

Introduction to Planning Law

Professor: Kirk E. Harris, J.D., Ph.D
University of Wisconsin-Milwaukee
Campus Office: Room 320
School: Architecture and Urban Planning,
Department: Urban Planning
Course Number: 702
Day and Time: Thursday, 6:00-9:10pm
Semester: Fall 2008
Course Room: AUP 191

OFFICE HOURS: After Class or by Appointment
HOME OFFICE PHONE: (708) 922-9588
HOME OFFICE FAX: (708) 922-9589
E-mail: drkharris@comcast.net

Course Description and Objectives:

The Founders of the United States had a particular interest in the preservation and protection of private property. So important was land, that early in the history of America, landowners occupied a special place of privilege and influence in matters of public affairs. The authority of government to impact the uses and utility of land has importance because government is broadly charged with balancing the individual's rights and interests in land with that of the "public interest and need." Municipal government has been given the responsibility of carrying out this function, and does so in the context of local values, preferences, and sensibilities. Local government is the public custodian of community character and typically seeks to maintain that character within constitutional limits. But, given the social, economic, and political implications of land use, local governments are continually testing the constitutional limits of their power to control land uses.

Municipal government power is premised on its legal establishment under state law and the state's delegation of the police power. It is important for planners to understand the constitutional dimensions and limitation of local authority with respect to regulating land. Often, the planner's ability to address quality of life issues in a community is potentially impacted by legal issues related to land use. Thus, this may affect the planner's opportunity to respond to social, political, and economic needs within his/her locality. In this course, we will examine legal issues relating to land use control by local government. As we examine an array of legal issues related to local governmental land use regulation we will seek to achieve three objectives. The first is to introduce students to important issues and key constitutional concepts within the area of land use law and provide students with an understanding of the essential legal precepts in the administration of land use. The second objective is to help students begin to think more concretely and systematically about the impact that land use authority has had and can have on the shaping of community life. The final objective of the course is to provide students with a framework for assessing the legal and ethical considerations related to governmental exercise of land use authority.

Required Material

*David L. Callies, Robert H. Freilich, and Thomas E. Robert, Cases and Material on Land Use, Fifth Edition. West Publishing Co: St. Paul. 2008.

*Pocket Constitution

*Handouts as provided

Class #1 & 2, October 16th & 23rd **Course Requirements and Highlights**

Individual Introductions

Course Overview and Requirements

Discussion Case Preparation

Place Students into Groups

Place Students into Groups and Assign Project

- 1) What are the distinctions between a Village, Town, City, Unincorporated Area, Special Districts, and County forms of government?
- 2) Identify the governmental structure for each of the municipal forms of government.
- 3) Where does the zoning function reside in each of the forms of government?

Resource for your research:

League of Wisconsin Municipalities

202 State Street, Suite 300

Madison, WI 53703-2215

Phone: (608) 267-2380

Toll Free Phone: (800) 991-5502

Fax: (608) 267-0645

Website: www.lwm-info.org

E-mail: league@lwm-info.org

Introduction:

A) Role of Law in Society & Understanding Constitutional Basis for Zoning and Its Evolution

B) Local Government Structure and Zoning Administration

Setting The Stage: Unplanned Environment, Callies, Freilich, and Roberts, pgs. 1-18

Class #3 & 4-October 30th & November 6th

Basics of Zoning

Zoning: Classic to Contemporary, Callies, Freilich, and Roberts, pgs. 19-33

Return to Euclid, *Planning*, November 1996, pgs. 4-8

Enabling Legislation, Callies, Freilich, and Roberts, pgs. 33-45

Zoning Districts, Callies, Freilich, and Roberts, pgs. 45-86

Zoning Administration, Callies, Freilich, and Roberts, pgs. 93-130

The Comprehensive Plan as Law

Zoning and the Comprehensive Plan, *Zoning News*, pgs. 1-4

The Consistency Doctrine, Callies, Freilich, and Roberts, pgs. 458-471

Discussion of Contemporary Comprehensive Planning Effort

Wisconsin Smart Growth Legislation

Class #5 & 6-November 13th & November 20th

Changes to the Comprehensive Plan

The Variance, Callies, Freilich, and Roberts, pgs. 130-138

Nonconforming Uses, Callies, Freilich, and Roberts, pgs. 138-147

Vested Rights, Callies, Freilich, and Roberts, pgs. 147-168

Development Agreements, Callies, Freilich, and Roberts, pgs. 168-182

Planned Unit Development, Callies, Freilich, and Roberts, pgs. 182-198

Subdivision Controls

History, Planning Context, Authority, and Process, Callies, Freilich, and Roberts, pgs. 199-234

MIDTERM EXAM-November 20th

Thanksgiving Recess-November 26th to November 30th

Class # 7 & 8-December 4th & December 11^h

Governmental Taking of Property

Taking, Callies, Freilich, and Roberts, pgs. 287-388, Due Process (Substantive and Procedural) in Taking 388-411

