

Nashville School of Law
Land Use Planning Law
Winter 2009-10

Final Exam

General Instructions

There are two essay questions and 40 multiple choice questions on the exam. Please write complete answers for both essay questions, and mark the one most appropriate response to each multiple choice question. Please be sure to print your student identification number at the bottom of this page.

The exam is a take home exam as we discussed in class. It must be returned by **Monday, February 22, 2010 at 12 noon**. The exam may be returned to me by email, fax, or hand delivery. Please email it to me (at gdean@plcd.com), or you may fax your exam to me at my office: 615-242-1515. As you are probably aware, the Internet is not the most reliable form of communication; please make sure to send the exam in plenty of time so that it will be received by the deadline if you elect to send it by email. We will email you back that we have received the exam; please keep the return email and a copy of the exam. If you have not received a return email from me acknowledging receipt within 4 hours on a week day, please call my secretary (Julie Cantrell 615-255-7500) to verify that we have received the exam. During the weekend, it may take up to 12 hours for me to respond. If you haven't heard from me over the weekend, please call Julie the following Monday morning. If you elect to return the exam by hand delivery, please either deliver to the law school office or to my office (200 Fourth Avenue North, Suite 500, in downtown Nashville).

The exam is open book and open notes; you may use any resource you like.

IT IS NOT PERMISSIBLE TO WORK WITH OTHERS ON THE EXAM.
PLEASE DO NOT GIVE OR ACCEPT ANY HELP ON THE EXAM.

If you have questions about the exam, please email or call me at my office (615-255-7500) or at home (615-292-9734).

Good luck!

Please print your student identification number here and on subsequent pages:

Essay Question # 1

The First Baptist Church began operating a small (50 student) elementary and middle school in 1998. The school is on a 25 acre tract of land and the church is located short distance away on another property. The school complies with state education mandates but also emphasizes the church's religious tenets in its teaching in the school as well. The school charges for tuition, although scholarships are available to help church families who cannot afford the cost.

In 2000, the city, Agnosticville, adopted a new zoning ordinance which zoned the school property for residential use and prohibited churches or schools on the property. Furthermore, the zoning ordinance amortizes inconsistent uses requiring that such uses be removed within 10 years of the adoption of the ordinance. The city has now written the school and requested that school discontinue its activities immediately pursuant to the requirements of the zoning ordinance.

The school asks your advice on what to do. Should it appeal to the zoning board, file suit against the city or wait and defend a city suit against it? Regardless of the forum, what arguments are available to the school in order for it to continue operations on the school property?

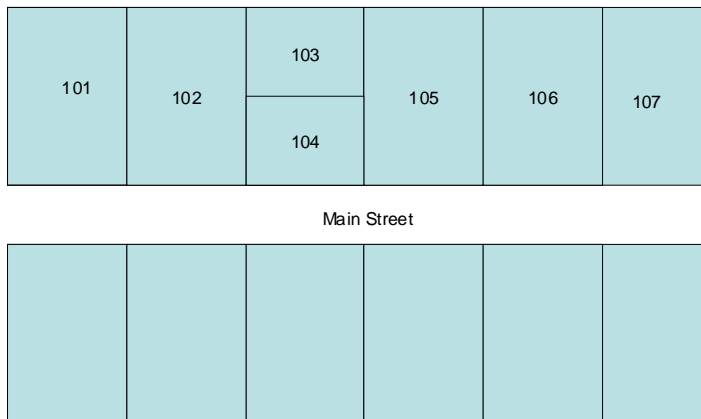
Finally, the school wants to expand its size in the near future, adding another 200 students. Can the school expand and what arguments are supportive of that effort?

Essay Question # 2

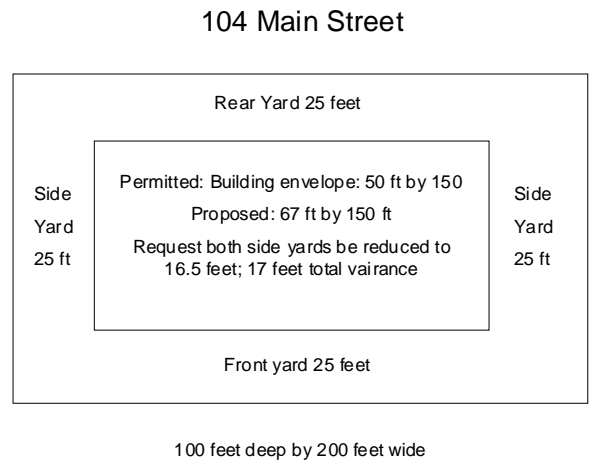
Mr. Pump Ur Biceps, a personal trainer, wants to move his business to a new location at 104 Main Street. The difficulty is that while most of the other lots fronting on Main are about 40,000 square feet, and roughly rectangular in shape (200 by 200), the new site only contains 20,000 square feet and runs back off Main only half as deep as the surrounding properties (100 by 200). See the Area Map below.

