Course Overview:

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, 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 and statutory and regulatory materials, as well as secondary sources, to help you develop a better understanding of the relationship between the law and basic land-use planning skills.

Meeting Time: Wednesdays from 6:45 pm to 8:25 pm
Meeting Location: Silver Center, 100 Washington Square East, Room 206
Contact Information: elizabeth.larsen@nyu.edu
Office Hours: By Appointment (please email me)

Course Objectives:

1. Develop the ability to use primary sources, such as judicial opinions, statutes and regulations to assist you in understanding land use issues and the implications of important legal decisions for planning practice.

2. Understand the legal underpinning of land use regulation.

3. Develop legal skills necessary to assess whether a land use regulation complies with basic constitutional principles and major federal, state and local laws.

4. Increase your awareness of how the law affects urban growth, real estate development and land use patterns.

5. Learn to spot and analyze legal issues in contemporary urban planning.

Course Materials:

The main text for the course is Land Use Planning and Development Regulation Law by Julian Conrad Juergensmeyer and Thomas E. Roberts (3rd Ed., 2013). Additional reading material, typically in the form of one or two legal cases, journal articles and/or policy papers, will be provided for each class on NYU Classes. Some of these readings are listed here; others may be added during the semester.
Course Requirements and Grading:

1. **Class participation** – 20% of final grade

   Assigned reading should be completed in advance of class to enhance classroom discussion. You will be expected to attend and participate in each class. If you need to miss a class, please e-mail me in advance—you will be asked to submit a one- to two-page reflection piece on the reading assigned for the day you are absent, due at the end of the same week as the missed class. An “A” grade will not be awarded to a student who does not attend substantially all classes and participate in class discussions.

2. **Expert case** – 20% of final grade

   The course will incorporate, among other methods, a “case method” approach to learning, similar to what is utilized in law school classes. Each student will be given the opportunity 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; and 3) be prepared to lead a 10-15 minute class discussion on the case in class. **Please submit the case brief and reflection piece by the Friday before the day you elect to present.** You will be expected to revise and resubmit your reflection piece per my comments within two weeks of receiving them.

3. **Attendance at hearing and summary paper** – 20% of final grade

   Due date: April 30, 2014 (penultimate class). The paper (2-3 pages) should describe the hearing, with a detailed description of the land use issues involved in at least two specific items on the agenda, including the questions/comments made by the hearing agency members and applicant responses, and any discussion by members of the public. Attach a copy of the agenda. In NYC, you may attend the Board of Standards and Appeals or the City Planning Commission; in the suburbs, you may attend either a ZBA/Board of Appeals or a Planning Board/Commission. If you work full time and live in the City and cannot attend a New York City agency hearing, which are held during the day, or if you have any other scheduling conflicts, you may attend a community board land use committee hearing or accept an alternative assignment, but please discuss with me first.

4. **Final exam or term paper** – 40% of final grade

   All students will have the option to choose either: 1) a take-home, open-book final exam or 2) a term paper of roughly 10-15 pages in length on any topic related to contemporary issues in land use law. Each option will be weighted identically in determining a final grade (40%). The final exam will be available online for three days during the NYU Wagner final exam period, May 14th – May 20th (final dates to be determined in class). The term paper will be due Monday, May 12th (the last day of Spring 2014 classes).

   **If you elect to prepare a term paper, you must notify me by the 7th week of class (March 12th) and submit a very brief (no more than one page) abstract of your proposed topic by the end of class that day. The summary must do more than identify the topic; it must explain what you intend to analyze/discuss.**
COURSE OVERVIEW

January 29
INTRODUCTION TO THE COURSE
BASIC STRUCTURE OF GOVERNMENT IN LAND USE
COMPREHENSIVE PLANS AND THE PLANNING PROCESS

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

Reading:
Textbook: Chapters 1 and 2
Standard State Zoning Enabling Act

February 5
STRUCTURE OF LAND USE CONTROLS
NON-GOVERNMENTAL CONTROLS
ANATOMY OF A CASE

“There must be progress, and in its march, private interests must yield to the good of the community.”

Reading:
Textbook: Chapter 3, Sections 3.2-3.16; Chapter 14; Chapter 15, Sections 15.1, 15.10-15.15

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

**Write a one page summary of this case that includes:

1. Who sued whom and why
2. The name of the court that decided the case
3. The fact pattern
4. The court’s ruling from the lowest level to the highest level
5. The holding (what did the Supreme Court rule?)

Please make an additional copy of your one page summary and submit to me for my review. It will not be graded.**

February 12
TRADITIONAL EUCLIDEAN ZONING
GOVERNMENTAL IMMUNITY
SUBSTANTIVE DUE PROCESS

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

Reading:
Textbook: Chapter 4, Sections 4.1-4.6, 4.8-4.9, 4.12-4.14, 4.22-4.24; Chapter 10, Section 10.12A

Principal Cases:
Village of Euclid, Ohio v. Amber Realty, 272 U.S. 365 (1926)
Nectow v. City of Cambridge, 277 U.S. 183 (1928)

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1 San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621 (1981)
February 19

**ZONING PROCESSES AND FLEXIBILITY MEASURES**
(CONDITIONAL ZONING, NONCONFORMING USES, REZONINGS, VARIANCES, SPECIAL PERMITS, VESTED RIGHTS)

“Zoning benefits are not cash items.”

