Minnesota State University  
Spring, 2011  
URBS 604: Zoning and Legal Issues  

Class meets on Thursday from: 6:00pm-8:45pm  
7700 France Ave South Edina  
Instructor: Richard Krier, AICP (see bio)  
Office: 1491 Shoreline Drive, Wayzata, MN 55391  
Office Hours: by Appointment  
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Email: Rkrier@mchsi.com  

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 the United States, landowners occupied a special place of privilege and influence in matters of public affairs. Government’s authority to impact the uses and utility of land is of critical importance because government is broadly charged with balancing the individual’s rights and interests in land with that of the “public interest, public need and public good.” Municipal government performs this function within the context of local values and preferences, articulated in the Comprehensive Plan and implemented through land use ordinances known as “official controls”. The local government’s authority to control the use of land is premised on the State’s delegation of the police powers to the local government in the form of enabling legislation. The exercise of the police powers is not absolute, but is governed by state statute, preemptions by the federal and state government, and by both the Federal and State Constitutions. Although there are other “official controls”, this class will focus on zoning as a tool to implement the policies of the municipality related to the regulation of land use.

This course explores and applies the legal standards, processes and politics controlling and regulating land use in the United States with an emphasis on Minnesota. The course is designed for students who wish to become actively involved or exposed to land management and the planning profession as it is practiced today in the United States, and as it may need to be practiced in the future.

The course offers an array of ideas from various viewpoints. Class will proceed largely through lectures, INCLUDING OUT STANDING QUEST LECTURES/MENTORS, seminar discussions, readings, short weekly assignments and two team oriented real situation class projects that will substitute for both the midterm and final examination. Because class participation will be critical to the success of each student in each class, the midterm and the final project, weekly preparation will be required.
At the conclusion of this course the student should:

1. Be able to read critically and analyze legal decisions and basic statutory materials related to zoning;
2. Have a thorough understanding of the basis, constraints and processes of zoning;
3. Be familiar with and able, in a critical fashion, to understand legal and planning issues raised by the assigned materials read for and discussed in class;
4. Gain working knowledge of the foundations, techniques, administration, and politics of land-use regulatory powers exercised by local government;
5. Be able to discuss and critique different types of zoning, the local government entitlement processes and the legal principle upon which zoning is fashioned, and
6. Be able to analyze a proposal, review it critically in light of a zoning ordinance and prepare a staff report with a recommendation to the local policy body.

REQUIRED TEXT:
- A Better Way to Zone: Ten Principles to Create More Livable Communities, Donald L. Elliott, FAICP, Island Press, 2008

RECOMMENDED (not required) REFERENCE TEXT

OR


Team Projects (substitutes for quizzes, midterm and final exams)
The best representation of what we learn is being able to apply it to real situations. The primary objective of this class is to develop the skills and knowledge necessary to be a professional planner or to enhance the skills and knowledge that you are now developing. Mentoring, a teaching and career enhancing technique, used in this class, will give you current knowledge and skills and provides you with ongoing resources. The class is designed to accomplish the primary objective in the following ways:

- Bringing to the class the following guest lecturers/team project mentors whose professional focus is on land use regulations:
  - Guest Lectures:
- Robert Hoffman, Esq.: Specializing in land use law and governmental relations; principle at the firm of Larkin, Hoffman and Daily;
- David Sellergren, Esq.: Specializing in land use and municipal law; principle at the firm of Fredrickson and Byron;
- Bruce Malkerson, Esq.: Specializing in land use law; principle at the firm of Malkerson, Gunn, Martin;
- Peter Beck, Esq.: Specializing in land use and municipal law; principle at the firm of Gray Plant Mooty and Mooty;
- Jed Burkett, Esq.: Specializing in municipal law, attorney for the Minnesota League of Cities Insurance Trust;
- Lane Kendig, AICP: Specializing in performance zoning and community character, retired (principle at the firm of Kendig Keats Collaborative);
- Jean Colman, AICP: Specializing in zoning and land use regulations, principle at CR Planning;
- Susanne Rhees, AICP: Specializing in Form Based Codes, on special assignment with the DNR;
- John Stark, AICP: Richfield Community Development Director.

- Work as teams on real life zoning projects including:
  - Midterm Team Project:
    - From available information (provided by the instructor), prepare and submit a land use application,
    - Working with the applicant,
    - Reviewing the land use application and preparing a staff report
    - Presenting the staff report to the planning commission at a public hearing with knowledgeable neighbors, who oppose the application, at the hearing,
    - Conducting the public hearing and make a recommendation.
  - Final Team Project:
    - Preparing a section of a zoning ordinance with mentor assistance,
    - Present your teams zoning section to the planning director and at a neighborhood meeting,
    - Presenting your teams zoning section to the planning commission.
- Class time, with an opportunity to work with the guest lecture/mentor, will be set aside at each class for the teams to work on the midterm and final team assignment.
- City staff from Minneapolis, Wayzata, Minnetonka Beach and Seattle will be available, on a limited basis as team project mentors, to answer questions that team members may have concerning the midterm applications.
Schedule and Class Content:

**Week 1: January 13, 2011: Course Overview, and An Overview: Regulating the Use of Land**

**Class Activities:**
Course requirements and highlights:
- Individual introductions (Ice Breaker what United State Supreme Court Justice are you),
- Course overview and requirements,
- Form Mid Term Project Teams (See Attached A: Mid Term Team Categories).

