This open-book examination consists of three essay questions. The three questions are worth a total of 180 points. The response to each question has three parts and the point value for each part of the response is identified. You will have three hours to prepare answers to the questions. In answering the questions, you should budget your time based on the point value of each question, because the questions are not equally weighted. For each question, I have indicated the potential points and a suggested time to allow for completion of the examination in three hours.

You must write your examination number on the front of each blue book that you use. Please write your examination number on this question sheet as well. Number sequentially the blue books that you use. Turn in all materials -- this examination packet and all blue books, including blue books used for scrap paper -- at the end of the examination period or when you have completed the examination, whichever is earlier.

PLEASE READ EACH QUESTION COMPLETELY BEFORE BEGINNING TO OUTLINE OR WRITE YOUR ANSWER. ANSWER EACH PARTICULAR PART OF EACH QUESTION BEING ASKED. WRITE YOUR ANSWERS LEGIBLY: WRITE ONLY ON EVERY OTHER LINE AND WRITE ONLY ON ONE SIDE OF THE BLUE BOOK PAGE. DO NOT WASTE YOUR TIME WITH WILD SPECULATIONS FOR WHICH NEITHER THE QUESTION NOR THE ANSWER CALLS.

If you have any questions, ask me.

DO NOT TURN THIS PAGE
OR BEGIN THIS EXAMINATION
UNTIL YOU ARE TOLD YOU MAY DO SO

GOOD LUCK!

QUESTION I (80 POINTS -- 80 MINUTES)

Pleasant City, a large metropolis, experiences the benefits and burdens of major urban areas in the late twentieth century. Along with development that has substantially increased property values, there has been a decrease in the amount of housing available for low-income residents. This has been an important reason why there are increasing numbers of homeless people in Pleasant City. The Mayor appointed a blue-ribbon panel that included economists, planners, architects, sociologists and public health experts to study the growing problem of homelessness and to propose comprehensive solutions.

The panel's report stated that homelessness was the most critical problem confronting Pleasant City for the foreseeable future. In thepanel's view, the problem had worsened to the point where it posed a grave threat to the health and welfare of Pleasant City's population and where it stood in the way of further economic development. The panel concluded that homelessness could be traced to a number of causes and that Pleasant City had the ability to eliminate one principal cause of the problem. Specifically, single-room occupancy (SRO) buildings had to be preserved to provide housing for people who would otherwise be homeless, and dilapidated SRO buildings also had to be renovated to create new housing opportunities for those already homeless. The report summarized how poorly SRO properties had fared during the preceding two decades. Developers, often with the encouragement of Pleasant City agencies, had demolished these old buildings and redeveloped the properties for commercial or other uses. The blue-ribbon panel
urged a transformation of this policy so that SRO buildings would be preserved and renovated to serve people who would otherwise go without housing. The panel also noted that these buildings had important architectural and historical value, and were prime examples of urban life in Pleasant City during the time when it was a principal home to new immigrants.

The Mayor transmitted the panel report to the City Council and Planning Commission with a cover letter challenging the Council and Commission to amend the comprehensive plan and the zoning ordinance so that they are effective in remedying the critical problem of homelessness. Following extensive public hearings, a favorable recommendation of the Commission, and a consistent amendment of the Comprehensive Plan, the City Council amended the Pleasant City zoning ordinance to establish a system to preserve and restore Pleasant City's SRO buildings. The principal provisions of this effort to address "the public health and welfare crisis of homelessness" were the following:

Overlay District Established: In recognition of the historical and social significance of SRO buildings, an overlay district for all SRO structures is established. This district is present wherever an SRO building is located. (An

SRO building is defined as any structure constructed before 1940, which has provided single-room occupancy housing for any twelve consecutive months since 1970. Approximately 450 buildings, containing 50,000 units, meet this definition.) Single-room occupancy and ancillary commercial uses on the ground floor are the only uses permitted in any structure defined as an SRO building.

Moratorium: The conversion, alteration and demolition of SRO buildings are prohibited, except when the owner obtains a certificate of appropriateness in the limited circumstances set out below. This prohibition lasts for five years, and is renewable for additional five-year periods as the City Council may find necessary.

Rehabilitation And Antiwarehousing: Owners of SRO buildings must rehabilitate and make habitable every SRO unit and lease every such unit to a bona fide tenant under the rent control system applicable to all rental housing in Pleasant City.

Buy-Out And Replacement Exemptions: An owner may purchase from the City's Housing Commission an exemption from these provisions (and receive a certificate of appropriateness for conversion, alteration or demolition) by payment of $30,000 per unit to be taken out of the housing stock or by providing an equal number of replacement SRO units elsewhere in the City. (The $30,000 figure is the estimated cost of acquiring and rehabilitating an SRO unit.)

