**ID:**
**Exam Name:** **Prop1_LS1_(Christiansen)_Final_F08**
**Instructor:** **Eric C. Christiansen**

**Grade:** ____________

1)
**A) Zoning of Springfield**
**Did Springfield Have the Right to Zone?**
Zoning laws come from a State's right to police its citizens to maintain health, safety, well-being and morals. Zoning laws often serve to stop conflict before it arises, to create certainty about what types of activities are allowed on a land and to limit the need for nuisance law suits. A State delegates its power to zone municipalities through Zoning Enabling Acts.
Here, we must assume that the State designated certain powers in the City of Springfield to place restrictions on its inhabitants through a Zoning Enabling Act, as cities, such as Springfield are better able to make decisions as to the use of their land and there are no facts to make us believe otherwise.
Thus, we must assume that Springfield had a right to create a comprehensive plan to zone its city.
**Did Springfield Use the Correct Process of Creating a Comprehensive Plan?**
A City Council of creates a comprehensive plan, assisted by the appointed Planning Commission, who in turn is advised by a Planning Department who are hired staff. The plan in then implemented by the Zoning Board.
Here, as far as we are aware the City of Springfield went through this process to create their plan, as we do not have any facts that state otherwise.
Thus, without more information, we can only assume that their plan was valid in its creation process.
**Are Springfield's Types of Zoning Valid?**
A comprehensive plan consists of two types of zoning, use zoning and area zoning. Use zoning determines the types of development which may occur in a certain area, such as residential or industrial development. Area zoning specifies the smaller details of what may occur, such as how far a property may be from the street or how tall a house may be.
Here, Springfield implemented use zoning when it determined that the area that the properties are located is zoned as a quiet residential use and it put this type of zoning at the edge of town. Springfield implemented area zoning when it determined that there were no size or height restrictions on the houses in that area.
Thus, Springfield correctly implemented use and area zoning. (We will address the exemption next).
**Are the Special Exemptions Provided or Non-Profit Social Service Facilities, Schools, Etc. Valid?**
Zoning is cumulative in most jurisdictions, meaning that types of activities that could take place in more restrictive areas (such as a residential neighborhood) are allowed in areas with less restrictive use zoning (such as an industrial area), but not vice versa. In

some jurisdictions zoning is non-cumulative meaning that only activities zoned for that particular area are allowed in that area are allowed. In both types of zoning areas City Councils may include Special Exemptions in their comprehensive plan. These are allowances for certain types of activities in an area that would normally be restricted to the area based upon cumulative or non-cumulative restrictions. Special exemptions are generally allowed by courts.
Here, the City of Springfield has created a valid special exemption when it allowed in RQ1 areas "non-profit social service facilities, schools and churches on minimum 5-acre lots, so long as they are not located within 1,000 feet of each other." This seems to fall within the general restrictions of the area and within the police powers of Springfield. BC may argue that this is Spot Zoning (which is generally not allowed by courts) because it is actually aimed at allowing a specifically allowing the Hospital to persist where it is, but because this exemption is found in other RQ1 areas, which are also at the edge of town, BC will likely not succeed in this claim.
Thus, the part of Springfield's zoning law allowing an exemption is for non-profit social service facilities, schools and churches is valid.

**Is Springfield's Zoning a Taking of Benevolent Corporation's (BC's) Land?**

There has been an ongoing conflict between a city's right to implement the police powers given to it by the state to place restrictions on the use of property within its land for the well-being, safety, health and morals of its citizens and the restriction placed upon Federal and State governments to restrict the use of property owner, established by the 5th (federal) and 14th Amendments (state). *Pennsylvania Coal* established that zoning restrictions that are too severe and do not fall under a city's police powers are considered a taking and are not allowed. However, *Euclid* established that a zoning regulation could reduce the property owner's value by 75% and not be considered a taking if it was in the interest of the health, safety, welfare and morals of the citizens, with the discretion given to the City to determine. Then, *Nectow* stated that zoning limitations could not go so far as to be complete takings, especially if there was not significant reason to do so as established by police powers, and thus were not allowed.
Here, BC will likely argue that the zoning restrictions established by Springfield are a taking according to *Pennsylvania Coal* and *Nectow* because the restriction of quiet residential use would destroy his business. However, the City will be more likely successful in arguing that this case is most like *Nectow* where BC would still be allowed to use their land for other purposes or sell it and thus, the value probably would not be reduced much more than the 75% value decrease in Nectow. Further, the City will be successful in stating that it was in the interest of safety, welfare, well-being and morals of its citizens that it created these zoning regulations.
Thus, the City will be able to successfully maintaining its zoning regulations despite the fact that they conflict with BC's use of their land.

