COURSE WEB SITE: http://lawschool.westlaw.com for Course Syllabus, Web Handouts (required supplemental reading) and Web Discussion. Please register for the TWEN Land Use course website using the email address that you check the most frequently.

BOOKS

Required: ROBERT C. ELICKSON, VICKI L. BEEN, RODERICK M. HILLS, CHRISTOPHER SERKIN, LAND USE CONTROLS: CASES AND MATERIALS (4TH ED. 2014) (Main Text)

Recommended Hornbook: Julian C. Juergensmeyer, Thomas E. Roberts, Land Use Planning and Development Regulation Law (3d Ed. 2013)

COURSE GOALS

The course will provide an overview of the legal framework for how we plan and regulate the use of land in the US and how the law resolves disputes over the use of land between private property owners and the public. Topics covered include zoning administration, federal and state constitutional limits on land use regulation including due process and takings and issues related to exclusionary zoning, growth controls and historic preservation. The goal is that students will develop an ability to conduct a probing and thoughtful analysis of land use disputes: understand applicable legal principles and standards for the regulation of land; become aware of the subtleties and difficulties of applying the law presented by competing private interests versus public policy concerns; and become familiar with strategies to balance public demands and further clients’ interests as well as see possibilities for future law.

COURSE REQUIREMENTS

Grades will be based on a 3 hour, open book, open notes, final examination (60%) and class participation (30%) (defined as: attendance, class discussion, individual hearing project):

1. Attendance. Final grades will be lowered for habitual unpreparedness or lateness. The expectation is that you will attend class but each student is entitled to 3 unexcused absences. After that, students who are absent or unprepared may be excused up to 2 times for 1) illness, 2) family emergency, 3) out-of-town job interviews, and 4) other compelling reasons not within your control. In accordance with ABA rules and UB policy, if you miss more than 5 classes you will not be allowed to sit for the final exam.
2. **Class Discussion.** If you attend class and participate in discussions by volunteering or answering questions you will have met the class participation requirement. Each week you may earn up to 2 points per week (for a total of 10 points) added to your final examination score for each news story you post to the TWEN website **IF** you include at least one sentence about how the news story relates or adds to the topics discussed in class. (2 points per news story/1 sentence explanation; 1 point for an at least, 1 sentence substantive reply will be added to your final examination score up to a total of 10 points).

3. **Individual Hearing Project.** You must a) attend a land use public hearing in a city or county of your choice, b) find the actual parcel that was under consideration at the hearing, c) photograph the parcel yourself, and d) write a learned, 3-5 page report about the dispute or matter that was considered. The report **MUST** include the following elements: i) a description of the actual hearing and issue presented, ii) your independent research on the relevant statutory or case law pertaining to the matter; and iii) an analysis of whether and how the matter illustrates issues, themes or matters covered by the course; iv) 1-3 (maximum) photograph(s). The photographs and reports will be submitted through the TWEN Assignment Drop Box and, time permitting, discussed in class. Please refer to the Web Handout entitled: Land Use In Action: Individual Land Use Project Instructions for further details about requirements for the report. The report will be graded based on the quality of your independent research efforts and the written report and will be worth up to 40 points added to your final examination score. **Due Dates (TWEN Drop Box):** 1) **Wednesday, Sept. 16, 2015:** Land Use Hearing you propose to attend; 2) **Mon., Nov. 9, 2015:** Final Land Use Hearing Report is due.

## REQUIRED READING

**Mon. Aug. 17, 2015**

1. **Introduction to the Regulation of Land Use: Private Property, Local Government and the Community**- pp. 1-14; 23-26; pp. 31-32(top) 45-50; Web Handout
   a. **ANDREW F. POPPER, PATRICIA E. SALKIN, DAVID AVITABILE, A COMPANION TO BORDERING ON MADNESS: AN AMERICAN LAND USE TALE, 4-12** (2d. ed. 2008) (Web Handout)
   b. Western PCS BTA v. Town of Steilacoom, 199 U.S. Dist. LEXIS 9068 (W.D. Wa. 1999) (Web Handout)
   c. **TIMOTHY BEATLEY, ETHICAL LAND USE: PRINCIPLES OF POLICY AND PLANNING, 3-4, 13-16** (1994)

