MIT Department of Urban Studies and Planning
Course # 11.367
Land Use Law and Politics
Spring 2020

Syllabus

Class meetings: Tuesdays and Thursdays, 11:00 AM to 12:30 PM, Room 9-451

Faculty: Justin Steil
Room 9-515
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Office hours: Office hours: Please sign up electronically: http://dusp.mit.edu/oh.

Teaching Assistant: Dan Traficante
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Course Description:

This course examines how the use of land is controlled. It begins with a brief introduction to the U.S. legal system and to property law. It goes on to discuss why and when government regulation, rather than private market ordering, might be necessary to control land use patterns. It examines the rights of owners of land and the types of regulatory and market-based tools that are available to control land use in the United States and provides a framework for evaluating these tools. Issues discussed include zoning ordinances, subdivision creation, land assembly, and takings. The course then goes on to consider land use regulation in relation to the powers of states and local governments. Finally, the course introduces students to basic principles of civil rights and anti-discrimination law and focuses on particular civil rights problems associated with the land use regulatory system, such as exclusionary zoning, residential segregation, the fair distribution of undesirable land uses, and gentrification. In addition to looking at the law, the course examines economic and political theories relevant to the regulation of land and provides a survey of the relevant literature. The course explores two fundamental normative questions: who should control how land is used, and how should they do it?

Class Participation:

This is a discussion-based, rather than lecture-based, course. Students should be well prepared to participate actively in class discussions, with well-supported arguments and should make an effort to build on and react to the arguments of classmates and faculty. The quality of your participation will make up 15% of your final course grade.

For each class the required readings include excerpts of several cases. You should be prepared to identify the legal question presented in each of those cases, the relevant facts, the
court’s holding, and the reasoning used to support that holding. We encourage you to read at least one of the recommended articles, which aim each week to have a mix of mainstream legal theory, critical legal theory, critical race theory, and empirical analyses relevant to planning practice.

Assignments:

Requirements and grading are as follows:

• **In-class participation** (15%). Be prepared, make arguments supported by the readings, and listen to each other.

• **A brief weekly legal memo of not more than 600 words each** (40%). At the end of each class, we will present you with a fact pattern for the following class. The memo should 1) identify the legal issue; 2) present the relevant rule, either from the appropriate statute, case law, or combination of the two; 3) apply the rule to the facts presented; and 4) conclude with a recommendation based on the rule application. You will be expected to submit one legal memo per week by 8:00 pm the night before class. No response paper is expected in the first or last weeks and you can choose not to submit in one week of your choice. Therefore, a total of 10 responses should be submitted. The responses will be graded on a √+, √, √- scale. A “√+” will count for 5 out of 5 points, a “√” 4.5 out of 5 points, and a “√-” 4 out of 5 points.

• **Midterm case decision** (20%). We will present you with a case in the second week of class, together with the briefs. By March 16, write a 1,000 word decision in the case, drawing on the cases reviewed in class and addressing the key arguments in the briefing.

• **Final brief** (10%) and **oral argument** (10%). In early March, we will present you with a case for the final brief and oral argument. You will work in teams of two, jointly preparing a 1,200 word brief and each preparing for a 5 minute introductory oral argument and rebuttal. The brief is due at 5pm on Friday, May 1. We will expect you to do your own legal research on LexisUni in order to prepare the final brief. For the final two classes, we will have guest panels of judges and oral arguments in the two cases.

The following grading rubric will be applied to evaluate written submissions and oral arguments:

I) Does it accurately identify the legal issue? (20%)
   i. Does it appropriately state the question presented?

II) Does it accurately identify the relevant legal rule? (20%)
   i. Does it identify the relevant statutes or cases and present the current state of the law?

III) Does it apply the rule appropriately to the facts? (20%)
   i. Does it identify and engage with the relevant facts?
   ii. Does it apply the rule appropriately to the facts?

IV) Does it present a clear conclusion? (20%)
   i. Is the conclusion, decision, or recommendation clear?
   ii. Is it appropriate in light of the relevant law and facts?

