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THE ELIMINATION OF THE NONCONFORMING USE IN CALIFORNIA

By ELVIN LAWSON RIDDLE

Mr. "X" has been operator of a scrap metal salvage enterprise for fifteen years. He has invested extensively in equipment and buildings and has given faithful service to his customers in nearby Orange City, California. Five years ago the orange groves surrounding his location were "bull dozed," tract houses thrown up, and Mr. "X" found his property incorporated as part of Orange City. On that day he also became the violator of City Ordinance 23456 which prohibited all but residential use of the one-unit structures allowed in the zone his buildings occupied. For five years the Planning Commission of Orange City has avoided enforcing this ordinance against Mr. "X." An enforcement of Ordinance 23456 would compel "X" to discontinue his trade and with it his means of livelihood. Forcing "X" to sell his peculiarly constructed buildings and lot for residential use would provide poor compensation. Attempting a move of his heavy stock and equipment out of town would cost him nearly as much as his business is worth. But continuing his necessarily noisy operations in this residential zone has in the past and will in the future continue to seriously interfere with the home lives of the many nearby residents. The experience of other communities indicates that elimination of Mr. "X's" business is not likely to occur through obsolence, fire, or other ravages of time. The Illinois Municipal Review[1] states:

> "[T]hey not merely continue to exist, but to send down deeper roots. They become clear monopolies with special privileges. Their existence is a continual threat to the conservation of property values in the districts where they exist . . . ."[2]

The ordinance that prevents certain uses insulates "X" from his natural competitors. He is granted a virtual franchise in his community. The elimination of the situation that Mr. "X" represents has been the recurring problem of community planners throughout the United States.

In zoning terminology, "X" is a nonconforming user—his building or land is occupied by a use that does not comply with the regulations of the district in which it is situated.[3] In seeking to eliminate the nonconforming use we are confronted with the conflicting interests of the individual and his property against the police power of the state. The United States Constitution acts as final arbiter between these interests by protecting the property rights of the individual and leaving the states adequate police power to promote the public welfare. But this residual power as stated in *Miller v. Bd. of Public Works*:[4]

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[1] Bartholomew, *The Zoning of Illinois Municipalities*, 17 ILL. MUNIC. REV. 221.

[2] *Id.* at 232.

[3] Note, 9 U. CHI. L. REV. 477, 486 (1941).

[4] 195 Cal. 477, 484, 234 Pac. 381, 383 (1925).

"[I]s not confined within the narrow circumspection of precedents, resting on past conditions; . . . as a commonwealth develops politically, economically, and socially, the police power likewise develops, within reason, to meet the changed and changing conditions . . . ."[5]

California's rapid growth has magnified the conflict between police power and private property. Consequently its use of police power has had to be especially progressive to promote the welfare of the public and at the same time protect the property rights of the individual.

The regulations aimed at eliminating the non-conforming use are of two general types: (1) limitations on the height or bulk of buildings within certain designated districts, having to do with structural and architectural designs, and (2) limitations on the use to which buildings within certain designated districts may be put. This Article will discuss the more important regulatory schemes employed to effect these limitations, together with the applicable common law principles, and the social, economic and political factors influencing such regulations.

Presumption of Statutory Validity:

The validity of zoning has been demonstrated so thoroughly that the constitutionality of the general principle is no longer open to question, but certain applications of that principal are still questioned under the due process and equal protection clauses of the fourteenth amendment to the U.S. Constitution. The elimination of nonconforming uses has been one of these frequently questioned applications.

The zoning ordinances used in non-conforming use situations are tested on two bases: (1) Their end must be to satisfy a public need sufficiently strong to justify an individual's sacrifice of property, and (2) the means employed must be reasonable. But as is stated in *Ex-Parte Quong Wo*,[6] the courts do not feel free to scrutinize zoning measures too closely:

"It is, of course, primarily for the legislative body cloaked with this power to determine when such regulations are essential, and its determination in this regard in view of its better knowledge of all the circumstances and the presumption that it is acting with a due regard for the rights of all parties, *will not be disturbed in the courts, unless it can plainly be seen that the regulation has no relation to the ends stated* . . . ."[7] (Emphasis added.)

Only a clear showing of disregard for the property rights of individuals will rebut the presumption of validity enjoyed by these ordinances.