Lecture: Richard Krier, AICP
- How to summarize court cases for easy access,
- Brief history of zoning,
- Constitutional authority to control land use & the constitutional right to enjoy property,
- How Euclidian Zoning Works, An Overview:
  - Nuts and bolts zoning districts, separation of uses, spot zoning, conditional and special uses, variances,
  - Nuts and bolts of land use governance: planning commission, city council & county boards, board of adjustments, hearing officers
- How Other Types of Zoning Works: Brief Descriptions of the Types of Zoning:
  - Hybrid Euclidian
  - Performance,
  - Form Based and Smart Codes

Class Discussion from lecture, assignment and readings

**Required Readings: Due January 13**
- Nolon and Salkin: Preface and Chapter One
- Elliot: Introduction and Chapter One a Brief History of Zoning
- Weaver and Babcock: City Zoning: The Once and The Future Frontier, *Chapter One City Zoning: Of What Importance to Whom? Page 1-14* (Electronic Reserve)
- Parolek, Parolek and Crawford, Form Based Codes, *A Brief History of Zoning pages 6-10* (Electronic Reserve)

Non Required Additional Readings: (hint many of the definitions are found in these readings)
- [http://www.mntownships.org/vertical/Sites/%7BD45B3299-B0BE-4D08-8A42-B7053B4AE74F%7D/uploads/%7B4DFA979C-684B-4914-8DA7-99577F88F56A%7D.PDF](http://www.mntownships.org/vertical/Sites/%7BD45B3299-B0BE-4D08-8A42-B7053B4AE74F%7D/uploads/%7B4DFA979C-684B-4914-8DA7-99577F88F56A%7D.PDF)
• www.lmnc.org Handbook for Minnesota Cities on LMC Chapter 14
• “Planning” February 1998, We’ve Been Sued, page 22
• http://www.planning.org/planning/2009/aug/savingfarmsside2.htm (Conservation Easement)
• Zoning Decisions Limitations and Pitfalls, MN Ass of Townships, Information library (Electronic Reserve), Definitions
• A comparative Analysis of Recent Planning Law and Implications, “Practicing Planner” Winter 2010 (Electronic Reserve)

Assignment Due January 13 before class:
• Determine the United States Supreme Court Justice that you will portray (Ice breaker) and be able to tell the class why you are like this justice
• Write a one page paper outlining the history of zoning in North American include dates.
• On no more than three pages define the following terms: police power, property interests, entitlement, vested interest, nuisance, easement, conservation easement down zoning, up zoning, due process, quasi-judicial action, legislative action, administrative action, arbitrary and capricious, equal protection, regulatory taking, over breadth, vagueness, estoppels, injunctions, writ of mandamus, certiorari, declaratory judgment, ex post facto, expatriate communications, NYMBY, De Novo, burden of proof, appellate, finding, conflict of interest, charter city, statutory city, state statute, enabling legislation, referendum, initiative, extraterritorial, discovery, interrogatories, deposition, set-a-side, remand, aggrieved, affected, standing.

Week 2: January 20 Authority to Zone, Comprehensive Plan as Law, Rational Basis Test, Inter Governmental Conflicts, State and Federal Preemptions:

Class Activities:
Visiting Lecture: Peter Beck, Esq. (see bio)
Mr. Beck’s Lecture Outline:
• Purpose and authority to plan and zone in Minnesota,
• Legislative, quasi judicial, and administrative authority,
  ▪ Delegation of authority to administrators, admin bodies, or the public,
• Rational basis test and the comprehensive plan;
  o Requirement for a comprehensive plan: consistency doctrine/ in accordance principle
• Balance of Interest test: local to state and local to local zoning conflicts
• State and Federal preemptions of local zoning authority:
Telecommunications, ADA, fair housing, religious land uses, group homes, public schools, manufactured homes, housing (California, New Jersey),

Class discussion with Peter Beck and Richard Krier based on the readings, assignment and lecture.

Readings for January 20 class:
- Minnesota State Enabling Legislation Chapter 462.351 through 462.364, Chapter 473.859 and 473.865 [https://www.revisor.leg.state.mn.us/statute](https://www.revisor.leg.state.mn.us/statute)
- Village of Euclid v. Amber Reality. A retrospective JAPA Summer 1986 (Electronic Reserve)
- Bartram v. Zoning Commission of the City of Bridgeport, Conn. 9 (Nolon and Salkin, page 89),
- Elliot: pages 105-107 and 125-127
- Ruger v. City of Burnsville, 295 NW 2d 609, Minn 1980 pages 321 & 322 Nolan & Salkin
- Town of Oronoco v. City of Rochester,197 NW 2d 426,429 (Minn 1972) (Electronic Reserve)
- The Necessity of Adequate Findings: Reason to Support Municipal Land Use Decisions, LMC(Electronic Reserve)
- Minnesota Rules of Interpretation (Electronic Reserve)
- Reviving Comprehensive Plan(Electronic Reserve)

Non Required Additional Readings: (hint MN application of rational basis can be found in these text)
- “Planning" April 2003Church v. State Page 14(Electronic Reserve)
- State, By Rochester Ass’n v. City of Rochester, 268NW 2d 885(1978),(Electronic Reserve)
- Beck v. City of St. Paul 231 NW 2d 919(1975), (Electronic Reserve)

Assignment due January 20 by e-mail before the beginning of class:
- Teams turn in task that each team member has been assigned for the Midterm project;
Write a one page paper outlining the “rationale basis test” contained in the Village of Euclid Ohio, et al v. Amber Reality Co. and how that test is applied in Minnesota, site cases.

