Course Overview and Goals

This course examines laws regulating the use and development of land. In the United States, land use is regulated 1) privately through negotiated easements and covenants; 2) judicially through nuisance law or other common law principles; and 3) publicly through federal, state and local legislation or regulation covering such issues as zoning, eminent domain, subdivisions, building codes, aesthetic controls, historic preservation, environmental protection and fair housing requirements. Each of these land use tools, as well the principal constitutional constraints placed upon them, will be discussed in this course.

Politics, economics and social norms also 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 will rely on case law, statutes and regulations as primary sources to help students develop a better understanding of the relationship between the law and land use planning. Specifically, the course aims to provide the following competencies and skills:

1. Develop the ability to find, understand and brief a judicial opinion, as well to grasp the implications of influential legal decisions for planning practice.
2. Develop the critical legal skills necessary to assess whether a land use regulation is legal or constitutional.
3. Increase awareness of how the law affects urban growth, real estate development and land use patterns.
4. Learn to spot critical legal issues in contemporary urban planning.

No prior background in law or legal analysis is required or expected from students in the course. The first class will be dedicated to providing an overview of the U.S. legal system, basic legal concepts and techniques for reading and understanding legal opinions. These skills will be reinforced throughout the course.

Meeting Times and Place

The course will meet on Monday evenings between 6:00 and 9:30 pm in Room 407 of the Silver Center for Arts and Sciences. Class will begin right on the hour; please be on time. Students will have a twenty-minute break at roughly 7:30 pm. Food and drink are allowed in the classroom; however, students are asked to be courteous and clean up after themselves.
Please note that Monday, May 31 is a holiday (Memorial Day) and class will not be held that day. **A make-up class will be held on Wednesday, June 2**

Course Materials

The main text for the course is ELLICKSON & BEEN, LAND USE CONTROLS (3rd Ed., 2005) (“E&B”). The main text is available for purchase at the NYU Professional Bookstore. A reserve copy is also available at the Bobst Library.

Supplementary materials (“SM”) for each class will be provided on Blackboard. SM typically will be limited to one or two journal articles (usually excerpted), policy papers or additional cases that provide a contemporary or local application of the fundamental (or “black letter”) case law provided in the main text.

Reading Assignments

A syllabus for the course is available on Blackboard. We may move through some material more quickly or more slowly than planned, so the syllabus is only a guide. Also, if there are particular areas that the class wants to explore in more depth, we will adjust the syllabus accordingly.

Course Requirements and Grading

1. Class participation – 20% of final grade

You will be expected to attend and participate in each class. All students will be expected to have read all required readings prior to class and may be called upon to discuss any of the materials listed in the syllabus. If you are going to have to miss a class, please send me an e-mail letting me know, and you are asked to submit a one- to two-page reflection piece (see below) on one case assigned for the day you are absent.

2. “Expert case” – 30% of final grade

The course principally relies on a “case method” approach to learning, similar to what is utilized in law school classes. Each student will be given asked to serve as an “expert” on one key case during the course of the term. As an expert, you must 1) prepare and submit a one-page case brief for your assigned case; 2) a one- or two-page reflection piece that comments on the relevance of the case to contemporary land use issues (you can use recommended websites on Blackboard as a research tool); and 3) be prepared to lead a 15-20 minute discussion on the case in class. **You are asked to email the case brief and reflection piece to me at solomon.greene@nyu.edu by the Friday before the day you elect to present.**

3. Final exam or term paper – 50% of final grade

All students will have the option to choose either: 1) to take a take-home, open-book final exam or 2) to prepare a term paper of roughly 15-20 pages in length on a topic related to contemporary issues in land use law. Each option will be weighted identically (50%) in determining a final grade.

The final exam will be available online during the week of July 5th and due by Friday July 9th. The term paper will be due by Friday, July 23rd.
**If you wish to elect the term paper option, you must notify me by Monday, June 14th, and submit a very brief (no more than two paragraphs) abstract of your proposed topic by the end of class that day.** Additional information on both the exam and term paper options will be provided in advance of “decision day.”

**Office Hours and Other Questions:**

Office hours will be held **by appointment only.** If you would like to schedule a meeting, please email me at solomon.greene@nyu.edu.

If you have any questions or problems, please don’t be afraid to ask for clarification, review or reassurance. I also welcome any suggestions you may have about how I can make class more interesting or more tailored to your particular concerns. You can raise questions or make suggestions via email, during a class break or by scheduling a meeting. I try to answer all e-mails within twenty-four hours, but I receive hundreds every day, so I sometimes get backlogged; if you don’t hear back from me within a day, please resend the e-mail.

