Course Overview

This course will assist you in getting a better understanding of the legal and administrative aspects of regulating land use at various levels of government, and the changing legal framework of regulations such as zoning, urban renewal and eminent domain, regulatory takings, exactions, landmarks and historic preservation, environmental laws, growth management and the relationship of the planner to the law. The course will cover basic legal procedures and will use lectures, case law readings as well as statutory and regulatory materials to help you develop a better understanding of the relationship between the law and land use planning.

Politics, economics and social norms play a critical role in the use and development of land, often adapting or even flouting the “law on the books.” Although principally concerned with the official legal rules governing of land uses, this course also will examine the interplay of formal and informal controls in shaping land use patterns. This course is intended to provide basic skills and develop competencies in:

1. Using of primary source materials, such as court cases, statutes and regulations to understand the law.
2. Briefing a judicial case, and comparing the case to other cases in the same and different jurisdictions.
3. Understanding the court system, how it operates, including the appeals process, and its relevancy to the planning process.
4. Understanding the legal underpinning of land use regulation.
6. Understanding the interplay between the “law” and land development, and the effects of zoning, discrimination, housing priorities, and growth management techniques.
7. Using critical legal skills to identify issues and understand constitutional, statutory and regulatory constraints.

This course is taught using both lectures and the “casebook method” that is utilized in law schools. Throughout the semester, students will be required to brief and discuss cases in class. Also, each student will be called on at least once to be the “expert” on a case and to give a short presentation to the class.

Grading

Classroom participation, “expert” presentations and case brief assignments are very important components of the class, and will be factored into final grade. There will be a take-home written examination at the conclusion of the course.
The final grade for the class will be determined as follows:
20% - Classroom Participation, Expert Analysis and Case Briefs
80% - Final Exam

**Meeting Time and Place**
Mondays from 6:45 pm – 8:25 pm
Meyer Hall, Room 122

**Reading Assignments**
All reading materials will be posted on NYUClasses or are available online. Reading assignments are provided for each class. Students should brief all cases from the required readings prior to class and should be prepared to discuss the required readings.

Supplemental materials are also provided for some classes. Students are not required to read the supplemental materials and will not be asked to discuss these materials in class. However, students may be tested on any topic covered in the lectures and final exam questions may be drawn from the supplemental materials.

**Office Hours and Contact Information**
Office hours will be by appointment only.

Professor Levine: mark.levine@akerman.com or 212-880-3832
Professor O’Brien: wmo214@nyu.edu or 718-710-8366
Class Schedule

1. **INTRODUCTION TO THE COURSE**
   
   **January 27**
   
   Overview of the Course
   Relationship of the Planner to the Law
   Influence of Time, Culture and Politics on Law
   Brief History of Property Law
   Statutes vs. Constitutional Law
   Comparing Jurisdictions
   Hierarchy of Courts
   Case Law
     - What Is “Case Law”?  
     - How to Read a Case  
     - How to “Brief” a Case  
     - Synthesizing Cases

2. **COMMON LAW OF NUISANCE**
   
   **February 3**
   
   What forms of land use regulation preceded zoning and what non-zoning land use approaches still exist? (Torts, nuisances, codes, deed restrictions, etc.) What were the advantages/disadvantages of these non-zoning approaches and what were the political influences on the cases? Who created the nuisance? Who was there first? Did the rulings follow the concept that the one who created the nuisance was liable? What kind of things can be considered a “nuisance” in today’s world?

   **Readings**
   A. **HADACHEK v. SEBASTIAN**, Supreme Court of the United States (1915)
   B. **REINMAN v. LITTLE ROCK**, Supreme Court of the United States (1915)

   **Supplemental Materials**

3. **NUISANCE V. ZONING LEGISLATION**
   
   **February 10**
   
   Constitutionality of Zoning
   Due Process
   How do regulations (police powers) differ from takings (condemnation)? What is an enabling legislation? What is its relevancy to a decision? Even if zoning is constitutional, can a specific plan be unconstitutional? Is interim zoning legal? What is spot zoning?
Readings

A. **VILLAGE OF EUCLID v. AMBLER REALTY COMPANY**, Supreme Court of the United States (1926)
B. **NECTOW v. CITY OF CAMBRIDGE**, Supreme Court of the United States (1928)
C. **UDELL v. HAAS**, Court of Appeals of New York (1968)
D. **ELLICKSON & BEEN**, pp. 73-104
E. **ELLICKSON & BEEN**, pp. 352-360
F. 5th Amendment of the U.S. Constitution (Due Process Clause), available at http://www.usconstitution.net/const.html#Am5

**Hand in a one page brief of Village of Euclid v. Ambler Realty Company, so that we can provide feedback on your case briefing. It will not be graded.**

4. **NO CLASS – PRESIDENT’S DAY**  

5. **TAKINGS I – PHYSICAL TAKINGS**  

February 17

What is “Public Use”? What is “Public Purpose”? What is “Just Compensation”? Understanding a recent ruling of the U. S. Supreme Court on eminent domain and its effects. Discussion of the urban renewal process (e.g., blight findings) and condemnation in general. Review 5th Amendment of the U.S. Constitution. Can eminent domain be used to help certain property owners gain at everyone else’s expense?

