



Minnesota State University

Fall, 2009

## URBS 604: Zoning and Legal Issues (3credits)

*Class meets on Tuesdays from: 200pm – 4:45pm in MH 112*

Instructor: Raymond Asomani-Boateng (Ph.D.)

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### 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 the influence in matters of public affairs. The authority of government 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 and need." Municipal government performs this function within the context of local values and preferences. The power of local government to perform the above stated function is premised on its legal establishment under state law and the states delegation of the police power

This course explores the legal standards by which land use is regulated, and controlled in the United States. 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

This course aims to offer an array of ideas from various viewpoints. Class will proceed largely through lectures, seminars based on cases and class discussion. Students should be prepared to discuss assigned readings in class. To better understand the core elements of zoning and planning, guest speakers, field exercises, readings and course lectures will be utilized. Class participation will be critical to the success of each student.

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. Be familiar with and able, in a critical fashion, to deal with legal and planning issues raised by the assigned materials read for and discussed in class
3. Gain working knowledge of the foundations, techniques, administration, and politics of planning and land-use regulatory powers exercised by local government

**REQUIRED TEXT:**

David L. Callies, Robert H Freilich and Thomas E Robert: Case and materials on Land Use. 5Edition, West Publishing Co: St Paul, 2004

**RECOMMENDED TEXT**

Levy, John M. (2009) Contemporary urban planning 8<sup>th</sup> edition  
Land Use in a nutshell Nolon & Salkin  
Planning and Urban Design for Students (2007)

**THEMES****Week 1: Aug. 25:**

Course requirements and highlights

- Individual introductions
- Course overview and requirements
- Place students in groups

**WEEK 2: Sept. 1**

Individual research project

- What are the distinctions between a village, town, unincorporated area, special districts, and county forms of government?
- Identify the governmental structure for each of the municipal forms of government
- Where does the zoning function reside in each of the forms of government

Resource for your research:

League of Minnesota Cities  
145 University Avenue West  
St Paul, MN 55103  
Phone: (651) 281-1200  
Toll Free phone: (800)925-1122  
Fax: (651) 281-1298  
Website: [www.lmnc.org](http://www.lmnc.org)

See Handbook for Minnesota Cities on LMC website

**Week 3: Sept. 8**

Zoning Basics

- Setting the stage: the unplanned environment
- Evolution of Zoning
- Definition and purpose of Zoning
- Statutory authority to adopt zoning and land use regulation
- Zoning classification & Zoning controls

Readings: Callies, Freich and Roberts: 1-18

<https://www.revisor.leg.state.mn.us/statutes/> (Minnesota statutes)

### **Week 4: Sept. 15**

- Zoning ordinance, creation and amendment process
- Land use plan creation, Amendment & process

Readings: Go to <http://www.mankato-mn.gov/CityCode/cityCode.aspx?chapID=10>

Class exercise: Zoning and Land use maps

### **Week 5: Sept. 22**

The Comprehensive Plan as a Law

- Zoning and the Comprehensive Plan
- The Consistency Doctrine/ In Accordance Principle

Readings: Callies, Freilich, and Roberts: 458 -471

Case presentation by student:

### **Week 6: Sept. 29**

Zoning Administration

- Framework for Land Use Control in the United States
- Local legislature
- Zoning Board of Appeals
- Planning Board
- Zoning Enforcement Officer

Reading: Callies, Freilich, and Roberts: 93-130

Case presentation by student:

### **Week 7: Oct. 6**

Legal Challenges

- Takings
- Equal Protection
- Substantive Due Process
- Procedural Due Process

Case presentation by student

### **Week 8: Oct.13**

Variance and Conditional Use Permit

- Purpose and authority
- Variance and the zoning board of appeals
- Use variance & area variance
- Variance procedure and conditions