The front, rear and side setbacks are 25 feet (as shown on the site diagram below), so that only 7500 square feet (50 x 150) is permitted in the building envelope under the terms of the zoning ordinance. Mr. Biceps wants to build a small gym but with at least 10,000 square feet of space. He needs a 17 foot variance from the zoning board (reducing the side yards to 16.5 feet on each side) and asks you to present the case for him. Under Tennessee law, is there an exceptional feature, what other factors are involved and what arguments would you make? Do you think the zoning board would grant the variance? If granted, and the neighbors appealed, could it be legally supported in court? If denied, could you appeal successfully on behalf of Mr. Biceps?

Area Map



The Site



III.

Multiple Choice -- Check the box or circle the letter of the best choice. Alternatively, simply send an email with a list of the 40 questions and your letter answer for each question.

1. When filing a petition for writ of certiorari, the petitioner
 - a. Must sue all surrounding property owners
 - b. Must have the petition verified;
 - c. Must allege the actions were a substantial burden on the owner;
 - d. Must be filed in the county with the petitioner lives

2. The powers of a board of zoning appeals usually include:
 - a. Variances
 - b. Non-Conforming Property cases
 - c. Appeals from the zoning administrator
 - d. All of the above.

3. Contract zoning is usually thought of as:
 - a. A legal method of granting zone changes.
 - b. Bilateral imposition of terms by the city
 - c. A method of planning for the future of the city or county
 - d. All of the above.

4. Euclid v Amber Realty:
 - a. Established that if the legislative classification was fairly debatable, it

was constitutional.

- b. Was argued by Oliver Wendell Holmes, the same attorney who authored the New York zoning enabling legislation.
 - c. Was authored by Justice Van Devanter
 - d. None of the above.
5. In Tennessee, a subdivision is usually approved by the
- a. Municipal attorney;
 - b. board of zoning appeals;
 - c. Owner's niece; or
 - d. planning commission.
6. A subdivision dedication is:
- a. a developer who offers sandwiches to the planning commission;
 - b. a dedicated land owner;
 - c. an offer to grant land to the government; or
 - d. An offer to give the city or county the subdivision;
7. A comprehensive plan is:
- a. A long term outline for the growth of the city;
 - b. Vitally important in Tennessee land use litigation;
 - c. Often confused with subdivision regulations;
 - d. None of the above.
8. The doctrine of vested rights

- a. Is always successful in a zoning and land use planning context.
 - b. Applies where a building permit has issued and substantial work done on the site
 - c. Permits law school students to climb flagpoles;
 - d. Applies where a building permit has issued, and a scintilla of work has been done on the site.
9. Dillon's Rule of municipalities
- a. Requires express authority for virtually all actions of the federal government
 - b. May be employed to invalidate a state enactment
 - c. Allows for some implied powers of a municipal government
 - d. None of the above
10. A non-conforming use
- a. Must be asserted before the zoning board before it can be raised in court as a defense
 - b. May only be continued for 1 year after passage of a new zoning ordinance;
 - c. Is constitutionally protected so as to allow expansion
 - d. None of the above
11. A non-conforming use may be amortized
- a. Where the owner is given a direct cash payment to terminate the use
 - b. In Tennessee, only in the cities.

- c. Where a reasonable time period is given for the owner to discontinue the accessory uses
 - d. None of the above.
12. The common law writ of certiorari
- a. Reviews the statements by board members for 1st Amendment violations;
 - b. Reviews the procedural history of the case and reverses if the applicant was substantially burdened;
 - c. Requires hyper-technical allegations in the petition;
 - d. Usually results in a decision against the administrative tribunal
13. The test of constitutionality of a zoning measure is:
- a. one of compelling state interests;
 - b. based on the relationship between the measure and its objective;
 - c. based upon the rational behavior of the legislator who introduced it; or
 - d. never utilized in federal court.
14. Spot zoning is:
- a. the antithesis of planning;
 - b. Scorned by local legislative bodies;
 - c. never illegal; or
 - d. easy to prove in Tennessee.
15. The Supreme Court's decision in First English
- a. addressed a motion to strike filed by the defense;

- b. addressed a motion for summary judgment filed by the defense;
 - c. finally acknowledged the standing of a developer in federal court; or
 - d. estopped the developer from continuing further.
16. Estoppel, as applied to land use planning cases, involves:
- a. the issuance of a building permit;
 - b. the revocation of a plumbing permit;
 - c. permission granted by a board of appeals; or
 - d. permission granted by a historic commission.
17. Historic zoning may involve:
- a. Landmark legislation;
 - b. Historic district regulation;
 - c. Conservation district regulation;
 - d. All of the above.
18. In estoppel, the bright line begins:
- a. at the time of the appeal to the planning commission;
 - b. at the time the property is purchased;
 - c. at the time of the application for a permit; or
 - d. at the time of the issuance of the use and occupancy permit.
19. The Fasano decision is:
- a. Unimportant here in Tennessee;

- b. important because it invalidates a conditional use permit;
- c. important because it concludes that a rezoning of property is a judicial function;
- d. important because it champions the administrative power to change zone districts.