**Reading:**
Textbook: Chapter 4, Sections 4.15-4.21, 4.31-4.40; Chapter 5, Sections 5.6-5.31

Municipal Art Society, *Zoning Variances and the NYC Board of Standards and Appeals*

**Principal Cases:**
Udell v. Haas, 21 N.Y.2d 463 (N.Y. 1968)
Municipal Art Society v. City of New York, 137 Misc.2d 832 (1987)

February 26

**ALTERNATIVES TO TRADITIONAL ZONING**
PUDs, TDRs

**GROWTH MANAGEMENT AND SMART GROWTH**

“A town is saved, not more by the righteous men in it than by the woods and swamps that surround it.”

**Readings:**

Smart Code, Version 9.2


NYC Zoning Resolution, Section 12.10, definition of “zoning lot”

March 5

**EXCLUSIONARY ZONING**

**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.”

**Reading:**
Textbook: Chapter 6, Sections 6.1-6.5, 6.8, 6.10; Chapter 10, Section 10.14

**Principal Cases:**
Moore v. City of East Cleveland, 431 U.S. 494 (1977)
City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)
March 12  

**INCLUSIONARY ZONING**  
**AFFORDABLE HOUSING**  
**FAIR SHARE REQUIREMENTS**

“Wait, 65,000 units of affordable housing in 40 years…in a state with how many people?”

**Reading:** Textbook: Chapter 6, Sections 6.6-6.7

**Principal Cases:**  

**Audio:** NPR’s The Brian Lehrer Show, *New Jersey Affordable Housing* (May 4, 2012)

**Additional Reading:** Law of the Land Blog, *Divided New Jersey Supreme Court Reaffirms Mount Laurel’s Constitutional Housing Obligations* (Oct. 7, 2013)

March 19  

**SPRING RECESS - NO CLASS**

March 26  

**FIFTH AMENDMENT TAKINGS CLAUSE**  
**EARLY TAKINGS 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.”

**Reading:** Textbook: Chapter 10, Sections 10.1-10.2, 10.4A

**Principal Cases:**  
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)  

April 2  

**TAKINGS: PER SE RULES**  
**PHYSICAL INVASIONS**  
**REGULATORY “TAKINGS”**

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

**Readings:** Textbook: Chapter 10, Sections 10.3, 10.4B, 10.4C, 10.6-10.10

**Principal Cases:**  
April 9

THE POWER OF EMINENT DOMAIN
PUBLIC USE OR PURPOSE
RECENT DEVELOPMENTS

“The specter of condemnation hangs over all property.”

Reading:
Textbook: Chapter 16, Sections 6.1-6.5

Principal Cases:

April 16

EXACTIONS
IMPACT FEES
COMMUNITY BENEFIT AGREEMENTS

“We view the Fifth Amendment’s [Takings Clause] to be…more than an exercise in cleverness and imagination.”

Reading:
Textbook: Chapter 10, Section 10.5; Chapter 9, Section 9.9

Principal Cases:
Dolan v. City of Tigard, 512 U.S. 374 (1994)

Additional Reading: Vicki Been, Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?, 77 U. Chi. L. Rev. 5 2010.

April 23

AESTHETIC REGULATION AND ARCHITECTURAL CONTROL
HISTORIC PRESERVATION
COSTS OF LANDMARKING

“It is becoming apparent that the door is slowly shutting on areas where much needed housing and affordable housing can be created.”

Readings:
Textbook: Chapter 12

New York City Landmarks Law

ArchDaily, Is NYC “Landmarking Away” Its Future? (July 30, 2013)
Real Estate Board of New York, The Impact of Landmarking on Housing Production in Manhattan (September 2013)

April 30  
REGULATION OF THE ENVIRONMENT  
CLIMATE CHANGE AND DEVELOPMENT  
GREEN BUILDINGS AND GREEN DEVELOPMENT  

“Buildings account for about 75% of carbon emissions, 85% of water use, and 95% of electricity consumption in New York City.”

Readings:  
Textbook: Chapter 11  
Department of City Planning, Environmental Review Process (please review at least one posted EAS document)  
Green Building Roadmap for NYC’s Next Mayor, Urban Green Council (May 29, 2013)  

Principal Cases:  
Chinese Staff & Workers' Assn. v. Burden, 27 Misc.3d 1219(A) (2010)*  

* Guest speaker Rachel Hannaford of South Brooklyn Legal Services, attorney for Petitioner-Appellant CSWA, will discuss background and litigation of this case with us.

May 7  
FAVORED USES  
RLUIPA  
FINAL EXAM REVIEW  

“The controlling consideration in reviewing the request of a school or church for permission to expand into a residential area must always be the over-all impact on the public’s welfare.”

Readings:  
Paul Selver, Elizabeth Larsen and Adam Taubman, RLUIPA and Land Use: An Overview and a Closer Look at the “Equal Terms” Provision and the Southern District’s Third Church Decision, Environmental Law in New York (November and December 2009)  

Principal Cases:  
Third Church of Christ v. City of New York, 626 F.3d 667 (2010)  