11.367 THE LAW AND POLITICS OF LAND USE
Spring Semester 2013
Tuesday - Thursday
2:30 - 4:00 p.m.
Room 10-401

Terry S. Szold, Adjunct Professor
Eric Schultheis, Teaching Assistant

COURSE OUTLINE AND SYLLABUS

This course focuses on local and state power to regulate land use and development. Particular emphasis is placed on the tools most frequently used by planners and communities to regulate land use, including zoning. The legal framework and foundation for zoning and the evolution of land use regulations are given considerable attention. Development decisions rendered by public agencies are reviewed, critiqued, and discussed in relation to the constitutional and other regulatory issues that are explored.

Given the recent perceived narrowing of the relationship between public improvements requirements and development impact, the course provides students with an opportunity to learn and become more skilled in crafting legally defensible regulations and programs. Supreme Court cases and decisions such as *Nollan, Lucas, Dolan, Kelo, Palazzolo, and Tahoe-Sierra* are examined. The potential lessons and prescriptions from these cases and decisions are discussed and analyzed. Recent cases in Massachusetts are also reviewed where appropriate, to provide further context.

While this course is focused on the foundation for land use regulation and evolving regulatory standards, it is not a subject that emphasizes the complex mechanics of the judicial system or litigation strategies. Rather, it is a course designed for the generalist planner. Students are exposed to the land use and regulatory issues that they may face in their future work endeavors, and the potential legal challenges that may result from the implementation of the various programs that they develop or administer.

Course materials and readings are drawn from land use law literature, a textbook, journal articles, and relevant publications. Legal cases and actual decisions rendered by regulatory agencies are also used. Where relevant to specific topics, guest speakers from the local legal and planning communities are invited as guest lecturers, and will participate in selected class discussions.

Student evaluations are based on completion of a final examination (30%), class participation (25%), two short papers (25%), and workshop participation (20%).
Academic Integrity
For information on MIT’s rules on academic integrity, also applicable to this class, please go to the MIT Website: http://web.mit.edu/academicintegrity.

Students with Disabilities
This class follows the MIT rules on the accommodation for students with disabilities, details for which are at: http://studentlife.mit.edu/dso/students

Instructor Office Hours
By appointment (generally Tuesday and Thursday, after class)

Required readings for each class are listed under each subject category for the class dates provided. See the section “Assigned Readings” at the end of the course outline/syllabus for more detail.

Where the symbol ☀️ appears, the reading is posted under “Materials” on the Stellar website for the class.

Where the symbol (■) appears, unless otherwise noted, these are suggested additional readings that are optional; students may wish to peruse or skim these for general content, if time permits, or if greater exploration of the subject is desired.

I. THE LEGAL FRAMEWORK AND FOUNDATION FOR LAND USE CONTROLS

Feb. 5th

• Course Introduction: Land Use Controls and the Legal Framework
(To be led by instructor, no assigned readings.)

Feb. 7th

• History of Land Use Controls; Nuisance Law and Police Power


Cases Reviewed:
Bove v. Donner-Hanna Coke Corp.
☀️ Spur Industries, Inc. v. Del E. Webb Development Co.

Feb. 12\textsuperscript{th}

- **The Takings Issue: Kelo and the "Zoning Classics"**

Cases Reviewed:

- \textit{Hadacheck v. Sebastian}
- \textit{Kelo v. City of New London} (Full U.S. Supreme Court decision also posted on Stellar for those interested.)
- \textit{Pennsylvania Coal Co. v. Mahon}
- \textit{Euclid v. Ambler Realty Co.}

Reading Assignment: PCLD pages 74-107.

See also these newer cases on the topic, posted or linked to from the Stellar site:

- \textit{County of Hawaii v. C&J Coupe Family}
- \textit{Goldstein v. N.Y. State Urban Development Corp.}
- \textit{Rhode Island Economic Development Co. v. The Parking Co.}

Also worth a review is the summary on Stellar of Arizona’s Prop 207.

