

What is Downzoning and When is it Compensable?

"Downzoning" describes a government agency's rezoning a parcel of land once previously zoned for a more intense use to a more restrictive use (e.g., changing the commercial zoning designation of an undeveloped parcel of land to agricultural or open space). Those who purchase an undeveloped property zoned for commercial, industrial, or residential uses, only to later have that property rezoned for agricultural or open space uses unquestionably suffer a loss. But when is it compensable?

There's an interesting [news article on the Daily Zilla](#) about an alleged downzoning case taking place in the City of Richmond, California. A property owner alleges that the City intends to change the zoning of its undeveloped industrial property to open space so the property can eventually be acquired by the City at a reduced price for a public park.

If the City simply wants to change the zoning to a more restrictive use, California law provides that unless the change in zoning results in a regulatory taking or deprives the owner of a vested right, the property owner is not entitled to compensation. In other words, the owner is not entitled to compensation unless (1) the new zoning designation results in a loss of substantially all economically viable uses of the property, or (2) the owner has done substantial work or expended large sums of money in good faith reliance on a development permit.

However, if the downzoning is done in bad faith, the owner may be entitled to compensation. For example, if the change in zoning can be shown as a subterfuge to reduce the acquisition price in a subsequent condemnation action, it constitutes a taking. Similarly, compensation may be owed if the change in zoning was meant to accomplish the same purpose of acquisition of the land (i.e., for open space purposes). And, a government agency may be on the hook if it tries to preserve the status quo by denying development applications for the purpose of reducing the eventual acquisition price.

How this all plays out in the City of Richmond will be interesting. We'll be sure to follow the story.