LAND USE PLANNING PROFESSOR MOORE

FINAL EXAMINATION FALL 1996

TIME LIMIT: 3 HOURS

INSTRUCTIONS

This is an open book examination. You may use the casebook, any materials distributed in class, your class notes, any other materials you personally prepared - with or without the assistance of your classmates - prior to the exam, and any commercial treatises or outlines. You may not consult your classmates during the examination.

The exam consists of 5 questions. The point allocation for each question is as follows:

Question I 95 points
Question II 30 points
Question III 20 points
Question IV 20 points
Question V 15 points

The number of points allocated to each question indicates how much time you should spend on it.

Write your answers in pen in the blue books. Only write on the front side of each page of the blue book(s). Be sure to put your exam number on this page and the cover of each blue book. At the end of the examination, please number your blue books, e.g., 1 of 2, 2 of 2, and turn in your exam, your blue book(s), and any scratch paper you have used. These materials should be collected and turned in together inside one blue book.

All academic endeavors of the students of the University of Kentucky College of Law are governed by the Honor Code. The Honor Code prohibits lying, cheating, stealing, and interference with academic pursuits. In addition, the Honor Code places an affirmative duty to report a breach of the Code on all students. A failure to report is a violation of the Honor Code.

QUESTION ONE

(SUGGESTED TIME: 95 MINUTES)

In 1980, Howard Roarke purchased a 25 acre tract of lakefront property in the city of Objectivity, state of Kentucky. In 1984, he purchased a second piece of lakefront property - a 5 acre tract adjacent to the first property. Roarke holds separate deeds to the properties and the parcels are separately taxed by the Objectivity. The property is bounded on the south by farmland, on the east by single family residences on ½ acre lots, on the west by single family residences on 5 acre lots, and on the north by the lake.
The County's Comprehensive Plan designates Roarke's property as "medium density residential." The Plan provides that "medium density residential allows a range of housing units from zero units per gross acre to a maximum of eight units acres per gross acre. Housing types found under this category include single-family detached, townhouse, duplex, and apartment."

At the time that Roarke purchased the land, it was zoned low density apartment (R-3). The R-3 zone permits single-family and multi-family dwellings with a minimum lot size of ½ acre. Roarke spent $2,500 for a boundary survey and an additional $3,000 to prepare a preliminary subdivision plat dividing the two tracts into 30 one-acre lots. Pursuant to that plat, Roarke planned to build 20 single-family dwellings on 20 of the lots and 10 townhouses on the remaining lots. Each townhouse was to contain eight units and was designed for low income residents.

Objectivity is a city of approximately 250,000 people. 95% of its residents are white while blacks comprise 4.5% of its population. 90% of the black residents live on the north edge of Objectivity approximately 10 miles from Roarke's lakefront property. Based upon family income, blacks constituted 50% of the Objectivity residents who would be eligible to purchase the proposed townhouses.

Shortly after Roarke submitted the preliminary subdivision plat to the Planning Commission, Peter Keating, a member of the Objectivity City Council, proposed an amendment to the city's zoning ordinance rezoning the property Roarke owned from R-3 to R-1A. The R-1A zone permits single family detached residences with a minimum lot size of ten acres. Finding that the proposed amendment "was consistent with the County's Comprehensive Plan" and in the public's best interest as it would "preserve Objectivity's natural beauty and limit suburban sprawl," the City Council passed the Keating amendment. The Planning Commission then denied Roarke's proposed subdivision as inconsistent with the City's zoning ordinance.

Roarke has come to your law firm for advice. The senior partner has asked you to draft a memorandum addressing the following questions:

1) On what grounds, if any, may Roarke challenge the Keating amendment? Is Roarke likely to be successful?

2) Assuming the amendment is valid, is there any other way for Roarke to avoid applicability of the Keating amendment and rely on the terms of the original zoning ordinance?

3) Assuming Roarke is bound by the amendment, assess whether Roarke would prevail in a claim that the Keating amendment, as applied to his property, is an unconstitutional taking that requires the payment of just compensation.

QUESTION TWO
(SUGGESTED TIME: 30 MINUTES)

Hawkeye Pierce owns a 10 acre tract of undeveloped land in Swingtown, Kentucky. The tract is rectangularly shaped and zoned low density apartment (R-3). It is bordered on the west by a residential subdivision, on the north and east by apartment complexes, and on the south by a shopping mall.

