



NYU

**ROBERT F. WAGNER GRADUATE
SCHOOL OF PUBLIC SERVICE**

**URPL-GP.1605 (001)
Land Use Law: The Planning Perspective**

**Syllabus
Spring 2021**

Professor: John Mangin

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Office hours will be by appointment. I'm available by email and phone and always happy to meet on Zoom.

Prerequisites: None.

Course Overview

This course is designed to give you a better understanding of the legal and administrative framework used to regulate land use and the relationship of the planner to the law.

We'll read and discuss legal opinions, statutory and regulatory materials, and secondary sources relating to zoning and land use procedure, takings and regulatory takings, urban renewal and eminent domain, inclusionary housing, historic preservation, and environmental review, among other topics. Although principally concerned with the official legal rules governing land use, this course will also examine the interplay of formal and informal controls that shape land use patterns, as well as the uses and abuses of land use regulation, with particular attention to the ever-present tension between the "progressive" and "exclusionary/discriminatory" strains of zoning history.

By the end of this course students will:

1. Understand the structure of land use regulation and procedure;
2. Identify the basic legal constraints that land use planners operate within;
3. Consult and apply primary legal source materials, such as court cases, statutes, and regulations;
4. Understand the complex interplay between land use law and practice;
5. Be conversant in the most important contemporary challenges in land use regulation.

Grading and Assignments

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

30% Attendance and Classroom Participation

Students are expected to attend and participate in class. Assigned reading should be completed in advance of class.

20% Hearing Memo

Due Date: April 8, 2021

Attend a public hearing on a land use matter and draft a 5-page (double-spaced) summary and analysis of the issues presented at a Community Board Land Use, City Planning Commission, or City Council Land Use hearing. We'll discuss this assignment in class.

50% Final Exam

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

Due Date: May 13, 2021 by midnight (submit through *NYU Classes*)

Meeting Time and Place

Thursdays from 6:45 pm – 8:25 pm
Room 101, 19 West 4th Street, NYC

Reading Assignments

All assigned readings can be found on *NYU Classes*.

NYU Classes

All announcements, resources, and assignments will be delivered through the NYU Classes site. I may modify assignments, due dates, and other aspects of the course as we go through the term with advance notice provided as soon as possible through the course website.

Academic Integrity

Academic integrity is a vital component of Wagner and NYU. Each student is required to sign and abide by Wagner's Academic Code. Plagiarism of any form will not be tolerated since you have all signed an Academic Oath and are bound by the academic code of the school. Every student is expected to maintain academic integrity and is expected to report violations to me. If you are unsure about what is expected of you should ask.

Student Resources

Wagner tutors are available to help students with their writing skills. Please see details on <https://wagner.nyu.edu/portal/students/academics/advisement/writing-center>.

The web also has some good resources to help you write better. After you finish writing your paper but before you submit it, you can obtain automated readability statistics here:

<https://igm.rit.edu/~jxs/services/TestReadability.html> and some additional feedback here: <http://writersdiet.com/test.php>. Use these services to improve your prose.

Henry and Lucy Moses Center for Students with Disabilities at NYU

Academic accommodations are available for students with disabilities. Please visit the Moses Center for Students with Disabilities (CSD) website at www.nyu.edu/csd and click on the Reasonable Accommodations and How to Register tab or call or e-mail CSD at (212-998-4980 or mosescsd@nyu.edu) for information. Students who are requesting academic accommodations are strongly advised to reach out to the Moses Center as early as possible in the semester for assistance.

NYU's Calendar Policy on Religious Holidays

NYU's Calendar Policy on Religious Holidays states that members of any religious group may, without penalty, miss class when required in compliance with their religious obligations. Any student absent from class because of his/her religious beliefs shall not be penalized for anything missed. Please let me know if you need any accommodations.

