LAND USE REGULATION

FINAL EXAMINATION

December 8, 1997

PROFESSOR PETER M. MALAGUTI

Your Social Security Number: _______________________

Your Social Security Number: _______________________

INSTRUCTIONS

PLEASE PUT YOUR ANSWERS RIGHT ONTO THIS EXAM BOOKLET. THERE IS NO BLUE BOOK.

YOU HAVE ONE AND ONE-HALF (1-1/2) HOURS.

ALL OF THE FOLLOWING QUESTIONS MUST BE ANSWERED WITHIN THE LINES PROVIDED AFTER EACH QUESTION. ALL ANSWERS EXCEEDING THE LINES WILL NOT BE COUNTED. THERE IS NO NEED TO USE UP ALL THE SPACE PROVIDED IF YOU CAN ANSWER THE QUESTION WITH JUST A FEW WORDS. PLEASE ALSO REMEMBER THAT I CAN ONLY CORRECT THAT WHICH I CAN READ. SO PLEASE TRY TO KEEP IT NEAT.

PLEASE NOTE THAT SOME OF THE LINES EXTEND ONTO THE NEXT PAGE. I GENERALLY GIVE FIVE (5) LINES PER QUESTION EVEN IF THE QUESTION CAN BE ANSWERED IN ONE WORD.

ASSUME THAT THE GENERAL LEGAL CONCEPTS WE STUDIED THIS SEMESTER APPLY UNLESS THE QUESTION CALLS FOR THE APPLICATION OF MASSACHUSETTS LAW.

QUESTIONS

1. In Massachusetts, why can't you obtain a variance unless the permit granting authority finds unique soil conditions, shape or topography which especially affect the land but don't generally affect the zoning district in which the land is located.

2. In a nutshell, why isn't a special permit "spot zoning"?
3. True or false, Massachusetts is one of the "majority" states in which the comprehensive or master plan can usually be oral. (Please circle the correct answer.)

True  False

4. What is the only major city in the United States which does not have a zoning ordinance?

5. What is the argument supporting the proposition that "transferable development rights" (TDRs) do not constitute a taking which requires monetary compensation?

6. What is the "priority of occupation" doctrine?
7. What was the most troublesome aspect of "private nuisance" as the sole public land use regulation doctrine (as it was prior to the advent of zoning)? (In other words, why wasn't nuisance good enough alone?)

8. In what area of land use regulation is the "rational planning process" an integral part?

9. What is "Euclidean Zoning" (Village of Euclid v. Ambler Realty Co.)?
10. Land use regulation involves a conflict between what two forces?

11. Why is the "Standard Zoning Act" drafted by the United States Department of Commerce in 1926 considered important even today?

12. Please briefly describe the legal test generally used to determine whether a land use ordinance or by-law satisfies the strictures of substantive due process.

13. What is the ultimate defense against a claim that a zoning action is "spot zoning"?
14. What is the rationale for requiring persons challenging the zoning activities of local boards to be "aggrieved persons"?

15. In the context of non-conformities, why is an "amortization" scheme, such as that used in California, more consonant with the goals of zoning than the potentially perpetual "grandfathering" method used in Massachusetts?

16. Please state at least one reason why it makes sense to file a preliminary plan when seeking subdivision approval in Massachusetts although it is not required for residential subdivisions.
17. In Massachusetts, what time period must pass before an abandoned non-conforming use may be deemed abandoned?

18. In determining whether a municipality can prevent a developer from building because of a zoning change, please briefly describe the difference between the "vested rights" theory and "estoppel" theory.

19. Generally, when are "development agreements" between a municipality and a developer acceptable?

20. In general terms, when is a developer entitled to an
"approval under the subdivision control laws not required" (ANR) plan?

21. What is a "reverse pocket veto"?

22. Why was *Nollan v. California Coastal Commission* decided under the "regulatory taking" category rather than the "physical intrusion" category of Fifth Amendment takings jurisprudence?

23. What is the difference between the "regulatory taking category" and "physical intrusion" categories?
24. Name one United States Supreme Court case which exemplifies the "physical intrusion" category.

25. What is the third and final category in Supreme Court Fifth Amendment takings jurisprudence?

26. In the 1984 case of Emerson College v. City of Boston, the Massachusetts Supreme Judicial Court declared unlawful the City of Boston's "fire protection fee" charged to non-residential buildings in proportion to the amount of water it would take to put out a fire in each such building. Briefly, what was the ground for the Court's decision?
27. As a practicing attorney who handles land use matters, why should you know the general terms of the federal Interstate Land Sales Act?

28. Why is it difficult to prevail on an exclusionary zoning claim under the federal equal protection clause, even when the claim is based on a racial classification?

29. What cause of action should a plaintiff raise which would likely be more successful than that mentioned in the last question?
30. Why can't an affluent town such as Weston or Dover increase minimum zoning requirements to five acres per residence to manage growth?

END OF EXAM

HAVE A GOOD HOLIDAY!