Interactive Class Projects: Teams working in class develop a proposal format and share the format in class (download the appropriate zoning ordinance sections, Wayzata, Minneapolis, Minnetonka Beach, or Seattle and bring it to class)

Week 3: January 27: The Politics and Process of Zoning
Visiting Lecture: Robert Hoffman, Esq. (see bio)
Mr. Hoffman’s Outline:
- Fair and speedy government action: time limits on actions and the 60-day rule,
- The work gets done before the public hearings
- Lobbying city officials
- Avoiding conflict of interest: staff, planning commission and city council ethics
- NIMBYism
- Working with the applicant and procedural due process
- Exhausting all administrative remedies

Class discussion with Robert Hoffman and Richard Krier based on the readings, assignment and lecture

Readings for January 27th class:
- Weaver and Babcock: Chapters Ten, Eleven, Twelve, Thirteen and Fourteen pages 133-198 (Electronic Reserve)
- Elliot: NIMBYism pages 82-85, Governing Well pages 107-104,
- Elliot: Depoliticizing Final Approvals pages 189-196
- AICP Code of Ethics, Nolon and Salkin page 51

Non Required Additional Readings: (hint: public hearing process can be found in these text)
- Pages 37 to 57, Appendix 4 A, 4 B and 4C “Working with the Developer and the Project”, Job of the Practicing Planner, Albert Solnit, 1988 Planners Press (Electronic Reserve)
- Page 21 Making the Record for Judicial Review:
- Subjective Questioning:(hint: use for team projects as a neighbors way of intervening)
  o http://wisdomofwe.com/786/art-of-asking-blended-learning-questions/
- Ethics: [http://www.planning.org/ethics/index.htm](http://www.planning.org/ethics/index.htm)
- NIMBYism: [http://www.lawlibrary.state.mn.us/archive/ctappub/9707/c09786.htm](http://www.lawlibrary.state.mn.us/archive/ctappub/9707/c09786.htm)
- Land use the Neighbor Factor (Electronic Reserve)
- Conflict of Interest:

**Assignment due by e-mail before class on January 27:**
Write a one page paper on the public hearing process, related to AICP Code of Ethics

**Interactive Class Projects:** Work in class on Midterm team projects

**Week 4: February 3 Due Process and Equal Protection**

Visiting Lecture: **David Sellergren, Esq.** (see bio)
Mr. Sellergren’s lecture outline:
- Void for vagueness, over breadth,
- Substantive due process,
- Procedural due process,
- Equal protection,
- Freedom of speech and religion,
- Fair housing and exclusionary zoning,
- Inclusionary zoning.

Visiting Lecture: **John Stark, AICP:** “Staff perspective: Insuring due process when working with City Government”

Class discussion with David Sellergren’s and John Stark based on the readings, assignment and lecture

**Readings for February 3 class:**
- Jonathan Barnett: Chapter 4 Equity: De-concentrating Poverty, Affordable Housing and Environmental Justice *Redesigning Cities, pages 63-77* (Electronic Reserve);
- First, Fifth and Fourteenth Amendment to the United States Constitution
- Nolen and Salkin *pages 131-134, 162, 175-177, 253-266*
- Elliot: Chapter 5 *pages 108-124*

Non Required Additional Readings
- *South Burlington County NAACP v. Township of Mount Laurel;* (Electronic Reserve)
- *Home Builders Association of Northern California v. City of Napa.* (Electronic Reserve)
Assignment due February 3 by email before beginning of class:
• In a one page paper discussing the majority and minority opinions in Southern Burlington County NAACP v. Township of Mount Laurel (NJ 1975)
• In a one page paper define each of the following relative to zoning substantiating your definitions by sitting court cases: 1) substantive due process, 2) procedural due process and 3) equal protection under the 5th and 14th Amendments to the United States Constitution

Interactive Class Projects: Teams working in class continue to work on the proposal Present outline drafts of your proposal to John Stark, AICP, City of Richfield Community Development Director for critical feedback

Week 5 February 10 Variance, Conditional Use permit, and Non-Conforming Use
Visiting Lecture: Jed Burkett, Esq. (see bio)
Mr. Burkett’s Outline:
• Variance and Conditional Use Permit:
  ▪ Purpose and authority
  ▪ Variance and the zoning board of appeals
  ▪ Use variance & area variance
  ▪ Variance procedure and conditions
  ▪ Contract, Zoning, Conditional Zoning and Conditional Use Permits
• Non conforming uses

Class Discussion Jeb Burkett and Richard Krier based on the readings, lecture and assignment

Readings for February 10 class:
Non Required Additional Readings


Assignment due by email before class on February 10:

- Prepare a one page staff report on Ms JoAnne Lieberler’s request for a variance to expand her non-conforming garage (See D2LWeb page for the facts, maps related to the case and zoning ordinance).
- Team “60 day letters due”

Interactive Class Projects: “Buzz Olson Where Have All the Workers Gone” Practice Strategic Questions in class, work on midterm project

Week 6: February 17: Property Rights and Regulatory Takings

Guest Lecture: Bruce Malkerson, Esq. (see bio)

Mr. Malkerson’s lecture outline:
- Common Law and Constitutional basis of property rights,
- Taking Clause and the meaning applied to regulatory taking
- “gone too far” and the limits on property rights
- When the regulatory process becomes a taking,

Class discussion with Bruce Malkerson and Richard Krier based on the readings and lecture

Readings for February 17 Class:

- Dolan v. City of Tigard, US Supreme Court (Reference Text or Electronic Reserve);
- Agins v. City of Tiburon, US Supreme Court (Reference Text or Electronic Reserve);
- Nolan v. California Coastal Commission, US Supreme Court (Reference Text or Electronic Reserve);
- Gildea, J. Wensmann Reality, Inc, et al v. City of Eagan, (Electronic Reserve);

Non-Required Additional Readings:
- Penn Central Transportation v. City of New York, US Supreme Court (Reference Text or Electronic Reserve);
- Lucas v. South Carolina Coastal Commission, US Supreme Court (Reference Text or Electronic Reserve);

Assignment due by email before class on February 17: On one page summarize the constitutional principle and legal test applied by the court in each of the court case readings.

