

Kern County College of Law

REAL PROPERTY

SPRING 2025

Prof. E. Estrada

Instructions:

This exam is three hours and consists of three essays.

Each essay is worth 1/3 of your final exam grade.

Time Allotted: Three (3) hours.

ESSAY 1

The City of Sugarbush is a small city in California nestled between Beverly Hills and Calabasas. It is 13 square miles in size and sits on both hills and flat lands. Its residents include numerous professional athletes, actors, and entertainment executives.

Sugarbush is popular amongst the wealthy because there are very few low-income residents or unhoused people. The city is zoned as follows:

- 65% zoned as single-family residential, located in both the flat and hilly terrains.
- 20% zoned as commercial for the various boutiques, health food grocery retailers, restaurants, salons, and office space, located in the flat terrain.
- 10% zoned as parks and other environmental reserves, located in the hilly terrain.
- 3% zoned for multi-family dwellings, all located in the hilly terrain.
- 2% zoned for churches, hospitals, and schools, located in the flat terrain.

The zoning ordinances further provide:

- Single-family dwellings must be set back at least 50 feet from each property line and at least 2,000 square feet in size.
- No greater than 3 unrelated persons may reside in the same single-family dwelling. "Related" is defined in the statute as related by blood, marriage, or adoption.
- For multi-family dwellings, there can be no greater than two persons residing in the dwelling per toilet in the dwelling.

Because the multi-family residential area is located in the hilly area, it is more expensive to build and develop, resulting in the multi-family housing units being more expensive to rent or purchase. Last year, the city voted to shut down the public transit system station in the town to prevent cheap, public transportation into the city, citing a possible influx of panhandlers and unhoused persons.

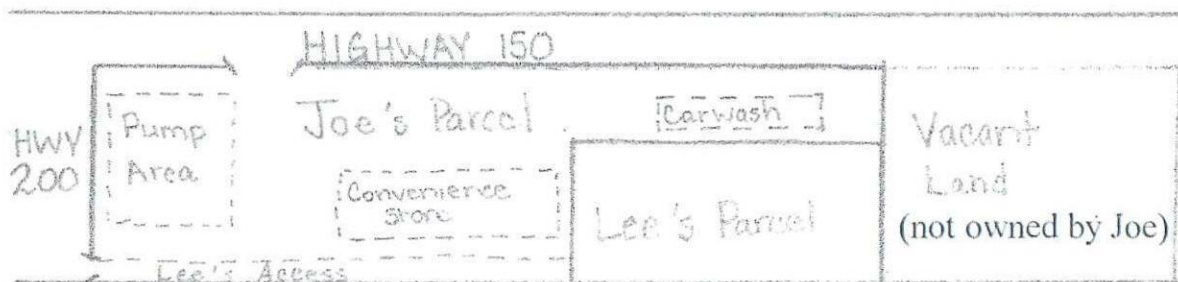
Carol is a divorced woman with 3 children under 12 years old. She has been dating Mike, a divorced man with three children of his own, also under 12 years old. Mike resides in Sugarbush. They decide they want to move in together, but they do not wish to get married because Carol would risk losing her hefty monthly alimony payments if she married. Carol, her three children, and their maid, Alice, all move into Mike's home in Sugarbush. Next door to Mike is the Luggar family, whose religious beliefs encourage procreation. The Luggars have 21 children and a live-in nanny.

Residents of Los Angeles who work in Sugarbush as retail employees, personal assistants, house cleaners, nannies, and landscapers, cannot afford to live in Sugarbush, even in the apartments for sale or rent in the area. There are 4,000 workers in Sugarbush who cannot afford to live there. A group of them join with Carol in suing Sugarbush, alleging that the zoning ordinances are invalid. Discuss both Carol's possible claims, and the Los Angeles residents' possible claims.

ESSAY 2

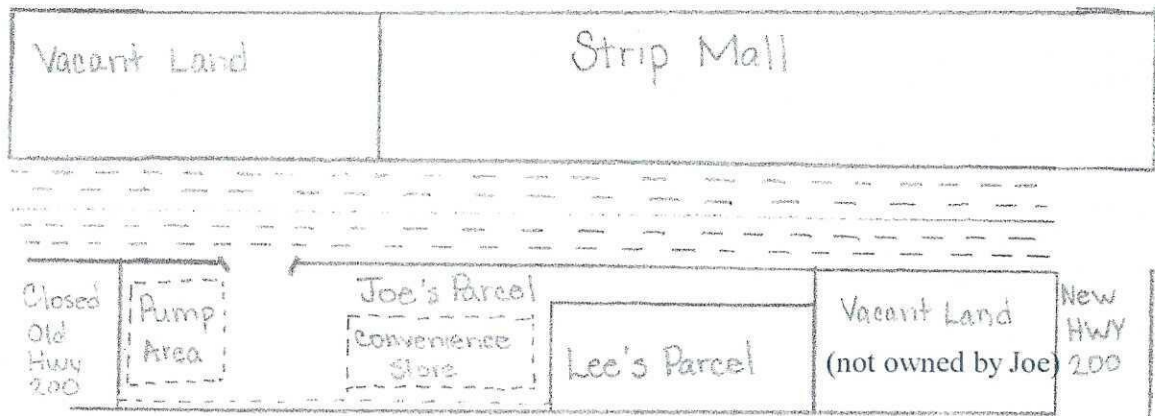
Joe owns a large, L-shaped parcel on the southeast corner of Highway 150 and Highway 200. Highway 150 is 2 lanes and runs east/west, and Highway 200 is 2 lanes and runs north/south. There is no center median on either highway. Joe's parcel is technically within city limits of Springfield, but is approximately 5 miles outside the city proper. Joe's parcel has a driveway on both Highways 150 and 200. There is not a grocery store within 5 miles of the area, and Joe took the opportunity to build a gas station, carwash, and a convenience store that sells food staples, as well as some ready-made hot dishes.

