Land Use Law: The Planning Perspective

Legal and administrative aspects of regulating land use at various levels of government, and understanding the changing legal framework of the regulations such as zoning, urban renewal and eminent domain, inverse condemnation, landmarks and religious considerations, environmental laws, growth management and the relationship of the planner to the law. The course will cover a basic understanding of legal procedures and use case law as well as statutory and regulatory materials to help you develop a better understanding of the relationship between the law and basic land-use planning skills.

P11.1605.002  Spring 2010  Professor Mark A. Levine

Mondays from 6:45 pm – 8:25 pm
Office Hours – by appointment only
Email:  Mark.Levine@nyu.edu, mlevine@herrick.com or call for an appointment at 212-592-1456.

All the assigned readings are on BLACKBOARD. Assignments should be read in advance of classes to enhance classroom discussion and for each student to prepare their own Study Guide. The course includes a “case method” approach to learning, similar to what is utilized in law school classes as well as lectures and class discussion. Each student will be given the opportunity to brief cases and be the “expert” on that case for the day and make a short presentation to the class. It is anticipated that there will be one in-class midterm exam. There will be a take-home written examination at the conclusion of the course. Classroom participation is important and also will be considered towards the final grade.

Competencies and Skills that the course is designed to strengthen:

1. The use of primary sources, such as court cases, statutes and regulations to assist you in understanding and the briefing of a judicial case, including the fact pattern, holding and comparing that case to other cases in the same and different jurisdictions.
2. Your better understanding of the court system, how it operates, including the appeals process and its relevancy to the planning process.
3. An understanding of the legal underpinning of land use regulation.
4. Your ability to identify and analyze legal trends in American society.
5. Assist you in better understanding the interplay between the “law” and its part in development, zoning, discrimination, housing priorities, and growth management techniques.
6. Assist you in learning how to think like a lawyer and communicate with lawyers.
7. To gain experience speaking in front of an audience.
1. **INTRODUCTION TO THE COURSE**  

   **January 25, 2010**

   A. Introduction to the Course and Professor  
   B. Planners Relationship to the Law and this class  
   C. Understanding the influence of time and culture and politics on law, especially the politics of the Supreme Court  
   D. Statutes vs. Constitutional law  
   E. Comparing Fact Patterns - What is “Case Law?” Reviewing similar fact patterns to narrowly define the specific tests or elements. Majority and Minority Opinions.  
   F. Comparing Jurisdictions, Hierarchy of Courts  
   G. How to read a case on Blackboard? (Headnotes, Syllabus-Summary, Opinion)  
   H. Analyze both Sebastian v. Hadcheck and Udell v. Haas

**READINGS:**

**SEBASTIAN v. HADACHEK**  
**U.S. Supreme Court 239U.S. 394 (1915)**

**Write a **ONE PAGE** summary for this case that includes:**

1. Who sued who?  
2. Why?  
3. What court decided this case?  
4. The fact pattern, what happened?  
5. The court’s ruling from the lower level up to the highest level;  
6. What is the “holding”…What did the Court rule?  
7. Try making a map of the land involved (use any mapping tool);  
8. Look at the headnotes and copy the pertinent ones to create your own study guide.  
9. Make an additional copy of your ONE PAGE SUMMARY to hand in on the first day of class so that I can see if you are doing it correctly. It will not be graded.

**BACKGROUND READING:**

A. 5th Amendment of the U.S. Constitution – Highlight Property Clause and copy it for your notes. [http://www.usconstitution.net/const.html#Am5](http://www.usconstitution.net/const.html#Am5)

2. **NON-ZONING LAND-USE CONTROLS**  
**February 1, 2010**

What preceded zoning and what other 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 ruling follow the concept of the one who created the nuisance was liable? What kind of things can be considered a “nuisance” in today’s world? How were they resolved?
LEGAL TOPIC: TORTS AND DEED RESTRICTIONS

READINGS:

A. Reinman v. Little Rock, 237 U.S. 171 (1915)
B. Respublica v. Urbin Fuquet 1799 - PA
C. Rose v. Socony 1934 - RI
D. Boomer v. Atlantic 1970 - NY

3. LEGAL BASIS FOR MODERN ZONING: The 1916 N.Y.C. ZONING RESOLUTION - WHY ENACTED? February 8, 2010

Why and when is zoning constitutional?

