

LAND USE PLANNING EXAMINATION FALL SEMESTER 2002
SECTION A. PROF. T.J. REED

Assumptions: All events take place in the State of Camelot, a Mid-Atlantic state lying between New Jersey, Pennsylvania and Delaware. Camelot adopted statewide zoning enabling legislation (the Standard Zoning Enabling Act and the Standard Planning Enabling Act) in 1931. Camelot municipalities consist of towns, boroughs and cities. Counties have the power to zone unincorporated land.

Instructions: You may not bring in any outside materials.

Your Assignment: Your examination consists of two questions. Each question is of equal weight. Answer every part of every question to the best of your ability.

QUESTION ONE. ONE HOUR (50% of GRADE)

Mayer v. City of Clarksville. The City of Clarksville (pop. 78 ,790) straddles the east and west banks of the Green River in western Camelot. The Clarksville zoning ordinance provides for Zone X (Planned Unit Development). Zone X is a "floating zone" classification that may be attached to any tract of land of more than 10 acres by the Clarksville Plan Commission. Zone X has for its permissible uses, single family residential, multi-family residential and neighborhood commercial. To obtain a Zone X, an applicant must submit a site plan to the Plan Commission for review, then the City Council must vote on a resolution authorizing the change of zoning classification.

Gigantic Developers, LL.P., holds an option on a 12 acre tract on the west bank of the Green River in a neighborhood zoned R-1 (single family on /12 acre lots). The tract is an old farmstead that was annexed by the city some years ago. The owner of record is Mel Mayer, a retired farmer. Mayer filed a site plan to redevelop the tract as a Zone X. The tract would contain 40 townhouse units and a shopping center in the center of the tract. The developer portrayed the structures as pleasing Tudor-style Old English buildings. Gigantic provided a site map and specialists to make a presentation to the Plan Commission. The Plan Department recommended that Gigantic dedicate one acre for park purposes and pay an infrastructure fee of \$20,000.00 in lieu of requiring additional dedication of road right of way. The opponents were residents in the neighborhood who claimed that property values would be diminished if the proposed PUD were permitted. Gigantic opposed the conditions set by the Plan Commission as "confiscatory" because the conditions would add more than \$100,000 to the total project cost and reduce the number of townhouse units from 40 to 36. The Plan Commission voted 4-3 to approve the site plan, disregarding the Plan Department's recommendations. Numerous opponents were present at Plan Commission.

The City Council hearing on the proposed re-zoning was marred by sign-carrying protesters

and accusations that one of the Plan Commission members who voted for the gigantic proposal was the insurance agent for Gigantic's construction subsidiary, Monstrous Builders, Inc.

The City Council voted 5-4 to disapprove the project on the ground that the Plan Commission was arbitrary and unreasonable in failing to heed the Plan Department's requirements for dedication and payments in lieu of dedication.