Lee owns a parcel just south of Joe that is landlocked. Joe sold the parcel to Lee in 2010. When Joe sold the parcel to Lee, the land was vacant and Joe never accessed the parcel at all. Lee built a home on the parcel and has been using Joe's driveway access from Highway 200 to get to Lee's property every day. Joe is aware of Lee's use and has never talked to Lee about it or otherwise interfered with Lee's use.



Springfield is growing, and the City is planning more commercial development in the area. The City issues a permit to a private developer to build a strip mall across from Joe's parcel that will have a full grocery store, movie theater, restaurants, and other retail establishments. To facilitate this development, the city determines it must widen Highway 150 to 6 lanes. At the private developer's request, the City also agrees to reroute Highway 200 farther east so that traffic on Highway 200 has direct access to the strip mall.

The city files an action in eminent domain against Joe to take 30 feet of frontage of his property to widen Highway 150, requiring Joe to remove his carwash and 4 gas pumps. Springfield also builds a center median on Highway 150, leaving westbound traffic unable to turn directly into Joe's parcel. Finally, the city reroutes Highway 200 to the private developer's requested location and puts up a blockade preventing any ingress or egress between the old Highway 200 and Highway 150. Lee loses all access to his parcel from the old Highway 200.



The City's appraisal shows that based upon the highest and best use of Joe's property, for a 30-foot strip, Joe is entitled to \$30,000.

Joe contends that the loss of 30-feet of his frontage has resulted in the loss of his carwash and 4 gas pumps and he is entitled to damages for that loss. He further contends that taking of the frontage renders the panhandle of his L-shaped property unusable. Finally, Joe contends that the City's installation of a center median, re-routing of Highway 200, and closure of the old Highway 200 has resulted in significant loss of business to him, and if Lee is entitled to relocate any easement right he had, then that results in another taking as against Joe. The City refuses to pay any amount to Joe over the \$30,000.

Discuss:

1. All easement rights Lee may have against Joe, if any, after the City closed the old Highway 200; and
2. Whether there has been a constitutional taking as against Joe as to the 30-ft strip.
3. Whether Joe is entitled to any additional damages from the City for:
 - a. His loss of the carwash and 4 gas pumps;
 - b. His loss of any productive use of the L-shaped panhandle;
 - c. His loss of business resulting from the City's installation of a center median on Highway 150 and rerouting of Highway 200, as well as any loss of use he will suffer resulting from the possible relocation of Lee's alleged easement.

ESSAY NO. 3

Jack owns a 3,000-acre parcel in southern Fern County approximately 20 miles south of Bakersville. Just 5 miles south of Jack's parcel is land owned by a Native American tribe, the Tehachapi Nation. No members of the tribe reside within 15 miles of Jack's parcel. Jack has leased his property to Bob for the last 25 years, and Bob has operated a dairy farm on the property. His initial lease term was 20 years, and was renewed in 2017 for another 20 years.

There often are gusty winds at the location in the winter and occasionally in the summer. There are no residential developments within miles of Jack's parcel, and he allowed Bob to operate a dairy farm on the parcel because there was nothing but gas stations nearby. Most of Bob's laborers travel to the farm from Bakersville.

In 2015, the Tehachapi Nation announced it would build a new casino with a 200-room hotel just 6 miles south of Bob's dairy farm. That announcement caused a wave of new development in the area, both on tribal and nontribal lands. Residential developments were approved by the county in 2016, and construction of 150 single-family dwellings was completed in 2018. New commercial developments also were constructed, including restaurants, retail shops, and a water park for children to enjoy while their parents gambled at the casino. The casino and hotel were completed and opened for business in 2020.

By 2020, there were 300 residents living within 2 miles of Bob's dairy farm, including around 50 of Bob's employees who moved there specifically to be close to their place of employment. Although Bob's employees were impervious to the smells wafting from the dairy farm, the other local residents and hotel patrons were not. The smells were not constantly present, but were pungent when gusty, prevailing winds carried the smells to the developed areas. The smells did not cause physical symptoms in the residents or patrons of the casino/hotel. In 2020, Bob still has 17 years remaining on his lease agreement.

Discuss:

1. Is Bob's dairy a nuisance?
2. Is Jack potentially liable for any damage caused by an alleged nuisance?
3. If Bob's dairy is a nuisance, analyze the possible affirmative defenses and remedies.

ESSAY 1 ANSWER OUTLINE

I. CAROL

Every state has police power to protect the health, safety, welfare, and morals of its citizens, so as to minimize harms to the public. This can be accomplished through zoning ordinances enacted under enabling legislation from the state. Zoning ordinances can be used to foster family values and quiet exclusion.

A. Arbitrariness/Reasonableness of the Statute

1. **Rule:** Zoning ordinances must not be clearly unreasonable or arbitrary. An ordinance is presumed valid and reasonable and the burden is on the citizen challenging the ordinance.
2. **Analysis:** The ordinance in question precludes more than 3 unrelated persons residing in the same single-family home. With respect to Carol, she and her 3 children are not related to Mike. The maid, Alice, likely is not related to Mike either. Therefore, Mike is residing with at least 5 persons to whom he is not related.

