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# Diminution in Value Is Not Inverse Condemnation: HFH, Ltd. v. Superior Court

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## Related Article

### Diminution in Value Is Not Inverse Condemnation: HFH, Ltd. v. Superior Court

The United States Constitution expressly forbids the taking of private property for public use without affording the owner of the property due process and just compensation.<sup>1</sup> California has provided even broader protection for owners of private property situated within its borders by forbidding the taking or damaging of private property for public use without just compensation.<sup>2</sup> In California the private property owner is protected from a physical taking or damaging of his property by eminent domain exercise and from direct physical encroachment upon use of the property.<sup>3</sup>

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1. U.S. CONST. amend. V

. . . nor shall private property be taken for public use, without just compensation.

2. CAL. CONST. art. I, § 19.

Private property may be taken or damaged for public use only when just compensation ascertained by a jury unless waived, has first been paid to, or into court for, the owner . . . .

Albers v. County of Los Angeles, 62 Cal. 2d 250, 257, 398 P.2d 129, 42 Cal. Rptr. 89 (1965); Reardon v. San Francisco, 66 Cal. 492, 6 P. 317 (1879); County of San Diego v. Miller, 13 Cal. 3d 684, 687, 532 P.2d 139, 119 Cal. Rptr. 491 (1975).

3. Brick v. Cazaux, 9 Cal. 2d 549, 71 P.2d 588 (1937) fee interests; San Francisco Bay Area Rapid Transit Dist. v. McKeegan, 265 Cal. App. 2d 263, 71 Cal. Rptr. 204 (1968) leaseholds; Dept. Pub. Wks. v. L.A. County Flood Dist., 254 Cal. App. 2d 470, 62 Cal. Rptr. 287 (1967) easements; City of Long Beach v. Pacific Elec. Ry. Co., 44 Cal. 2d 599, 283 P.2d 1036 (1955) rights

Nonetheless, private property owners may suffer a diminution in the value of their property as a result of government action *vis á vis* zoning and not receive any compensation.<sup>4</sup> The courts of the United States have held that

. . . enforcement of uncompensated obedience to a legitimate regulation established under the police power is not a taking of property without compensation, or without due process of law in the sense of the 14th Amendment.<sup>5</sup>

The United States Supreme Court has also established that property owners do not have a protected interest in the value of their property;<sup>6</sup> thus, acts done in the proper exercise of government power, although impairing the use of property and hence its value, do not require any compensation.<sup>7</sup>

California courts have adhered to the doctrine of non-vested interest in value of private property as against future zoning,<sup>8</sup> provided the future zoning does not affect a use of the property that has been undertaken by the owner prior to the time of the zoning.<sup>9</sup>

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of way; *Southern Cal. Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 507 P.2d 964, 107 Cal. Rptr. 76 (1973) building restrictions.

4. *Reichelderfer v. Quinn*, 287 U.S. 315, 319 (1932); *United States v. Cox*, 190 F.2d 293, 295 (1951); *HFH, LTD v. Superior Court*, 15 Cal. 3d 508, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

5. *Chicago & A.R. Co. v. Tranbarger*, 238 U.S. 67, 78 (1915); *Chicago B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 255 (1897); *New Orleans Gaslight Co. v. Drainage Commission*, 197 U.S. 453, 462 (1905); *Chicago B. & Q. R. Co. v. Illinois*, 200 U.S. 561, 591 (1906).

6. *Chicago & A. R. Co. v. Tranbarger*, 238 U.S. 67, 76 (1915).

[N]o person has a vested right in any general rule of law or policy of legislation entitling him to insist that it shall remain unchanged for his benefit.

See also, *Hurtado v. California*, 110 U.S. 516, 532 (1884).

7. *Pope v. United States*, 173 F. Supp. 36, 39 (1959).

[A]cts done in proper exercise of governmental powers and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking within the meaning of the constitutional provision.

*Northern Transportation Co. v. Chicago*, 99 U.S. 635, 641 (1878); *Richards v. Washington Terminal Co.*, 233 U.S. 546, 554 (1914); *Nunnally v. United States*, 239 F.2d 521, 523 (1956).

