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**LAW 635
CRP 545**

**University of New Mexico
Law and CRP
Professor Anita P. Miller
March 7, 2013**

INSTRUCTIONS:

This is an open book test. The situation is “hypothetical, even though the “facts” may sound very familiar. You may utilize your texts, lecture notes, and materials but only in print form, to assist you in writing your answer. Refer to case names in your discussion, as well as relevant statutes and ordinances, although you don’t have to include complete citations.

Read the entire hypothetical fact situation and additional instructions at the end of the exam. Identify **5 issues** for discussion, even though there are many more than 5 issues in the hypothetical. Don’t get bogged down in any one issue. Leave space at the end of each answer in case you want to add to it later. Due process issues should be addressed in all of your answers, **or** you may address due process as a separate answer.

You have 2.5 hours to complete the exam.

A developer sought to develop 30 acres which he owns on Coors Boulevard, within the Coors Corridor Sector Plan, and which would involve an amendment of that Plan, as well as an approval of a Walmart, proposed for the 30 acre site. The developer has successfully developed many shopping centers in Albuquerque, but has been able to get approval only after winning lawsuits against the City, which the City hasn’t forgotten. The land which it owns is also within a 100 acre subdivision plan which was approved in 2005, with the entire subdivision approval having been zoned SU1 for C-2 and PRC uses. The 2005 subdivision plan originally had 40 acres proposed as “village retail”, but each subsequent development had involved sale of the land to be developed to new owners who developed the residential developments instead. Now there’s only the 30 acres left to develop, and it’s still owned by the original owner.

As soon as the Walmart application was filed, the City passed a moratorium for 4 months, during which time it added floor area ratios, inside parking requirements, and other specific restrictions which Walmarts usually do not meet.

There was a major 4-way access into the entire subdivision, leading to a school and to the now deva two left turns onto local roads which pass the now occupied residential areas. To enter the Walmart parking lot, a customer would have to make a left turn onto a local road which

goes through the new residential areas. There are two other accesses into the potential Walmart, one off Montano and one off Coors, but none has a traffic signal with 4-way access.

The City Attorney had advised the City Council that this application is a legislative matter, since it involves changes to a Sector Plan.

Existing Neighborhood Associations have formed a coalition to oppose the Walmart. A new association was also been formed after the application was submitted to support its approval. At the City Council meeting, the President of the new organization was not allowed to speak, although one its members, who lived about 90 feet from the proposed Walmart, was allowed to talk to the Council for 2 minutes. Notice for the public hearing on the amended Uptown Sector Plan was given...publication and personal notice mailed to residents within 100 feet and to the established neighborhood association, although not to the new one which supported the Walmart

The City Council turned down the Walmart application, after it was recommended for approval by the EPC, and appealed to the LUHO by the Neighborhood Coalition. The LUHO had also recommended approval. One of the Councilor's husbands had been President of one of the Neighborhood Associations opposing the Walmart, and had convinced her to change her vote, originally for the Walmart, and now vote against it.

The Neighborhood Coalition is already up in arms because a mega-church wants to relocate in a vacant Shopping Center along Coors, expanding its parking lot to attract new members and also adding a soup kitchen to feed the homeless in one of the vacant stores in the . Center, which it states is part of its mission.

While the Walmart application was pending, the City also had to defend a lawsuit brought by the ACLU challenging the City's issuing a zoning violation because a movie theater in a nearby shopping center, zoned C-2, showed a movie entitled, "Playmates and Their Friends at Night". This film provided "adult entertainment" for just a weekend, as part of a film festival.

Back in the Bosque, an old kiva had been discovered during construction of a new addition to the School. The City Planning Office and subsequently the EPC and City Council would require the School to keep this land vacant as an historic landmark, thus limiting the amount of acreage which could actually be developed. The City would allow a higher building than would have been allowed under the original plan for the addition on the buildable part of the property as compensation for preventing development on the kiva site.

After the Walmart denial by the City Council, the developer both filed an appeal to the State District Court and an action in the U. S. District Court, joining the opposing neighborhood association and the City Council as defendants in both cases. Although the cases were different, in both cases the developer alleged several counts, including a plea for damages lost because of the lost leases.

The developer also filed a lawsuit in State District Court against the Neighborhood Coalition and its vociferous President alleging that it had trespassed on its property and extorted money from wealthy Albuquerque merchants to get them to oppose another Walmart in town.

In one of the strip shopping centers within the Coors Corridor Plan area there was a medical center which had an abortion clinic as a tenant. The City had enacted an ordinance limiting those people noisily opposing abortion from protesting within 100 feet of the clinic entrance, but allowing protestors to speak to patients, even against their will, as long as they stayed at least 8 feet away from them as they walked from the parking lot to the clinic entrance.

Protestors had placed a mobile electronic sign on vacant property adjoining the parking lot of the abortion clinic with quickly changing messages opposing both the abortion clinic and the Walmart which the sign said would interfere with locally owned businesses. Opponents of the Walmart also gave out flyers in the old mall's parking lot. There were several freestanding signs on the mall property advertising vacant space in the mall.

In the strip shopping center across from the mall a storefront was rented by a sect which slaughtered rabbits during its religious ritual and then ate them. Renters in the strip mall as well as in the residential area which backed up to the storefront were offended both by the practice and by the careless disposal of the uneaten remains of the rabbits. The sect had offered to donate a 10 foot statue of a giant rabbit on Civic Plaza as a shrine, if it were left alone.

SELECT 5 ISSUES TO DISCUSS.

- 1. For each issue you choose, state the position which the City Attorney would present to justify its position.**
- 2. State the legal position which the developer/property or other opponent of the City's position involved in a legal case would rely on to advance its position.**

- 3. If there are neighbors/neighborhood associations or environmental organizations which might be involved in the issues you choose, justify their legal positions.**
- 4. Based on your legal analysis of each issue, how would you decide the case if you were the appropriate appellate judge writing the opinion? If the issue you choose has more than one “sub-issue” you will get more credit if you discuss all of them in one answer, rather than splitting them into several small answers, e.g. if more than one First Amendment issue applies to a situation.**
- 5. Be sure to address due process/equal protection issues where relevant in your answers. Alternatively, you may choose to have one answer devoted entirely to all of the due process/equal protection issues that arise in the hypothetical.**

I'd like to see 5 great essays about 5 issues in the hypothetical, demonstrating that you understand the material presented in the course so far!