On the one hand, Sugarbush may, as part of its comprehensive plan, seek to promote family values and a right of residents to quiet exclusion and enjoyment of a peaceful neighborhood. It can also seek to eliminate filth and stench. A limit on the number of persons residing in a single-family home could reasonably serve to promote quiet enjoyment of the neighborhood by reducing the number of vehicles driving in the area and the number of children playing in the streets or front yards. Reducing the occupants in a home could also serve to reduce maintenance requirements of the city, such as higher traffic use of sewer lines, road damage from increased vehicle use or high occupancy vehicles, or increased garbage collection.

But, the ordinance would do nothing to prevent the Luggars from residing next door with their 21 children and live-in nanny. The Luggars would cause more potential wear and tear on roads and sewer lines, make more noise in the neighborhood from the sounds of children playing, and cause more garbage collection requirements for the city. Yet the Luggars would not violate the ordinance with 24 persons in the home, but Carol and Mike with 9 persons in the home would. Similarly, if Carol had only 1 child instead of 3, there would be no violation of the ordinance. Moreover, if Carol were willing to give up her alimony payments and marry Mike, their occupation of the home with their children would not violate the ordinance because now they would all be related by marriage, except for Alice. In short, the only reason that Carol and Mike are being treated differently than the Luggars is because they are not married.

3. **Conclusion:** A more reasonable ordinance might have instead precluded more than two unrelated families from residing in the same single-family home.

B. Vagueness

1. **Rule:** A zoning ordinance cannot be so vague that a landowner cannot objectively determine what is necessary for compliance.
2. **Analysis:** The provided definition of “related” would exclude the relationship between Carol and Mike because they are not related by marriage, blood, or adoption. It can be argued that the ordinance is vague as to how the “3 unrelated persons” is to be calculated. A reasonable interpretation of the ordinance could be that Mike’s and Carol’s six minor children do not count as six separate persons under the statute because they are merely children of the two cohabiting adults in the home. Therefore, only Mike, Carol, and Alice would count as persons under the statute. On the flip side, the ordinance includes relation by “adoption,” which could suggest that the ordinance contemplates the inclusion of minor children in determining the number of unrelated persons residing in a home.
3. **Conclusion**

C. Right to Privacy and Association

1. **Rule:** Although not explicit, the US Constitution affords to all persons the right of privacy, including the right to associate. Zoning ordinances may, however, regulate density and the number of persons who may gather in an area. This particular ordinance regulates how many unrelated persons may reside together in one home. Where a zoning ordinance infringes on a first amendment right, it is subject to strict scrutiny where it infringes on the content of expression, and is subject to intermediate scrutiny where it regulates time, place, and manner. Strict scrutiny requires the government to have a compelling reason for the legislation and to narrowly tailor the legislation to achieve the compelling purpose. Intermediate scrutiny requires the government to show that the restriction is substantially related to an important government interest.
2. **Analysis:** The zoning ordinance could be argued to infringe on Carol’s right of privacy and right of association in that it prohibits her from residing with her chosen partner and his children. The ordinance does not impact the content of any expression, and therefore would likely fall into a time, place, and manner type of restriction. Nothing prevents Carol from visiting Mike at his home, staying the night, or meeting him elsewhere; Carol simply cannot live with Mike and his children unless she marries him. The city could show an important government interest: quiet neighborhoods and reduced wear and tear on roads and sewer lines. The zoning ordinance is related to that interest, but may not significantly advance it in that it does nothing to prevent families, such as the Luggars, from residing in the neighborhood causing more noise and more damage to city property and systems.
3. **Conclusion**

II. LOS ANGELES RESIDENTS

A. Exclusionary Zoning

1. *Mount Laurel*

- a. Rule: In jurisdictions following the principles set forth in *Mount Laurel*, a city is obligated to ensure appropriate and a fair share of housing to low-income earners residing in the area, meaning they not only must remove barriers, but must take affirmative action to assist in the creation of housing for low-income earners. Where it is shown that zoning requirements preclude or substantially hinder low-income earners from acquiring housing, the city must establish a valid basis for its actions or inactions.
- b. Analysis: In Sugarbush, 65% of housing is zoned as single-family. The regulations as to single-family homes requiring 50-foot setbacks and minimum home size of 2,000 square feet reduce the supply of housing units available in the city, which in turn increases the cost of the housing. And should low-income earners in the city need to reside together to afford the cost of living in the area, the additional restriction on unrelated persons residing in the same home would prohibit it. To make matters worse, only 3% of the housing in Sugarbush is for multi-family units. Those units are each built on hilly terrain and therefore, are more costly to develop, resulting in higher purchase prices and making them less attainable for low-income earners. It also likely results in increased transportation expenses for the residents in those units because it is inconvenient to walk to work, church, school, or to shops, all of which are located in the flat terrain. The ordinances regulating single-family homes, coupled with the limited multi-family units and the location of the multi-family units, preclude or substantially hinder low-income earners from obtaining affordable housing.