Readings

A. 5th Amendment of the U.S. Constitution (Takings Clause), available at http://www.usconstitution.net/const.html#Am5
B. **BERMAN v. PARKER**, Supreme Court of the United States (1954)
C. **KELO v. NEW LONDON**, Supreme Court of the United States (2005)
D. **KAUR, TUCK-IT-AWAY, INC. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION**, New York State Appellate Division, 1st Dept. (2009)
E. **MATTER OF GOLDSTEIN v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION**, Court of Appeals of New York (2009)
F. **KAUR, TUCK-IT-AWAY, INC. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION**, Court of Appeals of New York (2010)


Supplemental Materials

A. **DENIHAN v. O’DWYER**, Court of Appeals of New York (1951)
B. **KASKEL v. IMPELLITTERI**, Court of Appeals of New York (1953)
6. **TAKINGS II – REGULATORY TAKINGS**  
March 3

When have regulations or governmental actions stepped over the line to become confiscatory or a “taking”?

What kind of governmental actions can be considered a “taking” even if no one intended for the government to acquire the property? When does the taking occur? Is the government responsible for any loss during this time period? When is a moratorium constitutional? How does it differ from interim zoning?

**Readings**

A. UNITED STATES v. CAUSBY, Supreme Court of the United States (1946)

B. FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, Supreme Court of the United States (1987)

C. DAVID H. LUCAS v. SOUTH CAROLINA COASTAL COUNCIL, Supreme Court of the United States (1992)

D. TAHOE-SIERRA PRESERVATION COUNCIL v. TAHOE REGIONAL PLANNING AGENCY, Supreme Court of the United States (2002)

**Supplemental Materials**

A. Takings Decisions: A Chronology for Congress (2003) [A good source for review of many cases dealing with the subject]

B. AGINS v. CITY OF TIBURON, Supreme Court of the United States (1980)

7. **HISTORIC PRESERVATION**  
March 10

**Readings**

A. PENN CENTRAL TRANSPORTATION CO. ET AL. v. NEW YORK CITY, Supreme Court of the United States (1978)

B. MATTER OF CITIZEN EMERGENCY COMMITTEE TO PRESERVE PRESERVATION v. TIERNEY, 103373/08 (2008)

C. MATTER OF CITIZEN EMERGENCY COMMITTEE TO PRESERVE PRESERVATION v. TIERNEY, 103373/08 (2010)

D. New York City Charter, Sections 3020-3021

E. Administrative Code of the City of New York, Section 25-301, et. seq.

F. Rules of the City of New York, Title 63

G. Zoning Resolution of the City of New York, Section 81-63 (Transfer of Development Rights from Landmark Sites)

8. **NO CLASS – SPRING RECESS**  
March 17

9. **CONTEMPORARY ZONING TOPICS**  
March 24
What are transferable development rights (TDR’s)? How are they utilized? How can planners be careful when using terms or concepts to make sure that their actions are constitutional?

Downzoning and Vesting

Incentive Zoning

Special Districts

Readings

A. FRED F. FRENCH INVESTING COMPANY, INC. v. CITY OF NEW YORK, Court of Appeals of New York (1976)

   - Section 12-10 definition of “Zoning Lot”
   - Article IX, Chapter III (Special Hudson Yards District)
   - Article IX, Chapter VIII (Special West Chelsea District)
   - Section 81-71 (Special Regulations for the Theater Subdistrict)

C. Rezoning to Preserve Neighborhood Character: Downzoning in New York City, David Karnovsky, Counsel to the NYC City Planning Commission

Supplemental Materials

A. NEWPORT ASSOCIATES v. SHELDON S. SOLOW, Court of Appeals of New York (1972)

B. MACMILLAN, INC. v. CF LEX ASSOCIATES, Court of Appeals of New York (1982)


10. EXACTIONS & COMMUNITY BENEFITS AGREEMENTS

March 31

How innovative can a planner be with private sector restrictions before the courts intervene and invalidate the zoning provisions? What is necessary for a plan to be constitutional, reasonable and part of a comprehensive plan with the proper enabling legislation? Does the enabling legislation permit this kind of planning? What tests are needed to ensure that the plan fits under the general welfare of the public or has a close relationship to the goals of the legislation and is not just a taking? Is the power to exact concessions from developers part of the government’s police powers? If so, what makes this a legitimate exercise of police power? When is an exaction a taking?