V) Does it present a compelling, well-structured argument? (20%)
   i. Does it have a logical structure that supports the development of the thesis?
   ii. Does it engage with counter-arguments and acknowledge weaknesses?
iii. Is the argument creative and original?

**Grading Scale:**
Grades are assigned using the following scale:

- A  96-
- A-  91-95
- B+  86-90
- B   81-85
- B-  76-80
- C+  71-75
- C   66-70
- C-  61-65
- D+  56-60

**Late Submissions:**
All submissions should be submitted via Stellar. In the event that medical or other personal circumstances arise that interfere with your ability to complete assignments on time, extension requests can be made to the Office of the Dean of Graduate Education (http://odge.mit.edu). If the ODGE decides that an extension is warranted, they will send a generic note that your assignment deadline should be extended without penalty. This policy is intended to preserve your privacy. Any assignment submitted after the deadline, without a request for an extension that was approved by ODGE, will be marked down 5 points out of 100. Any assignment more than 3 hours late will be marked down a further 10 points. A further 10 points will be deducted for each day the assignment is late.

**Writing Help:**
The WCC at MIT (Writing and Communication Center) offers free one-on-one professional advice from communication experts. The WCC is staffed completely by MIT lecturers. All have advanced degrees. All are experienced college classroom teachers of communication. All are all are published scholars and writers. Not counting the WCC’s director’s years (he started the WCC in 1982), the WCC lecturers have a combined 133 years’ worth of teaching here at MIT (ranging from 4 to 24 years). The WCC works with undergraduate, graduate students, post-docs, faculty, staff, alums, and spouses. The WCC helps you strategize about all types of academic and professional writing as well as about all aspects of oral presentations (including practicing classroom presentations & conference talks as well as designing slides). No matter what department or discipline you are in, the WCC helps you think your way more deeply into your topic, helps you see new implications in your data, research, and ideas. The WCC also helps with all English as Second Language issues, from writing and grammar to pronunciation and conversation practice. The WCC is located in E18-233, 50 Ames Street. To guarantee yourself a time, make an appointment. To register with our online scheduler and to make appointments, go to https://mit.mywconline.com/. To access the WCC’s many pages of advice about writing and oral presentations, go to http://cmsw.mit.edu/writing-and-communication-center/. Check the online scheduler for up-to-date hours and available appointments.
Academic Integrity:
Fundamental to the academic work you do at MIT is an expectation that you will make choices that reflect integrity and responsible behavior. Honesty is the foundation of good academic work.
Do trust the value of your own intellect and credit others for their work. Do not copy ideas or phrases without citing them appropriately. Do not submit projects or papers that have been written for a previous class.

See https://integrity.mit.edu/

Safe and Equitable Learning Environment:
MIT is dedicated to providing a safe and equitable learning environment for all students. Discrimination, sexual assault, and harassment are not tolerated by the Institute. You are encouraged to report any incidents to the Title IX Office. This is important for the safety of the entire MIT community. Violence Prevention & Response’s hotline, 617-253-2300, provides 24/7 confidential support. Please visit https://titleix.mit.edu/ for more information on reporting options and other resources.

Books:
Course materials will be made available on Stellar.
Part I: Introduction to the Law

I) The Constitution and an Introduction to Legal Methods (Tuesday, February 4)

Required Readings:
The US Constitution

Recommended Readings:

II) Legal Methods Continued: Civil Procedure, How to Read a Case (Thursday, February 6)

Required readings:
Brown v. Board briefs (from both sides)
State v. Schack, 58 N.J. 297 (1971)
Legal Realism: Oliver Wendell Holmes, Book Review, 14 Am. L. Rev. 234 (1880)

Recommended Readings:

III) Law, Planning, and Politics (Thursday, February 13)
Required Readings:
Euclid v. Ambler, 272 U.S. 365 (1926)
Patricia Williams, On Being the Object of Property. 14 Signs 1 (1988).