YOUR TASK

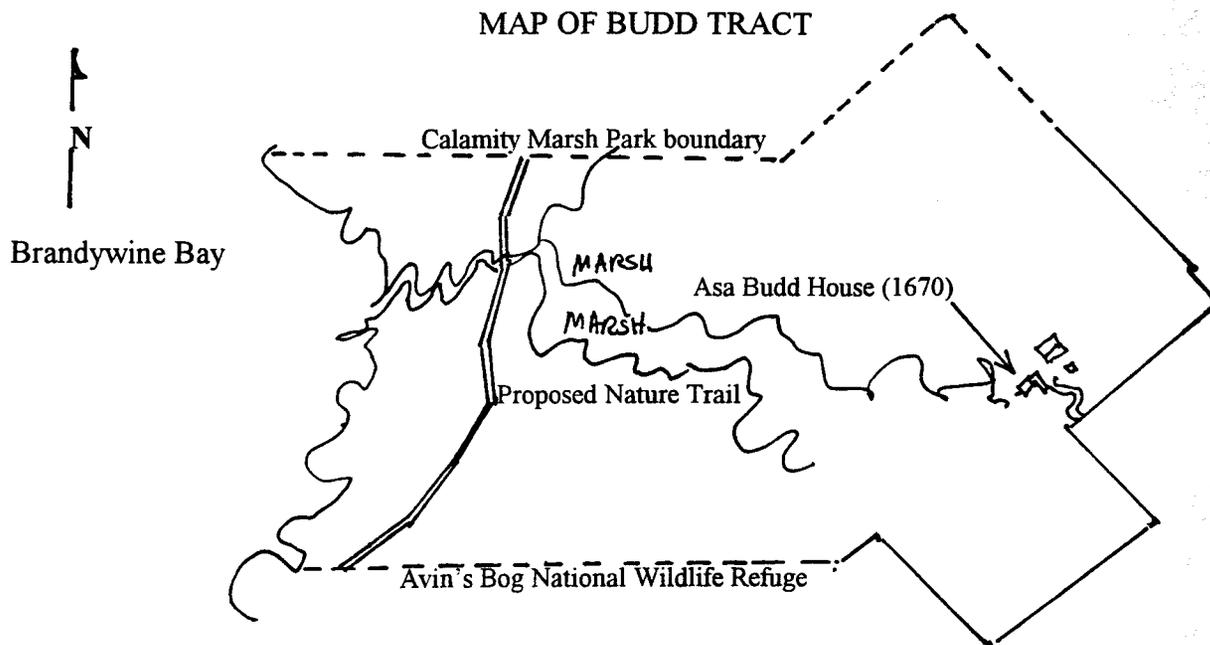
You represent Mayer, the ostensible real party in interest (but Gigantic pays your fee). Mayer wants you to file a plenary suit in Superior Court to challenge the decision.

- A. What contentions will you make in support of overturning the City Council decision?
- B. What will the City say in response to your contentions?
- C. How will the Superior Court decide the case? Please explain your answer

QUESTION TWO. ONE HOUR (50% of GRADE)

Falsetto Associates v. Coastal Commission of Camelot et al.

Patience Budd owned a 20 acre tract south of Port Damich fronting on Brandywine Bay. She inherited the tract from her grandfather, Billy Budd, a sailor. The farm house on the tract dates back to 1670. It is on the National Register of Historic Places and is listed as a protected property by the Essex County Historical Commission under the Monument ordinance. The tract is zoned R-3 (multi-family residential vacation homes). Miss Budd has a beach front between Calamity Marsh state park and lower Avin's Bog, a national wildlife refuge. Approximately 9 acres of the tract are salt marsh.



Miss Budd does not care a fig for things historical. She has sold the tract to Falsetto Associates who want to turn the Budd tract into a golf resort putting in an 18 hole championship golf course surrounded by attractive ultra-modern vacation homes. The project involves demolishing the Asa Budd house and filling in 5 acres of salt marsh.

In order to do the project, Falsetto must (1) obtain permission to fill the marsh from the Corps of Engineers; (2) obtain permission of the Camelot Coastal Commission for the basic project; (3) obtain permission to demolish the Asa Budd House from the Historical Commission and (4) file a site plan with the Essex County Plan Commission showing (1), (2) and (3)

The Corps of Engineers issued a section 4 permit to Falsetto to fill 5 acres, provided Falsetto establishes an equivalent acreage in strategic locations on the golf course (water hazards).

However, the Historical Commission refused to issue a certificate of appropriateness authorizing the destruction of the Asa Budd house. According to the County Zoning Ordinance, an aggrieved party may appeal a decision of the Historical Commission to the Board of Zoning Appeals. The Camelot Zoning Enabling Act permits an administrative appeal from the Board of Zoning Appeals to the Superior Court on the record of proceedings before the Board.

The Camelot Coastal Commission agreed to approve the site plan on the following conditions:

- (1) Falsetto must grant a 20 ft. easement for a nature trail from the Avins' Bog Wildlife Refuge to Calamity Marsh State Park; and
- (2) Falsetto must agree to preserve the Asa Budd house as a separate structure on at least a two acre tract

Falsetto refused to accept the Coastal Commission's conditions and the Commission refused to approve the project. The County Plan Commission rejected the site plan application.

YOUR TASK

You are the County Attorney and you represent the County Plan Commission. You expect Falsetto to take legal action against the County.

- A. What kind of legal action is Falsetto likely to take and what will Falsetto contend?
- B. What will your response be?
- C. Tell the County Plan Commission what the outcome is likely to be and explain your answer.