Readings: Callies, Freilich & Roberts: 130-188

Case presentation by student

### **Week 9: Oct. 20**

Special Issues in Land Use Controls

- Eminent Domain
- First Amendment

- Innovations in local zoning regulations
- Exclusionary zoning and Inclusionary zoning
  - Mobile/ Manufactured Homes
  - Group Homes
  - Adult Uses

Case presentation by students

**Week 10: Oct. 27**

Private Sector Roles in Zoning

Guest speaker: Chuck Brandel (I&S Group)

**Week 11: Nov. 3**

Environmental issues affecting zoning

Guest Speaker: Matt Brand (I&S Group)

**Week 12: Nov. 10**

New Urbanism

**Week 13: Nov. 17**

Discussion of current zoning issues

**Week 14: Nov. 24**

Course evaluation and review

**Week 15: Dec. 1**

Final examination (AICP format)

**Evaluation**

Students will be evaluated according to the following areas:

Research on Forms of Municipal Government	15
Cases presentation	15
Discussion of current zoning issues	30
Final examination	40
<b>Total</b>	<b>100%</b>

**Grading scale**

**A+: 97-100**

**A: 93-96**

**A-:90-92**

**B+:87-89**

**B: 83-86**

**B-:80-82**

**C+:77-79**

**C: 73-76**

**C-:70-72**

**D+:67-69**

**D: 63-66**

**D-: 60-62**

### **Attendance**

Except in case of emergency or some other legitimate reason, attendance in the class is mandatory

### **Make-ups and 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.

### **Presentation of cases**

For the assigned case students should read the assigned chapters and prepare a detailed power-point presentation which identifies and answers the following:

- who are the parties to the case (plaintiff/respondent, defendant/petitioner);
- what are the issues;
- facts of the case;
- outcome (decision);
- and sources of law and
- reasoning/arguments in arriving at the decision

for presentation to the class. Please make copies for everyone.

## COURT CASES

### Nuisance

#### Case

- Boove v Donner-Hanna Coke Corporation (NY App 1932 )  
Text: 1-12

### Zoning:

#### *The Power to zone: text 19-37*

- Pennsylvania Coal Co. v Mahon (US) Text: 308-312
- Village of Euclid v Ambler Realty Co. (US 1926). Text: 20-28
- Nectow v City of Cambridge Text: 28-36

#### *Eminent Domain and Taking*

- Hawaii Housing Authority v. Midkiff (US 1984). Text: 286-296
- Penn Central Transportation Co. v City of New York (US 1978). Text: 312-332
- Loretto v Teleprompter Manhattan CATV Corp. Text 296-308
- Nollan v California Coastal Commission (US 1987) Text 208--update
- Lucas v South Carolina Coastal Council (US 1992) Text 332-348
- Dolan v City of Tigard (US 1994) Text 220---update
- First English Evangelical Lutheran Church of Glendale v County of Los Angeles (US 1987) text 332-335.---update
- Williamson County Regional Planning Commission v Hamilton Bank (US 1985)  
Text 385-397

#### *In accordance with comprehensive plan*

- Udell v Haas (NY 1968) Text 37-45
- Board of County Commissioners of Brevard County v Synder (FL 1993)

### Zoning Administration: 93-130 ok

#### *Amendment*

- Bartram v Zoning Commission of City of Bridgeport (CT 1949). Text 95-100 ok

### *Conditional Use*

- Gorham v. Town of Cape Elizabeth (ME 1993) Text: 107-115 ok

### *Variance*

- Topanga Association for Scenic Community v County of Los Angeles (CA 1974). Text: 130-138 ok

### *Non-conforming use*

- City of Los Angeles v. Gage (Cal App 1954) Text 138-147 ok

### *Vested Rights*

- Avco Community Developers, Inc. v South Coastal Regional Commission (CA 1976). Text 147-168 ok

## **Zoning Districts (Use Classification) 45-90**

- Standard State Zoning Enabling Act. Text 33-37 ok
- Pierro v Baxendale (NJ 1955). Text 50-58 ok
- Hernandez v City of Hanford (SC of California 2007) 58-72 ok

