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## U.S. Supreme Court

### **AGINS v. TIBURON, 447 U.S. 255 (1980)**

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447 U.S. 255

AGINS ET UX. v. CITY OF TIBURON.

APPEAL FROM THE SUPREME COURT OF CALIFORNIA.

No. 79-602.

Argued April 15, 1980.

Decided June 10, 1980.

After appellants had acquired five acres of unimproved land in appellee city for residential development, the city was required by California law to prepare a general plan governing land use and the development of open-space land. In response, the city adopted zoning ordinances that placed appellants' property in a zone in which property may be devoted to one-family dwellings, accessory buildings, and open-space uses, with density restrictions permitting appellants to build between one and five single-family residences on their tract. Without having sought approval for development of their tract under the ordinances, appellants brought suit against the city in state court, alleging that the city had taken their property without just compensation in violation of the Fifth and Fourteenth Amendments, and seeking, inter alia, a

declaration that the zoning ordinances were facially unconstitutional. The city's demurrer claiming that the complaint failed to state a cause of action was sustained by the trial court, and the California Supreme Court affirmed.

Held:

The zoning ordinances on their face do not take appellants' property without just compensation. Pp. 260-263.

(a) The ordinances substantially advance the legitimate governmental goal of discouraging premature and unnecessary conversion of open-space land to urban uses and are proper exercises of the city's police power to protect its residents from the ill effects of urbanization. Pp. 261-262.

(b) Appellants will share with other owners the benefits and burdens of the city's exercise of such police power, and in assessing the fairness of the ordinances these benefits must be considered along with any diminution in market value that appellants might suffer. P. 262.

(c) Although the ordinances limit development, they neither prevent the best use of appellants' land nor extinguish a fundamental attribute of ownership. Since at this juncture appellants are free to pursue their reasonable investment expectations by submitting a development plan to the city, it cannot be said that the impact of the ordinances has denied them the "justice and fairness" guaranteed by the Fifth and Fourteenth Amendments. Pp. 262-263.

24 Cal. 3d 266, 598 P.2d 25, affirmed.

POWELL, J., delivered the opinion for a unanimous Court. [\[447 U.S. 255, 256\]](#)

Gideon Kanner argued the cause for appellants. With him on the briefs were John P. Pollock and Reginald G. Hearn.

E. Clement Shute, Jr., argued the cause pro hac vice for appellee. With him on the brief were Robert I. Conn and Gary T. Ragghianti. \*

[ [Footnote \\*](#) ] Briefs of amici curiae urging reversal were filed by Robert A. Ferris for the California Forest Protective Association; by Les J. Weinstein and Aaron M. Peck for the Glendale Federal Savings and Loan Association; by Howard N. Ellman, Kenneth N. Burns, and Michael J.

Burke for Half Moon Bay Properties, Inc.; by Gus Bauman for the National Association of Home Builders et al.; by Ronald A. Zumbrun and Thomas E. Hookano for the Pacific Legal Foundation; and, pro se, by Burton J. Goldstein, M. Reed Hunter, Jess S. Jackson, Jr., Jerrold A. Fadem, Michael M. Berger, Roger M. Sullivan, Richard F. Desmond, Stephen J. Wagner, Gerald B. Hansen, and Alfred P. Chasuk for Mr. Goldstein et al.

Briefs of amici curiae urging affirmance were filed by Sol