Interactive Class Projects: Working as teams in class prepare a draft staff report based on the proposal from another team, share with other teams (see midterm project matrix)

Week 7: February 24: Settling Land Use Disputes
Lecture: Richard Krier, AICP
Lecture Outline:
- Public Land Use disputes
- Private Land Use Disputes
- Mediation and other means of settling Land Use Disputes

Class discussion with Richard Krier based on the readings, lecture and assignment

Readings for February 24 class:
- Elliot: Negotiated Large Development pages 183 -188,
- “Using Assisted Negotiations to Settle Land Use Disputes”, Lawrence Susskind, Lincoln Institute of Land Policy, 2003 (Electronic Reserve)
- Responding to Streams of Land Use Disputes: A Systems Approach, Practicing Planner (Electronic Reserve)

Non Required Additional Readings:
- “Planning”, One Lawyers Crystal Ball(Electronic Reserve)

Assignment due by email February 21: Final Midterm Draft proposals for review by Staff (another team)

Interactive Class Projects: Proposal teams meet with staff teams to negotiate terms and changes in the draft proposal
**Week 8: March 3 Midterm Project Presentations;**
Presentation by teams to planning commissioners.
Each team will make a proposal for a specific project to the planning commission made up of other class members, who will hear a report from the city planners (another team), hold a public hearing (other team will represent the public opposed to the project) and make a decision on the application following due process (See Detail Attached)

**Assignment due in hard copy before class on March 3:** team staff report on other team’s proposals

**Spring Break:** March 10 no class

**Week 9: March 17: Zoning Ordinance Creation and Amendment**
Visiting Lecture by Jean Colman, AICP (see bio)
Ms. Colman’s Lecture Outline:
- Zoning ordinance, creation and amendment process
- Implementing your Comprehensive Plan
- Common problems and solutions
- Drafting an Ordinance.

Class discussion with Jean Colman and Richard Krier based on the readings, lecture and assignment.

**Readings for March 17 class:**
- Carolyn Braun. “Drafting Clear Ordinances: Do's and Don’ts". Planning Commissioners Journal (Electronic Reserve);
- “Planning”, January 2010 *After the Plan, the Code* (Electronic Reserve)
- “Planning”, July 2009 *Design First Than Codify* (Electronic Reserve)
- Comprehensive Land Use Planning: Drafting the Zoning Ordinance (Electronic Reserve).

Non-Required Additional Readings:
- Nolon: Page 376 Land Use codes

**Assignment due by email before class on March 17:**
Individually rather than as a team, on one page write an authority and purpose statement to your draft ordinance.

**Interactive Class Projects:** Working in class:
- Form teams for ordinance drafting
- Select ordinance type to be drafted by your team.
**Week 10: March 24 Details: Euclidian Ordinance from Simple to Hybrid**

Lecture by Richard Krier, AICP

Lecture Outline:
- The elements of Euclidian zoning ordinance
- Hybrid additions and how they work
  - Planned Unit Development
  - Overlay Districts
  - Floating Districts
  - Special standards for fully developed communities
  - Other standards
  - Elliott’s Ten Principles
- Land uses: permissive or perceptive
- Accessory land uses, chickens in the yard and other sustainable uses

Class discussion with Richard Krier based on the readings, lecture and assignment

**Readings for March 24 class:**
- Elliott: *A Better Way to Zone* pages 137-209

Non-Required Additional Readings: *(hint Teams one and four need to know)*
- *Administrative and Judicial Review of Land*, APA (Electronic Reserve)
- *Guidelines for Writing Your Conditional Use permit Burden of Proof*, (Electronic Reserve)

**Assignment due by email as follows:**
- By class on March 24: On one page write nonconforming use section of a Euclidian Ordinance that would allow additions to existing homes without setback variance(s).
- To all class members and Krier via e-mail by March 23: Find online or write Comprehensive Plan policies, goals objectives that will be used to support your team’s ordinance sections.
- Team assignments due

**Interactive Class Projects:**
- Review Comprehensive Plan Policies and how they related to purpose of the ordinance section,
- Team One and Two develop outline format and assignments for your ordinances.

**Week 11: March 31: Performance Zoning, Computerized Zoning and Community Character**

Guest Lecture: Lane Kendig, AICP (see bio)

Mr. Kendig’s lecture outline:
Performance Zoning:
- Concept of Performance Zoning
- Variables
- Design
- Standards

Community Character:
- The Designers Lexicon
- Context and Scale
- Character Classes and Types
- Community and Regional Forms
- Measurements

Class discussion with Lane Kendig and Richard Krier

Readings for March 31 class:
- [http://planningwiki.cyburbia.org/Performance zoning](http://planningwiki.cyburbia.org/Performance zoning), Pages 1 through 9 Community Character: Principles for Design and Planning (Electronic Reserve)

Non-Required Readings: *hint team two needs to know what’s in pages 1-55; other goodies*
- Pages 1 through 55 Performance Zoning (Library Reserve)

**Assignment due by email before class on March 31:**
- On one page prepare a land use intensity table for a neighborhood center,
- On one page write a performance standard for a buffer yard,
- On one page develop ordinance drafting questions for use in class.