**Was BC's Use of Its Land a Prior Non-Confirming Use?**

Cities will grant compensation or allowances to continue a use that was begun before zoning laws were created or change. A vested interest is applied when a landowner has relied upon zoning ordinances to begin construction in good faith and in a substantial way(in many jurisdictions, they must have received a building permit), a city will then compensate the owner for their expenses. A Prior Non-Conforming Use is when a property owner began conducting an activity on their land before a zoning law was created or modified to not allow that activity. Thus, it would be considered a taking to not allow that use to continue. In this case a city must allow the activity to continue, unless there is a change in the character, extent, or some other element of the activity (as exemplified by Auntie Punky's hypo and the Discotheque case). Selling the property would not end its status as a Prior Non-Conforming Use. The city may also place a time

limit on the prior non-conforming use in the form of a amortization clause that will stop the use at a time where the owner has gotten a fair amount of economic value out of the use.
Here, BC's use of their land to train dogs to develop obedience and viciousness began in 2000 when there was no zoning law in place and the zoning law that would restrict their activity was created in 2005 their use is clearly a prior non-conforming use.
Thus, City must allow it to stay. It is unclear whether the City could say that there is a specific time that the use of the land would have gained a fair economic value, as they could keep raising dogs indefinitely upon the land;thus, it would likely be difficult to place an amortization clause on the non-conforming use. The City should definitely look into this possibility, but also look out for any, even slight, changes in the way that BC is using the land in the scope or type of activity that it is doing (for example if it starts training dogs 19 hours a day, instead of 18 or gets many more dogs; however, selling the business would be OK). If the city does see a change it should terminate BC's right to conduct its business immediately.

**Conclusion**

Thus, while Springfield's zoning laws are valid, Springfield will have to allow BC to continue its activities as a prior non-conforming use, at least for now. Springfield should be on the lookout for any changes to BC's use that would enable them to stop the use.

**B. Nuisance**

**Tex (T) v. BC**

A nuisance is when a neighbor violates a property owners right to security (peace, quiet, well-being) through activities that the neighbor does on their own land. Nuisance law creates a conflict between a plaintiff's right to have this peace and quiet on their land (plaintiff's security) with a defendant's right to use her land as she pleases (defendant's privilege).
Here, the question is whether BC's activities on their land constitute a nuisance to Tex. To determine this we will ask six questions: 1. Is the activity a statutory violation? 2. Is the type of nuisance general or specific? 3. Is it a Public or Private Nuisance (3 and 4 determine what interest is violated) 4. Is the Harm Substantial? 5. Is the Harm Unreasonable and 6. What Remedies are Available to Tex?

**1. Is BC violating a statutory law?**

If an activity violates a statutory law it is considered a nuisance per se and the court will award Plaintiff's Veto or Plaintiff's Security and will enjoin the activity.
Here, we are not given any information about whether BC's activity violates statutory law, and must assume that it does not or the town would likely have taken some action against it already.
Thus, BC is likely not violating a statutory law.

**2. Is the type of interest violated by BC to Tex general or specific?**

A specific nuisance is one that falls into a specific category where courts have created special rules governing the action. Some examples include lateral support, subjacent support, light and air, and rules governing surface water. In these cases the court will apply plaintiff's veto (natural flow, some cases of lateral support and subjacent support) or defendant's privilege (light and air in most jurisdictions, common enemy rule for surface water). Also, in some cases courts will award defendant's privilege when the use is a Prior Use. In all other cases the type of nuisance is a general nuisance and the reasonable use test is applied.
Here, the type of nuisance that Tex is claiming against BC involved raising hounds on their land in a loud, disruptive manner. BC was on the land first, thus Prior Use could apply, but given the other significant factors in this case, the court will most likely see

this as a general nuisance.
Thus, the court will see BC's actions a general nuisance and apply the Reasonable Use test.

