Course Overview
This course is designed to give you a better understanding of the legal and administrative framework used to regulate land use at various levels of government, and the relationship of the planner to the law. We will cover basic legal procedures as well as statutory and regulatory materials relating to zoning, urban renewal and eminent domain, regulatory takings, inclusionary housing, historic preservation, and environmental law.

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. This course is intended to provide basic skills and develop competencies in:

1. Using primary source materials, such as court cases, statutes and regulations to understand the law.
2. Briefing a judicial case, and comparing the case to other cases in the same and different jurisdictions.
3. Understanding the court system, how it operates, including the appeals process, and its relevancy to the planning process.
4. Understanding the legal underpinnings of land use regulation.
6. Understanding the interplay between the law and land development, and the effects of zoning, discrimination, housing priorities, and growth management techniques.
7. Using critical legal skills to identify issues and understand constitutional, statutory and regulatory constraints.

This course is taught through lectures and the “casebook method” that is used in law schools. Throughout the semester, students will be required to brief and discuss cases in class. Also, each student will be required at least once to be the “expert” on a case and to give a short presentation to the class.

Grading
The final grade for the class will be determined as follows:

15% Expert Analysis
Each student will be given an opportunity to serve as an “expert” on one case during the semester. As an expert, you must 1) present a summary of the case to the class; 2) prepare and submit a one-page case brief for your assigned case; and 3) prepare and submit a two-page paper commenting on the relevance of the case and its significance to contemporary land use issues. The paper must be submitted before the class in which you are scheduled to present.

15% **Classroom Participation**

Assigned reading should be completed in advance of class. You will be expected to attend and participate in each class.

10% **Attendance at a Public Hearing and Summary Paper**

Due Date: May 4, 2015

The paper (2-3 pages) should describe the hearing. For at least two specific items on the agenda, include a detailed description of the land use issues involved, 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 New York City, you should attend a public hearing of the City Planning Commission or the Board of Standards and Appeals. If you live outside of the City or have scheduling conflicts, there are alternative meetings that you can attend.

60% **Final Exam**

Due Date: May 18, 2015 at 6PM

At the end of the last class, you will receive a take home final examination.

**Meeting Time and Place**

Mondays from 6:45 pm – 8:25 pm

Global Center for Academic & Spiritual Life / 238 Thompson St., Room 383

**Reading Assignments**

All reading materials will be posted on NYUClasses or are available online. Reading assignments will be provided for each class.

**Office Hours and Contact Information**

Office hours will be by appointment only.

Professor Levine: mark.levine@akerman.com or 212-880-3832

Professor O’Brien: wesley.obrien@friedfrank.com or 212-859-8334
Class Schedule

1. **INTRODUCTION TO THE COURSE**  
   **February 2**
   - Overview of the Course
   - Relationship of the Planner to the Law
   - Influence of Time, Culture and Politics on the Law
   - Brief History of Property Law
   - Statutes vs. Constitutional Law
   - Comparing Jurisdictions
   - Hierarchy of Courts
   - Case Law

2. **COMMON LAW OF NUISANCE / ALTERNATIVES TO LAND USE REGULATION**  
   **February 9**
   What forms of land use regulation preceded zoning and what forms of non-zoning land use controls still exist? What were the advantages/disadvantages of these non-zoning controls? What were the political influences on the cases? Who created the nuisance? Who was there first? Did the rulings follow the concept that the one who created the nuisance was liable? What can be considered a nuisance in today’s world?

   **Readings**
   - **A.** HADACHECK v. SEBASTIAN, Supreme Court of the United States (1915)
   - **B.** REINMAN v. LITTLE ROCK, Supreme Court of the United States (1915)
   - **C.** BOOMER v. ATLANTIC CEMENT CO., Court of Appeals of New York (1970)

   **At the beginning of class, hand in a one page brief of Hadacheck v. Sebastian, so that we can provide feedback on your case briefing. It will not be graded.**

3. **NO CLASS – PRESIDENTS’ DAY**  
   **February 16**

4. **TRADITIONAL EUCLIDEAN ZONING**  
   **February 23**
   Constitutionality of Zoning
   - Substantive Due Process
   - What is enabling legislation? What is its relevancy to a decision? Even if zoning is constitutional, can a specific plan be unconstitutional? What is spot zoning?

   **Readings**
   - **A.** VILLAGE OF EUCLID v. AMBLER REALTY COMPANY, Supreme Court of the United States (1926)
   - **B.** NECTOW v. CITY OF CAMBRIDGE, Supreme Court of the United States (1928)
   - **C.** UDELL v. HAAS, Court of Appeals of New York (1968)
D. 5th Amendment of the U.S. Constitution (Due Process Clause), available at http://www.usconstitution.net/const.html#Am5

5. **TAKINGS I – PHYSICAL TAKINGS**  
   **March 2**

   What is “Public Use”? What is “Public Purpose”? What is “Just Compensation”?  
   What are the effects of the U.S. Supreme Court’s most recent ruling on eminent domain?  
   What are the requirements for condemnation in the urban renewal process? What does the 5th Amendment of the U.S. Constitution require when government takes property? Can eminent domain be used to help certain property owners gain at everyone else’s expense?