**Interactive Class Projects:** Working in class to accomplish the following:
- Team Working on Euclidian ordinance sections discuss drafting with Richard Krier
- Team working on a performance ordinance sections discuss drafting with Lane Kendig
- Teams working on Form Based Code section and Hybrid section prepare draft format, outline and assignments for your teams zoning ordinance amendment

**Week 12: April 7:**
**Sustainability, Form Based Codes and Smart Codes**
Visiting Lecture: Susanne Rhees, AICP (see bio)
Ms Rhee’s Lecture Outline:
- What is From Base Code
- What are the different types of Form Based Codes
- What are the components FBC
- Drafting a FBC
Class discussion from readings, assignment and lecture with Susanne Rhees and Richard Krier

**Readings for April 7 class:**
- Nolon and Salkin: *Smart Growth and Other Flexible Land Use Strategies* pages 197-214
- “Practicing Planner”, *Zoning Sprawl, Coding Urbanism* (Electronic Reserve)

Non Required Readings: (*hint teams Three needs to familiarize itself with Parolek)*
- “Designing by the Rules: Historical Underpinnings of Form Based Codes”, JAPA Vol 75 number 2, 2009 page 144(Electronic Reserve)
- *Essential Smart Growth Fixes For Urban and Suburban Zoning Codes*, EPA Nov 2009((Electronic Reserve)

**Assignment due by email before class on April 7:**
- On one page draw a “transect” and provide an explanation of your drawing

**Interactive Class Projects:** Working in class accomplishes the following:
- Team Working on Form Based Code discuss drafting with Susanne Rhees
- Euclidian, Hybrid and Performance teams work on draft ordinance

**Week 13: April 14: Hybrid Zoning**
Lecture Richard Krier, AICP
Lecture Outline
- Details and drafting a hybrid section of the zoning ordinance
- Planned Unit Development
- Imbedding performance zoning and FBC into Euclidian ordinances
- Traditional Neighborhood Development in Wisconsin Middleton Hills and Wissota Green case studies
- Aesthetic and historic preservation
  - Oh No! more on signs
Class Discussion with Richard Krier from readings, assignment and lecture

Readings for April 14 class:
- Elliott: Chapter 8 pagers 211-221
- Nolon and Salkin, Aesthetic, Historic and Cultural Interest Protection Pages 298-317
- Berman v. Parker, United States Supreme Court (Electronic Reserve)
- Clear Channel Outdoor, Inc v. City of Minnetonka (Electronic Reserve)
- Metromedia, Inc. v. City of San Diego (Electronic Reserve)

Non Required Readings: (hint hybrid team should familiarize itself with PAS Report 489/490)
- Aesthetics, community character, and the law, Christopher Duerksen, PAS Report Number 489/490 (Library Reserve)
- Power point: A Better Way to Zone (Electronic Reserve)
- “Planned Unit Developments and Other Flexible Approaches”

Assignment due on April 14
Team members work on their sections of the ordinance for presentation to other team members in class

Interactive Class Projects: Team meetings, meetings with Krier to evaluate work to date discussion and changes

Week 14: April 21: Code Enforcement, Flexible Zoning Administration, and Making Presentation to Appointed and Elected Officials
Lecture by Richard Krier, AICP
Lecture Outline:
- Thoreau’s civil disobedience
- The Constitution and police power revisited
- The statutory authority to enforce local codes
- Enforcement process and administration
- Improving compliance
- The art of too much information
- Using graphics in land use regulations

Class Discussion with Richard Krier from readings, assignment and lecture

Readings for April 21 class:
- “Administering Flexible Land Use Standards” PAS (Electronic Reserve)
• “Improving Compliance with Regulations: Choices and Outcomes for Local Government”, JAPA Vol 64 number 3, 1998 page 324 (Electronic Reserve)
• Draft ordinance section prepared by teams: assigned readings

**Assignment due by email to all class members before April 19:**
• Sections of the draft ordinances with legal precedence sited for each section

**Interactive Class Projects:** Review and discuss each draft ordinance section

**Week 14: April 28: Presenting your teams draft zoning section ordinances to the following:**
• Planning Director (Krier) and
• Neighborhood Group Team
• Negotiate with City Attorney Team
• Make Revision and submit for planning commission team for public hearing and recommendation

**Readings for April 28 class:**
• Other team’s draft ordinances

**Assignment due in hard copy before class on April 28:**
Two page staff report on a team’s proposed draft ordinance recommending approval, denial or approval with conditions; agreeing or disagreeing with the legal precedent for each of the sections.

**Week 15: May 5 Final: Present Your Final Ordinance to the Planning Commission (other team) and Obtain Planning Commission Approval**

**Assignment due in class on May 5 by each team:**
• Hard copy of the draft ordinance,
• Final staff report and
• Power point presentation to the planning commission team

**Glass Evaluation**

**Grade Requirements**
Students will be evaluated according to the following areas:

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<th>Category</th>
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<tr>
<td>Class Discussion</td>
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<td>Weekly Assignments</td>
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<td>Midterm Project</td>
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<td>Final Project</td>
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<td><strong>Total</strong></td>
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Criteria of Grade Requirement Evaluation:

- **Discussion**: The object is to encourage the student to keep up with the readings, to ask insightful questions, and to develop a deeper understanding. Each class member will be called on in class to discuss lecture and assignment. When discussing readings, lecture and assignment, you must specifically cite the reading by page number, lecture or assignment, critically analyze it and state an opinion. A checklist will be used to evaluate each student’s discussion.

- **Weekly Assignments**: These assignments are meant to help you with the readings or with the team project. The assignments will be evaluated on the following:
  - Brevity and communicative understanding (making your point)
  - Completeness,
  - Students understanding of the readings.