Readings

A. NOLLAN V. CALIFORNIA COASTAL COMMISSION, Supreme Court of the United States (1987)
B. FLORENCE DOLAN V. CITY OF TIGARD, Supreme Court of the United States (1994)
C. KOONTZ V. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, Supreme Court of the United States (2013)
D. Role of Community Benefits Agreements in the New York City’s Land Use Process, New York City Bar Association (2010)
E. Materials on Kingsbridge Armory

11. GROWTH MANAGEMENT

April 7

When does “growth management” step over the line from preserving neighborhood character to exclusionary zoning? Can you prevent future changes to the current characteristics of a neighborhood? Where should people of low or middle incomes live? Should municipalities or region house a fair share of their low or middle class or can they exclude certain kinds of housing units all together?

Use of Zoning to Protect Certain Industries (e.g., Garment District, Industrial Manufacturing Districts)

Readings

A. IN THE MATTER OF RUTH GOLDEN ET AL. v. PLANNING BOARD OF THE TOWN OF RAMAPO ET AL., Court of Appeals of New York (1972)
B. VILLAGE OF BELLE TERRE ET AL. v. BORAAS ET AL., Supreme Court of the United States (1974)
D. Summary Materials on Westchester County Low-Income Housing Program

Supplemental Materials

A. SOUTHERN BURLINGTON COUNTY NAACP v. TOWNSHIP OF MT. LAUREL I, Superior Court of New Jersey, Appellate Division (1972)
B. SOUTHERN BURLINGTON COUNTY NAACP v. TOWNSHIP OF MT. LAUREL II, Supreme Court of New Jersey (1983)
C. CONSTRUCTION INDUSTRY ASSOCIATION OF SONOMA COUNTY v. THE CITY OF PETALUMA, United States Court of Appeals for the Ninth Circuit (1975)

12. VARIANCES, SPECIAL PERMITS, REZONING, CITY MAPPING ACTIONS AND THE UNIFORM LAND USE REVIEW PROCEDURE (ULURP)

April 14

Readings

A. New York City Charter, Sections 191-204 (ULURP and the City Planning Commission)
B. Rules of the City of New York, Title 62, Chapter 2 (ULURP), available at http://24.97.137.100/nyc/rcny/entered.htm (Select Title 62, Chapter 2)
   - Article VII, Chapter 4 (Special Permits by the City Planning Commission)
   - Sections 74-711 & 74-712 (Landmark Preservation and Development in Historic Districts)
   - Sections 74-721 through 74-80 (Other Special Permits by the City Planning Commission)
   - Section 72-00 through 72-23 (Interpretations and Variances by the Board of Standards and Appeals)
   - Sections 72-30 through 72-41 (Additional Powers of the Board of Standards and Appeals)

13. Guest Lecture April 21
14. Environmental Review April 28
   How does ULURP interface with city and state environmental regulations? What exactly comprises the environment in a City and State Environmental Quality Review? How is the Environmental Impact Statement (EIS) process utilized as a way of stalling projects? How do environmental groups obtain standing? How are hypothetical development scenarios used to analyze the environmental impacts of proposing zoning changes?
   Readings
   A. State Environmental Quality Review Act (SEQRA)
   Supplemental Materials
   A. SEQR Regulations- NYCRR 617, available at http://government.westlaw.com/linkedslice/default.asp?SP=nycrr-1000 (Select Title 6, Chapter VI, Part 617, within Regulations for the Department of Environmental Conservation Title-6)
15. Environmental Review (continued) May 5
   Readings
   A. H.O.M.E.S. ET AL. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION ET AL., Supreme Court of New York, Appellate Division, Fourth Department (1979)
   B. MATTER OF JACKSON v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION, New York State Court of Appeals (1986)
C. CHINESE STAFF AND WORKERS ASSOCIATION ET AL. v. CITY OF NEW YORK ET AL., Court of Appeals of New York (1986)

D. MATTER OF CHINESE STAFF WORKERS ASSOC. v. BLOOMBERG, New York County Supreme Court (2009)

Supplemental Material

A. IN THE MATTER OF GRICEL NEVILLE ET AL. v. EDWARD I. KOCH, Court Of Appeals of New York (1992)

16. **THE FUTURE OF LAND USE REGULATION** May 12

Environmental Review: Greenhouse Gas Emissions and Climate Change Impacts

New Urbanism

Another Way to Zone?

AT THE END OF THIS CLASS YOU WILL RECEIVE A TAKE HOME FINAL EXAMINATION. YOU WILL HAVE ONE WEEK TO RETURN THE FINAL EXAMINATION TO US BY 9PM ON MAY 19, 2013.