Additional readings:


  & Environmental Law}, September, 2005.


Feb. 14\textsuperscript{th}

- **The Takings Issue - Continued**

Cases Reviewed:

- \textit{Penn. Central Transportation Co. v. New York}
- \textit{Nollan v. California Coastal Commission}
- \textit{Dolan v. City of Tigard}

Reading Assignment: PCLD pages 108-133, 710-728. Also read starred case noted on Stellar.

Feb. 19\textsuperscript{th} (No class; Monday schedule of classes held due to President's Day)
Feb. 21st (1st Written Assignment Distributed and Discussed)

• **Per Se and Temporary Takings; Applying the Penn Central Test**

Cases Reviewed:

*First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*

*Lucas v. South Carolina Coastal Council*

*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*

*Lingle v. Chevron*

Guggenheim v. City of Goleta

Reading Assignment: PCLD pages 133-180.


Feb. 26th

• **Due Process and Equal Protection Limitations; Remedies for Violations; Barriers to Judicial Relief and Ripeness; Abstention**

Cases Reviewed:

*George Washington University v. District of Columbia*

*Village of Willowbrook v. Olech*

*Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*

Nectow v. City of Cambridge (A local case! See coverage in textbook; but also on Stellar.)

Reading Assignment: PCLD pages 188-222.

II. **ZONING AS THE PRINCIPAL TOOL OF CONTROL OF LAND USE**

February 28th

• **Zoning Enabling Acts and Ordinances; How a Zoning Case Gets to Court; Standing; Exhaustion of Remedies; Securing Judicial Review; Presumption of Validity**

Cases Reviewed:

*Center Bay Gardens, LLC v. City of Tempe City Council*

*Ben Lomond, Inc. v. Municipality of Anchorage*
Copple v. City of Lincoln  
City of Richmond v. Randall  
Krause v. City of Royal Oak

Reading Assignment: PCLD pages 223-269.

March 5th

• Density and Intensity of Use Restrictions; Residential Districts, Accessory Dwellings and Definitions of Family

Cases Reviewed:
- Jaylin Investments v. Village of Moreland Hills  
- Johnson v. Town of Edgartown  
- Village of Belle Terre v. Boraas  
- City of Cleburne v. Cleburne Living Center  
- Keinath v. Township of Edgmont  
- City of Wilmington v. Hill

Reading Assignment: PCLD pages 269-312. Also read or skim starred cases noted.

Guest Speaker: Joel B. Bard, Esquire, Land Use and Municipal Law Attorney from Kopelman and Paige, will speak about The Impact of Zoning on the Agassiz Neighborhood in North Cambridge, Massachusetts.

March 7th (1st Written Assignment Due)

• Commercial and Industrial Uses; Formula Business; Nonconforming Uses

Cases Reviewed:
- BP America Inc. v. Council of the City of Avon  
- Loreto Development Co. Inc. v. Village of Chardon  
- Hernandez v. City of Hanford  
- Conforti v. City of Manchester  
- City of Los Angeles v. Gage  
- Island Silver & Spice v. Islamorada

Reading Assignment: PCLD pages 312-355. Also read starred case noted.

Peruse various municipal Zoning Ordinances and Bylaws online and at the Mandelker web site.
March 12th

- **The Role of Zoning Change; The Zoning Variance, Special Use Permits, and Site Plan Review**

Cases Reviewed:

- Puritan-Greenfield Improvement Association v. Leo
- Simplex Technologies, Inc. v. Town of Newington
- One Meridian Partners, LLP v. Zoning Board of Adjustment of City of Philadelphia
- Ziervogel v. Washington County Board of Adjustment
- County v. Southland Corp.
- Crooked Creek Conservation and Gun Club v. Hamilton County North Board of Appeals
- Charisma Holding Corp. v. Zoning Board of Appeals of the Town of Lewisboro

Reading Assignment: PCLD pages 537-547; 558-585; 638-643. Also read starred cases noted.