- **Midterm Project**: The objective is to apply academic knowledge to a real situation. The team will be evaluated as a group on the following:
  - Completeness of the application,
  - Quality, communicative effectiveness, and logic of the staff report including accurate legal references,
  - Quality of the public hearing relative to legal requirements and decorum,
  - Quality of the neighborhood counter argument (see strategic questioning)

- **Final Project**:
  - Completeness and communicative presentation of the ordinance including graphics,
  - Legal references,
  - Quality of the verbal presentations,
  - Quality, communicative, effectiveness, and logic of the Attorney’s Report,
  - Quality of the public hearing relative to legal requirements and decorum,
  - Quality effectiveness and logic of the neighborhood strategic questioning.

Please note the following:

**Class attendance and participation is mandatory.**

**Make-up work.** As a general rule, there will be no makeup and no extra credit work. Documented medical excuses and serious personal matters are the only allowed exceptions. Students in these situations, or those participating in official University activities with letters from the appropriate authority, will be afforded the opportunity to reschedule due dates, to the extent feasible.

**Late work.** Unexcused late work may be accepted, for marginal 50% credit, at the instructor’s discretion. Nothing will be accepted after May 6, under any circumstances, in the absence of an incomplete contract.

**Incompletes.** If you need to take an incomplete, you must discuss this with the professor and if the incomplete is granted you will be required to fill out and sign a formal, written incomplete contract, in advance (or as soon as feasible after an emergency event).

**Extra credit.** There will be no extra credit work.
**All requirements to be fulfilled:** All Grade Requirements must be fulfilled in order to pass this course. Failure to submit all Grade Requirements will result in a failure.

**Work from another course.** You may not submit work that is or was for another course unless (under exceptional circumstances) professors in both courses have approved the arrangement.

**Course Resources:**

**Handouts:** Handouts will be available when you come to class. In most cases the handout will be course material or a power point outline for that day’s lecture or both.

**Course Website**

Website: <to be announced>; user name, operational; password <to be announced>;

The course website includes the syllabus, handouts, many of the readings, and links to numerous useful websites related to the study of zoning. Further information about the website and how to access it will be announced in class. For problems accessing the website please contact ?????@mnsu.edu

Reading, graphics and Writing: When putting together your assignments and team projects, keep in mind the need to think, draw graphics and write clearly, creatively and critically. When reading the assigned texts or sources for your project, could mean addressing some or all of the following considerations:

1. What is the author’s position? Where does it lie with respect to other positions we have considered? Is it compatible with or opposed to those positions?
2. Can you show how this author’s position serves as a continuation, or rebuttal, or avoidance, of positions by previous authors? (Understand that whoever is writing is not writing in a vacuum, but rather all such writing is part of a long historical dialectic.)
3. What is the author’s own interest in staking out such a position? (For example, does the author have concerns that are located in a particular class, race, gender, or profession?)
4. Who is the author’s audience? Is this explicit or implicit? What impact does this have?
5. What is the stake (or interest) of the author in presenting the discussion?
6. Who or what is advantaged (and disadvantaged) by virtue of this author’s position?
7. Who or what is left out of this discourse? What is left unsaid? To whose or what advantage? Who gains? Who loses?
8. If this author’s position were generally accepted, what might be the implications for how you view and conduct your life?
9. How convincing, successful, or complete is the author’s discussion?
10. How valid is the author’s use of historical or empirical evidence
11. How do the author’s arguments hold up in respect to the real world, as you know it
12. Does the author provide you with concrete ideas and principles or are they vague and hard to duplicate?
13. What questions would you like to put to this author?

**Resources for Student Writers:**


Library Sources: All of the “library reserve books” can be check out for a limited time with the instructor. Books must be returned to the instructor before a grade is issued.

Books Available at Other Libraries:
- Minneapolis Central Library: History and Social Sciences KF5698.A5L35 1989
- University of Minnesota Wilson Library: HD205 .L363x 1989
- University of Minnesota Architecture and Landscape Architecture Library: HD205 .L363x 1989

**City Zoning, the Once and Future Frontier**, Clifford L. Weaver, Planners Press 1979
- Bethel University: Main Collection 352.961 W363c
- Hamline Law Library: Law Treatises HT169.7 .W428
- Macalester College: Stacks HT169.7 .W42 1979
- University of Minnesota Wilson Library: KF5698 .W4x 1979
- University of Minnesota Architecture and Landscape Architecture Library: KF5698 .W4x 1979
- University of Minnesota Magrath Library: KF5698 .W4x 1979

- University of Minnesota Architecture and Landscape Architecture Library: Quarto NA9050.5 .P37 2008

- Macalester College: Stacks HT123 .B295 2003

**Performance Zoning**, Lane Kending Planners Press 1980
- University of Minnesota Architecture and Landscape Architecture Library: KF5698 .K46x 1980
- University of Minnesota Wilson Library: KF5698 .K46x 1980
- University of Minnesota Law Library: HT169.6 .K46

- University of Minnesota Wilson Library: KF5698 .E45 2008

**Aesthetics, Community Character, and the Law**, Christopher Duerksen, PAS Report 1999
- University of Minnesota Wilson Library: Quarto KF5698.Z9 D84x 1999

**Land Use in a Nutshell**, John Nolon, Thomson/West 2006
- Eagan (Westcott) Public Library: Non-Fiction 346.04 Land
- Apple Valley (Galaxy) Public Library: Non-Fiction 346.04 Land
- On Reserve in all four law libraries, thus probably cannot be used, but they may have the 2000 edition.