**3. Is this type of interest violated by BC to Tex a public or private nuisance?**

A public nuisance is one which effects the community as a whole. It could be a smoke stack that is polluting a large area or chemicals dumped into the water that effect many people. If a nuisance is a public nuisance than elected officials will need to bring the nuisance claim (though there is a trend to allow private individuals to claim nuisance as well in these cases). A public nuisance is one that effects individuals and the suit is brought by those individuals.
Here, this nuisance will likely be considered a private nuisance. BC's activities, as far as we know, are only effecting their two immediate neighbors, and not the broader community. BC or even the City might argue that there are factors such as the creation of flies and perhaps waste in the water that effects a broader group of people. However, it is more likely this would be a private nuisance suit as only Tex and the Hospital are effected.
Thus, Tex would be allowed to bring action for a private nuisance

**4. Is BC's harm substantial to Tex?**

Here, a court will look at whether the harm created by the defendant had a significant impact upon the defendant as would be seen by a reasonable person. The reason the harm is deemed substantial cannot be due to the hypersensitive nature of the defendant, but if the harm is found to be one that a reasonable person would find substantial then a defendant is liable for any hypersensitivities a plaintiff might have.
Here, BC's harm was clearly substantial. Tex, who seems to not have any hypersensitivities, hears noises until late at night and early in the morning. He is disturbed by flies (a specific case, I believe regarding a tire manufacturer, found that bringing flies into an area was a nuisance) and smells from the dog kennels. BC may argue that the these things shouldn't disturb Tex on his 20 acre lot, but I do not think that they will be successful as they seem like activities that most people would consider harmful.
Thus, BC's harm will be found to be substantial

**5. Is BC's harm unreasonable to Tex?**

In determining whether the harm was unreasonable the court will balance the utility of the defendant's actions with the gravity of the harm caused to the defendant. In exploring the utility of the defendant's actions the court will look at 1. what the social utility of the defendant's conduct,2. the reasonableness of the use for that area, 3. whether the defendant was conducting the action prior to the plaintiff's arrival and the 4. damages that would be caused to the defendant by being forced to discontinue their harmful activity. In exploring the gravity of harm to the plaintiff the court will look at 5. whether the harm is so great that it is one he should bear without compensation, 6. the utility of the conduct that the plaintiff is using their land, 7. and whether it is possible for the defendant to continue while compensating the plaintiff.
Here, 1. BC is conducting a business, thus is important to the economy. Likely they are employing people to train the hounds, sellers to find wealthy landowners to buy the hounds, and are supporting pet stores and other industries who service hounds. Thus, the utility of their business is significant. Tex may argue that raising hounds for wealthy people is not really that positive a benefit to society, but the court will likely feel that the utility of their business as a place in the economy is still significant. 2. BC's use is definitely not a good one for the area. It violates the city's new zoning ordinances and not at all a quiet residential activity. 3. On the other hand they were using the land for raising dogs before any of their neighbors moved in or the zoning ordinances were

established. Thus, like the pig farmers, this will likely have a significant weight on how the court perceives the activities. 4. Finally, it would likely be hard for BC to stop their harm without closing down the business. Even if they reduced their hours of operation, there would still be the issue of the smell and the flies. 5. The gravity of harm on Tex is not entirely clear. Are there many flies constantly on his land, are the sounds loud and piercing at his home, or is he far enough away that these are only minor concerns or are there so many dogs that they are near his land and bothering him all the time. Likely, they are fairly significant harms to Tex, but it is hard to be entirely sure. The harm is not as clear as the stench caused by a pig farm. 6. Tex is simply living on his land, so there is not a significant utility to his conduct. 7. Finally, it is possible that Tex could continue to live on his land with the smells, sounds and flies. It would depend on how pervasive these things were.
Thus, it is not certain whether the harm is unreasonable. The fact that BC was there first, is economically benefiting from their activities and would not be able to limit their activities without shutting down their business will weigh against how significant the harm to Tex is. Likely, the court will find that the harm is unreasonable, but not significantly.