8. *Anderson v. City Council*, 229 Cal. App. 2d 79, 88, 40 Cal. Rptr. 41 (1964).

It is settled that a property owner acquires no vested right, as against future zoning, merely by purchasing real property.

*O'Rourke v. Teeters*, 63 Cal. App. 2d 349, 352, 146 P.2d 983 (1944); *Price v. Schwafel*, 92 Cal. App. 2d 77, 82-85, 206 P.2d 683 (1949).

9. *Morse v. County of San Luis Obispo*, 247 Cal. App. 2d 600, 602, 55 Cal. Rptr. 710 (1967).

The limited existing law protects a landowner from future zoning on "instituted use" property, but the landowner and the practitioner advising the landowner must face the inevitable issue of what exactly constitutes a protectable instituted use.<sup>10</sup> Further, if the landowner's instituted use is not protected from future zoning, should the landowner be allowed to state a cause of action in inverse condemnation for diminution in value of his land caused by a zoning change?

The California Supreme Court in the case of *HFH, LTD. v. Superior Court*<sup>11</sup> restated that an instituted use is protected against future zoning but once again failed to adequately define the term "instituted use." Notwithstanding that omission, the majority of the court did agree that inverse condemnation does not lie for mere reduction in market value caused by zoning changes. Even though numerous *amici* suggested significant changes in the law of compensation concerning land use regulation, the court refused to redefine state and federal constitutional requirements of just compensation or to require payment for downzoning which causes reduction in market value of private property. The court's refusal was based on its conviction that it was the function of the legislature to effect such changes. The court did not, however, suggest such changes be made.

In his dissenting opinion, Justice Clark offered a tripartite test of fairness to determine whether an action for inverse condemnation should be allowed for downzoning resulting in diminution in value of private property.<sup>12</sup> The scope of this note will be to examine the practicality of Justice Clark's test in connection with proposed legislation and to determine whether or not compensation should be given for diminution in market value of private property resulting from zoning changes.

## THE CASE

Plaintiffs HFH, a limited partnership, and Vons, a Delaware

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A purchaser of land merely acquires a right to continue a use instituted before the enactment of a more restrictive zoning. *Paramount Rock Co. v. County of San Diego*, 180 Cal. App. 2d 217, 232, 4 Cal. Rptr. 317 (1960).

10. The recent interest shown by various environmental groups in preserving select parcels of unused realty present an interesting variation of the possible issue of "instituted use." For example, if property is purchased for the sole purpose of preserving its natural state, is that an "instituted use?" One might also consider whether or not the purchase of property for the purpose of speculation is an "instituted use" notwithstanding the intimation contrary in the principal case at page 521.

11. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

12. *Id.* at 526.

corporation, contracted to purchase a parcel of land from a common grantor; the land was zoned for agricultural use and was unimproved. The sale was conditioned upon the grantor's ability to obtain commercial zoning of the land from the City of Cerritos (the real party in interest). The grantor procured the commercial zoning and in 1966 the plaintiffs became the owners of the land. Thereafter, the plaintiffs submitted and the city approved a parcel map that subdivided the property in a manner appropriate for commercial use.

In 1971, while the land was still in its undeveloped state, the city temporarily rezoned the land for agricultural use. Plaintiffs did not challenge the rezoning or allege an interference with any planned use of the land. Subsequently the city adopted a general plan indicating that some land in the area of plaintiffs' property was appropriate for "neighborhood commercial uses." The city did not alter the agricultural classification of plaintiffs' land. The general plan designated the bulk of the land in the area of plaintiffs' property for "low density residential" uses.<sup>13</sup>

Plaintiffs concluded at that time that it would best serve their interest to sell rather than develop their land and in early 1972 entered into a \$400,000 contract of sale conditioned upon the reclassification of the land to commercial use. An application for commercial zoning that plaintiffs submitted to the planning commission was rejected. An appeal to the commission and the city council was also rejected and the property was rezoned for single family residential use. As a consequence, the plaintiffs alleged the land purchased by them for \$388,000 suffered a decline in market value to \$75,000. Further, plaintiffs alleged that the situation of their property rendered it "useless" for single family residential purposes.