LAND USE PLANNING EXAMINATION
ANSWER PROGRAM
EXAM NO. _____

TOTAL POINTS: 52 POINTS. YOUR SCORE: _____

QUESTION ONE: 24 POINTS. YOUR SCORE: _____

A. WHAT CONTENTIONS WILL YOU MAKE IN SUPPORT OF OVERTURNING THE CITY COUNCIL DECISION? 4 POINTS. Your Score _____

1. The City Council Arbitrarily and Capriciously Failed to Zone the Mayer Tract Zone X. 2 Points. Your Score _____

According to the Clarksville Zoning Ordinance, the Mayer tract qualified for Zone X treatment by reason of size and the site plan. The City Council had no discretion to reject the plan or to demand additional "amenities" from the owner in return for approval. Denial was arbitrary.

2. The Dedication of Park Land and Payment in Lieu of Dedication Demanded by the City Council was a Taking of Property Without Due Process of Law. 2 Points Your Score _____

The imposition of additional park land dedication and a \$20,000 payment in lieu of dedication was not due to any additional stress on the park land or road net of Clarksville due to the intensive development of the site. These amenities benefitted others who lived off-site and are exactions without due process of law.

B. WHAT WILL THE CITY SAY IN RESPONSE TO YOUR CONTENTIONS? 8 POINTS
Your Score _____

1. The City Council Did Not Arbitrarily and Capriciously Failed to Zone the Mayer Tract Zone X. 4 Points. Your Score _____

The decision to approve or disapprove a parcel of property for Zone X treatment is a presumptively valid legislative act. The Mayer tract may have technically qualified for Zone X treatment by reason of size and the site plan. However, the City Council had the discretion to reject the plan or to demand additional "amenities" from the owner in return for approval. The property owner was not entitled to Zone X treatment by right, and the City Council exercised its discretion in refusing permission.

2. The Dedication of Park Land and Payment in Lieu of Dedication Demanded by the City Council Was Not Taking of Property Without Due Process of Law. 4 Points Your Score _____

The imposition of additional park land dedication and a \$20,000 payment in lieu of dedication was the result of increased use of the Mayer tract. Thirty-six townhouse units filled with owners and their children generated additional traffic on the adjacent road system demanding a turndown lane for safety. Additional park space requested was reasonably related to the needs of those who

would live in the Mayer tract on completion. Therefore, the requirements were reasonable and Mayer should have accepted the requested dedication & payment.

C. HOW WILL THE SUPERIOR COURT DECIDE THE CASE? PLEASE EXPLAIN YOUR ANSWER. 12 POINTS *Your Score*_____

1. *The City Council Arbitrarily and Capriciously Failed to Zone the Mayer Tract Zone X. 6 Points. Your Score*_____

The decision to zone or re-zone, or to fix the location of a floating zone is a legislative decision. The City Council's decision will not be overturned unless it is proved that the decision was arbitrary and unreasonable. Since the property owner refused to accept reasonable requirements for approval, including additional parkland and payment in lieu of dedication, rejection of the floating zone designation was not arbitrary or capricious (ALTERNATIVE FOR EQUAL CREDIT: Although the City Council's decision is presumptively valid and the party challenging the denial has the burden of proof that the decision was arbitrary and capricious, Mayer has met that burden because the zoning classification was denied for a qualified tract and site plan on the grounds that the developer was unwilling to give up valuable acreage to a park and pay a fee in lieu of dedication for a turn down lane. These exactions were not the result of the additional people and traffic added to the community by the development.

2. *The Dedication of Park Land and Payment in Lieu of Dedication Demanded by the City Council was a Taking of Property Without Due Process of Law. 6 Points Your Score*_____

When private property is taken for a public purpose without just compensation, the taking is a denial of due process of law. Any kind of land use regulation imposes some limitation on the property' owner's ability to use the land for an infinite number of purposes. In this instance, the requirement of additional park land and additional right of way was roughly proportional to the impact the development will have on the community and does not constitute taking. See *Dolan v. City of Tigard*, U.S. (199)