It is generally held that even if a particular owner has successfully rebutted this presumption of validity, his success may not help other nonconforming users. Other types of statutes or ordinances found to be

[5] *Ibid.*
[6] 161 Cal. 220, 118 Pac. 714 (1911)
[7] *Id.* at 230, 118 Pac. at 718.

violating the due process or equal protection clauses of the Constitution are usually invalid for all applications. But a zoning ordinance may be void to some and valid to all other property owners—whether a zoning ordinance is unreasonable as to the particular property involved decides its validity.[8] Each property owner must take the time, expense, and effort of having his particular problem decided in court by a writ of certiorari or mandamus.[9] This tedious prospect has had a strong deterring effect on challengers of zoning ordinances.

Because the ordinance that has a retroactive effect on vested property rights of the nonconforming user may be held unconstitutional, most ordinances specifically exclude such non-conforming users. But a failure to make such an exception is seldom held invalid on a constitutional basis. The explanation is that the practice of exceptions is so generally accepted in ordinances that have a retroactive effect that the nonconforming uses are presumed to be excepted anyway.[10]

The California Government Code[11] attempts to provide an added procedural protection for the nonconforming user. Local adjustment boards of the various planning commissions are required to be created for the consideration, upon application, of variances from the terms of the ordinances. The adversely affected owner may bring his problem to this board and seek an exception from the operation of the ordinance. The board then considers the amount of hardship suffered in particular cases and gives relief where the situation warrants. It should be mentioned that these boards are usually composed of members of the planning commission which drafted the ordinance. Such a board may show little friendliness toward granting the exceptions that preserve the nonconforming uses and thereby thwart their work toward comprehensive planning. The disgruntled holder of an adverse decision from the board must then appeal by writ of certiorari or mandamus to a court of law. But his prospect for relief there is poor. The courts consider but two issues: (1) whether the person affected has been granted a hearing, and if so, (2) whether there is evidence to support the board's findings. If there is room for any reasonable difference of opinion, the board's decision stands.[12] Thus, as will be indicated later, such boards may in fact provide little protection for the nonconforming user.

Early Development of Planning: Public Nuisance

In the early days of community planning before our present day liberal application of police powers the basis for eliminating nonconforming users was founded on the theory of abating public nuisances. Besides serving as a direct means of abating a particular use, the public nuisance

[8] Morris v. City of Los Angeles, 116 Cal. App. 856, 254 P.2d 935 (1953).
[9] Grief v. Dullea, 66 Cal. App. 2d 986, 153 P.2d 581 (1924).
[10] See note 8 *supra*.
[11] CAL. GOVT. CODE § 65850.
[12] Walker v. San Gabriel, 20 Cal.2d 879, 129 P.2d 349 (1947).

principal provided the authority for upholding the early zoning ordinances. A public nuisance has been defined as:

> "[O]ne which affects an indefinite number of persons, or all the residents of a particular locality, or all people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal.[13]

Since a public nuisance is illegal, its elimination by use of the police power is not unreasonable and does not violate due process.

The effectiveness of the public nuisance tool for the abatement of nonconforming uses has varied with the ingenuity and inclination of the courts and legislatures. Early California courts upheld retroactive zoning laws only on finding that the target of the ordinance in question was a nuisance per se. This has been defined as:

> "[O]ne which constitutes a nuisance at all times and under all circumstances, irrespective of locality or surroundings, as, . . . distinguished from things declared to be nuisances by statute, and also from things which constitute nuisances only when considered with reference to their particular location or other individual circumstances."[14]

The United States Supreme Court in *Dobbins v. City of Los Angeles*[15] was unable to find a nuisance per se that justified a 1903 ordinance prohibiting gas works within the city limits. This view was supported by *In Re Kelso,*[16] where the court invalidated a San Francisco ordinance prohibiting the quarrying of rock within the city limits. In these two cases the courts felt a gas works or a rock quarry could be operated in a populous area so long as no tangible harm had been shown.