Hardship Exemption: The amount of payment or the number of replacement units required for an exemption (and the applicable certificate of appropriateness) may be reduced by the City's Housing Commission, in whole or in part, if the owner shows that there is no reasonable possibility that the owner can earn a reasonable rate of return from use as an SRO building. A reasonable rate of return is defined as a net annual rate of return of 8.5 percent of the assessed value of the property as an SRO building.

Penalties: Noncompliance is punishable by fines, including $150,000 for each dwelling unlawfully altered, converted or demolished, and $500 per day for each unit that remains unrented to a bona fide tenant following a reasonable period for rehabilitating the structure.

You are an associate for a law firm that has been contacted by an association of owners of SRO buildings. The association is outraged by these provisions and wants to challenge their legality. The association is comprised of owners of the following two types of buildings: dilapidated buildings that would have to be rehabilitated before they could be offered for rent and buildings that are currently habitable, with varying levels of vacancy and profitability.

The partner with whom you work has requested a memorandum analyzing (a -- 55 points) whether the ordinance provisions constitute a taking of property without just compensation. You have also been asked (b -- 15 points) when the association should assert a takings claim in court and (c -- 10 points) whether the City may avoid the payment of
just compensation by merely revising its ordinance in the event that a court decides some time in the future that it has gone too far. Please prepare a memorandum addressing these issues.

QUESTION II (40 POINTS -- 40 MINUTES)

Applicant is the owner of a vacant lot in Forest City. The lot is located in an established residential area consisting of one- and two-family residences. Applicant's lot is the only undeveloped property in the neighborhood. Applicant and her predecessors in title have owned the lot in its present form since 1927. Builder, Inc., a local developer, has offered to purchase the property at the development price, but only if the construction of a one-family residence is permitted on the lot.

Applicant has requested that the Board of Adjustment grant a variance from the City ordinance's requirements for minimum frontage and lot size. Specifically, the residential zone applicable to the lot requires minimum frontage of 75 feet and a minimum area of 7500 square feet. The lot, however, has a frontage on First Street of 30 feet and a total area of 5190 square feet.

Forest City's zoning ordinance was first adopted in 1933 and contained no minimum frontage or area requirements. An amendment to the ordinance in 1947 established the current frontage and lot size requirements. At the time of the 1947 amendment, only 7 of the 32 homes in the immediate area of Applicant's lot satisfied the two requirements. Those nonconforming lots had frontages varying from 40 to 74 feet. Since the 1947 amendment, only two additional homes have been constructed. One was built in 1948 with a frontage of 70 feet and one was built in 1970 with a frontage of 113 feet. The latter home is owned by East -- the home is across the street from and three lots north of Applicant's lot and was recently purchased by East for $90,000.

Builder, Inc., has prepared basic plans for a single family residence that would have a width of 20 feet and a depth of 48 feet. It would be centered on the 30-foot lot to provide five-foot side yards, the minimum required by the ordinance. The proposed setback would also comply with the ordinance. Construction pursuant to this plan would result in a residence that is about 18 feet from the North residence and 48 feet from the South residence -- the homes located adjacent to Applicant's lot. The North's lot has a 50-foot frontage and the South's lot has a 75-foot frontage. Testimony was that, if constructed, the home would sell for about $55,000 and that homes in the area have values in the range of $60,000 to $90,000.

Several years prior to the request for a variance, Applicant offered to sell the lot either to North or South. A deal was impossible, however, because those owners offered to pay only the assessed value of the property -- a value six times lower than the development value of the lot. Applicant had also unsuccessfully sought to increase the amount of frontage when he purchased the lot in 1960 by seeking to buy from South a tenfoot strip adjacent to the south side of the lot.

When the Board of Adjustment held hearings on the variance request, the facts summarized above were placed in evidence. Many near-by residents, including North, South and East opposed the application. The Board of Adjustment has authority to grant a variance when a denial "would result in peculiar and exceptional practical difficulties to, or exceptional and unnecessary hardship upon, the owner of such property."

The Board of Adjustment is uncertain about its decision on this variance request and seeks your advice as the City attorney responsible for zoning issues. A Board member opposed to the request is urging that a variance be denied based on a finding that "Applicant has failed to present any evidence establishing any unnecessary hardship." The Board asks your advice as to (a -- 5 points) whether the member's proposed ground for denial is sufficient. Other Board members leaning toward granting Applicant's variance request have concerns about whether a decision granting a variance could be successfully defended in court. These members believe that only East, a lawyer, is likely to seek judicial review of a variance. They want your views about (b -- 10 points) whether East has standing to bring a claim in court challenging a decision to grant a variance. Finally, the Board requests (c -- 25 points) your views as to
whether Applicant should receive a variance on this record. Please discuss these three issues.

