Course Overview

Today, land is a necessary but scarce resource. It triggers conflict and competition over its possession, use, development and redevelopment. Land, in any given locality, affects the interests of society and neighbors, yet market factors do not always protect or advance these interests. Hence planning and environmental laws have emerged to determine how land is used and built on. 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, all of which play a role in regulating land use.

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, reading and discussing cases. Throughout the semester, students will be requested to brief and discuss cases in class. I strongly suggest that each student "brief" each of the cases set forth in these materials.
Grading

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

10%  Case Brief

Each student will be expected to prepare a one (1) page double-space brief as assigned by the Professor. You will be asked to 1) present a summary of the case to the class; and 2) prepare and submit a one-page case brief for your assigned case. The paper must be submitted before the class in which you are scheduled to present.

20%  Attendance and Classroom Participation

Students are expected to attend class. 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

Due Date: [March 9, 2016]

(A) A short summary of one issue at the Public Hearing (2 pages double-spaced). This short paper should include a brief detailed description of the land use issues(s), the agency involved as well as, issues raised by the reviewing government entity. Attach an Agenda of the Public Hearing you attended. Public Hearings attended should include one of the following:

A. City Planning Commission
B. Board of Standards and Review.
C. Landmarks Preservation Commission.

10%  Assigned "Role-Playing written exercise" related to Mandatory Inclusion Housing (MIH)

Due Date: [March 30, 2016]

(B) The written exercise (3-5 pages double-spaced) should describe your role in the public review process regarding the proposed Mandatory Inclusionary Housing Program MIH (Amendment to the Zoning Resolution). You should decide which of the following officials you wish to role play (a) Chairman of the City Planning Commission, (b) Borough President (you pick the borough) and (c) Speaker of the Council. You must decide how your selected official should vote on the MIH issue and what arguments you would make to justify your vote to garner your colleagues support in voting with you on the issue.

50%  Final Exam

Due Date: [May 11, 2016] at 6PM

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

Meeting Time and Place

Wednesdays from 6:45 pm – 8:25 pm

Place: 25 West 4th Street, Room C-20

Reading Assignments

All reading materials will be posted on NYU Classes or are available online. Reading assignments will be provided for each week.
Office Hours and Contact Information

Office hours will be by appointment only.

Professor Levine: mark.levine@akerman.com or 212-880-3832 – Professor Levine will be pleased to have lunch with small groups of students during the semester.

Teaching Assistant: Tricia Dietz  [mpd361@nyu.edu]
Class Schedule

1. **INTRODUCTION TO THE COURSE**  
   January 27, 2016
   
   Overview of the Course and Materials
   Why have Planning Law Course?
   Influence of Time, Culture and Politics on the Law
   Brief History of Property Law; Attributes of Real Property-
   
   Real Property v. Personal Property
   Statutes vs. Constitutional Law
   Basic Principles of American Legal Systems
   Hierarchy of Courts
   Case Law:  How to brief a case
   The Role of the Planner
   No assigned reading

2. **COMMON LAW OF NUISANCE / ALTERNATIVES TO LAND USE REGULATION**  
   February 3, 2016
   
   How was land use regulated prior to 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? What is the role of the Planner in Land Use Law?
   
   Readings
   
   A. **HADACHEK v. SEBASTIAN**, Supreme Court of the United States (1915)
   B. **REINMAN v. LITTLE ROCK**, Supreme Court of the United States (1915)
   
   AT THE BEGINNING OF CLASS, HAND IN A ONE PAGE BRIEF OF **HADACHEK v. SEBASTIAN**, SO THAT I CAN PROVIDE FEEDBACK ON YOUR CASE BRIEFING. IT WILL NOT BE GRADED.

3. **TRADITIONAL EUCLIDEAN ZONING**  
   February 10, 2016
   
   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](http://www.usconstitution.net/const.html#Am5)

E. Zoning Resolution of the City of New York, (skim the chapters of the City’s Zoning Resolution to see how it's organized and what topics it covers.)

