

Pierce Law Center  
Land Use, Fall Semester 2007  
Final Exam  
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**Instructions and Guidance:** This exam is designed to require not more than two hours' time to complete. It will constitute 60% of your grade (short paper = 25%, class participation = 15%). Before starting, read through the entire exam once so that you can allocate your time to answer each section as completely as possible. Please write legibly. If I cannot decipher your writing, your grade will be affected adversely. Please read each question twice before you answer to make sure you understand the question. While you answer and after you have completed your answer, check to make sure that your answer responds to the question being asked. Questions are not designed to "trick" you, but you do need to respond to what is being asked.

This is an open book exam, meaning that you may refer to the course text and your class notes. You may not use any outside resources during the exam.

Please write your answers in the provided blue book(s). Use pen and write on only one side of each page!

**Part A. Short Answer.** (40 total points - 4 points for a correct and complete response to each of the following 10 statements). Each question makes a short statement about land use. Please state first whether you agree or disagree and then explain your answer (e.g., why you agree, why you disagree, or why you agree or disagree in part.) Your answer for each question should be no longer than 3-4 short, simple declarative sentences. Compound sentences are not favored here.

1. Local government's power to regulate land use arises from its inherent power to control public nuisances.
2. The requirement that zoning be adopted in accordance with a comprehensive plan means that master plans have the full force and effect of law.
3. Amortization is an effective means of implementing the policy of land use that nonconformities should be eliminated as quickly as possible.
4. Once a zoning ordinance is adopted, landowners may rely on the zoning classification of their property as they plan future uses.
5. Floating zones violate the "uniformity of use" requirement within a zone that applies to zoning ordinances to avoid equal protection arguments.
6. The mechanism to obtain a variance exists to save an ordinance from being declared unconstitutional on its face.
7. Since impact fees are designed to mitigate a developer's impact on growth, it would be improper to apply a growth management ordinance limiting the size or timing or development to a developer who will also pay impact fees.
8. After the Lake Tahoe case, all takings analysis will proceed on the basis of the "whole parcel" rule.
9. To successfully defend against a claim of spot zoning, the ordinance in question is reviewed under intermediate scrutiny, as the basis for finding spot zoning unlawful rests in the equal protection clause.
10. Legislative deference means that local governments have full discretion to amend zoning ordinances unless the amendment would constitute a denial of equal protection, result in a regulatory taking, or interfere with a protected constitutional right such as speech.

**Part B. Short Essay.** (30 total points, 15 points for a correct and complete response to each of the two scenarios described in this part.) Each question asks that you analyze the situation described. Mere repetition of the fact scenario or regulatory text will not assist in that task. Assume that all fact scenarios take place in New Hampshire under current law. Please respond based on the information given, though it is permissible to indicate any additional information that might be of assistance. A “correct” response will (1) identify the key issue(s) presented, (2) state governing legal principles, and (3) suggest a proper outcome.

1. Developer (D) enters agreement with property owner (PO) to jointly develop a 15-lot residential subdivision. They enter a conditional purchase and sale agreement to take effect only after the subdivision is approved and PO provides a power of attorney authorizing D to seek subdivision approval. Before the Planning Board (PB) accepts the application, the municipality adopts a temporary growth control ordinance which, *inter alia*, bars the PB from approving subdivisions containing more than 5 residential lots. Based on the ordinance, the PB does not accept the application for approval filed by D. PO files an appeal under RSA 677:15 asserting that the growth control ordinance is unconstitutional and violates state law. Municipality files a motion for summary judgment. While that is pending, PO and D have a disagreement and PO revokes the power of attorney, after which D files motion to intervene in the appeal. Before the court acts on that motion, PO withdraws the appeal and the municipality files a motion to dismiss the appeal. D files an objection asserting that he should be allowed to pursue the appeal, as he incurred substantial expenses in preparing the application for subdivision approval. How should the Court rule and why?

2. A zoning amendment is adopted to ban the use of electronic, changeable text signs by any business in the community. The asserted basis for the ban is a concern with aesthetics and traffic safety. A provision allows a business to use such a sign for a “special event” if the Zoning Board of Adjustment finds that the use will be temporary and of benefit to the community. The ZBA has frequently granted permission to use portable signs which do not exceed 4 feet by 5 feet, for not more than three days at a time to advertise sales events and the like to attract customers. In many cases, these approvals were given to the same owners as frequently as once a month. An adult business installed an electronic, changeable text sign on the front of its business. A building permit was obtained, but the permit application did not ask if the sign was electronic. After its first use, the owner was cited for violating the ban on electronic signs. He agreed not to use the sign pending action on an application to obtain permission to do so, and then applied to the ZBA for temporary use of his sign for three days every other month. As part of the testimony to the ZBA, the adult business owner submitted videos showing temporary electronic signs used by the municipality in various locations to

notify residents of upcoming meetings and hearings. The ZBA chair has asked you for guidance on whether the ZBA may deny the application.

**Part C. Analysis.** (30 total points for correct analysis on all ten cases.) In a sentence or two for each case, describe the major “contribution” made by each of the following cases to current “takings law.”

1. Penn Coal
2. Keystone Bituminous
3. Agins
4. Loretto
5. Penn Central
6. Nollan
7. Dolan
8. Lucas
9. Palazzolo
10. Lake Tahoe

Good Luck!