Urban Land Use: Final Examination (May 1973)

William & Mary Law School

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

1. A nuisance may be public and private at one and the same time. T

2. An owner of land is at liberty to use his property as he sees fit without objection or interference from his neighbor provided such use does not violate an ordinance or statute. F

3. A public nuisance is a crime whereas a private nuisance is a tort, but a public nuisance may also be a private nuisance if it interferes with the enjoyment of land. F

4. Rights of habitation are superior to rights of industry, commerce and trade, and when they conflict the persons asserting rights of habitation are entitled to an injunction against industry, commerce, and trade. T

5. Residents who object to funeral parlors in their neighborhood normally cause prosecution of the owners of the funeral parlors as a public nuisance. T

6. Wherever a plaintiff proves that a defendant is committing a private nuisance and that the plaintiff is injured thereby, the plaintiff is entitled to an injunction against the nuisance as a matter of course. T

7. An article of tangible personal property can be useful and harmless and yet it can be put to an illegal use which may make the article a public nuisance which can be destroyed after an appropriate hearing. F

8. Once there has been a judicial determination that a specific use does not constitute a public nuisance, it will be held res judicata if adjoining property owners seek to have the use declared a private nuisance. T

9. An ordinance which prohibits the emission of dense smoke is unconstitutional since the term 'dense smoke' is not capable of reasonable definition. F

10. A state court can enjoin the construction of an atomic energy plant within its jurisdiction if the state court determines that the atomic energy plant would be a public nuisance. T

11. When a local unit of government adopts a zoning ordinance, the coming law of public nuisance has no further application within the jurisdiction of that local unit of government. T

12. Before the commencement of comprehensive zoning ordinances, the judicial branch of government did more than the legislative branch to prevent unhealthy development of land, but the judicial action was generally haphazard and not planned uniform regulation. T

13. Since a plan must be established first and then zoning adopted pursuant to the plan, it is impossible to maintain the status quo while the plan is being prepared. F

14. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities. T
15. One is precluded from attacking the constitutionality of a zoning
ordinance until one complies with the administrative provisions
of the ordinance.

16. In order for a zoning ordinance to be held constitutional it is
incumbent upon the municipality to prove that the specific
provision of the ordinance in issue protects the public health,
safety and general welfare.

17. Since the Euclid and Nectow cases the Supreme Court has consistently
refused to pass judgment in zoning cases.

18. Under a cumulative zoning ordinance a court is required by the
terms of the ordinance to impose a greater penalty for each
subsequent violation of the ordinance by the same individual.

19. Purchase of property with knowledge of the restriction of a
zoning ordinance does not bar the purchaser from testing the
validity of the zoning ordinance since the regulation concerns
land and not the owner.

20. Acquiescence and compliance with the provisions of an unconsti-
tutional ordinance validates the ordinance.

21. Where the text of a zoning ordinance establishes the usual use
districts, but no land is placed in any use district until the
owner applies to the planning commission for a use permit, and
the planning commission then establishes the zoning classifica-
tion of the land, the ordinance is unconstitutional.

22. The establishment of Planned Unit Development is the antithesis
of zoning in accordance with an original comprehensive plan.

23. Under the English Town and Country Planning Act where land has
no present beneficial use in its present state and cannot be
rendered capable of beneficial use in accordance with the plan,
the owner has the right to cause inverse condemnation.

24. One who buys real property in reliance upon the zoning classifica-
tion of the property and the adjoining property has a right that
the same zoning classification remain in effect until the intended
use by the purchaser is concluded.

25. It has been a general principle in zoning that industry should be
separated from residential use but the converse of this principle
was not accepted for many years.

26. Zoning ordinances which are reasonably related to the protection
of the public health, safety and general welfare, cannot be
applied to churches because of the constitutional principle of
freedom of religion.

27. The owner of property which is being used in violation of the
zoning ordinance is immune from all sanctions of the law after
he conveys the property to a new owners.

28. Zoning regulations can be used as an effective means of controlling
population and thus reducing the costs of municipal services,
i.e., schools, to the public.