Redevelopment and Eminent Domain, Callies, Freilich, and Roberts, pgs. 605-625

Special Issues in Land Use Controls

First Amendment, Callies, Freilich, and Roberts, pgs. 411-457

Aesthetics, Callies, Freilich, and Roberts, pgs. 515-530

Exclusionary Zoning, Callies, Freilich, and Roberts, pgs. 530-584

Nontraditional Living Arrangements, Callies, Freilich, and Roberts, pgs. 584-604

Course Review Based on Student Questions

Final Exam- December 18th

STUDENT EVALUATION:

Students will be evaluated based on their performance in the following categories:

- 1) Class Participation and Student Engagement: This grade is based on the student's level of participation in class discussions. Students are expected to engage in serious thought with respect to their readings and convey this in their class participation. Students are also expected to relate the readings to broader themes and ideas presented throughout the course.
- 2) Group Research and Case Reports: During the semester, student groups will be required to provide oral case reports and write-ups for the topical area to which they are assigned. The student group should be prepared to provide the following:
 - a) A typed summary of the cases for which the group is responsible will be presented to the instructor on the evening that the case material is to be covered. Each case report is to identify the following: 1) the facts of the case; 2) the issue(s) that the facts of the case give rise to (i.e., what is the dispute or problem the court is seeking to resolve); 3) the common law, legislation, or administrative regulation controlling at the time the case emerged (i.e.; what rule of law is the court examining); 4) the conclusion the court reached in the case; and 5) the judicial rationale behind the final decision (i.e., given all that was presented to the court, why did the court decide the case the way it did). The case summaries should contain the names of the group members and the date of submission. **The group members must evenly divide the opportunity to present cases or some portion of assigned cases among group members.** A group grades will be given for this exercise.
 - b) Each group will be required to do research on municipal government forms and structures as identified in weeks 1 and 2 of the syllabus.
- 3) Exams: The mid-term and final exams will cover key concepts, issues, and definitions discussed in class. The exam will take place during normal class hours.
- 4) Grading:
 - 15%- Research on Forms of Municipal Government
 - 30%-Case Reports and
 - 15%-Mid-Term Exam
 - 40%-Final Exam
- 5) Attendance: Except in case of emergency or some other legitimate reason, attendance in the class is mandatory
- 6) Make-ups and the Incomplete Grade: At the discretion of the instructor students may be able to do a make-up assignment or receive an incomplete grade. Every request for either a make-up assignment or an incomplete grade will be evaluated as the circumstance arises and will be based on the merits of the request.

COURSE STUDY GUIDE

*Understand of differences between a Town, City, and Village, Unincorporated Area based on the materials shared and discussed in class.

*Understand the basic structure of a City, its functioning elements. ie executive, legislative, judicial and what functions are performed by each.

*Understand where the zoning function is lodged in local government and how it is generally administered.

*Understand the origins of the police power and how it is devolved to the local municipality.

*Understand the Euclid Case and the precedent that it set as a landmark case in zoning.

*Understand the basis upon which municipal government can exercise the police power, as well as the threshold consideration for determining the appropriate exercise of that power.

Changes to the Comprehensive Plan

*Understand the Consistency Doctrine, its relevance and its application to zoning issues.

* Understand the concept of variance, and the considerations for granting a variance.

* Understand the concept of nonconforming use. What is it? When is it applied and why?

*What is a vested right and why is this concept important to preserving a landowner's rights.

*Define a PUD, what it is, and how it's used?

Subdivision Controls

*Understand and describe the steps in the subdivision approval process, and know when in the process of subdivision approval a landowner can rely on the approval as final.

Governmental Taking of Property

*Know which provisions in the constitution relate to governmental taking of property.

*Know which provision in the constitution applies to taking by federal government and which provision applies to taking by state government.

*Be able to outline the elements of a constitutionally correct "taking."

*Be able to explain the concepts of eminent domain and regulatory taking and how they differ.

*Be able to explain the notion of "public purpose" in the context of taking.

Special Issues in Land Use Controls

First Amendment

*Be able to explain the extent to which municipalities can regulate speech, and understand the concept of place, time and manner regulations.

*Be able to explain what it means when the regulation of speech is "content neutral."

Aesthetics

*Be able to explain the basis upon which regulation of community aesthetics rests.

Exclusionary Zoning

*Be able to explain the concept of exclusionary zoning.

*Be able to identify what constitutional amendment comes into play when exclusionary zoning is at issue, and what rights that amendment protects.

Equal Protection

What do we mean by the concept of "equal protection." When is the concept most likely to be invoked in the context of local zoning issues?

Other Constitutional Issues you should know

* Define and describe substantive and procedural due process.

*Explain the term "compelling state interest" and describe this term's relationship to matters of fundamental rights, such as freedom of speech, right to association, and the right to be free of discrimination and unequal treatment.

Nontraditional Living Arrangements

* What constitutional amendment applies to local governmental control over nontraditional living arrangements? How does that amendment apply and under what circumstances?