NEW YORK UNIVERSITY: WAGNER SCHOOL

GENERAL COURSE INFORMATION AND SYLLABUS - 2012

Land Use Law: The Planning Perspective

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 understand the changing legal framework of regulations such as zoning, urban renewal and eminent domain, regulatory takings, exactions, landmarks and historic presentation, environmental laws, growth management and the relationship of the planner to the law. The course will cover a basic understanding of 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 basic land-use planning skills.

General Course Information

P11.1605.002 Spring 2012 Professor Mark A. Levine

Meeting Time Place
Mondays from 6:45 pm – 8:25 pm Silver Hall, Room 711

Food and drink allowed in the classroom; please clean up after yourself.
Office Hours – by appointment only
Email: mlevine@herrick.com, mlevine134@gmail.com, Mark.Levine@nyu.edu, or call for an appointment at 212-592-1456.

Unless otherwise stated, 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 both a “case method” approach to learning, similar to what is utilized in law school classes as well as lectures and class discussion. Students will be given the opportunity to brief cases and, in many occasions, be the “expert” on that case for the day and make a short presentation to the class. 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 very important and also will be considered towards the final grade.

Competencies and Skills that the course is designed to strengthen:

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. At the end of the semester, I hope you will have learned:
1. The use of primary sources, such as court cases, statutes and regulations to assist you in understanding and briefing of a judicial case, including the fact pattern, holding and comparing that case to other cases in the same and different jurisdictions.

2. Have better understanding of the court system, how it operates, including the appeals process and its relevancy to the planning process.

3. Gain an understanding of the legal underpinning of land use regulation.

4. Better be able to identify and analyze legal trends in American Society.

5. Better understand the interplay between the “law” and its part in development, zoning, discrimination, housing priorities, and growth management techniques.

6. Have learned how to begin to think like a lawyer to enable you to better communicate with lawyers.

7. Have developed critical legal skills.

I have asked Wesley O'Brien, Esq. Counsel to the New York City Mayor’s Office of Environmental coordination to assist me in teaching this Semester’s course. The Teaching Assistant for the course is Zachary Townsend, Wagner School of Public Service, 2012. Mr. Townsend is available to help you with case briefing as well as questions with respect to the course materials. You may email him at ztownsend@gmail.com.
1. INTRODUCTION TO THE COURSE  
   February 6, 2012
   
   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. A brief description of Property Law history and concepts
   H. How to read a case on Blackboard? (Headnotes, Syllabus-Summary, Opinion)
   I. How to “Brief” a legal case

2. NON-ZONING LAND-USE CONTROLS  
   February 13, 2012
   
   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?

   A. SEBASTIAN v. HADACHEK  
      U.S. Supreme Court 239U.S. 394 (1915) (Case is on BLACKBOARD)
      
      ** 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:

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

LEGAL TOPIC: Forms by Land Use Regulations - Deed Restrictions, Torts

READINGS:

B. ELLICKSON & BEEN pp 20-24, 29-30, 50-59, 62-63
C. REINMAN V. LITTLE ROCK, 237 U.S. 171 (1915)
D. BOOMER V. ATLANTIC 1970 - NY

3. ** NO CLASS PRESIDENT’S DAY ** February 20, 2012


3 HOURS

Why and when is zoning constitutional?

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. ELLICKSON & BEEN pp 73-104
B. ELLICKSON & BEEN pp. 352-360
C. VILLAGE OF EUCLID, et al., v. AMBLER REALTY COMPANY, Supreme Court of the United States November 22, 1926, Decided.
D. NECTOW v. CITY OF CAMBRIDGE et al., Supreme Court of the United States, May 14, 1928, Decided.
E. **UDELL v. HAAS**, Court of Appeals of New York (1968) 21 NY24 463, 288 NYS 2d 888, [New York State’s requirement for comprehensive planning]

5. **TAKINGS I - PHYSICAL TAKINGS - PUBLIC PURPOSE**  
   March 5, 2012

   3 HOURS

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. 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. **DENIHAN 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**- US Supreme Court 348 U.S. 21 - November 22, 1954
D. **MATTER OF GOLDSTEIN V. NEW YORK STATE URBAN DEVELOPMENT CORPORATION** (November 24, 2009)
E. **KAUR, TUCK-IT-AWAY, INC. V. NEW YORK STATE URBAN DEVELOPMENT CORPORATION**, (Supreme Court, App. Div., 1st Dept., December 3, 2009)
F. **KELO v. NEW LONDON**- US Supreme Court 545 US, 469 (2005)
G. **KAUR ET. AL. PETITIONERS V. NEW YORK STATE URBAN DEVELOPMENT CORPORATION** (Columbia University Case) 14 NY 3d 868 (2010)
H. **LESSON ON LIMITS OF EMINENT DOMAIN AT COLUMBIA, NEW YORK TIMES ARTICLE**, January 20, 2010

6. **NO CLASS**  
   SPRING BREAK **  
   March 12, 2012
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? Reminder of Property Law Concepts.