This attitude in a growing urban community quickly became untenable, and it soon became necessary to the public's welfare that consideration be given to particular locations and other individual circumstances. By 1911, another Los Angeles ordinance was passed and approved prohibiting within residential areas any stone-crusher, rolling mill, carpet-beating establishment, hay barn, wood yard, lumber yard, public laundry, or wash house.[17] Then in *Ex parte Hadacheck,*[18] the Calif. Supreme Court approved a statute prohibiting the manufacture of bricks within the city limits of Los Angeles, even though its enforcement deprived the owner of a valuable business without compensation. This decision was sustained by the United States Supreme Court in *Hadacheck v. City of Los Angeles,*[19] where the Court said that the police power could be exerted to declare that under particular circumstances, and in particular localities, specified

[13] BLACK, LAW DICTIONARY (3rd ed. 1933).
[14] *Ibid.*
[15] 195 U.S. 223 (1904).
[16] 147 Cal. 609, 82 Pac. 241 (1905).
[17] See note 6 *supra.*
[18] 165 Cal. 416, 132 Pac. 584 (1913).
[19] 239 U.S. 394 (1915).

businesses which are not nuisances per se are to be deemed nuisances in fact and at law. By means of having the planning board composed of the same people who drafted the ordinances substantial progress was made towards comprehensive planning.

The early rule requiring a finding of a nuisance per se had impeded the elimination of nonconforming uses. However, the adoption of the liberal *statutory* nuisance system furnished an effective tool for accomplishing the desired result.

But an even more important step was taken in *Livingston Rock Co. v. City of Los Angeles*[20] (1954). There it was decided that a local planning commission could decide which uses were nuisances at law. The statute involved provided the commission with quasi judicial authority for determining in particular instances which owners were conducting their operations so as to constitute nuisances at law. The main advantage in having a commission make these decisions is that they may make a conclusive finding of nuisance far more easily than a court of equity with its traditional requirements. Or equity may prevent a complete abatement of a nonconforming use through its modification, whereas the owner who receives an adverse decision from a board must accept the decision or appeal to the courts. There he would be met by a presumption favoring the finding of the local board.[21]

Thus the courts in recognizing the urgent need for community planning in a modern society have effectively "stacked the deck" of procedural law against the nonconforming user. This owner must seek relief from a reviewing commission which by its nature and composition will quite likely be unsympathetic to his position. Failing there, he must appeal the commission's findings to a court where a presumption favors such findings. Or he can go directly to the courts and attack the validity of an ordinance which the courts will initially presume to be valid.

Further Development of Planning Regulations Under More Liberal Police Powers

Even the rule regarding nuisances at law requires a use to be causing a present harm to the public before there can be a basis for its elimination. Our Mr. "X" caused little discomfort to the orange growers around his scrap yard, but he might well have discouraged future home buyers from settling in his vicinity. If zoning is to be most effective its purpose should be to provide for the future, and not to attempt to correct the mistakes of the past. It seems to this writer that only legislation for prospective purposes could insure the future welfare of the public. The modern concept of the legislature's power to provide for the public welfare was indi-

[20] 43 Cal.2d 121, 272 P.2d 4 (1954).
[21] Lockard v. City of Los Angeles, 33 Cal.2d 453, 202 P.2d 38 (1949).

cated by the United States Supreme Court in *Chicago B. & Q. R. Co. v. Illinois:*[22]

> "As our civic life has developed so has the definition of public welfare until it has been held to embrace regulations . . . to promote the economic welfare, public convenience, and general prosperity of the community . . . ."[23]

The court followed this concept of public welfare in its first decision approving the validity of zoning ordinances, *Village of Euclid v. Amber Realty Co.*[24]

California was among the first to realize the advisability of zoning measures to promote the public welfare. The promotion of the public welfare was a sufficient justification for ordinances prohibiting the activities indicated in the following cases without the showing of nuisance: four unit apartment houses in two unit zones,[25] the drilling of new oil wells in present fields within the city limits,[26] the continued existence of a cement batching plant in a light industry zone,[27] and the selling of residential lots of a size below a prescribed minimum area.[28]

To satisfy due process the courts continued to require a showing of some public benefit, if only a future one, as justification for the use of legislative police power. Ordinances prohibiting an owner from erecting an apartment house on his lot in an apartment house neighborhood,[29] or forbidding the operation of a lumber yard adjoining railroad tracks in an industrial area,[30] were not felt to be promotions of the public welfare.