29. Housing codes do not establish districts but establish standards
of housing quality.

30. The need for flexibility of treatment in zoning has produced
the doctrine of nonconforming use, variances, and legislative
amendments.
31. Zoning authorities must always be faced with the impossibility of eradicating nonconforming uses.

32. The variance procedure should not be used to permit a use in a zone merely because the property is near another use district which does permit such a use.

33. Zoning for purposes of aesthetics has been traditionally considered just as important as zoning for purposes of safety.

34. The location of a power station in a residential zone may be a defeat for purposes of amenity, but it is not necessarily poor planning.

35. 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.

36. A zoning ordinance must be one which is designed to further a plan which relates to a substantial area of the unit of government enacting it and to the reasonable needs of the community, both present and in the foreseeable future.

37. The purpose of early subdivision controls was primarily to make better plans for recordation purposes and to establish clear boundary lines on the ground.

38. The power of the municipality in regard to making public improvements is solely within the discretion of the governing body and a court will never substitute its judgment for that of the governing body.

39. The principle of nonconforming use under zoning laws is applicable to the same extent and in the same manner to subdivision ordinances.

40. The common law method of vacating streets and alleys which had been set forth on a plat of record was to obtain an agreement of vacation from the owners of all property set forth on the plat together with approval of the governing body of the local unit of government.

41. A local unit of government can adopt an official map showing proposed public parks and schools on private property without violating the rights of the owners of the property.

42. Since a local unit of government can condemn slum property under its police power, a fortiori it can condemn and pay reasonable compensation for it.

43. The Supreme Court in the case of Berman v. Parker held that a municipality has the power to zone even though such regulations are solely for aesthetic purposes.

44. Since a local unit of government can exercise the power of eminent domain only for land to be taken for public use, it cannot acquire property for future development by the public.

45. Since traditional eminent domain proceedings have proved time-consuming and inefficient, many states have provided new quick-take procedures.

46. The owner of a family business conducted on land being taken by eminent domain is entitled to introduce the books and records of the business in evidence to show the value of the property being taken.
47. The owner of a remainder area is not ordinarily entitled to recover for damage caused by the taker's use of property acquired from others, but he is entitled to damages for the decrease in value of his remaining land occasioned by virtue of the take.

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

49. 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.

50. Boston is generally credited with adopting the first zoning ordinance.

II. (1) 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>I</th>
<th>II</th>
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<tbody>
<tr>
<td>1. Eminent Domain</td>
<td>Problems created by subdivision</td>
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<td>2. Public Purpose</td>
<td>Enabling legislation</td>
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<td>3. Berman v. Parker</td>
<td>Light, air and openness</td>
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<td>4. Required Dedication</td>
<td>comprehensive plan</td>
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<td>5. Zoning</td>
<td>World Trade Center</td>
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<td>6. Spot zoning</td>
<td>Site plan review</td>
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<td>7. Variance</td>
<td>hardship because of uniqueness</td>
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<td>8. Power to zone</td>
<td>value of take and damages to remainder</td>
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<td>9. Green belt</td>
<td>denial of equal protection</td>
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<td>10. Planning Commission</td>
<td>beautiful as well as sanitary</td>
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</tbody>
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(2)(a) List and explain briefly the various methods of determining value in eminent domain proceedings.

(b) Explain the method for computing damages to remaining property in eminent domain proceedings.
(3) Many zoning ordinances prohibit certain uses of land in any district, but then provide for a special use permit to authorize such a use by the governing body after a public hearing by the planning commission and by the governing body.

(a) What legal objections are there to such a procedure?

(b) What answer can be made to such objections which might result in the validity of special use permits?

(4) (a) List five codes (other than zoning and subdivision) which most local units of government adopt which also regulate land use.

(b) Compare the variance and nonconforming use doctrines of a zoning code with similar problems which arise under one of the codes that you listed in part (a) of this question.

(5) Please write a short review of the required casebook for this course, including your recommendations for additions or deletions of materials, and revision of the order of presentation of materials.