- University of Minnesota Architecture and Landscape Architecture Library: KF5692 .S57 2008

Resources and Policies
**Disability Services.** Every attempt will be made to accommodate qualified students with disabilities. If you are a student with a documented disability, please see or email me as early in
the semester as possible to discuss the necessary accommodations, and/or contact the Disability Services Office at 507-389-2825 (V) or 1-800-627-3529 (MRS/TTY).

**Grading**
Grades will be shaded (+) Grades are defined as follows:
A achievement that is outstanding relative to the level necessary to meet course requirements.
B achievement that is significantly above the level necessary to meet course requirements.
C achievement that meets the course requirements in every respect.
D achievement that is worthy of credit even though it fails to meet fully the course requirements.
S achievement that is satisfactory, which is equivalent to a C- or better.
F(or N) Represents failure (or no credit) and signifies that the work was either (1) completed but at a level of achievement that is not worthy of credit or (2) was not completed and there was no agreement between the instructor and the student that the student would be awarded an I (see also I).
I (Incomplete) Assigned at the discretion of the instructor when, due to extraordinary circumstances, e.g., hospitalization, a student is prevented from completing the work of the course on time. Requires a written agreement between instructor and student.

**Plagiarism and cheating.** Plagiarism, a form of scholastic dishonesty and a disciplinary offense, is described as follows: “Scholastic dishonesty means plagiarizing; cheating on assignments or examinations; engaging in unauthorized collaboration on academic work; taking, acquiring, or using test materials without faculty permission; submitting false or incomplete records of academic achievement; acting alone or in cooperation with another to falsify records or to obtain dishonestly grades, honors, awards, or professional endorsement; or altering, forging, or misusing a University academic record; or fabricating or falsifying of data, research procedures, or data analysis.”

If you have questions regarding the expectations for a specific assignment, please ask, in class or in office hours or by email. Be advised that cheating and/or plagiarism may very well result in an automatic grade of F.

You may not submit a paper completed for another course without seeking prior permission, both from me and from the other course’s instructor.

Remember, the fact that you want to make the best use of sources is not a sign of poor scholarship; as long as you cite them correctly, they contribute strength to your work

**Adjunct Faculty Evaluation:** University policy requires student evaluations must be completed for all adjunct taught courses using the standardized MSU forms. The course evaluation request form should be requested from the department secretary prior to the last two weeks before the end of the last class and the completed student responses must be returned the day after they are given by someone other than the instructor.
Team Assignments for Midterm

Team One: Euclidian Zoning District Amendment (City of Minneapolis)
• This team’s application, based on available data, applicant plans and the City of Minneapolis Zoning Ordinance (see web page for plans and information), will be to prepare a detail rezoning district changing application for a one block area at 4th Avenue and Lake Street from residential to mixed use.
• Team One will prepare an outline with time schedule of the steps necessary to change the zoning district map. The team will assign each team member a specific task.
• Team One will meet with the Mentor in his office at City Hall to discuss the project, the application and process.
• Team One will study the previously prepared plans and information, file the required applications and obtain the required signatures (from neighbors represented by Team Two) for a rezoning;
• Team One will create a narrative describing the proposal related to the legal basis for the city to zone property and to amend the zoning map (Statutory Authority, City Charter, Comprehensive Plan, Area Wide Plan, legal sittings).
• Team Three (city staff) will review the application, prepare a “60 day letter”, negotiate with Team One and prepare staff report.
• Team One will make a presentation (power point) to the planning commission (Team Four).
• Team Four (planning commission) will conduct a public hearing, with team two (neighborhood) being in opposition to the application. Team Three will present their staff report
• Team Four will make the appropriate findings to recommend approval, conditionally approval or deny the application.

Team One Mentor is Robb Clarksen, City Planner, Minneapolis CPED, Planning Division Email: Robert.Clarksen@ci.minneapolis.mn.us

Team Two: Applying for a Conditional Use (City of Wayzata)
• This team’s assignment, based on available data, applicant plans and the City of Wayzata Zoning Ordinance (see web page for plans and information), will be to prepare a detail CUP applications. This team is requesting a conditional use permit and design review for a proposed sailing school at Eastman Lane and Arlington Circle.
• Team Two will prepare an outline of the steps necessary to obtain a CUP and assign tasks each team members a specific task.
• Team Two will study the previously prepared plans and information, file the required applications and hold a neighborhood meeting (neighbors Team Three) for a CUP;
• Team Two will meet with the Mentor in his office at City Hall to discuss the project, the application and process.
• Team Two will create a narrative describing the proposal related to the legal basis for the city to issue a CUP (Statutory Authority, City Charter, and Comprehensive Plan, site legal CUP cases).
• Team Four (city staff) will review the application, prepare the “60 day letter”, negotiate with Team Two and prepare staff report.
• Team Two will make a presentation (power point) to the planning commission (Team One).
• Team One (planning commission) will conduct a public hearing, with team three (neighborhood) being in opposition to the application.
• Team One (planning commission) will make the appropriate findings to recommend approval, conditionally approval or deny the application.