Sugarbush can argue that the purpose of their restrictions is to maintain property values and keep property tax values lower for their residents by keeping the number of residents low and minimizing the expenses necessary for maintenance of the city and services offered to residents through taxpayer dollars. These are valid bases for regulation, but do not negate the obligation to ensure appropriate housing for low-income residents. There are no facts to suggest that Sugarbush has removed barriers or taken any affirmative steps to help residents acquire housing. But, there also is no evidence that there is a measurable number of low income earners residing in Sugarbush. There are “very few” low-income residents or unhoused people. Therefore, Sugarbush may not even have an obligation to ensure housing for low-income residents.

c. Conclusion

2. *Other Jurisdictions*

- a. Rule: Other states do not require affirmative action to assist residents in obtaining affordable housing and courts consider the matter on a case-by-case basis.
- b. Analysis: Sugarbush is located between Beverly Hills and Calabasas and is popular with wealthy residents because unlike other areas in the Los Angeles area, there are very few low-income or unhoused persons. The city's zoning regulations appear targeted to keep the property value of its high-income residents high and the low-income earners who work for them excluded. Moreover, the city even shut down public transportation into the city to avoid unhoused persons and panhandlers using public transportation to enter the city, thereby taking affirmative measures to exclude low-income earners.
- c. Conclusion.

B. Standing

1. Rule: In some jurisdictions, only residents of the city in question may sue the city for harms caused by exclusionary zoning.
2. Analysis: Los Angeles residents are not residents of Sugarbush, and therefore, in those jurisdictions, the Los Angeles residents would lack standing and could not prevail in the action.

ESSAY 2 ANSWER OUTLINE

I. Lee's Easement Rights

A. Express Easement

- a. **Rule:** An express easement is created by agreement, usually a deed, wherein an easement is either reserved or excepted.
- b. **Analysis:** There appears to have been no reservation or exception in the deed, or any other reference to an express easement.

B. Implied Easement

- a. **Rule:** An easement may be created by implication where there was common ownership of both the dominant and servient tenements, and at the time of severance, there was a quasi-easement in apparent use by the common owner.
- b. **Analysis:** Joe never accessed Lee's parcel when Joe owned both, and there was no quasi-easement at the time of severance.

C. Easement by Necessity

- a. **Rule:** There must be unity of ownership of the two parcels, and at the time of severance, a necessity existed.
- b. **Analysis:** Joe owned both his own and Lee's parcel. At the time they were severed, a necessity existed for access to Lee's parcel because Lee's parcel is landlocked and has no direct access to any public street.

D. Prescriptive Easement

- a. **Rule:** An easement may be created by prescriptive use where the servient tenement uses the easement openly, adversely, and continuously for the statutory period.
- b. **Analysis:** Joe never gave permission for use of the easement, but also never stopped or interfered with Lee's use of it. Lee's use is open and notorious in that he uses it every day and Joe knows that Lee is doing so. Lee likely has met the statutory period for prescriptive use, but likely cannot show hostile use.

II. Whether There Has Been a Constitutional Taking

A. The Rules:

- i. **The Constitution:** The Fifth Amendment of the US Constitution provides that no private property shall be taken unless for a public use and with just compensation.
- ii. **Taking:** Where the government seizes private property, or a regulation results in permanent physical occupation or total economic or productive loss of value, it is a taking.
- iii. **Public Use:** Broad test encompasses any use that benefits the public. Narrow test is whether the public will have the right to use the private property taken.
- iv. **Just compensation:** Fair value for the highest and best use.

B. **Analysis:** Government took actual ownership of 30-ft strip, resulting in permanent physical occupation of it. Under either broad or narrow test, the public use element is satisfied because every member of the public will have the right to drive on the widened highway. The appraisal for \$30,000 was based upon an appraisal using the highest and best use.

III. Whether Joe is Entitled to Additional Damages

A. **Loss of Pumps and Carwash**

- i. **Rule:** Just compensation includes not only the fair value of the land seized, but the related economic losses. This can include loss of business and goodwill, relocation expenses, and cost of fixtures and equipment.
- ii. **Analysis:** Joe has lost 4 pumps and a carwash, and the business associated with it. If his gas station has fewer pumps and those pumps are often in use, traffic may not stop to fill up if they have to wait or cannot get a carwash while they wait for a free pump.

B. **Loss of Productive Use of Panhandle**

- i. **Rule:** Where a city's actions result in land having no beneficial or productive use for the severed parcel, it constitutes a taking for which the owner is entitled to just compensation.
- ii. **Analysis:** The panhandle now is so narrow that Joe had to remove his carwash. But there is nothing that states that there is no productive or beneficial use for the panhandle. There could be parking, or other storage uses. And the parcel as a whole has not been rendered useless or unproductive. Moreover, the panhandle has beneficial and productive value to Lee, who may wish to purchase the panhandle so he can acquire direct access to Highway 150.

C. **Changes to Highways 150 and 200**

- i. **Rule:** Governments may exercise police power to maintain the health, safety, and morals of the population. Exercise of the police power that does not result in permanent physical occupation does not constitute a taking for which just compensation is required.
- ii. **Analysis:**
 1. **150:** The City, in widening Highway 150 to 6 lanes, is attempting to maintain the safe flow of traffic by adding a center median. It is for the public health and safety and therefore falls within the police power. The exercise of the police power did not result in a permanent physical occupation of Joe's property.
 2. **200:** Similarly, relocation of Highway 200 also falls within the police power as regulation of flow of traffic. Although the 200 was relocated at the request of the private developer of the strip mall and benefits him economically, the benefit to the private

developer does not matter for purposes of locating streets and highways.