To be held valid, an ordinance must show more than a legitimate end of public welfare. There must be a use of reasonable means to accomplish that end. A means which imposes undue hardship on an individual owner is not considered reasonable. In *Jones v. City of Los Angeles,*[31] an ordinance was passed prohibiting the establishment of hospitals for the treatment of mental disorders. Before it was passed the appellant had constructed a building for use as a sanitarium. The court found that businesses of that type were proper subjects for such regulation and that the classification of districts was reasonable and not arbitrary; but it refused to enforce the ordinance because its retroactive effect, causing great injury to a business which was not a public nuisance, made it an unreasonable exercise of the police power as applied to the appellant.[32] So, despite the present success in restraining the future uses of property, the public wel-

[22] 200 U.S. 561 (1905).
[23] *Id.* at 606.
[24] 272 U.S. 365 (1926).
[25] See note 4 *supra.*
[26] Beverly Oil Co. v. City of Los Angeles, 40 Cal.2d 552, 254 P.2d 865 (1951).
[27] See note 20 *supra.*
[28] Clemmons v. City of Los Angeles, 36 Cal.2d 95, 222 P.2d 439 (1950).
[29] Miller v. Bd. of Public Works, 195 Cal. 477, 484, 234 Pac. 381, 383 (1925).
[30] Hurst v. Burlingame, 207 Cal. 134, 277 Pac. 308 (1929).
[31] 211 Cal. 304, 295 Pac. 14 (1930).
[32] Skalko v. Sunnyvale, 14 Cal.2d 213, 93 P.2d 93 (1939); Orange County v. Goldring, 121 Cal.App.2d 442, 263 P.2d 321 (1933); Ryan v. Andriano, 91 Cal.App. 136, 266 Pac. 831 (1928).

fare cannot be promoted at the unreasonable expense of a nonconforming user with vested rights at the effective date of the ordinance.

Restrictions Imposed on Expansions of Nonconforming Users

Even where a nonconforming use could not be eliminated, it could be restrained. An immediate and complete elimination of the property of the nonconforming user was considered too high a price for him to have to pay for the promotion of the public welfare. But a regulation and restriction of his rights, privileges, and immunities enjoyed as a property owner was considered reasonable. The clearer the showing of a public need for limitation on his use, the greater could be the restraint of the individual's rights.

The first restriction imposed on a nonconforming user was the requirement that he be, in fact, a user at the time of the ordinance. This meant that a lessee of proven oil lands who contemplated drilling for the oil in the future was not a present user.[33] But an owner who had laid a foundation and let contracts for the erection of a nonconforming building could complete that building.[34] In the mind of the court, a contemplated drilling was a lesser vested interest than a partially erected building. There was accordingly less hardship in the former case.

While an existing nonconforming use was preserved, it was not allowed to expand. A grocery store could not be extended twenty-two feet into a vacant lot;[35] a statute limited the reconstruction of all nonconforming structures to 25% of assessed value;[36] another grocery store could not be built to replace the one destroyed by fire;[37] a real estate office could not be subsequently used after once having been discontinued.[38]

A distinction was usually made between nonconforming uses and nonconforming structures. Nonconforming structures represent a greater investment by the individual, and limitations on their use were accordingly less stringent. The nonconforming uses which received the most attention from the courts were those involving the drilling of oil wells in residential areas. The typical statute prohibited the drilling of new wells in proven oil lands, the deepening of existing wells, and the enlargement of storage facilities.[39] At the least, the nonconforming users were prevented from enjoying many of the benefits which they had earlier by way of unintended protection from zoning ordinances. At the most, the limitations put on the uses assured their eventual elimination.

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33 Marblehead Land Co. v. City of Los Angeles, 36 Fed.2d 242 (9th Cir. 1929).

34 County of San Diego v. McClurken, 37 Cal.2d 683, 234 P.2d 972 (1951).

35 Rehfield v. San Francisco, 218 Cal. 83, 21 P.2d 419 (1933).

36 Yuba City v. Cherniavsky, 117 Cal. App. 568, 4 P.2d 299 (1931).

37 *Ibid.*

38 Burke v. City of Los Angeles, 68 Cal.App.2d 189, 156 P.2d 28 (1945).

39 Pacific Palisades Ass'n v. Huntington Beach, 196 Cal. 211, 237 Pac. 538 (1925); see note 29 *supra*; Skalko v. Sunnyvale, 14 Cal.2d 213, 913 P.2d 93 (1939).