20. Conditional zoning:

- a. Allows negotiated zoning agreements;
- b. is just as illegal as contract zoning;
- c. is the same as a conditional use permit; or
- d. none of the above.

21. Variances

- a. Can be granted by a board of building code appeals
- b. Are to be liberally construed
- c. Usually are sustained on appeal
- d. Have specific enabling legislation in Tennessee

22. The negative criteria under Tennessee variance law include:

- a. That such relief may be granted without substantial benefit to the public good
- b. That such relief may be granted by eliminating the intent and purpose of the zone plan
- c. That such relief may be granted without substantially impairing the intent and purpose of the zoning ordinance

- d. None of the above
23. Variances can be granted under Tennessee law (the public enabling statutes) only if:
- a. The property is exceptionally narrow or shallow
 - b. There are exceptional topographic conditions on neighboring properties
 - c. The property is exceptionally shaped at the time of the adoption of the subdivision regulations
 - d. None of the above
24. In a petition for writ of certiorari, the petitioner must verify
- a. That the allegations are true to the best of his/her knowledge, information and belief
 - b. That the petition was composed in accordance with law
 - c. That the allegations are included in the petition;
 - d. That it is his/her signature;
25. Conditional use permits
- a. Must always be granted by the zoning board
 - b. Are generally reversed if denied by the board
 - c. Permit the introduction of virtually any proof
 - d. Generally have no standards
26. The "essential nexus" referred to in *Nollan v. California Coastal Commission*, refers to the relationship between
- a. Historic zoning and zoning regulations

- b. The required dedication and the impact which the development will have on surrounding properties
 - c. The connection between Nollan and Dolan v. City of Tigard
 - d. The need for open public spaces in subdivided land
27. Statutory protection for non-conforming uses in Tennessee permits:
- a. Continuation of the non-conforming use
 - b. Expansion of the non-conforming use
 - c. Total destruction and reconstruction of buildings and other structures relating to the use
 - d. All of the above
28. The rational basis test
- a. Requires that all government actions have a compelling reason as justification;
 - b. Tests the relationship between a property and economic hardship;
 - c. Only applies to planning actions;
 - d. Justifies a governmental action if there is a reasonable connection between the action and its goal.
29. The compelling governmental interest test
- a. Applies only if the challenged legislation has an impact on a fundamental religious tenet or suspect classification
 - b. Requires that the legislation generally be the least restrictive means of accomplishing the objective

- c. Requires that the act be written in compelling language from a linguistic perspective
 - d. Both a and b above
30. Nollan v California Coastal Commission
- a. Involved a request for public access to beach property
 - b. Concluded that the requirement was easily justifiable
 - c. Has importance in the area of subdivision construction standards
 - d. Would have been decided the other way if the commission had only asked for an easement instead of an ownership interest
31. The decision in Dolan v City of Tygard
- a. Depended in part upon the use of the word “could”
 - b. Depended in part upon the city’s demand for ownership of a portion of the Dolan’s property
 - c. May ultimately be of little constitutional significance
 - d. All of the above
 - e. None of the above
32. A planned unit development
- a. Is a zoning change combined with a subdivision;
 - b. Is a zoning change combined with a variance;
 - c. Is a zoning change combined with a site plan;
 - d. Often involves conditional zoning.

33. The federal telecommunications act
- a. Precludes local regulation of cell towers
 - b. Requires special procedures in cases of telecommunication applications
 - c. Never applies in a land use context
 - d. None of the above.
34. Conditional zoning
- a. Permits negotiated agreements in zoning disputes
 - b. Is not a good zoning doctrine
 - c. Ensues where the government dictates the terms of approval
 - d. Both a. and b.
35. Equitable estoppel
- a. Does not apply to zoning controversies
 - b. May apply where the developer has changed position based on the issuance of the permit
 - c. Is extremely dissimilar to the doctrine of vested rights;
 - d. Both a. and c.
36. A planned unit development in Tennessee
- a. Lacks enabling legislation under the general public statutes;
 - b. Often involves contract zoning, whether legal or otherwise;
 - c. Is noted for its flexibility in administration;
 - d. All of the above.

37. The trinity of litigants in land use litigation does not include:
- a. The neighbors
 - b. The state government
 - c. The owner's niece; or
 - d. The construction lender (financial institution)
38. The zoning board
- a. May never record its proceedings
 - b. Has no obligation to record its proceedings
 - c. Must record its proceedings to allow for judicial review
 - d. Must allow newspaper reporters to record the proceedings
39. Exclusionary zoning:
- a. Often involves large lot zoning
 - b. Violates the federal Fair Housing Act
 - c. Often involves developing communities
 - d. All of the above.
40. Transferable development rights are:
- a. used only in historical contexts
 - b. employed to fully compensate an owner for a taking
 - c. very helpful in undeveloped cities
 - d. building rights to be exercised within a specified area.