

PART II**ESSAY QUESTION -- Suggested time: 75-90 minutes**

The Benevolent Corporation for the Raising of Rabid Security Hounds is a business that acquired a 50-acre property on the edge of the town of Springfield in 2000. Their unique business model involves 18-hour-a-day training of dogs to develop both obedience and viciousness. The dogs are then sold to wealthy landowners for protection of their estates. Initially the land near the Benevolent Corporation was undeveloped and un-zoned, but in 2005 two 20-acre properties (one on either side of the Benevolent Corporation) were conveyed and developed.

The property to the east of the Benevolent Corporation was purchased by a Texas millionaire, "Tex," who built a large mansion and grounds. Tex hates the loud noises from the Benevolent Corporation's training sessions and the smell and flies from its dog kennels. The sounds can be heard until 11:00pm most nights and start again at dawn each day.

The property to the west of Benevolent Corporation was donated to the Charitable Hospital for the Treatment of Severe Nervous Disorders. They have constructed their hospital facility building in the center of their large lot and insulated the building for sound, but the noise disturbance is still significant. It is dramatically interfering with their patients' treatment.

With encouragement from Tex and the Hospital, the Planning Commission of Springfield recently zoned the area these three properties are located in. It is zoned RQ1 (for large lot, quiet residential uses; no size or height restrictions). All RQ1 areas (and there are others in town, usually at the less-developed edges of the town) also allow "not-for-profit social service facilities, schools and churches on minimum 5-acre lots, so long as they are not located within 1000 feet of each other". There are no other significant elements to the ordinance.

The Benevolent Corporation has been told it is in violation of the zoning law. It is suing, claiming that the zoning law is invalid. Meanwhile, Tex and the Hospital are considering filing a nuisance suit against the Benevolent Corporation.

A) The Town of Springfield comes to you for advice. They want to know what reasonable claims regarding the invalidity of the town's zoning can the Benevolent Corporation make and what is their likelihood of success? Furthermore, must the town allow the Benevolent Corporation to continue its current use under the new zoning law and, if so, for how long?

B) Also, Tex and the Hospital have each come to you separately to discuss their ability to successfully sue Benevolent Corporation for either legal or equitable relief under their state's common law of nuisance. What advice will you give each of them about their nuisance claims: can they bring a claim, what defenses might the Benevolent Corporation have, will they win and what remedy can they expect if they do?

END OF PART II

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