Learning Assessment Table

<u>Graded Assignment</u>	<u>Course Objective Covered</u>
Participation	All
Hearing Assignment	All
Final Assignment	All

Grading Scale and Rubric

Students will receive grades according to the following scale:

There is no A+

A = 4.0 points

A- = 3.7 points

B+ = 3.3 points

B = 3.0 points

B- = 2.7 points

C+ = 2.3 points

C = 2.0 points

C- = 1.7 points

There are no D+/D/D-

F (fail) = 0.0 points

Student grades will be assigned according to the following criteria:

(A) Excellent: Exceptional work for a graduate student. Work at this level is unusually thorough, well-reasoned, creative, methodologically sophisticated, and well written. Work is of exceptional, professional quality.

(A-) Very good: Very strong work for a graduate student. Work at this level shows signs of creativity, is thorough and well-reasoned, indicates strong understanding of appropriate methodological or analytical approaches, and meets professional standards.

(B+) Good: Sound work for a graduate student; well-reasoned and thorough, methodologically sound. This is the graduate student grade that indicates the student has fully accomplished the basic objectives of the course.

(B) Adequate: Competent work for a graduate student even though some weaknesses are evident. Demonstrates competency in the key course objectives but shows some indication that understanding of some important issues is less than complete. Methodological or analytical approaches used are adequate but student has not been thorough or has shown other weaknesses or limitations.

(B-) Borderline: Weak work for a graduate student; meets the minimal expectations for a graduate student in the course. Understanding of salient issues is somewhat incomplete. Methodological or analytical work performed in the course is minimally adequate. Overall performance, if consistent in graduate courses, would not suffice to sustain graduate status in “good standing.”

(C/-/+) Deficient: Inadequate work for a graduate student; does not meet the minimal expectations for a graduate student in the course. Work is inadequately developed or flawed by numerous errors and misunderstanding of important issues. Methodological or analytical work performed is weak and fails to demonstrate knowledge or technical competence expected of graduate students.

(F) Fail: Work fails to meet even minimal expectations for course credit for a graduate student. Performance has been consistently weak in methodology and understanding, with serious limits in many areas. Weaknesses or limits are pervasive.

Course Overview

Module One: Sources and Limits of the Power to Regulate Land Use

- January 28: Introduction to Course/Standard State Zoning Enabling Act
- February 4: Pre-Zoning Land Use Regulation
- February 11: Zoning and Race
- February 25: Traditional Euclidean Zoning
- March 4: Basic Limits: Due Process, Spot Zoning, and the Comprehensive Plan
- March 11: Takings and Eminent Domain
- March 18: Regulatory Takings

March 25: Exactions

Module Two: Policy and Practice of Contemporary Land Use Regulation

April 1: Land Use Procedure and Land Use Outcomes
April 8: Zoning Tools (Hearing assignment due)
April 15: Environmental Review
April 22: Aesthetic Regulation and Historic Preservation
April 29: Exclusionary Zoning
May 6: Inclusionary Zoning and Review
May 13: Final Due by midnight

Readings**1. INTRODUCTION TO THE COURSE (1/28/21)**

In the first class, I'll introduce the course and outline expectations and objectives. To inform my teaching throughout the semester, I'll want to hear a bit about your general career directions.

I'd also like to get to substance in the first class. For that, the *Standard State Zoning Enabling Act* (SZEА) will do double duty. The SZEА is not only an ur-text for the contemporary zoning practice that forms the core of this course, but also serves as an excellent lens into fundamental concepts of the U.S. legal system, such as:

- Sources of law
- Separation of powers
- Hierarchy of courts
- Basic structure of local government law

Please be prepared with a question or comment that emerges from your reading of the SZEА. The point is to gather your impressions and interests before we plunge into the semester's material. No question or comment is too basic.

