1972

Urban Land Use: Final Examination (May 22, 1972)

William & Mary Law School

Repository Citation

I. Place T or F before each of the following statements to indicate whether the statement is true or false.

1. A private nuisance is an interference with the use or enjoyment of land, other than by direct physical invasion or trespass.  
   T

2. In modern times if D invades P's land by light rays, particles of energy or molecules of dust or gas originating on D's land, P may consider D's action as a direct invasion of P's rights.  
   T

3. Each landowner is owed a duty by every other landowner that no one will do any act on his land which is an annoyance to his neighbor.  
   T

4. Cemetery use is not as likely to constitute a nuisance in relation to adjoining property as funeral parlor use.  
   T

5. Immemorial use creates an easement by prescription and any interference with such use constitutes a private nuisance.  
   F

6. One who permits oil stored on his property to seep into the soil and enter an undefined water flow and thus pollute his neighbor's spring is guilty of a private nuisance irrespective of whether the state has an agricultural or an industrial economy.  
   T

7. Even though courts place great value on habitation rights, it does not follow that business use which conflicts with residential use will always be enjoined.  
   F

8. Common law property rights have been modified by judicial interpretation by virtue of the invention and development of airplanes, but common law nuisance law has not been modified by judicial interpretation in relation to airports.  
   F

9. Relative utility and social value of a particular industry may prevent a court from enjoining the operation of an industry which conflicts with residential use, but this doctrine of weighing the equities does not preclude the awarding of damages.  
   T

10. Land use which renders the enjoyment of life and property uncomfortable for the public constitutes a public nuisance.  
    T

11. Any member of the public is entitled to use self help to abate any public nuisance, and is accordingly immune from liability for such actions.  
    T

12. Where a legislative body defines a specific act as a public nuisance, a court of proper jurisdiction would be required to enjoin a person from committing that act.  
    T

13. Zoning legislation has completely supplanted public nuisance law as a means of land use control.  
    T

14. New York City is generally credited with enacting the first comprehensive zoning ordinance, although prior to such enactment some cities had adopted height restrictions.  
    T

15. A land use study should be made and a plan for development adopted prior to the enactment of a zoning ordinance.  
    T

16. State enabling legislation is required before a local unit of government can adopt a cumulative type zoning ordinance, but state enabling legislation is not required for the adoption of a non-cumulative type zoning ordinance.  
    T
17. Any person who contests the constitutionality of a zoning ordinance must first comply with the administrative procedures set forth in the ordinance before he can properly raise the issue of the constitutionality of the ordinance.

18. Since the Euclid and Nectow cases were decided, the Supreme Court of the United States has held many zoning ordinances to be constitutional and very few zoning ordinances to be unconstitutional.

19. One of the most successful methods of zoning is to place all properties in a very restrictive class, and then grant special use permits to property owners when a need arises to use land inconsistent with the ordinance.

20. One who purchases property with knowledge of the restrictive provisions of the ordinance applicable to the property is precluded from contesting the constitutionality of the restrictive provisions.

21. It is generally held that local units of government have no power to enact zoning ordinances in the absence of express enabling authority.

22. There has not been in the zoning field as much delegation of rule-making authority to administrative agencies as is present in other fields of regulation.

23. Where land does not produce a reasonable return for the owner because of a provision in a zoning ordinance, the owner thereof has a right of inverse condemnation.

24. In order for a landowner to obtain a different zoning classification than that established by the zoning ordinance, the landowner must prove that the original zoning of his property was wrong or that conditions have changed since the original zoning.

25. Once a zoning classification is established each landowner has a contract with the unit of government which cannot be changed by the unit of government until the expiration of a reasonable period of time.

26. It has been an established principle in planning that industry must be separated from residences, but nevertheless residences have generally been permitted in industrial zones.

27. A zoning ordinance which permits certain uses for owner occupied property but denies such uses (in the same use district) to tenant occupied property is invalid.

28. A dormitory occupied by sixty students may be a "single family residence" for zoning purposes if the house is used as a single house keeping unit.

29. Zoning ordinances which regulate church or religious organizations in the use of land are unconstitutional in violation of freedom of religion.

30. In order to obtain a non-conforming use a landowner must prove before an administrative board that the zoning ordinance constitutes a hardship in relation to the use of his property.

31. Federally funded or subsidized low or moderate-income housing projects are not subject to local zoning ordinances.

32. Although the regulation of the minimum lot size is quite common under a zoning ordinance, if the purpose of such a regulation is solely to limit the population of the local unit of government, the regulation is invalid.
33. A zoning ordinance based upon the wealth of the occupant of land would be unconstitutional, but an ordinance which regulates the size of a building which may be placed on the land is ordinarily proper and valid, even though a wealthy person can more readily comply with the ordinance.

34. Any zoning ordinance which requires the leaving of a green area as an undeveloped portion of property is unconstitutional because it deprives the owner of a reasonable return on his investment.

35. A non-conforming use is terminated upon the change of ownership of the property.

36. The findings of fact set forth in the minutes of a Board of Zoning Appeals are binding on the courts; therefore every attorney appearing before such a Board should see that the Board's minutes are properly written.