3. **Lee's Alleged Easement:**

- a. **Rule:** An easement is a nonpossessory interest in property nonpossessory interest in land. Condemnation that results in the loss of an easement is compensable to the easement holder. A regulation that results in a loss of total economic or productive value of a property is a taking.
- b. **Analysis:** Rerouting of streets is within the police power and does not constitute a taking. Therefore, it could be argued that no compensation due to Lee for the loss of his easement. On the other hand, the city's action in rerouting the street arguably resulted a complete loss to Lee of the productive and economic value of his property because without access to it, Lee's property has no value. It could be argued, though, that Lee's property does have economic value to Joe, who could buy it and add pumps and a carwash, or Joe and Lee could agree to relocate the easement to provide access to Highway 150.

ESSAY 3 ANSWER OUTLINE

I. **Is Bob's Dairy a Nuisance**

- a. **Rule:** A nuisance is a substantial and unreasonable invasion of another person's ordinary use and enjoyment of their own land, whether intentional or unintentional. Unreasonable means that it would cause annoyance to a reasonable person with ordinary sensitivities, and the social benefit and utility of the activity outweighs the harm caused by the activity.
- b. **Analysis**
 - i. Substantial Invasion – The smell is not constantly present, but are pungent when gusty, prevailing winds carry the smells. The winds are, however, frequent in the winter and occasional in the summer. This likely would not affect the water park much because it probably is closed and/or indoors in the winter.
 - ii. Unreasonable –
 1. Annoyance to Persons with Reasonable Sensitivities - The smells do not cause physical symptoms in the residents or casino patrons. The laborers who live in the area are nose-blind. But the smell is pungent to tourists. The tourists inside the casino are not likely to smell the dairy. It would primarily be the residents who reside in the area and primarily in the winter when they likely would remain indoors. Infrequent wind gusts in the summer may not be enough to be annoying to a person with reasonable sensitivities.
 2. Social Utility vs. Harm – There is social utility in dairy operations and providing dairy products for the public benefit. There also is social utility in the jobs the dairy farm provides. Much of the residential development in the area is due to the dairy farm and its laborers moving into the area. There also is social utility to quiet enjoyment and the sanctuary of one's home. There is also utility to the casino, retail, and other businesses based upon tourism that the casino brings.

II. **Is Jack Liable for Nuisance Damage**

- a. **Rule** – Landlords generally are not liable for a nuisance created by its tenant, but can be liable if its property was in a state of nuisance at the time the lease was entered.
- b. **Analysis:** The original lease was entered into 25 years ago, when there was nothing within 20 miles of the property. The lease was renewed in 2017, 2 years after the Tehachapi Nation announced it would be building a new casino just 6 miles south of the dairy farm. Residential developments were approved by the county in 2016. Therefore, at the time Jack renewed his lease with Bob for another 20 years, he knew that development would be occurring within the following few years. Construction of 150 single-family homes and the casino

were completed after the lease was entered into. Therefore, people did not move into the area until after Jack renewed the lease with Bob.

III. Possible Affirmative Defenses and Remedies

a. Coming to the Nuisance

- i. Rule: Where development spreads and results in a lawful business being deemed a nuisance due to its proximity to new development, the owner of the nuisance can be compensated for his relocation costs
- ii. Analysis

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1)

Carol v. Sugarbush

Constitutionality of the Zoning Ordinances

Zoning is the governments ability to reasonable control the use of land either by laws or ordinances. These laws must not be too restrictive or racially discriminatory.

Here, the City of Sugarbush have zoning ordinances that have a lay out that are primarily zoned, 65%, for singe-family residential homes. Part of the ordinance states that no greater than 3 unrelated persons may reside in the same single-family dwelling. "Related" being defined as by blood, marriage, or adoption. No more than two persons residing in the dwelling per toilet in the dwelling. The city is home to many professional athletes and entertainment executives.

Carol is a divorced woman with 3 children under 12 years old and lives in Sugarbush with Mike who also has three children under 12 years old. They share the home with the maid Alice. Along side of them are the Luggars that have a 21 children and a live-in nanny. Their religious beliefs encourage procreation.

Carol may claim that the zoning ordinances infringe upon her constitutional rights.

Challenges

A party may challenge a zoning ordinance if they have standing and for a number of reasons including but not limited to: Due Process violations, Equal Protection Clause violations, triggers the taking clause under the Fifth Amendment, or if they are arbitrary or ambiguous. *I do like this intro statement, though.*

Arbitrary

A party may challenge a zoning ordinance if there is no real reason for its enactment or its unfair.

Here, Carol may argue that the ordinance is arbitrary because there is no real reason for the City of Sugarbush to restrict who and how many people live in the home. Part of the ordinance states that no greater than 3 unrelated persons may reside in the same single-family dwelling. "Related" being defined as by blood, marriage, or adoption. No more than two persons residing in the dwelling per toilet in the dwelling. Both Carol and Mike are not married to one another but have less people living

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in their home than the Luggars. However, it would be acceptable, according to the ordinance, for the Luggars to continue on living with 20 plus people. *Yes!*

Yes!! The government may try to argue that they are exercising their police powers in keeping the health and safety of their residents at the forefront because they are trying to regulate the sewage that is coming from the residences. The government may also argue that they are keeping the health of their residences in mind living in each of the homes by attempting to keep the number of people who live in the home to a minimum. *More Yes!!!*

However, absent facts such as, how many toilets are provided for in each house this argument will ultimately fail. Carol may claim that the ordinance is not fair because she does not wish to marry Mike and should not be forced by the government to take that step just to live in the City of Sugarbush. The Luggars are in compliance with the ordinance only because of the fact that they are married. Again, this would not be fair to Carol or any divorcee living in the community.