Readings

- A. United States Department of Commerce, *A Standard State Zoning Enabling Act* (Washington DC: Government Printing Office, 1924)

2. PRE-ZONING LAND USE REGULATION (2/4/21)**Readings**

- A. Joseph Gordon Hylton, *Prelude to Euclid: The United States Supreme Court and the Constitutionality of Land Use Regulation, 1900-1920*, 3 Wash. U. J. L. & Pol'y 1 (2000)
- B. Pennsylvania Coal v. Mahon 260 U.S. 393 (1922)

3. ZONING AND RACE (2/11/21)**Readings**

- A. Richard Rothstein, THE COLOR OF LAW (Chapter 3)
- B. Kenneth Jackson, THE CRABGRASS FRONTIER (Chapter 11)

4. TRADITIONAL EUCLIDEAN ZONING (2/25/21)**Readings**

- A. Ambler Realty Co. v. Vill. of Euclid, Ohio, 297 F. 307 (N.D. Ohio 1924), rev'd, 272 U.S. 365 (1926)
- B. Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926)
- C. Nectow v. City of Cambridge, 277 U.S. 183 (1928)

5. BASIC LIMITS: DUE PROCESS, SPOT ZONING, AND THE COMPREHENSIVE PLAN (3/4/21)**Readings**

- A. New York Department of State, *Zoning and the Comprehensive Plan* (2015)
- B. Udell v. Haas, 21 N.Y.2d 463 (1968)
- C. Asian Americans for Equal. v. Koch, 72 N.Y.2d 121 (1988)

6. CONSTITUTIONAL LIMITS: TAKINGS AND EMINENT DOMAIN (3/11/21)

Readings

- A. Kelo v. City of New London, Conn., 545 U.S. 469 (2005)(excerpt)
- B. Berman v. Parker, 348 U.S. 26 (1954)

7. CONSTITUTIONAL LIMITS: REGULATORY TAKINGS (3/18/21)

Readings

- A. Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104 (1978)(excerpt)
- B. Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992)(excerpt)

8. CONSTITUTIONAL LIMITS: EXACTIONS (3/25/21)

Readings

- A. Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?* 77 U. Chi. L. Rev. 5 (2010)
- B. Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013)(excerpt)

9. LAND USE PROCEDURE AND LAND USE OUTCOMES (4/1/21)

Readings

- A. Frederick A.O. Schwarz Jr. and Eric Lane, *The policy and politics of Charter making: the story of New York City's 1989 Charter*, 42 N.Y.L. Sch. L. Rev. 723 (1998) (pp.853-872)
- B. R.A. Schuetz, "SF Planning 101: How Community Input Affects The Building Process" (2015), available online at: <http://hoodline.com/2015/11/sf-planning-101-how-community-input-affects-the-building-process>
- C. Tanvi Misra, How Chicago's Aldermen Help Keep It Segregated, August 2, 2018, available online at: <https://www.citylab.com/equity/2018/08/how-chicagos-aldermen-help-keep-it-segregated/564983/>

10. ZONING TOOLS (4/8/21)

Readings

- A. TBD
- B. Greater East Midtown (In-class presentation)

11. ENVIRONMENTAL REVIEW (4/15/21)

Readings

- A. Noah Kazis, *Environmental Review as an Incentive for Parking Provision in New York and California: Moving From Conservatism to Conservation* 41 Transportation Law Journal 157 (2014)
- B. Chinese Staff & Workers Ass'n v. City of New York, 68 N.Y.2d 359 (1986)

12. AESTHETIC ZONING AND HISTORIC PRESERVATION (4/22/21)

Readings

- A. Ed Glaeser, *Preservation Follies*, City Journal (Spring 2010)
- B. J. Peter Byrne, *Historic Preservation and Its Cultured Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development*, 19 Geo. Mason L. Rev. 665 (2012)

13. EXCLUSIONARY ZONING (4/29/21)

Readings

- A. S. Burlington County NAACP v. Mount Laurel Tp., 67 N.J. 151 (1975) [“Mt. Laurel I”](excerpt)
- B. S. Burlington County NAACP v. Mount Laurel Tp., 92 N.J. 158 (1983) [“Mt. Laurel II”](excerpt)
- C. John Mangin, *The New Exclusionary Zoning*, 25 Stanford L. & Pol’y Rev. 91 (2014)

14. TBD + REVIEW (5/6/21)

Readings

- A. TBD
- B. TBD

TAKE-HOME FINAL EXAMINATION

DISTRIBUTED MAY 6, 2021

DUE MAY 13, 2021