March 14th

- **The Zoning Amendment: Vested Rights, Spot Zoning, Quasi-Judicial Versus Legislative Rezoning**

Cases Reviewed:

- Western Land Equities, Inc. v. City of Logan
- Kuehne v. Town of East Hartford
- Board of County Commissioners of Brevard County v. Snyder
- Thomas Bransford and Others v. Edgartown Board of Zoning Appeals (read both the SJC and Land Court decisions.)
- Bjorklund & another v. Zoning Board of Appeals of Norwell
- Amicus Brief for the Massachusetts Chapter of APA in the Bjorklund SJC case

Reading Assignment: PCLD pages 585-620. Also read starred cases noted above.


March 19th (2nd Written Assignment Distributed and Discussed)

- **Downzoning; The Role of the Comprehensive Plan; Initiative and Referendum; SLAPP Suits**

Cases Reviewed:

- National Amusements, Inc. v. City of Boston
- Stone v. City of Wilton
- Haines v. City of Phoenix
- Township of Sparta v. Spillane
- City of Eastlake v. Forest City Enterprises, Inc.
- Tri-County Concrete Company v. Uffman-Kirsch
Trail v. Terrapin Run

Reading Assignment: PCLD pages 620-626; 643-680. Also read or skim starred cases.


March 21st


Cases Reviewed:
Collard v. Incorporated Village of Flower Hill
Rando v. Town of North Attleborough
Durand v. Bellingham
Susan C. Campion et al. v. Board of Aldermen of the City of New Haven
Campion et al. v. Board of Aldermen of the City of New Haven (Connecticut Supreme Court decision)

Reading Assignment: PCLD pages 626-638. Also read starred cases noted above.

Also see: Burlington Planned Development District Bylaw
Providence Rhode Island Institutional Floating Zoning Regulations
Del Monte Dunes at Monterey Ltd. v. City of Monterey (See case summary/article)

April 2nd (2nd Written Assignment Due)

- Uses Entitled to Special Protection: Free Speech-Protected Uses and Religious Uses; Telecommunications Uses

Cases Reviewed:
City of Renton v. Playtime Theatres, Inc.
C.L.U.B. et al., v. City of Chicago
Omnipoint Communications MB Operations, LLC, v. Town of Lincoln
Reaching Hearts Int’l Inc. v. Prince George’s County
Centro v. City of Yuma

Reading Assignment: PCLD pages 355-378. Also read starred cases noted.

Guest Speaker: Michael Giaimo, a DUSP alumni and Partner with the law firm Robinson and Cole, will speak about his work on cases related to the religious use question.
III. RESIDENTIAL DEVELOPMENT CONTROLS AND EQUITY ISSUES: EXCLUSIONARY ZONING, EXACTIONS, AND IMPACT FEES

April 4\(^{th}\)

- Exclusionary Zoning and The Mount Laurel Doctrine; Discriminatory Zoning

Cases Reviewed:
Southern Burlington County NAACP v. Township of Mt. Laurel (I &II)
- City of Cuyahoga Falls v. Buckeye Community Hope Foundation Village of Arlington Heights v. Metropolitan Housing Development Corp.
Huntington Branch, NAACP v. Town of Huntington
Larkin v. State of Michigan Department of Social Services
- Innovative Health Systems (HIS) Inc. v. City of White Plains
- Budnik v. Town of Carefree

Reading Assignment: PCLD pages 457-479; 505-536. Also read/skim starred cases noted.


April 9\(^{th}\)

- Inclusionary Zoning and State Affordable Housing Legislation

Reading Assignment: PCLD pages 479-505.

Also see on Stellar:
- Palmer/Sixth Street v. City of Los Angeles

MGL Chapter 40B: The Massachusetts Anti-Snob Zoning Act


Conduct your own online search for inclusionary zoning ordinance provisions of the City of Cambridge and the Town of Brookline.
Guest Speaker: Clark Ziegler, Executive Director of the Massachusetts Housing Partnership, will join the class to discuss inclusionary zoning provisions and the best ways to remove barriers to affordable housing.