Thus, Carol may challenge the ordinance on the basis that it is arbitrary.

Fantastic. You are showing the City's likely purpose for the ordinance and why it st seems arbitrary given the Luggars' circumstances.

Ambiguous

A party may challenge a zoning ordinance if there a reasonable person would not be able to understand how to comply with the law or how to enact the law.

Here, Carol may argue that the ordinance is ambiguous because how far does the ordinance extend down the "related" bloodline? A reasonable person may not know if their second cousin twice removed along with their family would be able to live in the home with her. Also, the part of the ordinance that requires no more than two persons per toilet in the dwelling may be difficult to comply with if the home has a toilet but it is not functioning. How are families supposed to comply with the ordinance then? *Or, can Carol and her children be considered 1 unit because the children are minors? Same with Mike? Do minors count?*

Again, the governments argument will be largely the same as above. They may try to argue that they are exercising their police powers in keeping the health and safety of their residents at the forefront because they are trying to regulate the cleanliness of their community by regulating the sewage use and how many people are living in a home. However, this argument will likely fail because families like the Luggars, are in compliance with the ordinance but defy every reason the government may try to claim in their right to exercise their police powers.

Thus, Carol may have a claim that the ordinance is ambiguous.

First Amendment Challenges

The First Amendment to the Constitution protects five fundamental rights: speech, assembly, press, religion, and the ability to petition the government. This is subject to **strict scrutiny**.

Here, Carol may claim that the ordinance is infringing upon her First Amendment rights. Carol and Mike have the right to assemble in the manner in which they please as long as they are acting within the scope of the Constitution. Carol wishes to assemble with Mike in Mike's own home along with their children. Should the government continue with the way the ordinance is set, this has the danger of setting precedent to spill over into other communities. Other city ordinances may enact similar laws to restrict the way people are living and seriously hurt communities like low-income earners.

The government will argue that they are not infringing upon their rights because Carol and Mike could simply get married and the problem is fixed. However, the government is under a strict duty to review the constitutionality of the ordinance and weigh against the repercussions an ordinance like this may have. As of now there are no federal laws that state unmarried people may not live together.

Thus, Carol may bring an action for the unconstitutionality of the ordinance.

Non-conforming Use

A once lawful use of land now deemed non-conforming because a law depleted its economic value or no longer complies with a zoning ordinance.

Here, if the City should win, they may be liable to Carol for her relocation because Carol is now unable to live with Mike.

They may be liable for her move within the City of Sugarbush or to a nearby town.

Los Angeles Residents v. Sugarbush

Constitutionality of the Zoning Ordinances

Defined above.

Here, the residents of Los Angeles may bring a suit challenge the constitutionality of the ordinance in Sugarbush.

Challenges

Defined above.

Standing

A party has standing if they are a resident in the community or if they are impacted by a law or ordinance that caused them harm. ✓

Here, City of Sugarbush will argue that the residents of Los Angeles have no standing because they are not residents of the community of Sugarbush. However, the residents of Los Angeles that work in the town of Sugarbush will argue that they do have standing because they are being directly impacted by the city ordinance. Sugarbush has shut down the public transit system to prevent cheap, public transportation into the city.

The residents of Los Angeles that work there have no means of being able to easily access the town nor are they able to live there because of how expensive it is.

They may be able to claim that the ordinance violates the Equal Protection clause and triggers the Mount Laurel rule.

Mount Laurel

Based on the case law Mount Laurel gave us, cities may not enact ordinances that exclude or severely restrict the development for low-income housing.

The residents of Los Angeles will claim that the ordinance is excluding the low-income housing and that Sugarbush has a duty to provide some sort of housing for them or means for the residents to be able to travel to and from. The residents are there to work in all different occupations that directly benefit the city's elite. Sugarbush may be able either reinstate the public transportation system or provide for affordable housing for the residents of Los Angeles that work in Sugarbush.

Probably running out of time, here, but what did the city do to make housing Thus, the residents of Los Angeles may have a claim against Sugarbush. *unaffordable? Exclusively*

Arbitrary

Defined above.

multi-family housing in the hills it was expensive to develop, put a limitation on multifamily housing number of persons per toilet to prevent multiple families from living together

Here, the residents of Los Angeles will claim that the ordinance is arbitrary because there is no real reason for its enactment. However, Sugarbush may claim that they shut down the system for the public welfare of their residents because there was an influx of panhandlers and unhoused persons. The City will argue that they were keeping their elite residents safe. Thus, properly exercising their police powers.

However, the residents will argue that there are other means the city can regulate the unhoused. They may be able to enforce more police action in the streets to ensure that they are not harming the residents of the community.

Thus, the ordinances are arbitrary.

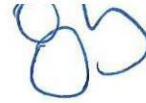
Ambiguous

Defined above.

The argument would be much like the one above for Carol.

The conclusion would be must like the one above for Carol.

Well done! There were a lot of facts in the fact pattern and it was easy to get overwhelmed and run out of time. But the analysis you provided was strong.



2)

1 . Easement rights Lee may have against Joe

Easement

Easements are a non-possessory interest that confers a right to use another's land. Here we have an easement appurtenant because there is two parcels. The dominant land uses an easement in the servient owners land. These types of easements run with the land and attach automatically.

Beautifully stated.

Easement Termination by Condemnation

An easement may be terminated by eminent domain which the government taking land for public use with just compensation.