**Wed. Aug. 19, 2015**

2. **The Underpinnings of Zoning:**
   a. **Land Use in the Absence of Zoning – Nuisance and non-zoning approaches to land use** – 639(bottom)- 641(top); 643-646; 580-584
      i. Bernard Siegan, Non-Zoning in Houston, p.643 What are the pros and cons of adopting Houston’s approach to land management. Is there is a difference between who is advantaged and disadvantaged by zoning?
      ii. Virginia Postrel, A Tale of Two Town Houses: Real estate may be as important as religion in explaining the infamous gap between red and blue states, ATLANTIC MONTHLY (November 2007) (Web Handout)
   b. **Replacing the Common Law with Statutory Regulation (Zoning):** pp. 86-104(top) Two questions to consider:
      i. Should the Supreme Court have ruled in favor of the intrusion into private property rights
Mon. Aug. 24, 2015
3. How a Zoning Case Gets to State Court - Web Handouts
   a. Standard State Zoning Enabling Act (please read notes & answer questions) (Web Handout)
   b. 222 East Chestnut Street Corp. v. Bd. of Appeals, 152 N.E.2d 465 (Ill. 1956) (Web Handout)
   e. Daniel R. Mandelker, A Preliminary Note on Remedies in Land Use Cases (Web Handout)
   f. Willow Neighborhood Assn. Problem (Web Handout) (please be prepared to discuss)

4. Constraints on Zoning Regulations: Types of Legal Challenges to Zoning Regulations & Standards of Review
      i. Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461 (7th Cir. 1988)
      iii. Cormier v. County of San Luis Obispo, 207 Cal. Rptr. 880 (Ct. App. 1984)
  
Mon. Aug. 31, 2015
b. Other Constraints on Zoning Regulations: pp. 112-119(top); 129-136
   ii. Island Silver & Spice, Inc. v. Islamorada, 542 F.3d 844 (11th Cir. 2008)
   iii. Layne v. Zoning Board of Adjustment, 460 a.2d 1088 (Pa. 1983)

Wed. Sept. 2, 2015
1. Nonconforming Uses and Vested Rights, Web Handout; p.206-218
   a. Please look for a nonconforming use in your town - does it blend with or contradict
      the neighborhood. Should the “use” be phased out?
      iii. Zoning for a Healthy Baltimore, Section 5: pp. 5-5-5-7(top)(Web Handout)
      v. Valley View Industrial Park v. City of Redmond, 733 P.2d 182 (Wash. 1987) (en banc)
      vi. Note on Vested Rights
LAND USE

Wed. Sept. 9, 2015

2. Zoning Administration – pp. 301-306
   a. Regulatory Flexibility Device Built into the Zoning Code, Part I: Variances – pp. 306-316; Web Handout; p.376-385
      i. Proceedings before Planning & Zoning Board of the City of San Cibola (Web Handout – please be prepared to discuss any procedural and/or substantive problems in the scenario presented).
      ii. Matthew v. Smith, 707 S.W.2d 411 (Mo. 1986)
      iii. Richard Roeser Professional Builder, Inc. v. Anne Arundel County, 793 A.2d 545 (Md. 2002) (Web Handout)

Mon. Sept. 14, 2015

b. Regulatory Flexibility Device Built into the Zoning Code, Part II: Special Exceptions (Conditional Uses) – pp. 317-326; Web Handout
   iii. Board of Supervisors of Fairfax County v. Southland Corp., 297 S.E.2d 718 (Va. 1982) (Web Handout)
   v. Ultra Vires Limits on Conditions Imposed by Administrative Agencies

c. Doctrines Utilized by Courts to Impose Constraints on Zoning Changes - 331-344; Web Handout
   i. Spot Zoning
      1. Kuehne v. Town Council of East Hartford, 72 A.2d 474 (Ct. 1950) (Web Handout)

Wed. Sept. 16, 2015

c. Doctrines …Constraints on Zoning Changes, cont’d
   ii. The Change-Mistake Approach, pp. 344-345; Web Handouts

   iii. Quasi-Judicial v. Legislative Rezoning – pp. 367-376
      1. Snyder v. Board of County Commissioners, 595 So. 2d 65 (Fla. Dist. Ct. App. 1991), quashed, 627 So. 2d 469 (Fla. 1993)
      2. Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993) p.346

Mon. Sept. 21, 2015

Page 4 of 8
d. Doctrines …Constraints on Zoning Changes, cont’d
iv. Contract or Conditional Zoning, pp. 345-358 (top)
   3. Note on Cluster Zoning and Planned Unit Development, p. 329

Wed. Sept. 23, 2015
  e. Regulatory Flexibility Device Built into the Zoning Code, Part III: “Incentive” Zoning - pp. 326-331 (top); Web Handouts
   vi. Lisa Forderaro, Privately Owned Park, Open to the Public, May Make Its Own Rules, NY TIMES, A26 (October 14, 2011) (web handout)
   vii. JEROLD S. KAYDEN, Occupying Wall Street at the public-private frontier, The Architects Newspaper (October 12, 2011) (web handout)