The trial court sustained a demurrer without leave to amend to plaintiffs' cause of action in inverse condemnation. The plaintiffs sought review of the order sustaining the demurrer and a writ of mandate directing the trial court to overrule the demurrer. The Supreme Court upheld the lower court's decision and stated that inverse condemnation does not lie in zoning actions in which the complaint alleges mere reduction in market value<sup>14</sup> and cited sev-

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13. City of Cerritos October 1971 General Plan Map; EVID. CODE § 452, subd. (b) (West 1974).

14. HFH, LTD. v. Superior Court, 15 Cal. 3d 508, 513, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

eral previous decisions for that principle.<sup>15</sup> The court stated that the

. . . rights reserved to the individual . . . are held in subordination to the rights of society. Incidental damages to property resulting from governmental activities, or as laws passed in the promotion of the public welfare are not considered a taking of the property for which compensation must be made.<sup>16</sup>

The court referred to the *Morse* case<sup>17</sup> in support of the proposition that landowners have no vested right in existing or anticipated zoning ordinances.<sup>18</sup> Further, the court stated that a landowner merely has a right to a use of the property instituted before the enactment of more restrictive zoning.<sup>19</sup> The court also added that some uncompensated hardships must be borne by individuals as the price of living in a modern, enlightened and progressive community.<sup>20</sup>

Plaintiffs' argument that the city had "damaged" their property by enactment of the zoning ordinance was rejected by the court, who declared that the plaintiffs had failed to distinguish between "damaged" property as required by the Constitution for compensability<sup>21</sup> and "damages" by which courts measure the amount of compensation due.<sup>22</sup> The court stated that the Constitution's "damaged" provision was intended to reach situations in which government activity damaged land without taking it and was not intended to cover situations in which undamaged land has suffered only from diminution of market value.<sup>23</sup> In addition, the court

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15. *Welch v. Swassey*, 214 U.S. 91, 107 (1909); *Miller v. Bd. of Pub. Wks.*, 195 Cal. 477, 488, 234 P. 381 (1925); *McCarthy v. City of Manhattan Beach*, 41 Cal. 2d 879, 890, 264 P.2d 932 (1953); *Consolidated Rock Products Co. v. City of Los Angeles*, 57 Cal. 2d 515, 530, 370 P.2d 342, 20 Cal. Rptr. 638 (1962); *Selby v. City of San Bernadino*, 10 Cal. 3d 110, 127, 514 P.2d 111, 109 Cal. Rptr. 799 (1973); *State of California v. Superior Court (VETA)*, 12 Cal. 3d 237, 252-53, 524 P.2d 1281, 115 Cal. Rptr. 497 (1974).

16. *Miller v. Bd. of Pub. Wks.*, 195 Cal. 477, 488, 234 P. 381 (1925).

17. *Morse v. County of San Luis Obispo*, 247 Cal. App. 2d 600, 602, 55 Cal. Rptr. 710 (1967).

18. *Anderson v. City Council*, 229 Cal. App. 2d 79, 88-90, 40 Cal. Rptr. 41 (1964).

19. *Livingston Rock Co. v. County of Los Angeles*, 43 Cal. 2d 121, 127, 272 P.2d 4 (1954).

20. *Metro Realty v. County of El Dorado*, 222 Cal. App. 2d 508, 518, 35 Cal. Rptr. 480 (1963); *Morse v. County of San Luis Obispo*, 247 Cal. App. 2d 600, 602-03, 55 Cal. Rptr. 710 (1967).

21. CAL. CONST. art. I, § 19.

22. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 518, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

Reasoning backwards, plaintiffs erroneously contend that since they can calculate damages (by measuring decline in market value), they must have been damaged within the meaning of the state Constitution.