April 11th

- **Subdivision Regulations; Private Covenants and Restrictions; Planned Unit Developments**

Cases Reviewed:
- Garipy v. Town of Hanover
- Baker v. Planning Board
- City of Gig Harbor v. North Pacific Design, Inc.
- Cheney v. Village 2 at New Hope, Inc.

(While not a major focus of the course, it is appropriate for students to have some knowledge about subdivision regulations and the use of private land use controls that are recorded with subdivision plans.)

Reading Assignment: PCLD pages 681-706; 747-765.

Also skim the Gilroy and Royal Oak PUD Ordinances on class Stellar site.

(The APA National Conference will take place in Chicago, April 13th – April 17th. Students going to the conference are urged to attend the array of sessions on land use law and growth management.)

April 16th Holiday (Patriots’ Day Observed)

April 18th

- **Dedications, Exactions, Linkage, and Impact Fees**

Cases Reviewed:
- Sparks v. Douglas County
- The Drees Co. v. Hamilton Township
- Erlich v. City of Culver City
- Barbery Homes v. Rodenheiser (Another local case)

Reading Assignment: PCLD pages 706-710; 728-747. Review Nollan and Dolan (PCLD pages 126-130; 710-728). Read starred cases noted.

Please also read:
IV. GROWTH MANAGEMENT AND ALTERNATE URBAN DEVELOPMENT FORMS

April 23rd

• Introduction to Growth Management; Moratoria and Interim Controls; Quota Programs; Timing, Phasing, Rates of Development

Cases Reviewed:
Ecogen, LLC v. Town of Italy
■ Construction Industry Ass’n of Sonoma County v. City of Petaluma (also in textbook)
Zuckerman v. Town of Hadley
Golden v. Ramapo Planning Board
■ Biggers v. City of Bainbridge Island
■ Monks v. City of Rancho Palos Verde

Reading Assignment: PCLD pages 767-773; 547-558; 773-796. Also read or skim starred cases noted.

Guest Speaker: Attorney Diane Tillotson, a Partner at Hemenway and Barnes, will join the class for discussion of a legal challenge to a growth control regulation in Hadley, Massachusetts.

April 25th

• Adequate Public Facilities Ordinances, Concurrency, Urban Growth Boundaries; Controlling Growth through Public Services and Corridor Preservation; Takings Legislation

Cases Reviewed:
Maryland-National Capital Park and Planning Commission v. Rosenberg
Hildebrand v. City of Adair Village
Dateline Builders, Inc. v. City of Santa Rosa
■ Citrus County v. Halls River Dev. Inc.

Reading Assignment: PCLD pages 796-835. Also read starred case noted.

And browse on Stellar:
■ State of Oregon’s growth management tools, Measure 37 and Measure 49.

April 30th

• Mixed Use Development, Transit-Oriented Development, New Urbanism, The Transect, and Smart Growth; Preserving Agricultural Land

Cases Reviewed:
Gardner v. New Jersey Pinelands Commission
Tonter Investments v. Pasquotank County
Buchanan v. Simplot Feeders Limited Partnership

Reading Assignment: PCLD pages 378-387; 389-423. Also read:


Students should scan “model codes” listed on the Conference for New Urbanism web site: www.cnu.org, and be prepared to discuss potential challenges that may arise from implementing such regulations.

Students should read the following two chapters from the book referenced below and placed on Stellar:


Students are also requested to find an article, case, or regulation on “Smart Growth” that presents or reflects a land use regulatory challenge for the planning profession.

