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 and regulations covering such issues as zoning, eminent domain, subdivisions, building codes, aesthetic controls, historic preservation, environmental protection and fair housing. 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 important legal decisions for planning practice.
2. Develop the critical legal skills necessary to assess whether a land use regulation complies with basic constitutional principles and major federal, state and local laws.
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 two classes 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 Wednesday evenings between 6:45 and 8:25 pm in the Waverly Building, Room 435. Food and drink are allowed in the classroom; however, students are asked to be courteous and clean up after themselves.
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 Main Bookstore. Reserve copies are 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

The syllabus for the course with initial reading assignments will be available on Blackboard prior to the first day of class. 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

Substantial class time will be dedicated to discussion on the reading materials, and participation from all students will be essential for a productive session. You will be expected to attend and participate in each class. All students also will be expected to have read required readings prior to class and may be called upon to discuss any of the materials assigned for the day. If you need to miss a class, please e-mail me—you will be asked to submit a one- to two-page reflection piece (see below) on one case assigned for the day you are absent, due at the end of the same week as the missed class.

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) prepare and submit a two-page reflection piece that comments on the relevance of the case to contemporary land use issues (you can use recommended websites listed on Blackboard as a research tool); and 3) be prepared to lead a 10-15 minute discussion on the case in class. **Please submit the case brief and reflection piece 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 for three days during the NYU Wagner final exam period, May 9th – 15th (final dates to be determined in class). The term paper will be due by Friday, May 25.

**If you wish to elect the term paper option, you must notify us by Wednesday, March 21st, 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 with Professor Greene and Professor Attie will be held by appointment only. If you would like to schedule a meeting with either of us, please email us at solomon.greene@nyu.edu or jessica.attie@nyu.edu.

If you have any questions or problems, please do not be afraid to ask for clarification, review or reassurance. We also welcome any suggestions you may have about how we 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. We try to answer all e-mails within twenty-four hours, but we receive hundreds every day, so we sometimes get backlogged; if you don’t hear back from either of us within a day, please resend the e-mail.

We look forward to working with each of you.
NEW YORK UNIVERSITY
WAGNER GRADUATE SCHOOL OF PUBLIC SERVICE

Land Use Law: The Planning Perspective
URPL-GP 1605-001
Spring 2012

SYLLABUS

January 25
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 [Introduction to the U.S. Legal System; Amendments to the U.S. Constitution; How to Brief a Case; Hadacheck case]

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

February 1
LAND DEVELOPMENT BASICS
THEORETICAL APPROACHES TO LAND USE LAW
STRUCTURE OF LAND USE CONTROLS

“Any fixed plan is inevitably wrong.”

Readings: Ellickson & Been [“E&B”], 16-52, 58-59, 62-74

February 8
CONSTRAINTS ON LAND USE
POLICE POWERS
EARLY ZONING

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

Readings: E&B, 74-94

Principal Cases: ** Village of Euclid v. Amber Reality, 272 U.S. 365 (1926)

February 15
DUE PROCESS
DISCRIMINATORY LINE DRAWING

“This case presents a garden variety zoning dispute dressed up in the trappings of constitutional law.”

Readings: E&B, 94-104, 112-119 [substantive due process]

** indicates “expert cases” for student presentations
Principal Cases:

** Nectow v. City of Cambridge, 277 U.S. 183 (1928)
Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461 (7th Cir. 1988)

February 22  TAKINGS I: EARLY CASES & PENN CENTRAL BALANCING

“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:  TBA

Principal Cases:

** Mugler v. Kansas, 123 U.S. 623 (1887)
** Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)

February 29  TAKINGS II: PER SE RULES

“There is nothing magical in the reasoning of judges long dead.”

Readings:  TBA

Principal Cases:

** Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)
** Pallazolo v. Rhode Island, 533 U.S. 606 (2001)

March 7  TAKINGS III: EMINENT DOMAIN & RECENT DEVELOPMENTS

“The specter of condemnation hangs over all property.”

Readings:  TBA

Principal Cases:


March 12 – 17  SPRING RECESS. NO CLASS.
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<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Key Points</th>
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<tbody>
<tr>
<td>March 21</td>
<td><strong>FLEXIBILITY MEASURES I: VARIANCES, CONDITIONAL USES &amp; SPOT ZONINGS</strong></td>
<td>&quot;Spot zoning 'is the very antithesis of planned zoning.'&quot;</td>
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<td>Readings: TBA</td>
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<td>Principal Cases: Matthew v. Smith, 707 S.W.2d 411 (Mo. 1986) <strong>Griswold v. City of Homer, 925 P.2d 1015 (Alaska 1996)</strong></td>
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<td>March 28</td>
<td><strong>FLEXIBILITY MEASURES II: CONTRACT ZONING &amp; REZONINGS</strong></td>
<td>&quot;Zoning benefits are not cash items.&quot;</td>
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<td>Readings: TBA</td>
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<td>April 4</td>
<td><strong>FLEXIBILITY MEASURES III: EXACTIONS &amp; COMMUNITY BENEFIT AGREEMENTS</strong></td>
<td>&quot;We view the Fifth Amendment's [Takings Clause] to be . . . more than an exercise in cleverness and imagination.&quot;</td>
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<td>Readings: TBA</td>
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<td>April 11</td>
<td><strong>ALTERNATIVES TO PUBLIC REGULATION: NUISANCE, COVENANTS, RESIDENTIAL ASSOCIATIONS &amp; NORMS</strong></td>
<td>&quot;The plaintiff says that a wall would stop the trouble. If so, it can build one upon its own land.&quot;</td>
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<td>Readings: TBA</td>
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April 18  FREE SPEECH  AESTHETIC REGULATIONS  HISTORIC PRESERVATION

“[U]nless the billboards fall, I’ll never see a tree at all”

Readings: TBA

** Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981)
** City of Ladue v. Gilleo, 512 U.S. 43 (1994)
A-S-P Associates v. City of Raleigh, 258 S.E.2d 444 (N.C. 1979)

April 25  EQUAL PROTECTION CLAUSE  FAIR HOUSING ACT

“A quiet place where yards are wide, people few and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.”

Readings: TBA

Principal Cases:  ** 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”]
Gallagher v. Magner, 619 F.3d 823, 829 (8th Cir. 2010), cert. granted, 10-1032, 2011 WL 531692 (U.S. Nov. 7, 2011)
** Moore v. City of East Cleveland, 431 U.S. 494 (1977)
** City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)

May 2  SITING ISSUES  REGIONAL FAIR SHARE HOUSING

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

Readings: TBA

Principal Cases:  Chinese Staff & Workers’ Assn. v Burden, 2011 NY Slip Op 06417 (decided September 8, 2011)
May 7  

**OPTIONAL EXAM REVIEW SESSION. LOCATION TBA.**

May 9 – 15  

**FINAL EXAM PERIOD. EXAM DATES TBA**