Here, Lee may claim that his easement was terminated because of the governments taking of Joe's land that contained Lee's easement to his property.

Easement by Necessity

An easement may be created out of **strict** necessity so that a person may gain access to their land or a main road. The servient landowner typically can choose the location. The easement will terminate once the necessity ends. *Be sure to include elements of common ownership at servi and when necessity arose.*

Lee once had an easement to his parcel but because of the City put up a blockade preventing any egress and ingress between the old Highway 200 and Highway 150 he lost all access to his parcel through Highway 200. Lee may claim that he now has a strict necessity to gain access to his parcel.

However, Joe may argue that Lee never had an easement agreement to begin with and thus, is under no need to grant him access to Lee's parcel now that the blockade is up. Lee may argue that whether Joe grants him access or not he needs access to his parcel and there is no other means. However, Joe may argue that Lee may ask that the ask the vacant land owner's permission to gain access to Lee's parcel via the new Highway 200. Because there is another means for Lee to gain access to his parcel via the New Highway 200 the court may not be inclined to grant Lee an easement by necessity because there is no strict need.

Thus, the Lee may not be able to acquire an easement by necessity.

Easement by Prescription

An easement may be created by adverse possession. A party actual enters upon the land, uses the easement for the statutory period of time, hostile, open and notorious.

Here, Lee may be able to satisfy the requirements listed above to be able to get an easement by prescription through Joe's property from the new Highway 150. Before the City occupied Joe's land Lee was already driving across Joe's driveway access from Highway 200 to gain access to Lee's property. Lee bought the property in 2010 assuming we are in the current year of 2025, then that is 15 years of ingress and egress. Should Lee satisfy the statutory requirements; enter Joe's driveway again (**actual entry**); Joe never talked to Lee (**hostile**) or interfered with his use(**open and notorious**) again Lee may have a right to use the easement by prescription.

Joe will argue that 15 years does not satisfy the statutory requirement and that by his knowing that Lee was crossing his yard he granted him "permission to use the easement. However, this argument will ultimately fail because without express agreement Joe may not be able to claim he gave Lee permission to use the land. Absent other facts that state a statutory period of time we may be able to assume that Lee satisfied the statutory requirements.

Thus, Lee may have an easement by prescription.

If all else fails the two parties may come together and Joe may grant Lee an express easement in writing so that it satisfies the statute of frauds and it is signed by the servient land owner.

2 . Whether there has been a constitutional taking against Joe as to the 30-ft strip

Eminent Domain

Under the 5th Amendment the government may take private property for public use with just compensation. *A perfect rule statement.*

Taking

A taking can be actual or implied. An actual taking is when the government takes physical possession of the property. Implied taking happens when the government enacts a law or regulation that depletes the property from its economic value.

Here, Joe will claim that the City committed an actual taking because the City took 30 feet of frontage of his property widen Highway 150, which required him to lose his carwash and 4 gas

pumps. Joe may claim that there is a **Penn Central** argument because the City took away his carwash and 4 gas pumps which resulted in loss of earnings. Penn Central triggers the consideration of any potential losses of investment backed endeavors as opposed to the public utility the government may get out of the taking.

Joe will argue that he provided essentials to the public that the government took away. Joe provided food and gas in a food desert. There were no grocery stores within 5 miles of the gas station. Joe not only lost business but also the communities in the area lost access to necessities such as food and gas.

The government will argue that they did not commit a taking because widening the Highway 150 and placing a center median to promote public health and safety under the lawful right to exercise **police powers**. By redirecting traffic flow with the center median they are keeping drivers and pedestrians safe. By widening the highway they are promoting traffic efficiency by widening the flow of traffic. More cars being able to travel will keep traffic to a minimum.

Ultimately, the government committed a taking.

Public Use

Under the broad view public use pertains to anything that may benefit the public at large. Under the narrow view public use directly benefits the public.

Here, the City of Springfield's argument will be similar to the one above, the widening of the highway and the center median are for the public's use because the drivers will be directly benefitting from it.

The taking is for direct public use.

Just Compensation

Fair market value at the time of the taking at its highest and best use.

Here, the City of Springfield will argue that Joe was fairly compensated. The City had an appraiser assess Joe's property for the 30 foot frontage at its highest and best use and they were given the number of \$30,000. However, Joe will argue that he was not fairly compensated because he had the potential to make way more than \$30,000. With the money he could have made from the carwash and the 4 gas pumps.

Absent any facts showing receipts of how much Joe made a year from the carwash and the 4 gas pumps he may be fairly compensated.

Thus, Joe may have been fairly compensated.

Conclusion

The City committed eminent domain as against Joe's 30 foot frontage.

3 . Whether Joe is entitled to any additional Damages for

a) Loss of carwash and 4 gas pumps

Here, the argument would be much like the one above.

The facts indicate the City had an appraiser assess Joe's property for the 30 foot frontage at its highest and best use and they were given the number of \$30,00. However, Joe will argue that he was not fairly compensated because he had the potential to make way more than \$30,000. With the money he could have made from the carwash and the 4 gas pumps.

Absent any facts showing receipts of how much Joe made a year from the carwash and the 4 gas pumps he may be fairly compensated.

b) Loss of any productive use of the L-shaped panhandle

The panhandle may constitute as a **regulatory/implied** taking as defined above because the property is unusable. For any takings the government is liable for just compensation of the land. Here, Joe contends that the L-shaped panhandle is now unusable and thus must be compensated for any possible losses. However, the facts do not indicate that Joe had any specific plans for the property. There are no showings of any actual earnings either.