V. AESTHETICS AND THE REGULATION OF DESIGN

May 2nd

- Design Controls, Aesthetics, Urban Design, Design Review; Historic Preservation; Transfer of Development Rights

Cases Reviewed:
Metromedia, Inc. v. City of San Diego (Cal.)
Metromedia, Inc. v. City of San Diego (U.S. Supreme Ct.)
Showing Animals Respect and Kindness v. City of West Hollywood
Naser Jewelers, Inc. v. City of Concord
State ex rel. Stoyanoff v. Berkeley
Anderson v. City of Issaquah
Pinecrest Homeowners Assn v. Glen A. Cloninger and Assoc.
In re Pierce Subdivision Application
Figarsky v. Historic District Commission
Fred F. French Investing Co. v. City of New York
Friends of the Great Southern v. City of Hollywood
Gibbons v. Historic District Commission of the Town of Fairfield
Casey v. Mayor and City Council of Rockville

Reading Assignment: PCLD pages 837-913. Case notes and questions may be skimmed.

Final Workshop Assignment Distributed and Discussed on 5/2
“Critiquing a Local Land Use Decision and Crafting Defensible Decisions”

May 7th

(Workshop Period/Team Meetings)

May 9th

• Reviewing and Judging the Workshop Team Assignment and Results

Teams present and summarize their decisions before a small panel of “judges” who are land use law practitioners. Team written reports and decisions are due at 5:00 p.m.

VI. ENVIRONMENTAL LAND USE CONTROLS

May 14th

• Wetlands, Floodplain Regulation, Groundwater and Watershed Protection, Protecting Hillsides, Coastal Zone Management, Sustainability and Climate Change

Cases Reviewed:
Lopes v. Peabody
FIC Homes of Blackstone, Inc. v. Conservation Commission of Blackstone
Rapanos v. U.S.
Suitum v. Tahoe Regional Planning Agency
Topliss v. Planning Commission (see Hylton reading referenced below.)
Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers (see Hylton reading referenced below.)
Ecker Bros. v. Calumet County


Also feel free to peruse the following:

The sections on the Topliss and SWANCC decisions in Chapter 13 of “Property Law and the Public Interest,” J. Gordon Hylton et al., pages 706-715 and 722-730 posted on Stellar.


VII. CLASS WRAP-UP AND SYNTHESIS

End of assigned readings.

May 16th

• Class Wrap-up/Synthesis
• Open Review and Question Period for Final Exam Preparation

Week of May 20th

• Final Exam - Final Date and Exam Location to be Announced.

**Assigned Readings**

Listed below is the main textbook that contains various required readings for the course. In addition, the instructor will distribute copies of articles in class, and place additional material on Stellar or on reserve at the Rotch Library, as noted.

The book listed below is strongly recommended for purchase at the MIT Coop:


The “Notes and Questions” which follow each of the cases in the Mandelker and Payne text may often be perused and skimmed for general content. However, there are often useful areas of inquiry and interesting observations contained in these sections. The “Problems” posed after discussion of various topics and cases are worth considering.
Daniel Mandelker’s web site is a companion and major course resource to the textbook. The URL is: http://law.wustl.edu/landuselaw/ and includes case summaries, new cases, model ordinances, representative ordinances relevant to course topics, case site maps, and wonderful supplementary materials. Here you’ll also find an Update Letter to PCLD, organized by textbook chapter, which includes many new cases and commentaries of interest.

Recent United States Circuit Court cases are also available at: www.uscourts.gov/links.html

Confused about a word, term, or definition in a case? See the on-line law dictionary at: http://dictionary.law.com/

* Also on reserve at Rotch Library.

**Other Recommended Readings**

The journal and book listed below is also recommended for those students who anticipate future involvement with land use law or regulatory matters, or those who wish to explore current planning and land use law cases. It is not required for the course.

The journal *Planning and Environmental Law* is available at the Rotch Library and contains many relevant and interesting articles related to the topics explored in this course. The book is Blaesser, Brian W., *Discretionary Land Use Controls: Avoiding Invitations to Abuse Discretion*, 2007, West Group.