LAND USE REGULATION

FINAL EXAMINATION

DECEMBER 10, 1992
QUESTION ONE

Suggested time: One (1) hour

In the State of Florida, no person may develop or improve his or her property without first obtaining a "development permit" from a local government agency. Section 337.241(2) of the Florida Statutes states:

Upon recording by the Florida Department of Transportation, a map of reservation shall establish:

(a) that no development permits shall be granted by any governmental entity for new construction of any type, or for renovation of an existing commercial structure that exceeds 20 percent of the appraised value of the structure, for a period of 5 years from the date of recording such map of reservation. The 5 year period may be extended for an additional 5 years by the Department of Transportation by re-recording the map of reservation prior to the expiration of the first 5 years.

The purpose of the statute is to support efforts of the Department of Transportation ("DOT") to plan, facilitate and implement highway construction and extension.

Joint Ventures, Inc. owned 8.3 acres of vacant land adjacent to the Dale Mabry Highway in Tampa, Florida. Joint Ventures had contracted to sell that property contingent upon the buyer's ability to obtain the permits necessary to develop it. Prior to the completion of the transaction, however, the DOT determined that 6.49 acres of the vacant land owned by Joint Ventures was needed for storm water drainage associated with a planned widening of the highway. In November, 1989, the DOT recorded a map of reservation in accordance with Section 337.241(2) of the Florida Statutes. The effect of the recording was to quash the sale of the land by Joint Ventures.

Joint Ventures contends that it cannot sell or develop the land because of the recordation of the map of reservation. It concedes that the State will eventually pay just compensation for an eminent domain taking, but claims it may have to wait up to 10 years before the property is actually taken. Joint Ventures is considering undertaking a legal action against the State of Florida. It has asked you to write a legal memorandum expressing the strengths and weaknesses of such a legal challenge. Please write that memorandum and make a recommendation regarding the likelihood of success in such a law suit.
QUESTION TWO

Suggested time: One (1) hour

The town of Chester, New Hampshire lies 13 miles east of the city of Manchester. Primary highway access is provided by New Hampshire Routes 102 and 121. The available housing stock is primarily single-family homes. There is no municipal sewer or water service, and other municipal services remain modest. The town, known as a "bedroom community," watches most of its labor force commute to Manchester. It has not encouraged industrial or commercial development. Because of its close proximity to job centers and the ready availability of vacant land, Chester is projected to have among the highest growth rates in New Hampshire over the next two decades.

Chester’s prior zoning ordinance provided for a single-family house on a two-acre lot or a duplex (two family) on a three-acre lot, and excluded multi-family housing from all zoning districts. In July, 1990, Chester amended its zoning ordinance to allow multi-family housing only as part of a "planned residential development" ("PDR"). A PDR is a form of multi-family housing required to include a variety of housing types, such as single-family homes, duplexes and multi-family structures.

In January, 1992, a real estate developer and several persons who claim to have been unsuccessful in locating affordable housing in Chester challenged the amended zoning ordinance. They assert that PDRs are allowed on tracts of not less than 20 acres in only two designated "R-2" zoning districts. Due to existing home construction and wetlands considerations, only slightly more than half of all the land in the two "R-2" districts could reasonably support multi-family development. They further contend that this constitutes only 8.7% of the land in the town.

The challengers of the Chester amended ordinance also contend that PDRs must receive approval of the town planning board as to whether "in its judgment the proposal meets the objectives and purposes set forth in the zoning ordinance, in which event the board may grant approval subject to reasonable conditions and limitations." Furthermore, argues the challengers, the ordinance permits the board to hire, at the applicant’s expense, "a registered professional engineer, hydrologist, or any other applicable professional to assist the board in determining compliance with the zoning ordinance."

Please state all relevant legal issues the challengers should raise in their legal action and determine whether they will be successful on each issue. Be sure to include all reasons supporting your conclusions as to each issue.
QUESTION THREE

Suggested time: One (1) hour

The Al Capone Development Corporation owns a 4.1 acre lot on Ness Boulevard in the town of Eliot, Massachusetts. On April 24, 1992, Capone applied to the Eliot Board of Appeals for a variance to build 36 two-bedroom condominium units in seven two-story buildings on the Ness Boulevard property. Capone intended its condominiums exclusively for the elderly and handicapped. The site is located in an "R-4" zone which permits only single-family residences unless the property has frontage on Prohibition Road, Chicago Street or Machine Gun Alley.

At Capone’s hearing, the petitioner stated that the community needed elderly and handicapped housing and that the site had "unique physical and topographical features due to its historic use as a site for agricultural experiments." Furthermore, Capone stated that it is impractical to subdivide the property into individual lots because of a severe slope. Capone presented the testimony of an engineering expert who testified that Capone could develop 12 individual single family lots, but that it would be significantly more cost-effective to build the condominium units. Another expert presented testimony on the need for elderly housing, the advantages of multi-family housing and the compatibility of condominiums with the surrounding neighborhood.

The Board of Appeals voted to grant Capone’s variance stating in writing that:

The Ness Road site presents topographically unique characteristics causing substantial hardship. Granting the variance will not be adverse to public concerns or interfere with the scope and purpose of the zoning by-law. Furthermore, this is the minimum variance necessary to allow reasonable use of the land and its use would not impair the essential character of the neighborhood.

Several of Capone’s neighbors vehemently object to the granting of the variance and have come to you seeking representation. These neighbors call themselves the Eliot Ness Temperance Association. Two weeks have passed since the grant of variance. Please write a legal memorandum informing the association whether it should pursue litigation against Capone and the town. Please discuss whether there exist any legal impediments to the commencement of a law suit. Please determine which issues they should raise. Please support all your conclusions with legal reasons.

END OF EXAMINATION