Amortization of the Nonconforming Use

But as the need for comprehensive planning increased, so did the realization that the nonconforming use must be totally eliminated. More positive steps appeared to be needed. In the Zoning Bulletin of the Regional Planning Association, June, 1952,[40] it was said:

> "The only positive method of getting rid of nonconforming uses yet devised is to amortize a nonconforming building. That is, to determine the normal useful remaining life of the building and prohibit the owner from maintaining it after the expiration of that time."[41]

A gradual, rather than an immediate removal of the nonconforming use through an amortization scheme was not thought to be so harsh as to be unreasonable. Thus the complete elimination of the nonconforming use could be realized by reasonable means.

The constitutionality of amortization statutes was early litigated in *State ex rel. Dema Realty Co. v. McDonald*,[42] a Louisiana case in which certiorari was denied by the United States Supreme Court. The Louisiana court approved certain statutory provisions for the elimination of a grocery store within one year. The court cited *The Village of Euclid v. Amber Realty Co.* in which the United States Supreme Court had said that the Village had the authority to create and maintain a purely residential district. The Louisiana Court then reasoned that the Village was vested with authority to remove any business from the district and to fix a time limit in which the same should be done. After this decision, many other states utilized this technique and passed similar statutes which their courts approved. Amortization statutes were passed in Chicago, Cleveland, New Orleans, Richmond, Seattle, Tallahassee, and Wichita.[43]

The apparently anomalous conclusion is that the courts have condoned the postponed elimination of the same property interests which they protected from sudden elimination. But there is a reasonable basis for this distinction. The owner suffers far less hardship through amortization. He is given valuable time within which to more advantageously alter, move, or discontinue his business. During this time an increase in his proceeds through his new monopolistic position given him by the statute may very likely compensate him for his loss caused by the statute.

Within the last ten years California has joined the other states in adopting amortization statutes. A typical California statute was the one approved by the court in *City of Los Angeles v. Gage*[44] providing:

> ". . . (a) The nonconforming uses of a conforming building or structure may be continued, except that in the 'R' Zones any nonconforming com-

[40] City of Los Angeles v. Gage, 127 Cal.App.2d 442, 274 P.2d 34 (1954).
[41] *Id.* at 454, 274 Pac. at 41.
[42] 168 La. 172, 121 So. 613 (1929).
[43] See note 40 *supra.*
[44] *Ibid.*

mercial or industrial use of a residential building . . . shall be discontinued within five (5) years . . . (1) where no buildings are employed, (2) where only buildings used are accessory or incidental to such uses; (3) where such use is maintained in connection with a conforming building."[45]

This ordinance provided for a five-year elimination period for nonconforming uses, but it was careful not to go so far as to eliminate nonconforming buildings. The ordinance's constitutionality was approved in its particular application to Gage. He was forced to discontinue his wholesale plumbing business in a residential district, but the cost to him was small. His office had been a conforming house; he had no other structures involved in his business. The cost of relocating his business less than a mile away was $1,000, or less than 1% of his minimum gross business for the five years. Thus his amortized loss was small as compared to the public gain.

But the decision in *Livingston Rock Co. v. City of Los Angeles*[46] went much further towards eliminating uses by amortization. There the court approved a statute providing for an amortized elimination of a large nonconforming cement batching plant. To prevent an unreasonably harsh effect, the statute provided for a twenty year amortization period. Not content with this boldness, the statute went further, and provided for a shortening of the amortization period if the:

" . . . (Regional Planning) Commission finds: (a) That the condition of the improvements, if any, on the property are such that to require the property to be used only for those uses permitted in the zone whence it is located would not impair the constitutional rights of any person; (b) That the nature of the improvements are such that they can be altered so as to be used in uniformity with the uses permitted in the zone in which such property is located without impairing the constitutional rights of any person . . . . After a public hearing therein, provided, . . . the use for which the approval was granted is so exercised as to be detrimental to the public health or safety, or so as to be a nuisance."[47]

Thus in the one ordinance a two pronged attack on nonconforming uses was provided for: (1) the certain elimination of nonconforming structures involving large private investments through amortization; (2) the shortening of the amortization period if the nonconforming structure became a public nuisance, this latter decision to be made by a Regional Planning Commission. The provision for adjustments by the Commission was designed to maintain a fair balance between the public welfare and the interests of the individual. If the excepted business did little harm to the conforming users of that zone at the time of the ordinance's adoption, a reasonable period for discontinuing its operation would be allowed. But as the community grew and this nonconforming use began to endanger the larger public need for community planning, the commission could eliminate the use.