Mon. Sept. 28, 2015
Constraints on Zoning Changes, cont’d
f. “Consistency?”: Zoning Without, or in Conflict with the Comprehensive Plan - pp. 361-367 (top)
   ix. Trail v. Terrapin Run, LLC, 403 Md. 523; 943 A.2d 1192 (2008) (an edited version of this case is in Web Handouts)
   x. Baltimore County Master Plan 2020 (web handout) (skim- take a look at pp. 54 and p.66)
   xi. Baltimore City Comprehensive Plan 2007/2015 (web handout) (skim)
   xii. Run a GOOGLE search of the term “comprehensive plan”. Combine it with the name of a city, town or other jurisdiction that you find interesting. Please come to class prepared to discuss your favorite plan:
   xiii. 1. should the comprehensive plans have the force of law, i.e. be legally binding on future development? Why or why not?
      2. should comprehensive planning be mandated by the state? the federal government? Or is the principle of local control important enough that the matter should it be left up to each locality to decide?

Wed. Sept. 30, 2015
   a. City of Chicago v. Stratton, 44 N.E. 853 (Ill. 1896)
b. Cary v. City of Rapid City, 559 N.W.2d 891 (S.D. 1997)
c. Buckeye Community Hope Foundation v City of Cuyahoga Falls, 697 N.E.2d 181 (Ohio 1998)


4. Private Property, Eminent Domain & The Public Interest, pp. 900-923; 926-935
   a. The Power to Take
      v. Hellman, How They Assembled the Most Expensive Block in New York’s History
      vi. Please be prepared to specifically discuss Kelo as 1) an expansion or 2) restriction on the rule announced in Berman v. Parker.

   b. Just Compensation - pp. 935-940 (top)


5. Regulatory Takings
   a. Early Interpretations - pp. 137-160 (top)
      i. Mugler v. Kansas, 123 U.S. 623 (1887) p.136
      ii. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) p. 140
   b. The Ad Hoc Balancing Test - p.158-167

Mon. Oct. 12, 2015

c. Per Se Takings – Categorical Rules – 175-187; Web Handout

   d. Tensions Between Balancing and Per Se Rules - pp. 187-193; 200-201(n.1-5)


e. Tensions Between Balancing and Per Se Rules (con’td) pp.193-206(top); 265-276
   ii. First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 US 304 (1987)


6. Constraints on Zoning Measures That Threaten Civil Liberties
   e. Freedom of Religion - Web Handout; pp. 218-228
Wed. Oct. 21, 2015
f. Freedom of Speech – pp. 228-240
   i. Alexander Reichl, Fear and Lusting in Las Vegas & NYC: Political Economy & Public Space (Web Handout)

7. Aesthetic Regulation (What is beauty?) -- pp. 497-499(top); 517-534
   g. Building Design and Historic Preservation
      ii. State by Powderly v. Erickson, 285 N.W.2d 84 (Minn. 1979)
      iii. Rector of St. Bartholomew’s Church v. City of New York, 914 F.2d 348 (2d Cir. 1990)

8. Land Use & Exclusion: Confronting The Matter of Social Equity and Land Use Regulation?-- pp. 725-753; Web Handout; p.753-758
   a. From Racial Zoning to Exclusionary Zoning
      ii. Christopher Silver, “The Racial Origin of Zoning in American Cities” (Web Handout)
      iii. Village of Arlington Heights v. Metropolitan Housing Development Corp. [Arlington Heights I]
      iv. Metropolitan Housing Development Corp. v. Village of Arlington Heights [Arlington Heights II], 558 F.2d 1283 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978)
      v. Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988) (Web Handout)

Mon. Nov. 2, 2015
b. Exclusionary Zoning to Inclusionary Zoning? pp. ; 758-787
   i. Mount Laurel (District Court Statement of Facts) (Web Handout)
   vi. Report: Montgomery County Moderately Priced Dwelling Unit (MPDU) Program (Web Handout)
Wed. Nov. 4, 2015
   i. Moore v. City of East Cleveland, 431 U.S. 494 (1977)

   a. People with Disabilities - pp. 794-810

Mon. Nov. 9, 2015
10. Growth, Impact and Development
    a. Growth Management Control Strategies - pp. 848-887
       i. Associated Home Builders v. City of Livermore, 557 P.2d 473 (moratoria)
       iii. Maryland Smart Growth (Web Handout)

Wed. Nov. 11, 2015
11. Subdivision Regulations and Impact Fees
    a. Subdivision Regulation - pp. 438-451;458-461
       i. Miles v. Planning Board of Millbury, 536 N.E.2d 328 (Mass. 1989) p.418
       ii. Note on Subdivision Standards, Street Layouts and New Urbanism, p. 420

Mon. Nov. 16, 2015
b. Dedications, Exactions & Impact Fees – pp. 670-689; 697-709 (top); 713(bottom)-718

Wed. Nov. 16, 2015
Class Discussion of Land Use Hearing Reports;

Mon. Nov. 23, 2015
Review