**6. What remedies are available to Tex?**

If the court finds that the activities of a defendant not at all unreasonable but were significant they would grant defendant's privilege and the defendant could continue their activities. If the court found that the activities were somewhat unreasonable and were significant , the court will grant a legal remedy of damages to the plaintiff. If the court found that the harm was substantial and significantly unreasonable it will grant an injunction. However, if the harm is substantial and significantly unreasonable, but it would place an unfair burden upon the defendant the court would grant the equitable remedy of a purchased injunction.
Here, it would be most likely that the court would grant damages to Tex, as the harm does not seem unreasonable enough to force them to stop raising hounds, given the economic value of BC and the fact that they were there first, even if the flies, the smell and the sound were genuinely bothering Tex. This would really depend upon how smelly, loud and fly-ridden their operations are, but I doubt the court would find the harm unreasonable enough for an injunction.

Thus, in conclusion, Tex will be able to receive damages from BC and BC will be able to continue their operations.

**Hospital v. BC**

Here, the analysis provided above in #1 and 2 would be exactly the same. For number 3, this may be moving more towards a public nuisance, as this is a not for profit hospital that serves clients from the general public. However, because the hospital is still a private entity (it is not a government operated hospital), it is still likely that the hospital would sue under private nuisance.
Thus, this would be a private nuisance claim for a general nuisance where the reasonable use test would be applied.

**4. Is BC's Harm Substantial to the Hospital**

Here, BC would likely argue that the hospital's use of is a hypersensitive one. They serve people with severe nervous disorders, who are likely extremely sensitive to loud noises and smells, moreso than the average person. However, the facts are that the noise disturbance is still significant even though they have insulated their building for sound. Also, Tex, the neighbor on the other side seems to be a reasonable person and he is also disturbed by the sound. Thus, I believe that a court would find that despite the

Hospital's hypersensitive nature that BC's activities are still significant enough that a reasonable person would consider their harm substantial.
Therefore, a court would find that BC's harm to the hospital was substantial. Because the court would find that the harm is substantial, BC is then liable for any hypersensitivities that the hospital has.

**5. Is BC's Harm to the Hospital Unreasonable?**

Here, the utility of BC's conduct is the same as above. However, the gravity of harm to the Hospital is more significant. 5. The harm is one that the hospital clearly should not bear without compensation as it is dramatically interfering with the treatment of their patients 6. There is a significant utility to the conduct of treating people with severe nervous disorders. A court will likely say that this use is a more significant than he social utility of the economic benefits of raising vicious hounds, who in themselves are not something that society would really favor. 7. Finally, it the harm is not one that the hospital could continue to bear as it is dramatically interfering with their patient's recovery.
Thus, the harm caused to the hospital by BC is significantly unreasonable. However, a court will still look to the fact that BC was there first in determining its remedy.

**6. What remedies are available to the hospital?**

The court will look at the same possible remedies that it did in determining a remedy for Tex. However, in this circumstance because it will determine that the harm is substantial and is significantly unreasonable and will likely chose an <u>equitable remedy</u> of an <u>injunction</u> against BC's operation of their hound raising. Because BC was conducting its activity prior to the construction of the hospital, just as in the pig farm case, the court will likely issue a <u>purchased injunction</u>, having the Hospital pay for the expenses to move the dog raising operation.
Thus, the court will issue a <u>purchased injunction</u> to for the hospital to pay to move BC's activities elsewhere

**Conclusion**

Thus, due to the substantial and significantly unreasonable effects that BC's activities are having on the Hospital and due to the fact that BC was operating first, the court will issue a purchased injunction to move BC's activities. Thus, BC will have to leave Springfield and will be paid for their move.

**END OF EXAM**