23. *Id.*

stated that the basic equitable principles of fairness<sup>24</sup> are not abused by this holding because

. . . the long settled state of zoning law renders the possibility of change in zoning clearly foreseeable to land speculators and other purchasers of property, who discount . . . value by the probability of such change.<sup>25</sup>

Justice Clark, in a dissenting opinion,<sup>26</sup> urged that the "or damaged" language in the Constitution<sup>27</sup> is not limited to mere physical damage but encompasses something more than either direct or immediate damage.<sup>28</sup> Further, Justice Clark stated that the government should pay for property value it has impaired or destroyed.<sup>29</sup> The point at which an injury is compensable, he stated, is determined by balancing two fundamental, yet inconsistent, policy considerations: the policy of distribution of individual loss for public improvements by redistributing such loss throughout the community and the policy that liberal compensation will seriously impede or stop beneficial public improvements because of increased cost.<sup>30</sup>

In reviewing these conflicting policy considerations, the fact that both state and federal constitutions<sup>31</sup> require compensation to the individual who has lost his property because of a taking or damaging by government activity cannot be ignored. These constitutional rights should not be abrogated because the government finds it more convenient and less expensive to ignore the individual's rights. It should not matter at all that the government's cost will be in-

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24. *United States v. Fuller*, 409 U.S. 488, 490 (1973).

The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness as it does from the technical concepts of property law.

*United States v. Commodities Trading Corp.*, 339 U.S. 121, 124 (1950); *Southern Cal. Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 175, 507 P.2d 964, 107 Cal. Rptr. 76 (1973).

25. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 523, 542 P.2d 237, 125 Cal. Rptr. 365 (1975); Michelman, *Property, Utility, and Fairness: Comment on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 165, 195-96 (1967).

26. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 523, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

27. CAL. CONST. art. I, § 19.

28. *Reardon v. San Francisco*, 66 Cal. 492, 501, 6 P. 317 (1885).

29. *Id.* at 503; *Bacich v. Board of Control*, 23 Cal. 2d 343, 351, 144 P.2d 818 (1943).

30. *Bacich v. Board of Control*, 23 Cal. 2d 343, 350, 144 P.2d 818 (1943).

31. U.S. CONST. amend. V; CAL. CONST. art. I, § 19.

creased or its convenience hampered in exercising its police power through zoning when constitutional guarantees are at stake. Absent some compelling reason, such as a national emergency, the police power must yield to the Constitution's commands.

Any increase in the cost of zoning may be met by local government increasing its property tax assessments or by alternative taxes. As stated by Professor Michelman in his noted law review article:<sup>32</sup>

. . . [I]t would appear that any measure which society cannot afford or, putting it another way, is unwilling to finance under conditions of full compensation, society cannot afford at all.

Basic principles of fairness suggest that no individual member of a democratic society should be made to bear alone a financial burden that is incurred for the benefit of the entire society. Thus, the financial cost of a public improvement should be equitably distributed throughout society. The ultimate test of whether compensation is required in downzoning cases resolves itself into one of constitutional principles and fairness.<sup>33</sup>

Justice Clark conceded that not all governmental activity that adversely affects property values must be compensated.<sup>34</sup> Governmental activity, to be exempt, would have to lie beyond the parameters of his tripartite test of fairness.<sup>35</sup> This tripartite test would require compensation when by public action (1) land has suffered substantial decrease in value, (2) the decrease is of long or potentially infinite duration and (3) the owner will incur more than his fair share of the financial burden incident to such decrease in value.<sup>36</sup> By applying this test to the facts before him, Justice Clark concluded that an eighty percent decrease in market value was substantial, that the decrease was of a long or potentially infinite duration and that the plaintiffs would incur more than their fair share

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32. Michelman, *Property, Utility, and Fairness: Comment on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 165 (1967).

33. *County of San Diego v. Miller*, 13 Cal. 3d 684, 689, 532 P.2d 139, 119 Cal. Rptr. 491 (1975); *Southern Cal. Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 173-75, 507 P.2d 964, 107 Cal. Rptr. 76 (1973).

34. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 526, 542 P.2d 237, 125 Cal. Rptr. 365 (1975); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922).

35. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 526, 542 P.2d 237, 125 Cal. Rptr. 365 (1975); *see also*, *United States v. Fuller*, 409 U.S. 488, 490 (1973); *United States v. Commodities Trading Corp.*, 339 U.S. 121, 124 (1950); *Southern Cal. Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 175, 507 P.2d 964, 107 Cal. Rptr. 76 (1973).

36. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 526, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).



of the financial burden. Thus, Justice Clark would have granted the writ directing the lower court to overrule the demurrer.<sup>37</sup>

The underlying issue of whether inverse condemnation should lie for diminution in market value caused by downzoning was successfully avoided by the majority, who suggested that such change should come from the legislature.<sup>38</sup> Although Justice Clark favors compensation for reduction in market value of certain downzoned property, the elements of his test are illusory. Just what constitutes a "substantial decrease in value of long or potentially infinite duration" is as subjective as "a fair share of the financial burden." However, the test offered by Justice Clark might be workable given a legislative definition of "substantial decrease in value."

The argument for legislative change and a standard test for compensation in a case such as *HFH, LTD. v. Superior Court* finds much support in the "or damaged" clause of the California Constitution.<sup>39</sup> Downzoning private property from residential to agricultural use or from commercial to residential use, for example, truly will damage the property insofar as its beneficial use is concerned, as much as if the state built a facility adjoining a residentially zoned parcel which rendered the parcel unfit for human habitation.

One of the reasons for not requiring compensation in downzoning cases is that some incidental damage to private property caused by zoning is inconsequential, i.e., the diminished value of the property affected is *de minimus*. If compensation was to be required in each instance where property values were only slightly affected, the result would be a flood of nuisance claims for compensation against the zoning authority. Local government would be in the position of either having to pay these claims or rescinding legitimate zoning ordinances for financial reasons. Ultimately, government zoning could become prohibitively expensive because of nuisance claims or ineffective because of self-imposed restrictions to avoid the added expense. It might also be argued that any change in a zoning ordinance concerning a particular parcel must necessarily affect neighboring parcels, some of them adversely. However, these arguments are inherently weak; the former fails to recognize that the legislature could set a standard by which damages would or would

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37. *Id.* at 527.

38. *Id.* at 522.

39. CAL. CONST. art. I, § 19.

not be considered inconsequential and the latter can be dealt with by a proximate cause analysis.

A proximate cause analysis in a downzoning situation, like its tort counterpart, could be utilized to limit the liability of the zoning agency to compensation for adversely affected parcels within the immediate physical vicinity of the downzoned parcel.<sup>40</sup> Of course, the problem that immediately presents itself is the definition to be given to the term "immediate physical vicinity." The solution to this definitional problem could be dealt with on a judicial case by case basis or by legislation. Difficulties that would be encountered with the case method would be lack of uniform decisions, expensive and time consuming litigation and vague standards. On the other hand, a legislative definition must necessarily be arbitrary because of the elusiveness of the term "immediate physical vicinity."

Because an inflexible legislative definition of the term "immediate physical vicinity" may operate harshly against property lying beyond a fixed area, such as one square mile or even ten square miles, a compromise between legislative fiat and judicial discretion would serve the purpose of defining the term and affording relief to those property owners who would suffer hardship simply because their property fortuitously lay outside a defined boundary. "Immediate physical vicinity" could be legislatively defined as that area within one square mile of the downzoned parcel, except in those instances determined by a court of competent jurisdiction to merit special consideration as a matter of public policy; such a definition would adequately dispose of litigation concerning affected land within one square mile of the downzoned parcel, while at the same time allowing flexibility for "hardship" cases.<sup>41</sup> Further, the proposed definition would afford clear notice to landowners and zoning agencies alike that diminution in value of property located within one square mile of a downzoned parcel will be conclusively presumed to have been proximately caused by the downzoning; it would also give notice that a court of competent jurisdiction may extend the one square mile limitation upon a showing that special consideration, as a matter of public policy, should be given.

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40. See, *Workable Rules for Determining Proximate Cause*, 20 CAL. L. REV. 229 (1932).

41. The author is aware that any proposed physical boundary is, of course, arbitrary. Nonetheless, a limitation of one square mile is no more arbitrary than legislation that makes a person below the age of eighteen years legally incompetent to contract. The proposed definition will define the outer limits of "immediate physical vicinity" while remaining flexible enough to accommodate hardship situations.

If one accepts the premise that government should compensate for damages proximately caused by downzoning, the measure of damages can also be ascertained by legislation utilizing Justice Clark's test. That legislation would simply define what Justice Clark termed a "substantial decrease in value." Obviously, the term encompasses a decrease in value down to zero. The problem is at what point before the decrease reaches zero will it be considered substantial?