Pierce would like to build a hospital on the property. As the R-3 zone permits hospitals as a conditional use, Pierce applied for a conditional use permit to build a hospital on the property. More than 20 residents of the neighboring subdivision appeared at the public hearing held on the application and objected to the application.
Following the public hearing, the Board of Adjustments granted the application subject to one condition: Pierce was required to dedicate to Swingtown for public park purposes the two acres of the tract that directly adjoin the subdivision. In its grant, the Board of Adjustments found that "a public park and a hospital were in the best interest of Swingtown and that a buffer was necessary between the residential subdivision and the traffic that would be created by a hospital."

Pierce objects to the condition and has come to you for advice. Please draft a memorandum addressing the following questions:

(1) On what ground or grounds may Pierce object to the condition? Is Pierce likely to be successful?

(2) Suppose that such an objection were successful and a court were to remand the matter to the Board of Adjustments, and the Board of Adjustments were to deny the application finding such use "inconsistent with the neighboring subdivision," on what ground or grounds could Pierce object to the denial? Would such an objection likely be successful?

QUESTION THREE

(SUGGESTED TIME: 20 MINUTES)

On May 6, 1970, Cosmo Kramer acquired title to a 5 acre tract of land in Atown, Kentucky. At the time that Kramer acquired title to the property, Atown had no zoning ordinance in effect and the tract of land and surrounding area were undeveloped.

Shortly after Kramer purchased the property, he erected a building on his property and began the business of grinding and mixing stock feeds and selling fertilizer and livestock equipment. Kramer has continued this business without interruption since acquiring title to the land in 1970.

On May 6, 1985, the county adopted a zoning ordinance classifying Kramer's property as restricted residential (R-1) property. In 1990, Kramer built an addition to his building. The original building was 75 square feet. The addition doubled the size of the building to 150 square feet. With the addition, Kramer's workforce doubled from 4 employees to 8 employees, and his gross sales tripled.

In 1992, J. Petermen purchased 50 acres of land to the west of Kramer's property and began to develop the Meadowbrook subdivision. Sales were brisk on the western edge of the subdivision but slowed as they neared Kramer's property. Potential purchasers were offended by the noise, dust, and smells generated by Kramer's business and refused to purchase homes that were close to Kramer's property.

Petermen has come to you for advice. He wants to know what, if anything, he can do to stop Kramer's business. Please draft a letter advising Petermen of his options and whether he is likely to be successful.

QUESTION FOUR

(SUGGESTED TIME: 20 MINUTES)

In 1990, Tim Allen purchased two adjacent lots in a residential zone on Elm Street in Changetown, Kentucky. Lot one contained the Allen home. Lot two was not a buildable lot at the time Allen purchased the lots because the depth of lot two left the rear set back line and the front set back line only a short distance apart. The front setback line for any new home construction, however, was variable based on the setback of existing homes on Elm Street. Thus, in 1992, Allen made the buildable area of lot two sufficient in size by adding a front room to his existing home on lot one. Before Allen had the opportunity to construct a home on lot two, Changetown modified its zoning ordinance to fix the setback requirement at such a point that lot two was no longer buildable.
Allen would like to build on lot two and has come to you for advice. Please draft a letter advising him of what he may try to do to obtain permission to build on lot two and whether he is likely to obtain such permission.

QUESTION FIVE

(SUGGESTED TIME: 15 MINUTES)

In 1990, Ozzie and Harriet Nelson purchased a house in Pleasantville. The house is located in a D Residence district which is restricted to "single-family" housing. The ordinance defines a "family" as "any number of persons who are related by blood, marriage, or adoption or to two persons not so related but both of whom are 62 years of age or older."

Two years after they purchased the house, the Nelsons leased the house to four unrelated young men between the ages of 22 and 25 who had grown up in Pleasantville and wanted to remain near their families but not reside with them. Shortly after the tenants moved in, a criminal information was filed against the Nelsons charging them with violating the Pleasantville zoning ordinance because the house was occupied by more than one family.

The Nelsons have come to you for advice. Please draft a memorandum advising them of what grounds, if any, they may challenge the ordinance, and whether they are likely to be successful in such a challenge.