Thus, Joe may not be compensated for any supposed loss of use for the L-shaped panhandle.

Absent other facts, Joe may be able to claim that his contribution to the community around him caused him great loss and the City may be liable for any losses from the loss of the L-shaped panhandle.

c) Loss of business resulting from the City's installation of a center median on Highway 150 and rerouting Highway 200 and any loss of use he will suffer form the possible relocation of Lee's alleged easement

Here, Joe may argue that he has lost a significant amount of business from drivers because of the center median. Now, he will only be able to get business from the drivers coming in from the New Highway widened Highway 150.

The City will argue that they are exercising their police powers to regulate the flow of traffic and keep members of the road safe. If they are exercising their police powers they will not need to pay Joe for any losses.

However, Joe is an integral part of feeding the community and giving the community of drivers in the area access to gas. The facts do not indicate where the nearest gas station is in this area for drivers. The facts also do not indicate where the new flow of traffic is coming from. Is the flow of traffic actually being regulated or now because there are more lanes that means more traffic is piling up?

The City infringed on Joe's use and enjoyment of his property and he may be compensated for it.

Also, Lee's easement this may not necessarily mean that Joe has suffered any monetary loss that he will need to be compensated for. Lee was using an easement before any takings by the City. The facts do not indicate that Joe lost any money from Lee's use of the easement before eminent domain.

Therefore, he will not be compensated for any new easement rights Lee may have.

3)

1 . Whether Bob's dairy is a nuisance

A private nuisance is a substantial , unreasonable interference with the use and enjoyment of ones property. A public nuisance is an unreasonable interference with the health, safety, or property rights of the community at large. Substantial interference refers to the defendants behavior and whether it is offensive or annoying to the average member of the community. For unreasonable interference we look to see if the plaintiff's injury outweighs the public utility of the defendants behavior. A party may bring suit in a private nuisance if they have standing, property rights. In public nuisances it is usually the government that will bring an action unless a private citizen can prove they suffered a unique harm that others in the community did not.

Here, the Tehachapi Nation and the other residents may argue that the Bob's dairy is a private nuisance. Tehachapi nation will argue that they have standing because they own the casino built and other retail facilities near the dairy. The 300 residents living within 2 miles of the dairy have property rights as well.

Both plaintiffs will argue that the smells being caused by the dairy are pungent and constantly present. The plaintiffs will argue that they have a right to enjoy their property without the smell emitting from the dairy. However, Bob will argue that the plaintiffs have suffered no **substantial interference** because there is no loss of business and have not manifested any physical symptoms from the smells. Therefore, they were not damaged. Bob will argue that there is no unreasonable interference because it is a dairy. Bob's business is providing resources to the community and arguably globally.

However, the plaintiffs will argue the they have a right to enjoy their bundle of sticks without smells. But Bob will also argue that he has a right to use his land as he sees fit.

Should the government see the revenue the casino is making and consider the overall health of the residents the government may deem is a public welfare issue and use its police powers to declare Bob's dairy a nuisance. Absent other facts the government may not step in and use its police powers.

The dairy may not be considered a private nuisance.

2 . Whether Jack is potentially liable for any damage caused by an alleged nuisance

Lessors duties for any tortious acts of their lessees.

Lessors may be liable for any tortious acts of their lessees if they were on notice of the behavior and the lessees were not acting within the scope of their lease agreement.

Should the court find Bob's dairy a nuisance then Jack may or not be liable for Bob's dairy. Here, the facts do not indicate that any of the plaintiffs suffered any actual harm other than discomfort, Bob may be able to just move and therefore causing him to break his lease. Should the court grant any injunctive relief Bob may argue that he does not owe Jack any money for the lease.

The facts do not indicate that Bob was acting outside the scope of their lease or that he was on notice of any complaints from the plaintiffs.

Thus, Jack may not be liable.

3 . Whether Bob's dairy being a nuisance triggers any remedies or may have possible affirmative defenses

Affirmative defenses: Coming to the nuisance

A party may not be able to win an action for nuisance if they came to the nuisance to specifically bring a suit.

Bob will argue that the plaintiffs came to the nuisance. The plaintiffs have known that Bob has been using the property as a dairy for the last 25 years. They never complained about the smell then. However, the plaintiffs will argue that they were not residing within 15 miles of Jack's parcel that Bob was using as a dairy. They would not have known he was there. However, in 2015 when the Tehachapi nation announced its plans to build a casino within 6 miles of Bob's dairy they would have known of the dairy's presence and the smells. The Tehachapi nation may argue that the smells may have not been present since it only happens when winds pick up.

Bob may claim that the plaintiffs came to the nuisance.

Remedies: Monetary Damages and Injunctive Relief

Potential remedies for a nuisance are monetary damages and injunctive relief. A party may ask the court to compensate them for damages they may have incurred due to the nuisance or ask that the court move the nuisance or stop the nuisance from happening.

Here, should the court deem the dairy a nuisance they may be inclined to ask Bob to move the dairy elsewhere. Here, Bob may be able to be compensated for any potential move he may have to make if the court grants the plaintiffs request for a relocation. It would only be fair that he be compensated for the move.

The facts do not indicate the plaintiffs suffered any monetary loss for the smells emitting from the dairy so the court is likely not going to grant any damages.

Thus, the only type of relief the plaintiffs may be entitled to is injunctive but Bob may also be compensated for any expenses he may incur during his move.

END OF EXAM