Mentor: Bryan Gadow, AICP City Planner, City of Wayzata, bgadow@wayzata.org

Team Three: Applying for a Variance to the side set back standards of the Ordinance (City of Minnetonka Beach)
• This team’s application based on available data, applicant plans and the City of Minnetonka Beach’s zoning ordinance (see web page for plans and information), will be to prepare a detail variance application for side set back variance for a new home to be located on a 60-foot wide lot.
• Team Three will prepare an outline of the steps necessary to obtain a variance and to assign specific tasks to each team member.
• Team Three will study the previously prepared plans and information, file the required applications and hold a neighborhood meeting (neighbors Team Four) for a variance;
• Team Three will meet with the Mentor in his office at City Hall to discuss the project, the application and process;
• Team Three will create a narrative describing the proposal related to the legal basis for the city to grant a variance (Statutory Authority, City Charter, and Comprehensive Plan, site cases).
• Team One (city staff) will review the application, prepare “60 day letter”, negotiate with Team Three and prepare staff report.
• Team Three will make a presentation (power point) to the planning commission (Team Two).
• Team Two (planning commission) will conduct a public hearing, with team four (neighborhood) being in opposition to the application.
• Team Two (planning commission) will make the appropriate findings to recommend approval, conditionally approval or deny the application.

Mentor: Richard Krier, AICP Consultant Planner, City of Minnetonka Beach 952 476 1762 Rkrier@mchsi.com
Team Four: Applying to a Hearing Officer for a variance to a height standard (City of Seattle)

- This team’s application, based on available data, applicant plans and the City of Seattle’s zoning ordinance (see web page for plans and information), will be to prepare a detail variance application. This team is requesting a conditional use permit.
- Team Four will prepare an outline of the steps necessary to obtain.
- Team Four will study the previously prepared plans and information, file the required applications and hold a neighborhood meeting (neighbors Team One);
- Team Four will complete a conference call with the Mentor to discuss the project, the application and process;
- Team Four will create a narrative describing the proposal related to the legal basis for the city to zone property and to amend the zoning map (Statutory Authority, City Charter, and Comprehensive Plan, site cases).
- Team Two (city staff) will review the application, negotiate with Team Four and prepare staff report.
- Team Four will make a presentation (power point) to the hearing officer (Team Three).
- Team Three (Hearing Officer) will conduct a public hearing, with Team One (neighborhood) being in opposition to the application.
- Team Three (Hearing Officer) will make the appropriate findings to recommend approval, conditionally approval or deny the application.

Mentor: Susan Tanner, Chief Hearing Officer City of Seattle, 1 206 684 0521 e-mail:

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<th>Team Responsibility Matrix</th>
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Team Assignments for Final Project

Team One: Prepare a Euclidian Zoning Text Amendment

- This team will create a section of an Euclidian ordinance, with each member of the team writing a specified section to be combined with the other team member’s sections for planning commission approval.
- Team One will prepare an outline of the steps necessary to change the zoning text, decide on a writing format and assign a zoning ordinance section to each team member.
- Team One will prepare the draft text for presentation and review by a neighborhood group (Team Two) and the planning director (Krier).
- Team One will prepare a final text and graphics amendment for presentation to the planning commission.
- Team Three (city attorney) will review the application, negotiate with Team One and prepare staff report and public notice.
- Team One will make a presentation (power point) to the planning commission (Team Four).
- Team Four (planning commission) will conduct a public hearing, with team two (neighborhood) being in opposition to the amendment.
- Team Four will make the appropriate findings to recommend to the city council or return the text to the staff for revisions.

Team Two: Prepare a Performance Zoning Text Amendment

- Team Two will create a section of a performance ordinance, with each member of the team writing a specified section to be combined with the other team member’s sections for planning commission approval.
- Team Two will prepare an outline of the steps necessary to change the zoning text, decide on a writing format and to assign a section to each team member.
- Team Two will prepare the draft text for presentation and review by a neighborhood group (Team Three) and the planning director (Krier).
- Team Two will prepare a final text and graphics amendment for presentation to the planning commission.
- Team Four (city attorney) will review the text negotiate with Team Two and prepare staff report, sitting cases and prepare public notice.
- Team Two will make a presentation (power point) to the planning commission (Team One).
- Team One (planning commission) will conduct a public hearing, with Team Three (neighborhood) being in opposition to the amendment.
- Team One will make the appropriate findings to recommend to the city council or return the text to the staff for revisions.

**Team Three: Prepare a Form Based Code Text Amendment**
- This team will create a section of a form based code, with each member of the team writing a specified section to be combined with the other team member’s sections for planning commission approval.
- Team Three will prepare an outline of the steps necessary to change the zoning text, decide on a writing format and to assign a section to each team member.
- Team Three will prepare the draft text for presentation and review by a neighborhood group (Team Four) and the planning director (Krier).
- Team Three will prepare a final text and graphics amendment for presentation to the planning commission.
- Team One (city attorney) will review the text, negotiate with Team Three and prepare staff report and public notice.
- Team Three will make a presentation (power point) to the planning commission (Team Two).
- Team Two (planning commission) will conduct a public hearing, with Team One (neighborhood) being in opposition to the amendment.
- Team Two will make the appropriate findings to recommend to the city council or return the text to the staff for revisions.

**Team Four: Prepare a Hybrid Amendment**
- This team will create a section of a hybrid Euclidian code, that will include both Euclidian, performance and FBC elements in combination in the same section of the code. Each member of the team write a specified section to be combined with the other team member’s sections for planning commission approval.
- Team Four will prepare an outline of the steps necessary to change the zoning text, decide on a writing format and to assign a section to each team member.
- Team Four will prepare the draft text for presentation and review by a neighborhood group (Team One) and the planning director (Krier).
- Team Four will prepare a final text and graphics amendment for presentation to the planning commission.
- Team Two (city attorney) will review the text, negotiate with Team Four and prepare staff report and public notice.
- Team Four will make a presentation (power point) to the planning commission (Team Three).
- Team Three (planning commission) will conduct a public hearing, with Team One (neighborhood) being in opposition to the amendment.
- Team Three will make the appropriate findings to recommend to the city council or return the text to the staff for revisions.

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