37. A variance should not be granted for business use of a residentially zoned lot merely because it adjoins a business district.

38. A valid zoning ordinance in legal effect determines that a use which is prohibited by the ordinance in a particular area is both a private and a public nuisance in that area.

39. Traditionally zoning has not been permitted for aesthetic purposes, but in recent years some courts have held that aesthetic considerations are proper objectives for a legislative body to consider.

40. The definition of a subdivision is uniform throughout the United States.

41. The determination of public improvements to be made is within the sound discretion of the legislative body and the courts will not interfere with that determination unless there is a violation of constitutional or legal rights.

42. The definition of a lot under a subdivision ordinance cannot be inconsistent with the definition of a lot under the zoning ordinance of the same unit of government.

43. The traditional method for vacating a plat of record is to obtain agreement of all persons who own property shown on the plat together with all persons owning property adjoining the property set forth on the plat, and then enacting an ordinance of vacation by the governing body.

44. The determination of a taking for a public purpose by an administrative body pursuant to legislative authority will not be reviewed by a court unless there is an allegation of violation of a specific constitutional right.

45. In eminent domain proceedings a landowner is entitled to payment of the fair market value of his property which has been taken together with damages to his remaining property which were caused by the taking.

46. Since all land is unique, the only method to determine the value of land taken in an eminent domain proceeding is to determine the price that the land would be sold for in a free market where the buyer is under no compulsion to buy and the seller is under no obligation to sell.

47. Where government action deprives a person of a beneficial use of his property, then the government is required to pay just compensation to the person.
48. The difference between a governmental taking and a regulation is determined by whether the government is forcing some people alone to bear public burdens which in fairness and justice should be borne by the public as a whole.

49. The increase in value due to the government absorbing the supply cannot be considered an eminent domain proceedings.

50. The official zoning map is an essential part of the master plan of a local unit of government.

II. A. Place the number of the item in the first column before the item in the second column which is most closely related to it.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1.</td>
<td>Hardship</td>
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<td>2.</td>
<td>Pig in parlor</td>
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<td>3.</td>
<td>Plat of alley</td>
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<td>4.</td>
<td>Needs of community</td>
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<td>5.</td>
<td>Use, bulk and height</td>
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<td>6.</td>
<td>Use of residence</td>
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<td>7.</td>
<td>Public purpose</td>
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<td>8.</td>
<td>Materials</td>
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<td>9.</td>
<td>Own sweet will</td>
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<td>10.</td>
<td>Agreement</td>
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</tbody>
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B. Classify each of the following as (a) spot zoning, (b) contract rezoning, (c) floating zone, (d) Eye to the future, or (e) rezoning according to plan, by placing the appropriate letter in the space before each item:

- (____) Amending ordinance on request, but subject to agreement that owner will develop property in a given way.
- (____) Amending ordinance without rhyme or reason so as to scatter various uses without relation to use of adjacent properties.
- (____) Mapping the areas eventually to be used for apartments, and then gradually rezoning for apartments as needs develop.
- (____) Amending ordinance to specify circumstances under which an area will be rezoned.
- (____) Amending ordinance to rezone maximum amount of land which would conceivably be used for apartments.

Which of the proceeding is most likely to be held invalid? (____)
Which of the proceeding is most likely to be held valid? (____)

C. Fill in the proper word or words in each blank.

1. The ____________________ is an agency of local government which serves as a sounding board for the governing body.
2. Any person aggrieved by the decision of a Board of Zoning Appeals can appeal therefrom to the appropriate court by obtaining a __________ from the court.

3. If an administrator refuses to issue a permit where the applicant has conformed to all requirements of law, the applicant should seek a __________.

4. A public nuisance may be enjoined by a court of equity or may be prosecuted as a common law __________.

5. The constitutionality of zoning was upheld in the Euclid case under the __________ as protection of the public health, safety and general welfare.

6. An incidental use which is reasonably related to a principal use and is permitted as such under a zoning ordinance is called an __________ use.

7. A zoning ordinance which contains __________ can best be used to regulate setback lines, heights, etc., of a development which contains irregular features.

8. The difference between slums and __________ areas is that the former already constitutes a health problem whereas the latter is in the process of deterioration.

9. In Berman v. Parker it was stated that it was within the power of the legislature to determine that the community should be __________ as well as healthy.

10. Blackstone stated, "So great moreover is the regard of the law for __________, that it will not authorize the least violation of it; no, not even for the general good of the whole community."

D. What law or ordinance would most commonly be used to solve or prevent the following problems?

1. Continuation of a vacant house which has rotted and constitutes a fire hazard.

2. Loud noises at night from a manufacturing plant situated in an industrial zone.

3. Emission of dense smoke from a manufacturing plant situated in an industrial zone which smoke is carried by prevailing winds into a residential zone.

4. Mining operations in a rural mountain area which is used for summer homes.

5. Development of a subdivision which is unusually ugly.

E. Please write a short evaluation of the course and offer suggestions for improvement of the course.