I look forward to working with each of you.
May 17  INTRODUCTION TO THE COURSE
OVERVIEW OF THE U.S. LEGAL SYSTEM
ANATOMY OF A CASE

“If a policeman must know the Constitution, then why not a planner?”

Readings:  Supplementary Materials [“SM”] available on Blackboard [intro to U.S. legal system; how to read a judicial opinion; Hadacheck case]

Principal Cases:  ** Hadacheck v. Sebastian, 239 U.S. 394 (1915)

May 24  LAND DEVELOPMENT AND ZONING BASICS
DUE PROCESS

“A nuisance may be merely a right thing in the wrong place, like a pig in a parlor instead of a barnyard.”

E&B, 73-94 [early zoning]
E&B, 94-104, 112-119, 125-134 [substantive due process]
E&B, 352-360 [procedural due process]
SM [Udell case]

Principal Cases:  ** Village of Euclid v. Amber Reality, 272 U.S. 365 (1926)
** Nectow v. City of Cambridge, 277 U.S. 183 (1928)
Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461 (7th Cir. 1988)
** Udell v. Haas, 21 N.Y.2d 463 (N.Y. 1968)

Notes:  Can skim planning background on pages 16-29 and 62-71 and section on procedural due process on pages 352-360

June 2  TAKINGS

“Government could hardly go on if to some extent values incident to property could not be diminished without paying for every such damage in the general law.”

Readings:  E&B, 134-197 [takings]
Principal Cases:

Mugler v. Kansas, 123 U.S. 623 (1887)
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)
** Penn Central Transportation Co v. City of New York, 438 U.S. 104 (1978)
** Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)
** Lingle v. Chevron, 544 U.S. 528 (2005)

Notes:
Can skim section on just compensation, 855-861

June 7

FLEXIBILITY MEASURES AND ZONING CHANGES

“Zoning benefits are not cash items.”

Readings:
E&B, 283-336, 341-352 [variances, conditional uses, rezonings, and flexibility measures]
E&B, 634-652, 671-674 [exactions and inclusionary zoning]
SM [Furman Center report on NYC re-zonings]

Principal Cases:
Board of County Commissioners v. Snyder, 627 So. 2d 469 (Fla. 1993)
** Nollan v. California Coastal Commission, 483 U.S. 825 (1987)
** Dolan v. City of Tigard, 512 U.S. 374 (1994)

Notes:
Be sure to read Furman Center report on re-zonings. The authors of the report will guest lecture for part of the class and you should be prepared with questions.

June 14

SUBDIVISION REGULATIONS AND BUILDING CODES
HISTORIC PRESERVATION AND AESTHETIC CONTROLS

“[A] man may [not] be deprived of his property because his tastes are not those of his neighbors. Aesthetic considerations are a matter of luxury and indulgence rather than of necessity . . . .”

Readings:
E&B, 441-452, 454-469 [building and housing codes]
E&B, 469-494 [signage and aesthetic controls]
E&B, 496-505 [landmark preservation and historic districts]
SM [article on illegal subdivisions; article on historic districts]

Principal Cases:
** City of Ladue v. Gilleo, 512 U.S. 43 (1994)
June 21  ALTERNATIVES TO PUBLIC REGULATION: NUISANCE, COVENANTS, ASSOCIATIONS AND NORMS

“The plaintiff says that a wall would stop the trouble. If so, it can build one upon its own land.”

Readings: E&B, 511-520, 523-528 [nuisance]
E&B, 550-563, 572-582 [covenants]
E&B, 582-584, 590-596, 605-606 [residential community associations]
E&B, 611-614 [“non-zoning”]
SM [article on racial covenants]

Principal Cases: ** Nahrstedt v. Lakeside Village Condominium Association, 878 P.2d 1275 (Cal. 1994)

Notes: In addition to assigned cases, be sure to read Brooks article from Blackboard, which we will discuss in detail in class

June 28  CIVIL LIBERTIES
ENVIRONMENTAL JUSTICE AND SITING ISSUES
RACIAL DISCRIMINATION AND FAIR HOUSING ISSUES

“We may not build houses, but we do enforce the Constitution.”

Readings: E&B, 220-232 [freedom of speech]
E&B, 691-730 [Equal Protection Clause and Fair Housing Act]
E&B, 731-733, 740-747, 754-760 [LULUs and environmental justice]
E&B, 760-788 [“fair share” housing]

** Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 1977 [“Arlington Heights I”] and 558 F.2d 1283 (7th Cir. 1977) [“Arlington Heights II”]
** Moore v. City of East Cleveland, 431 U.S. 494 (1977)
City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)

Notes: Can skim section on statutory protections under Fair Housing Act on pages 722-730.