The problem presented by a legislative definition of "substantial decrease in value" is twofold. The first part of the term "substantial decrease" must be defined separately from the second part of the term "value." Once again a legislative standard will be arbitrary. However, recognized economic factors, such as the legal rate of interest prevailing in the United States, may be used in defining "substantial decrease." For example, a substantial decrease may be said to exist whenever the value of property is lessened beyond the acquisition cost of the property together with the legal rate of interest compounded annually from the date of acquisition of the property. Thus, if downzoning occurred in 1973 and the legal rate of interest remained seven percent through 1975 and the property was acquired in 1973 at a cost of \$100,000, any decrease in value below \$114,490 would be conclusively presumed to be a substantial decrease.<sup>42</sup>

The second part of any legislative definition of "substantial decrease in value" must succinctly define the term "value." It is obvious that zoning agencies and landowners would find it beneficial to their respective interests to assert as appropriate different values. Zoning agencies might claim the cost of the property at acquisition as appropriate and landowners might assert potential market value as more appropriate. It is fortunate that there does exist an equitable middle ground between these extremes. This middle ground, used in eminent domain proceedings, is the cur-

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42. If \$100,000 is invested in 1973 at 7% per annum, it would accrue \$14,490 interest at the end of 1975. Thus, principal plus interest on such an investment at the end of two years would total \$114,490.

The legal rate of interest is suggested by the author as a logical standard in that a prudent investor would hope to obtain at least the prevailing legal rate of interest on an investment. No less of a return on investment should be expected by a private property owner.

rent fair market value of the property.<sup>43</sup> The current fair market value of the property at the time of the zoning complained of can be adduced at a hearing after both the zoning agency and the landowner have mutually selected an independent expert evaluator. By utilizing the concept of current fair market value in its definition of "substantial decrease in value" the legislature can avoid bestowing a windfall on either the public through the zoning agency or on the private property owner.

### PROPOSED LEGISLATION

Proposed legislation utilizing Justice Clark's test might read:

There shall exist a civil remedy in inverse condemnation for any private property owner whenever by public action:

- (1) Such owner's real property has suffered a substantial decrease in value, which decrease will be presumed upon a showing by such owner that the current fair market value of his property at the time of the public action has decreased below the sum of the cost of acquisition of such property and interest thereon, compounded at the legal rate or rates prevailing during the period of time for which such property was held; and
- (2) Such decrease in value is of long or potentially infinite duration and, in any event, not less than one calendar year from the time of the public action; and
- (3) The property affected lies within one square mile of the downzoned parcel or is determined by a court of competent jurisdiction, as a matter of public policy, to lay within the immediate physical vicinity of the downzoned parcel.

Application of the proposed legislation to the facts presented in *HFH, LTD. v. Superior Court*<sup>44</sup> would have resulted in recovery for the plaintiffs, since the parcel involved had been diminished in current fair market value at the time of the zoning in excess of eighty percent (current fair market value prior to the zoning was \$388,000, which dropped to \$75,000 after the zoning), the parcel had decreased in value beyond the one calendar year requirement and the parcel lay within the physical boundary. This would have been a more equitable result.

The impact of any such proposed legislation undoubtedly would be far-reaching. It cannot be disputed that, to accomplish legitimate zoning objectives in community land use planning, local government will be forced to compensate heretofore uncompensated property owners whose property values have diminished because of zoning ordinances. Further, local government will be

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43. CAL. CODE OF CIVIL PROCEDURE § 1249 (West 1972); see also, *San Diego Land & Town Co. v. Neale*, 88 Cal. 50, 25 P. 977 (1891).

44. *HFH, LTD. v. Superior Court*, 15 Cal. 3d 508, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

put to the added expense of increased administrative cost in either assessing and collecting additional taxes or in implementing other revenue raising measures to meet the cost engendered by the proposed legislation. It is possible that certain desired zoning changes will not be affected because of the anticipated cost of compensating private property owners. On the positive side, however, the proposed legislation will encourage more responsible government *vis á vis* careful land use planning if only to avoid the increased cost of compensation. In addition, the cost of public improvements will be ratably distributed to all who benefit from such improvements.

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