ALTERNATIVE FOR EQUAL CREDIT: The imposition of additional park land dedication and a \$20,000 payment in lieu of dedication was not due to any additional stress on the park land or road net of Clarksville due to the intensive development of the site. These amenities benefitted others who lived off-site and are exactions without due process of law. See *Nollan v. California Coastal Commission*, U.S. (1987)

QUESTION TWO: 28 POINTS. YOUR SCORE: _____

A. WHAT KIND OF LEGAL ACTION IS FALSETTO LIKELY TO TAKE AND WHAT WILL FALSETTO CONTEND? 4 POINTS Your Score _____

1. Falsetto Must Appeal the Denial of the Certificate of Appropriateness from the Historical Commission to the Board of Zoning Appeals. 2 Points. Your Score _____

Since an aggrieved party may appeal an Historic Commission decision to the BZA, the next step for Falsetto will be to take that appeal, and if necessary, take certiorari to the Superior Court for judicial review of the denial of permission to demolish.

2. Falsetto Must File a Civil Action Against the Coastal Commission on the Ground that the Denial of the Coastal Permit was Arbitrary and Unreasonable. 2 Points. Your Score _____

Since there is no administrative or other form of appeal from the decision of the Coastal Commission, falsetto will have to file a civil action, probably in multiple counts, against the Coastal Commission alleging that the Commission's failure to approve the site plan (due to Falsetto's unwillingness to donate the nature trail and protect the Asa Budd house) was arbitrary and unreasonable

B. WHAT WILL YOUR RESPONSE BE? 4 POINTS Your Score _____

1. The County Must Support the Historical Commission at the Board of Zoning Appeals and Beyond. 2 Points. Your Score _____

The County should take the legal position that the Historical Commission's decision not to issue a certificate of appropriateness for demolition was reasonable since the house is listed on the National Register and is protected by the monument ordinance.

2. The County Can Take no Action on the Site Plan Until the Coastal Commission and Falsetto Resolve Their differences. 2 Points. Your Score _____

Since site plan review is halted due to the controversy with regard to the donation of a nature trail and sparing the Asa Budd house, the County can neither grant nor deny Falsetto's site plan and building permit, lacking the necessary "sign-off" from the Historic Commission and the Coastal Commission.

C. TELL THE COUNTY PLAN COMMISSION WHAT THE OUTCOME IS LIKELY TO BE AND EXPLAIN YOUR ANSWER. 16 POINTS. Your Score _____

1. The Certificate of Appropriateness. 8 Points. Your Score _____

First, the denial of the certificate of appropriateness for demolition of the Asa Budd house was rationally based on objective facts. The Budd House is more than 300 years old and is a National Register structure. It is of at least statewide, if not national importance as an example of 17th century rural farmhouse architecture in Camelot. The BZA will presumably affirm the denial. See *Penn Central Transportation System v. City of New York*, U.S. (1978) On certiorari to

the Superior Court, the Superior Court is entitled to de novo review of the facts, and is not obliged to defer to the BZA. Despite this right, the Superior Court is very likely to affirm the decision of the Historical Commission and BZA. Refusal to grant a certificate for demolition is not clearly erroneous and capricious and the Historic Commission had a rational basis for its decision supported by objective facts.

EQUAL CREDIT for an alternative that finds the denial was arbitrary and unreasonable, supported by analysis showing that the Asa Budd house was of historical importance, but the undue hardship worked on Falsetto by denying it the right to demolish the house for a golf club development was severe and required special relief from the rigor of the Historic Monument Ordinance.

2. *The Dedication of the Nature Trail & The Park. 8 Points. Your Score _____*

The Coastal Commission may impose dedication to the public good when it is rationally related and roughly proportionate to the type of development undertaken on the tract. In this instance, the need for a nature trail was not caused by the proposed golf club housing project. It was the product of the common needs of the whole state of Camelot for recreation, and as such cannot be required as an exaction prior to development. See *Dolan v. City of Tigard*. The forced dedication is a taking without due process of law for that reason. The second requirement, preservation of the Asa Budd house on a two acre tract, goes beyond the Historical Commission's refusal to permit the house to be demolished. Again, the exaction appears to be for the general good of the whole state, and not required because of the adverse impacts of development of the Budd farm into a golf club. Therefore, Falsetto should prevail on a plenary suit to set aside the denial of a coastal permit.