**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
D. FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, CALIFORNIA USSC- June 9, 1987
E. DAVID H. LUCAS, PETITIONER v. SOUTH CAROLINA COASTAL COUNCIL SUPREME COURT OF THE UNITED STATES June 29, 1992
F. TAHOE-SIERRA PRESERVATION COUNCIL v. TAHOE REGIONAL PLANNING AGENCY, 535 US 302 (2002)*

* If time permits

**BACKGROUND READING:**

* Takings Decisions: A Chronology for Congress (2003)* A good source for review of many cases dealing with the subject.
8. HISTORIC PRESENTATION PRESERVATION March 26, 2012

READINGS:

A. PENN CENTRAL TRANSPORTATION CO. ET AL. V. NEW YORK CITY ET AL. Supreme Court of the United States, June 26, 1978
B. MATTER OF CITIZEN EMERGENCY COMMITTEE TO PRESERVE PRESERVATION V. TIERNEY (103373/08) Decided: December 30, 2008
C. MATTER OF CITIZEN EMERGENCY COMMITTEE TO PRESERVE PRESERVATION V. TIERNEY (103373/08) Decided: February 25, 2010
D. 1. NEW YORK CITY CHARTER
   2. NEW YORK ADMINISTRATIVE CODE SECTION 25-301 Et. Seq.
   3. NEW YORK ADMINISTRATIVE CODE TITLE 63 RULES AND REGULATIONS FOR LANDMARKS PRESERVATION COMMISSION
   4. SECTION 81-63 OF ZONING RESOLUTION RE: TRANSFER OF DEVELOPMENT RIGHTS

9. EXACTIONS, COMMUNITY BENEFIT AGREEMENTS April 2, 2012

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? Is the power to exact concessions from developers part of the Government’s police powers? If so, what makes this a legit exercise of policy power? When is an exaction a taking?

READINGS:

A. NOLLAN ET UX. V. CALIFORNIA COASTAL COMMISSION Supreme Court of the United States June 26, 1987, decided
B. FLORENCE DOLAN, PETITIONER V. CITY OF TIGARD Supreme Court of the United States June 24, 1994, decided
C. COMMUNITY BENEFITS AGREEMENTS (Report, New York City Bar Association, March 2010)
10. **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.

**READINGS:**


B. **VILLAGE OF BELLE TERRE ET AL. V. BORAAS ET AL.** Supreme Court of the United States April 1, 1974, decided

C. **ROSEANN BAER ET AL., RESPONDENTS, V. TOWN OF BROOKHAVEN ET AL., APPELLANTS** Court of Appeals of New York March 23, 1989, decided

D. **SOUTHERN BURLINGTON COUNTY NAACP V. TOWNSHIP OF MT. LAUREL I**, 119 N.J. Super. 164; 290 A.2d 465

E. **SOUTHERN BURLINGTON COUNTY NAACP V. TOWNSHIP OF MT. LAUREL II**, 92 N.J. 158; 456 A.2d 390


G. **WESTCHESTER COUNTY LOW-INCOME PROGRAM**

H. **NYC INCLUSIONARY ZONING**

* Read Summaries of these cases to be provided on Blackboard.
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 Transfer of Development Rights (TDR); See §12-10 Definition of Zoning Lot of the Zoning Resolution
Incentives Zoning; Hudson Yards Special District
Special Chelsea Zoning District (“High Line”)

**Development Controls Other than Zoning**

1. Building Code
2. Environmental
   - (a) air
   - (b) Noise
3. Special West Chelsea Zoning District
4. Moratorium
5. Inclusionary Zoning

**READINGS:**

A. **NEWPORT ASSOCIATES, INC., RESPONDENT, V. SHELDON S. SOLOW**, Appellant Court of Appeals of New York April 26, 1972, Decided
B. **MACMILLAN, INC., RESPONDENT, V. CF LEX ASSOCIATES ET AL., APPELLANTS, ET AL., DEFENDANTS** Court of Appeals of New York June 23, 1982, Decided

**ADDITIONAL READING:**

Please read the article by David Karnovsky, Counsel for CPC, on Rezoning to Preserve Neighborhood Character: Downzoning in New York City (Vesting).
12. **VARIANCES, SPECIAL PERMITS, REZONING, CITY MAPPING ACTIONS AND THE UNIFORM LAND USE REVIEW PROCEDURE (ULURP)**

**READINGS:**

A. SECTIONS 191-204, NEW YORK CITY CHARTER WITH RESPECT TO THE NEW YORK CITY PLANNING COMMISSION;

B. CITY LAND USE REVIEW (ULURP) RULES OF THE CITY OF NY ULURP - [http://24.97.137.100/nyc/rcny/entered.htm](http://24.97.137.100/nyc/rcny/entered.htm) (Select Title 62, Chapter 2)

C. ARTICLE VII CHAPTER 4 - SPECIAL PERMITS BY THE CITY PLANNING COMMISSION SECTION 74-00 ET SEQ

D. SECTIONS 74-711 AND 74-712 LPC SPECIAL PERMITS

E. SECTION 74-721 THROUGH 74-80 OTHER EXAMPLES OF CPC SPECIAL PERMITS

F. SECTION 72-00 THROUGH 72-23 (BOARD OF STANDARDS AND APPEALS & VARIANCES)

G. SECTIONS 72-30 THROUGH 72-41 NYC ZONING RESOLUTION ADDITIONAL BSA POWER;

April 23, 2012

13. **THE LEGALITY OF ENVIRONMENTAL REGULATIONS**

**READINGS:**

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


(Select Title 6, Chapter VI, Part 617). These are contained within Regulations for the Department of Environmental Conservation Title-6.

B. City of New York Counterpart (CEQR)

CEQR: [http://24.97.137.100/nyc/rcny/entered.htm](http://24.97.137.100/nyc/rcny/entered.htm)

(Select Title 62, Chapter 5, Appendix A)

C. New York State Urban Development Corporation Statute Chapter 174, Laws of 1968; Title 16, Chapter 24, Sections 6250 et. seq. Unconsolidated Laws


April 30, 2012
What is ULURP? How does it 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 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

E. MATTER OF CHINESE STAFF WORKERS ASSOC. V. BLOOMBERG, (100961/09 December 24, 2009)

14. LEGALITY OF ENVIRONMENTAL REGULATIONS May 7, 2012
(continued)

A. Economic Development Incentives

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 14, 2012 BY MIDNIGHT.