

**Part II: Essay Question (60 minutes estimated time).** In 1990 Fred Farmer was looking for land to add to his extensive agricultural holdings. He saw an advertisement for a 160-acre farm called Badacre in Grim County for sale, and went to inspect it. He quickly determined that the soil on Badacre was severely depleted, that it was seriously eroded, and that it had little agricultural value. He checked with the Grim County planning department and learned that the farm was zoned A-1 (exclusive agriculture use). Because of the farm's poor condition, he was able to purchase it for only \$20,000.

Farmer actually farmed Badacre for five years, but with decreasing yields each year. He determined that it would be possible to put Badacre in somewhat better agricultural condition, but only by very costly measures, including major additions of fertilizer and topsoil. He concluded that the land's potential agricultural returns would not justify these expenditures, so he simply continued depleting the land, and in 1996 he discontinued farming it altogether. It has been vacant and unused since that time.

As the growth of Grim City approached Badacre, Farmer decided that it was time to subdivide Badacre and sell lots. He applied to the Grim County planning department in 1998 for a rezoning to R-10 (single-family houses on 10,000 square foot minimum lots) and for subdivision approval. He submitted all of the necessary documents, including a preliminary plat of the proposed subdivision.

The county first considered Farmer's rezoning application. After hearings before the Grim County planning commission and the county supervisors (the governing body of the county), the land was rezoned R-10 as Farmer had requested. The planning commission then scheduled a hearing on the subdivision request. (Under the subdivision ordinance, only planning commission approval was needed for the subdivision.) However, a group of environmentalists mounted a vigorous attack on the subdivision, asserting that wild birds frequently alighted on the Badacre and that subdividing it would drive them away. They testified in opposition to the project at the planning commission's hearing, which was held in April 1998. No other argument for refusing the subdivision approval was advanced by anyone, and the planning commission members conceded at the hearing that Farmer's plat met all of the technical requirements of the subdivision ordinance.

The planning commission did not make a prompt decision, primarily because it realized that any decision would be unwelcome by some interested parties. Instead, it "sat on" the application until March 2000. At that time, it finally issued a decision refusing to approve the subdivision. It gave no formal reasons for its decision. When Farmer attempted to learn whether a different subdivision plat (e.g., one with fewer dwelling units) would be acceptable, he was unable to get any answer, either from the planning commission itself or from the county's staff members.

The week after the planning commission issued its decision, the county supervisors issued a notice that they were considering rezoning the land back to A-1. (Farmer, of course, did not request any such rezoning.) After the necessary notice and hearing, and despite Farmer's strong objections, the supervisors did indeed rezone the land A-1 in April 2000.

Farmer believes that the land has little or no value unless it can be subdivided. A residential subdivision is, in his opinion, virtually the only practical use for the land. He also believes that the environmental opposition, based on the birds' use of the land, is essentially a sham, that there is no significant bird population using the land, and that the real opposition of the environmentalists is based on their desire to preserve open space for the county without paying for it.

Farmer has consulted you, asking your opinion as to whether a suit against the county would be likely to succeed. He would be happy either to obtain compensation (in the amount – approximately \$2 million – that the land would be worth if subdivision approval were granted), or in the alternative, to obtain an injunction compelling the county to issue the subdivision approval that he requested. He believes that the county supervisors and the planning commission are well aware that he is entitled to

subdivide the land, and he would be pleased if he could obtain personal damages against them.

Please write a memo to Farmer, discussing the legal theories that might plausibly be employed in a suit against the county and analyzing their probable treatment in the courts.