Recommended Readings:

***Seminar on legal research with Jen Greenleaf: February 11th from 5-7 PM***

NO CLASS Tuesday, February 18 (Monday class schedule on that day)

Part II: Property Law

IV) Introduction to Property Law: Possession and Acquisition (Thursday, February 20)

Required Readings:
Johnson v. M'Intosh, 21 U.S. 543 (1823)
Pierson v. Post, 3 N.Y. 175 (1805)
International News Service v Associated Press, 248 U.S. 215 (1918)

Recommended Readings:
Harold Demsetz, Toward a Theory of Property Rights. 57 Am. Econ. Rev. 2 (1967)
Carol M. Rose, Possession as the Origin of Property. 52 U. Chi. L. Rev. 73 52, (1985)
Margaret Jane Radin, Property and Personhood. 34 Stanford L. Rev. 5 (1982)
Cheryl I. Harris, Whiteness as Property. 106 Harv. L. Rev. 8 (1993)

V) Adverse Possession and Landlord Tenant Law (Tuesday, February 25)

Required readings:

Recommended readings:


VI) Land Transfers (Thursday, February 27)

Required readings:

Recommended readings:

VII) Takings and Regulatory Takings (Tuesday, March 3)

Required readings:

Other Resources:
VIII) Regulatory takings (Thursday, March 5)

Required readings:
Dolan v. City of Tigard, 512 U.S. 374 (1994)

Other Resources:
Knick v. Township of Scott, 588 U.S. 1 (2019)

Recommended readings:
Carol M. Rose, Takings, Federalism, Norms. 105 Yale L.J. 1121 (1996)

IX) Introduction to Land Use Controls (Tuesday, March 10)

Required readings:
Nectow v. City of Cambridge, 277 U.S. 183 (1928)
Nahrstedt v. Lakeside Village Condominium Association, 8 Cal. 4th 361 (1994)

Recommended readings:

X) Zoning and its History (Thursday, March 12)

Required readings:
Revisit *Euclid v. Ambler*
MA State Zoning Enabling Act
Somerville Masterplan
Cambridge Zoning Map, Overlay Districts, Zoning Ordinance (skim)

Recommended readings:

XI) **Judicial Limits on Land Use Planning (Tuesday, March 17)**

Required readings:
*Valley View Industrial Park v. City of Redmond*, 107 Wn.2d 621 (Wash. 1987)
*State v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978)

Other Resources:
*Warth v. Seldin* - 422 U.S. 490, 95 S. Ct. 2197 (1975)
*Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996)
*Haines v. City of Phoenix*, 151 Ariz. 286 (1986)

Recommended Readings:
Perin, Constance. *Everything in its place: Social order and land use in America.* Princeton University Press, 2014. Read Chapter 1 (pp. 3-31) and Chapter 6 (pp. 210-219).

XII) **Flexibility in Land Use (Thursday, March 19)**
Required readings:
Matthew v. Smith, 707 S.W.2d 411 (Miss. 1986)
Commons v. Westwood Zoning Board of Adjustment, 410 A.2d 1138 (N.J. 1980)
Gladdon v. DC Board of Zoning Adjustment, 659 A.2d 249 (D.C. 1995)

Recommended readings:
Municipal Art Society v. City of New York, 137 Misc.2d 832 (1987)

NO CLASS Tuesday, March 24 and Thursday, March 26 (Spring Break)

XIII) The Politics of Growth Controls (Tuesday, March 31)

Required readings:
St. Bartholomew’s Church v. City of New York, 914 F.2d 348 (2d Cir. 1990)

Recommended readings:
Lee Anne Fennell, Homes Rule, 112 YALE L.J. (2002).

