendant passed a law that has caused the harm to the party.

Here, the City Council passed a zoning ordinance that will require owner to evacuate within three months.

Therefore the the injury was caused by the Defendant.

(iii) Redressability

Redressability refers to the court's ability to render a decision that would remedy

the injury.

Here, the property owner will be able to continue to have his business open if the court finds that the zoning ordinance is invalid.

Therefore the court will be able to redress his injury.

Conclusion: Property Owner A has standing.

C. Invalid Zoning Based on Prior Use

The property owner will argue that the zoning ordinance is invalid as to him because his restaurant was in existence prior to the issuance of the ordinance and therefore he should be exempted.

Owner will argue that the zoning ordinance is an ex-parte law that retroactively forbids activities that were lawful prior to the issuance of the zoning ordinance, which is unlawful.

Here, Owner A's restaurant was in business prior to the ordinance and is very popular. Since his business was open prior to the ordinance, it would be an invalid exercise of the court's power to cause him to close his business and suffer extreme loss.

D. Non-conforming use

If the City Council rejects his request of prior use exemption, he will ask for a permit of non-conforming use. A city can provide persons with a nonconforming use permit.

He will argue that to enforce the regulation on him would be unreasonable because he would in essence lose his entire business and the popularity value of the business. He will argue that the burden on his business is grave compared

to the interests of the city.

The business will argue that he can put up signs for his clients on keeping an eye out for the safety of the children and in that aspect he can assist the city with child safety.

Conclusion: Owner A will be entitled to remain on the premises because his business was in existence prior to the issuance of the ordinance.

2. Property Owner B, who had spent \$1 million on engineering and marketing studies on his undeveloped lot in good faith prior to the amendment, was not entitled in any relief

State Action

See above

Standing

See above - for causation and redressability

Here, Owner B will state that his injury is the economic loss of \$1 million and the restraint on his ability to develop his land.

The court will likely find that Owner B had standing.

5TH AMENDMENT TAKINGS CLAUSE

The 5th Amendment of the United States Constitution prohibits the government from taking property for public use without just compensation. The 5th Amendment is applicable to the states under the due process clause of the 14th Amendment

1. Was there a taking?

A taking can occur in two ways: Physical taking and a regulatory taking

a. Physical taking

A physical taking is one where the state has occupied the premises or has perpetuated a third party to occupy the land.

Here, does not appear to be a physical occupation of Owner B's undeveloped land.

Therefore a physical taking has not occurred.

b. Regulatory Taking

A regulatory taking deprives the owner of economic value of the property.

(i) Deprives of Entire Economic Value

Here, Owner B will argue that he has spent \$1 million on planning to build for a commercial purpose and not being able to build for that purpose will deprive him of the entire value of the property.

The court will likely disagree because B would be able to use the property for residential purpose, therefore he has not lost the economic value of the entire property.

(ii) Deprives of Substantial Investment Backed Expectation

Investment

Here, Owner B will argue that his investment of \$1 million on engineering and marketing studies substantially interferes with his expectation of the property because the investment is already made. Owner B has paid that money in good faith belief that he would be able to secure a commercial asset on his property.

Expectation

The court will argue that the expectation that he expected is speculative because there is no indication of what he planned to build. His building could have lost money and therefore he did not actually lose what he expected from his planning for the lot.

Therefore, the ordinance does not amount to a regulatory taking.

2. For Public Use

A regulation for public use is one passed for any benefit to the public.

Here, the regulation was passed to secure the safety of children.

Therefore the regulation is for public use.

3. Without Just Compensation

Just Compensation requires that the city pay the fair market value for the taking whether it be a physical or regulatory taking of property.

Since there was no taking the city will not be providing just compensation.

Conclusion: The ordinance does not amount to a regulatory taking.

3. Property Owner C, who lot dropped in value by 65% as a result of the

amended ordinance, did not suffer a regulatory taking

A. State Action

See above

B. Standing - - for causation and redressability

Owner C will state that his injury is the loss in value by 65% as a result of the ordinance.

Therefore, the court will likely find that Owner C had standing.

C. 5TH AMENDMENT TAKINGS CLAUSE

The 5th Amendment of the United States Constitution prohibits the government from taking property for public use without just compensation. The 5th Amendment is applicable to the states under the due process clause of the 14th Amendment.

1. Was there a taking?

a. Physical taking

See above

b. Regulatory Taking

Deprives of Economic Value

He will argue that 65% is high despite not being a total deprivation.