   **Readings**
   A. 5th Amendment of the U.S. Constitution (Takings Clause), available at http://www.usconstitution.net/const.html#Am5
   B. BERMAN v. PARKER, Supreme Court of the United States (1954)
   C. KELO v. NEW LONDON, Supreme Court of the United States (2005)
   D. KAUR, TUCK-IT-AWAY, INC. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION, New York State Appellate Division, 1st Dept. (2009)
   E. KAUR, TUCK-IT-AWAY, INC. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION, Court of Appeals of New York (2010)

6. **TAKINGS II – REGULATORY TAKINGS**  
   **March 9**

   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?

   **Readings**
   A. UNITED STATES v. CAUSBY, Supreme Court of the United States (1946)
   B. FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, Supreme Court of the United States (1987)
   C. DAVID H. LUCAS v. SOUTH CAROLINA COASTAL COUNCIL, Supreme Court of the United States (1992)
   D. TAHOE-SIERRA PRESERVATION COUNCIL v. TAHOE REGIONAL PLANNING AGENCY, Supreme Court of the United States (2002)

7. **NO CLASS – SPRING RECESS**  
   **March 16**
8. **HISTORIC PRESERVATION**

March 23

Readings

A. **PENN CENTRAL TRANSPORTATION CO. ET AL. v. NEW YORK CITY**, Supreme Court of the United States (1978)

B. **MATTER OF CITIZEN EMERGENCY COMMITTEE TO PRESERVE PRESERVATION v. TIERNEY**, 103373/08 (2008)

C. **MATTER OF CITIZEN EMERGENCY COMMITTEE TO PRESERVE PRESERVATION v. TIERNEY**, 103373/08 (2010)

D. New York City Charter, Sections 3020-3021

E. Administrative Code of the City of New York, Section 25-301, et seq.

F. Rules of the City of New York, Title 63

G. Zoning Resolution of the City of New York, Section 81-63, et seq. (Transfer of Development Rights from Landmark Sites)

9. **CONTEMPORARY ZONING TOPICS**

March 30

What are transferable development rights? How are they utilized? How can planners ensure that the actions of planning agencies are constitutional?

Downzoning and Vesting

Incentive Zoning

Special Districts (i.e., Hudson Yards, West Chelsea & Theater Subdistrict)

Readings

A. **FRED F. FRENCH INVESTING COMPANY, INC. v. CITY OF NEW YORK**, Court of Appeals of New York (1976)

   - Section 12-10 definition of “Zoning Lot”
   - Article IX, Chapter III (Special Hudson Yards District)
   - Article IX, Chapter VIII (Special West Chelsea District)
   - Section 81-71 (Special Regulations for Theater Subdistrict)

C. **Rezoning to Preserve Neighborhood Character: Downzoning in New York City**, David Karnovsky, Former Counsel to the NYC City Planning Commission

10. **VARIANCES, SPECIAL PERMITS, REZONINGS, CITY MAPPING ACTIONS AND THE UNIFORM LAND USE REVIEW PROCEDURE (ULURP)**

April 6

Readings

A. New York City Charter, Sections 191-204 (ULURP and the City Planning Commission)

   - Article VII, Chapter 4 (Special Permits by the City Planning Commission)
   - Sections 74-711 & 74-712 (Landmark Preservation and Development in Historic Districts)
   - Sections 74-721 through 74-80 (Other Special Permits by the City Planning Commission)
   - Section 72-00 through 72-23 (Interpretations and Variances by the Board of Standards and Appeals)
   - Sections 72-30 through 72-41 (Additional Powers of the Board of Standards and Appeals)

11. **Exactions & Community Benefits Agreements**

   April 13

   How innovative can a planner be with private sector restrictions before the courts intervene and invalidate the zoning provisions? Does the enabling legislation permit government to impose exactions on individual development projects? Is the power to exact concessions from developers part of the government’s police powers? If so, what makes this a legitimate exercise of police power? When is an exaction a taking?

   **Readings**
   
   A. **Nollan v. California Coastal Commission**, Supreme Court of the United States (1987)
   
   B. **Florence Dolan v. City of Tigard**, Supreme Court of the United States (1994)
   
   
   D. Role of Community Benefits Agreements in the New York City’s Land Use Process, New York City Bar Association (2010)
   
   E. Materials on Kingsbridge Armory

12. **Environmental Review**

   April 20

   How does ULURP 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 used to stall projects? How are hypothetical development scenarios used to analyze the environmental impacts of proposing zoning changes?

   **Readings**
   
   A. State Environmental Quality Review Act (SEQRA)
   
   
   C. SEQR Regulations (6 NYCRR 617) available at http://government.westlaw.com/linkedslice/default.asp?SP=nycrr-1000 (Select Title 6, Chapter VI, Part 617, and see all sections)
13. **Environmental Review (Continued)**

April 27

Readings

A. *H.O.M.E.S. ET AL. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION ET AL.*, Supreme Court of New York, Appellate Division, Fourth Department (1979)

B. *MATTER OF JACKSON v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION*, New York State Court of Appeals (1986)


D. *MATTER OF CHINESE STAFF WORKERS ASSOC. v. BLOOMBERG*, New York County Supreme Court (2009)


14. **Inclusionary Housing / Guest Lecture**

May 4

How do governments incentivize the production of affordable housing? Should municipalities or regions be required to house a fair share of their low or middle class or can they exclude certain kinds of housing units all together?

Readings & Audio


B. *JUERGENSMEYER & ROBERTS*, pp. 244-245


15. **Future of Land Use Regulation**

May 11

Environmental Review: Greenhouse Gas Emissions and Climate Change Impacts

Flood Resilience

New Urbanism

Another Way to Zone?

Reading