How do regulations (police powers) differ from takings (condemnation)? What is 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? Does everyone benefit from zoning or can single owners be impacted for everyone else?

READINGS:

A. UDELL v. HAAS Court of Appeals of New York (1968), [New York State’s requirement for comprehensive planning]
B. VILLAGE OF EUCLID ET AL. v. AMBLER REALTY COMPANY SUPREME COURT OF THE UNITED STATES November 22, 1926, Decided
C. NECTOW v. CITY OF CAMBRIDGE ET AL. SUPREME COURT OF THE UNITED STATES May 14, 1928, Decided
E. EVES v. ZONING BOARD. The Supreme Court of Pennsylvania September 26, 1960

** NO CLASS ** February 15, 2010 President’s Day **
4. EMINENT DOMAIN  February 22, 2010

What is “Public Use”?  What is “Public Purpose”?  What is “Just Compensation”?

Current Ruling of the U. S. Supreme Court on Eminent Domain and its effects on the rest of the country. Discussion of Urban Renewal Process (Blight Findings) and Condemnation in general. Current Applications. 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. DENTHAN v. O’DWYER- Court of Appeals of New York  May 24, 1951
B. KASKEL v. IMPELLITTERI- Court of Appeals of New York October 23, 1953
C. Berman v. PARKER- SUPREME COURT OF THE UNITED STATES - November 22, 1954
D. KELO v. NEW LONDON- US Supreme Court certiorari granted Sept. 28, 2004
E. Kaur et. al. Petitioners v. New York State Urban Development Corporation (Columbia University Case)

5. REGULATORY “TAKINGS”  March 1, 2010

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? Initial discussion of downzoning.

READINGS:

A. UNITED STATES v. CAUSBY ET UX. SUPREME COURT OF THE UNITED STATES May 27, 1946, Decided
C. AGINS ET UX. v. CITY OF TIBURON SUPREME COURT OF THE
UNITED STATES  June 10, 1980, Decided

D.  SAN DIEGO GAS & ELECTRIC CO. v. CITY OF SAN DIEGO ET AL.  SUPREME COURT OF THE UNITED STATES  March 24, 1981, Decided

E.  FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, CALIFORNIA  USSC- June 9, 1987, Decided

F.  DAVID H. LUCAS, PETITIONER v. SOUTH CAROLINA COASTAL COUNCIL  SUPREME COURT OF THE UNITED STATES  June 29, 1992, Decided

BACKGROUND READING:


6.  MIDTERM: March 8, 2010 - Remainder of Class - Review current zoning topics

**SPRING RECESS MARCH 15 - 20 -- NO CLASS**

7.  INNOVATIVE ZONING CONTROLS  March 22, 2010

How innovative can a planner be with private sector restrictions before the courts intervene and invalidate the zoning provisions? What is necessary for the 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? When is a moratorium constitutional? How does it differ from interim zoning?

Standing – Who Can Sue?

READINGS:

A.  In the Matter of Ruth Golden et al., Respondents, v. Planning Board of the Town of Ramapo et al., Appellants; Rockland County Builders Association, Inc. et al., Respondents, v. John McAlevey et al., Constituting the Town Board of the Town of Ramapo, et al., Appellants  Court of Appeals of New York  May 3, 1972, Decided

B.  Nollan et ux. v. California Coastal Commission  Supreme Court of the United States June 26, 1987, decided

C.  Florence Dolan, Petitioner v. City of Tigard  Supreme Court of the United States June 24, 1994, decided

D.  Tahoe-Sierra Preservation Council, Inc., et al., Petitioners v. Tahoe Regional
8. **GROWTH MANAGEMENT: EXCLUSIONARY ZONING OR PRESERVING THE CHARACTERISTICS OF THE NEIGHBORHOOD?**  

When does ‘Innovative Zoning” step over the line and become discriminatory and a tool to prevent certain groups from being able to live in an area? 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 -- Garment District, Industrial Manufacturing Districts Tools including limitation of size, special permits and use restrictions.