QUESTION III (60 POINTS -- 60 MINUTES)

Pastoral City was comprehensively zoned pursuant to a comprehensive plan and zoning ordinance that were amended prior to the dispute recounted here to permit planned unit developments (PUDs) in identified districts. New Development Co. owns a large tract of undeveloped land that is both within a district zoned for single family residential use and within a district in which PUDs are permitted subject to approval.

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The Pastoral City ordinance prescribes the procedure to be followed for a PUD. A developer first must submit to the Planning Commission a preliminary plan that includes descriptions of the types and coverage of the real property, the proposed land uses and densities, and the extent and character of open spaces. A staff report on the preliminary plan is then prepared commenting on the proposed PUD and showing the existing zoning of the subject property and adjoining areas. After receiving this staff report, the Planning Commission must hold a public hearing on the application. After the hearing, the Planning Commission may approve in principle the preliminary plan, modify or reject it.

Within six months after approval of the preliminary plan, the developer must file with the Planning Commission a final development plan showing land use, contours and drainage, traffic circulation, and landscaping. The developer also must submit architectural sketches that "depict the general height, bulk and type of construction and proximity of structures on lots." At the time the applicant submits this final development plan, the applicant must request a map amendment to identify the precise location of the PUD. Following notice, the Planning Commission convenes a public meeting to consider the final plan and map amendment request. The final step is a public hearing, after notice, before the City Council, which has final authority to approve or reject the final plan and map amendment. If approved by the Council, the map is amended and the final development plan is filed with the City Recorder.

The ordinance provides finally that the owner may change the approved final plan as long as the change is consistent generally with the plat approved and recorded, and the total density of residential units is not increased. Changes that increase the density of residential units must be presented in the form of a new PUD and must be approved as provided generally for PUD approval.

New Development sought approval of a PUD on its tract of land. The preliminary plan for the PUD, consistent with the uses that the ordinance permits for PUDs, identifies singlefamily and multiple-family residences, commercial buildings, and open spaces. The Planning Commission approved the preliminary plan following receipt of a favorable staff report and public hearing.

Within the six-month period, New Development presented its final plan. Consistent with the preliminary plan, the final plan states that "garden apartments" will be constructed in the southern portion of the property to serve as multi-family residences. Sketches submitted as part of the final plan show two garden apartment complexes, each of which has a five-story tower at either end of the complex with a two- or three-story-high structure linking the two towers. The two complexes were to include a total of 104 apartment units. At the required hearings, nearby residents opposed the PUD because of detrimental impacts on the neighborhood (e.g., too many new residents, decreased amounts of open space, and impairment of appreciation of natural resources, including vistas impaired by new construction). Following these hearings, the final plan and map amendment were approved by both the Planning Commission and City Council.

Construction work on the PUD then began and New Development began clearing and excavation to allow construction of the garden apartments. Now aware of the scope of preparations for construction, owners of single family residences that adjoined the site of the garden apartments became greatly concerned about the actual bulk and size of the garden apartments. These owners protested to the City Council, which referred the matter to the Planning Commission to determine whether the proposed structure was consistent with the final plan approved for the PUD.
After a courtesy hearing and a review of the blue prints for the single-structure "garden apartments" to be constructed, the Planning Commission concluded that these "garden apartments" were consistent with the final plan and construction was authorized. The blueprints show a large, monolithic structure with six stories at one end and five stories at the other end. (The number of stories varies at each end because the ground slopes over the length of the building.) The structure contains 102 units -- two units less than the number of units identified in the final plan.

You have recently joined a law firm's land use planning department. The firm has been contacted by an association of owners of single-family residences adjoining the site of the garden apartments at which construction is now proceeding. The partner wants you to prepare a memorandum that presents a strategy for challenging the approval of the PUD. Specifically, the partner wants you to identify, with supporting argument, (a -- 30 points) the particular aspect of the approval process that is most susceptible to a successful legal challenge; (b -- 15 points) the standard of review that a court would likely apply in reviewing the actions of the Planning Commission and City Council in approving the PUD; and (c -- 15 points) the type of relief that the association should seek in a court action. In this memorandum, she wants you to state whether success on the merits is likely and what, if any, relief is likely to be awarded.