Part IV: Civil Rights in Housing and Land Use Law

XIV) Equal Protection and State Action (Thursday, April 2)

Required readings:
Yick Wo v. Hopkins, 118 U.S. 356 (1886)
Shelley v. Kraemer, 334 U.S. 1 (1948)
Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977)
Other resources:
Buchanan v. Warley, 245 U.S. 60 (1917)
Reitman v. Mulkey, 387 U.S. 369 (1967)
Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972)
Palmer v. Thompson, 403 U.S. 217 (1971)

XV) Civil Rights and Land Use (Tuesday, April 7)

Required readings:
Moore v. City of East Cleveland, 431 U.S. 494 (1977)
City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)

Recommended readings:

XVI) The Fair Housing Act (Thursday, April 9)

Required readings:
The Fair Housing Act
Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979)
US v. Starrett City Associates, 840 F.2d 1096 (2d Cir. 1988)

Other Resources:
NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988)

XVII) Competing Conceptions of the Equal Protection’s Mediating Principle: Anti-discrimination v. Anti-domination; Disparate Impact and AFFH Under the Fair Housing Act (Tuesday, April 14)

Required readings:
2013 Disparate Effects Rule
2019 Proposed Disparate Effects Rule
Bank of America Corp. v. City of Miami, 581 U.S. 211 (2017)
2015 AFFH Rule
2019 Proposed AFFH Rule

Other Resources:
Green v. New Kent County, 391 U.S. 430 (1968)
Loving v. Virginia, 388 U.S. 1, (1967)

Recommended readings:

XVIII) Section 1983 and Fair Lending: CRA, ECOA, HMDA, TILA (Continued) (Thursday, April 16)

Required readings:
Monell v. Department of Social Services, 436 U.S. 658 (1978)

Other resources:
Rasche v. Village of Beecher, 336 F.3d 588 (7th Cir. 2003)
Natale v. Town of Ridgefield, 927 F.2d 101 (2d Cir. 1991)

Recommended readings:

Part V: Local Government Law

XIX) Introduction to Local Government Law (Tuesday, April 21)

Required readings:
Madison, The Federalist (excerpt)
De Tocqueville, Democracy in America (excerpt)
Recommended readings:
Charles Tiebout, A Pure Theory of Local Expenditures, 64 Jour. of Pol. Econ. 5 (1956)
Richard Briffault, Our Localism: Part I – The Structure of Local Government Law, 90 COLUM. L.
Gerald E. Frug, The City as a Legal Concept. 93 Harv. Law Rev. 6 (1980).
Keith Aoki, Space Invaders: Critical Geography, The "Third World" in International Law and
Foster, Sheila R., and Brian Glick. "Integrative lawyering: Navigating the political economy of

XX) Local Government Powers (Thursday, April 23)

Required readings:
Hunter v. City of Pittsburgh, 207 U.S. 161 (1907)
Arlington County v. White, 528 S.E.2d 706 (Virg. 2000)
Kalodimos v. Village of Martin Grove, 470 N.E.2d 266 (Ill. 1984)

Other resources:
City of La Grande v. Public Employees Retirement Board 576 P.2d 1204 (Oregon 1978)

Recommended readings:
Richard Schragger, City Power: Urban Governance in a Global Age (2016). Introduction and
Chapter 1.
Gerald E. Frug, David Barron and Rick T. Su, Dispelling the Myth of Home Rule: Local Power in
Richard Briffault, Nestor Davidson, Paul A. Diller, Olatunde Johnson. "The Troubling Turn in
State Preemption: The Assault on Progressive Cities and How Cities Can Respond." J. ACS

XXI) City Formation (Tuesday, April 28)

Required readings:
Wit v. Berman, 306 F.3d 1256 (2d Cir. 2002)
City of Tucson v. Pima County, 190 Ariz. 385 (1997)

Recommended readings:
Richard T. Ford, Geography and Sovereignty: Jurisdictional Formation and Racial
Michelle Wilde Anderson, Cities inside out: Race, Poverty, and Exclusion at the Urban Fringe.
XXII) Inter-local Relations and City Finance (Thursday, April 30)

Required readings:
*Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (N.J. 1975)

Other resources:

Recommended Readings:

XXIII) Review and Reflections (Tuesday, May 5)

XXIV) Oral Argument 1 (Thursday, May 7)

XXV) Oral Argument 2 (Tuesday, May 12)