**Legal Topic:** Amicus Brief – Pro Bono groups.

**READINGS:**

A. **Village of Belle Terre et al. v. Boraas et al.** Supreme Court of the United States April 1, 1974, decided  
B. **Roseann Baer et al., Respondents, v. Town of Brookhaven et al., Appellants** Court of Appeals of New York March 23, 1989, decided  
C. **Southern Burlington County NAACP v. Township of Mt. Laurel I**, 119 N.J. Super. 164; 290 A.2d 465  
D. **Southern Burlington County NAACP v. Township of Mt. Laurel II**, 92 N.J. 158; 456 A.2d 390  
E. **Village of Arlington Heights et al. v. Metropolitan Housing Development Corp** Supreme Court of the United States January 11, 1977  

9. **CONTEMPORARY ZONING TOPICS**  

Today’s zoning is based on districts, classification of uses, bulk regulations and a zoning lot. How can we learn specific details from how different Courts interpret cases with similar fact patterns? What are TDR’s? How are they utilized? How can planners be careful when using terms or concepts to make sure that they are constitutional under their state or municipality?  

Initial discussion of downzoning and vesting.
Special Districts - History Purpose

Zoning Techniques - Incentives Zoning
Inclusionary Zoning

Development Controls Other than Zoning

1. Building Code
2. Mapping Actions
3. Landmarks, Historic Districts
4. Environmental
   (a) air
   (b) Noise

READINGS:


ADDITIONAL READING:

Please read the article by David Karnovsky, General Counsel for CPC, on Rezoning to Preserve Neighborhood Character: Downzoning in New York City (Vesting).

10. THE LEGALITY OF ENVIRONMENTAL REGULATIONS, April 12, 2010

READINGS:

A. State Environmental Quality Review Act (SEQRA) and Regulation

(Select Title 6, Chapter VI, Part 617)

B. NYC Charter §197C

NY City Charter Section 197-c: http://24.97.137.100/nyc/charter/entered.htm
(Select Chapter 8, Section 197-c)

C. City of New York Counterpart (CEQR)

CEQR: http://24.97.137.100/nyc/rcny/entered.htm
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 if they are not deemed complete or scoped properly? How do Environmental Groups obtain standing? How can you use hypothetical scenarios when proposing zoning changes?

**READINGS:**

A. **Chinese Staff and Workers Association et al., Appellants, v. City of New York et al.**, Court of Appeals of New York November 18, 1986, Decided


C. **H.O.M.E.S. et al., Appellants, v. New York State Urban Development Corporation et al., Respondents.** Supreme Court of New York, Appellate Division, Fourth Department July 13, 1979

D. **Matter of Jackson v. New York State Urban Development Corporation** 67 NY 2d 400, 503 NYS 2d 298


11. **SPECIAL ZONING DISTRICTS, April 19, 2010**

**CONTINUATION OF ENVIRONMENTAL CASES**

Transfer of Development Rights (TDR); See §12-10 Definition of Zoning Lot of the Zoning Resolution

Special West Chelsea Zoning District
12. LANDMARKS PRESERVATION, April 26, 2010

   Historic Districts
   New York City Landmarks Statute

A. Penn Central Transportation Co. et al. v. New York City et al. Supreme Court of the United States, June 26, 1978

AT THE END OF THIS CLASS YOU WILL RECEIVE A TAKE HOME FINAL. YOU WILL HAVE ONE WEEK TO RETURN THE FINAL EXAMINATION TO ME ON OR BEFORE MAY 10, 2010 BY 7 P.M.