[45] *Id.* at 448, 274 P.2d at 37.
[46] 43 Cal.2d 121, 272 P.2d 4 (1954).
[47] *Id.* at 124, 272 P.2d at 7.

This statute in California's largest city indicates this state's progress in developing adequate zoning measures to satisfy the urgent need for community planning. No longer does effective zoning involve the unsolvable dilemma of police power against private property rights.

Eminent Domain as a Supplement to Police Power

Zoning ordinances represent the most effective device for the elimination of nonconforming uses. They effect future community planning and, with some limitations, erase the blight suffered by communities who saw the need for comprehensive planning too late. But zoning cannot remove the vacated, antiquated office building or factory, or find new homes for the crowded tenement dwellers. The likelihood is small that private capital will enter such unattractive areas, go to the prohibitive expense of razing such old structures, and then replace them with modern conforming structures. In such circumstances the only solution remaining is the use of another form of government aid, eminent domain.

Eminent domain is the power of the state to take private property for public use.[48] The traditional requirement of this public use is that it be for a substantial use by the public. This use has included the taking of private property with reasonable compensation granted to property owners for the construction of public highways, hospitals, schools, and forts,[49] and in *Schneider v. Dist. of Columbia*[50] it was expanded to include a use "for the public interest," as contrasted to use "by the public."

California followed this view in *Redevelopment Agency v. Hayes.*[51] There the court upheld the validity of the California Health and Welfare Code provision that provided for a rehabilitation agency to clear slums and blight areas:

> Blighted Areas: Unfit buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, or any combination of such uses, which are unfit or unsafe to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:
>
> (a) Defective design and character of physical construction.
> (b) Faulty interior arrangement and exterior spacing.
> (c) High density of population and overcrowding.
> (d) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities.
> (e) Age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses.[52]

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48 BLACK, LAW DICTIONARY (3d ed. 1933).
49 117 F. Supp. 705 (D.D.C. 1953).
50 *Ibid.*
51 122 Cal.App.2d 777, 266 P.2d 105 (1954).
52 CAL. HEALTH & WELFARE CODE § 33041.

The court also approved the reselling of the cleared areas to private persons, provided: (1) that the proposed disposition of the title could reasonably be expected to prevent the otherwise probable development of a slum, (2) that the seizure of the title be necessary to the elimination of the slums.

In *Linggi v. Garavotti*,[53] the California Supreme Court followed the same helpful attitude it had practiced in regard to zoning legislation. In situations where the use to be made of condemned property was of a doubtful nature, the will of the legislature prevailed over the doubts of the court.

Only time can show with certainty the value of this new utilization of eminent domain. There are some serious objections to its wide use. The purchase of nonconforming structures is an expensive means of eliminating them. A suitable system for reasonably compensating the owner and disposing of his land for maximum public benefit is difficult. These problems were sufficiently difficult to discourage the use of eminent domain proceedings for the elimination of nonconforming uses until very recently. Such proceedings will probably be confined to situations where other police power methods are ineffective. But the very fact that eminent domain is the only supplement to zoning ordinances thus far devised is reason to believe that its help may be relied on to a greater extent in the future.

Conclusion

The danger posed to California's political, economic, and social development by the nonconforming use is justification for a progressive exercise of police power. This power is executed through: (1) judicial presumptions, (2) abatement of public nuisances, per se and at law, through proceedings in law courts and quasi-judicial agencies, (3) zoning regulations within specified districts to forbid future uses of certain types, limit expansion and/or amortize present nonconforming uses, and (4) supplementary aid through eminent domain proceedings in limited situations where the use of other police powers is inadequate. The future use of these instrumentalities of police power should be limited or expanded as needed to preserve the just balance between the rights of the individual and the public under the United States Constitution.

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[53] 45 Cal.2d 20, 286 P.2d 15 (1955).