**Background Reading**


---

4. **Takings I – Physical Takings**

February 17, 2016

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](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)


**Background Reading**

E. **KAUR, TUCK-IT-AWAY, INC. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION**, New York State Appellate Division, 1st Dept. (2009)

F. **KAUR, TUCK-IT-AWAY, INC. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION**, Court of Appeals of New York (2010)


---

5. **Takings II – Regulatory Takings**

February 24, 2016

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. DAVID H. LUCAS v. SOUTH CAROLINA COASTAL COUNCIL, Supreme Court of the United States (1992)

C. TAHOE-SIERRA PRESERVATION COUNCIL v. TAHOE REGIONAL PLANNING AGENCY, Supreme Court of the United States (2002)

6. INTRODUCTION TO CITY OF NEW YORK LAND USE ACCESS: March 2, 2016
ULURP SEQRA/CEQR, VARIANCE ROLE OF BSA, SPECIAL PERMITS, REZONING AND CITY MAPPING PROCEDURES

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


C. Readings

1. State Environmental Quality Review Act (SEQRA)


3. 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)

Background Readings


- 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)
7. **CASE STUDIES: PROJECTS UTILIZING CITY'S LAND USE PROCEDURES**

A. **HALLET'S POINT**
B. **WILLET'S POINT**
C. **CENTRAL PARK WEST**

8. **SPRING BREAK**

9. **EXACTIONS & COMMUNITY BENEFITS AGREEMENTS**

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)
C. **KOONTZ v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**, Supreme Court of the United States (2013)

**Background Reading**

E. Materials on Kingsbridge Armory

10. **CONTEMPORARY ZONING TOPICS I**

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)
B. **Rezoning to Preserve Neighborhood Character: Downzoning in New York City**, David Karnovsky, Former Counsel to the NYC City Planning Commission
C. **APA Reading – https://www.planning.org/etc.**

**Background Reading**

- 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)

11. **HISTORIC PRESERVATION**  
**April 6, 2016**

**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)

**Background Reading**

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)

12. **CONTEMPORARY TOPICS II**  
**April 13, 2016**

**MANDATORY INCLUSIONARY HOUSING (MIH)**

**Guest Speaker**

*Vikki Been, Commissioner*

*Department of Housing and Preservation*

**Review MIH Zoning Text Commentaries** -

Students to submit written exercise describing the position they would take on MIH as a decision maker listed below and the reasons to support their decision.

A. Chairman of City Planning Commission, or
B. Borough President – Pick a Borough
C. Speaker of the City Council

13. **ENVIRONMENTAL REVIEW (CONTINUED)**  
**April 20, 2016**

**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)
C. CHINESE STAFF AND WORKERS ASSOCIATION ET AL. v. CITY OF NEW YORK ET AL., Court of Appeals of New York (1986)
D. MATTER OF CHINESE STAFF WORKERS ASSOC. v. BLOOMBERG, New York County Supreme Court (2009)
E. IN THE MATTER OF GRICEL NEVILLE ET AL. v. EDWARD I. KOCH, Court Of Appeals of New York (1992)

14. Equity and Land Use
   Exclusionary Zoning
   Fair Share
   Ocean Hill President Association v. City (shelter)
   Reform Now v. Bloomberg (solid waste)

   [Tricia – Would you input your week 14 materials here]

15. FUTURE OF LAND USE REGULATION
    May 4, 2016
    Environmental Review: Greenhouse Gas Emissions and Climate Change Impacts
    Zoning for Residency
    Flood Resilience
    New Urbanism
    Another Way to Zone?

    Reading

16. Wrap Up
    May 11, 2016
    Take-Home Final Examination
Localities have the authority to adopt comprehensive plans and zoning/land use regulations, derived from state's police power. Delegated by state legislation to town, villages, and cities. Enabling Acts. Legislation passed by NYS legislature authorizing counties, cities, towns, and villages to carry out functions in the public interest. Municipalities may adopt comprehensive plans, zoning ordinances, and land use regulations under these acts. Comprehensive Plan. Written document that identifies goals, objectives, principles, guidelines, etc. for development of the community.