### *Residential Use Classifications*

- Village of Belle Terre v Boraas (US 1977). Text 513-514
- City of Cleburne, Texas v. Cleburne Living Center (US 1985) Text at 517
- City of Edmonds v Oxford House, Inc. (US 1995)

### *First Amendment*

- City of Renton v Playtime Theaters, Inc. (US 1986) Text 363; 382-383.
- Korean Buddhist Dae Won Sa Temple of Hawaii v Sullivan (HA 1998). Text 383

### *Exclusionary and Inclusionary zoning*

- Southern Burlington County NAACP v Township of Mount Laurel (NJ 1983) Text 467; 487-488
- Board of Supervisors of Fairfax County v DeGroff Enterprises, Inc. (VA 1973) Text 488; 492-493
- Village of Arlington Heights v Metropolitan Housing Development Corp. (US 1978). Text 493

## **Flexible Zoning Techniques**

- Giger v City of Omaha (NE 1989). Text 137. Contract and conditional zoning. Text 76-77
- Fesano v Board of County Commissioners of Washington County (OR 1973). Text 77, 149-156 Floating zones

## **Growth Management**

Text 595-604

- Woodbury Place Partners v City of Woodbury (Minn App 1992). Text at 604; 613-616
- Golden v. Planning Board of the Town of Ramapo (NY 1972). Text at 616; 630-633.
- Long Beach Equities, Inc v County of Ventura (CA App 1991) Text at 633; 637-643

- Construction Industry Association of Sonoma County v City of Petaluma. Text at 644; 653-658
- Thompson v Hancock County (IA 1995) Text at 658
- Borel v Contra County (CA App 1990). Text at 665; 671-674.

### **Aesthetics and Preservation**

Text 433

- A-S-P Associates v. City of Raleigh (NC 1979) Text at 434; 446;451;453
- Reid v. Architectural Board of Review of City of Cleveland Heights (OH App 1963) Text at 453; 461-463

Student presentation of cases

Week 5: September 23

*Evolution of planning & zoning:*

- Hadacheck v. Sebastian 13-18
- Boover v. Donner-Hanna Coke Corporation
- Pennsylvania Coal Co. v Mahon (US) Text: 308-312
- Village of Euclid v Ambler Realty Co. (US 1926). Text: 20-28
- Nectow v City of Cambridge Text: 28-36

Week 6: September 30

*Eminent Domain and Taking*

- Hawaii Housing Authority v. Midkiff (US 1984). Text: 286-296
- Penn Central Transportation Co. v City of New York (US 1978). Text: 312-332
- Loretto v Teleprompter Manhattan CATV Corp. Text 296-308
- Nollan v California Coastal Commission (US 1987) Text 208--update

Week 7: October 7

*Eminent Domain and Taking*

- Lucas v South Carolina Coastal Council (US 1992) Text 332-348
- Dolan v City of Tigard (US 1994) Text 220---update
- First English Evangelical Lutheran Church of Glendale v County of Los Angeles (US 1987) text 332-335.---update
- Williamson County Regional Planning Commission v Hamilton Bank (US 1985) Text 385-397

Week 8: October 14

*In accordance with comprehensive plan*

- Udell v Haas (NY 1968) Text 37-45
- Board of County Commissioners of Brevard County v Synder (FL 1993)

*Amendment*

- Bartram v Zoning Commission of City of Bridgeport (CT 1949). Text 85-90.

*Conditional Use*

- Gorham v. Town of Cape Elizabeth (ME 1993) Text: 97-105

Week 9: October 21

*Variance*

- Topanga Association for Scenic Community v County of Los Angeles (CA 1974).  
Text: 118-126

*Non-conforming use*

- City of Los Angeles v. Gage (Cal App 1954) Text 127-135

*Vested Rights*

- Avco Community Developers, Inc. v South Coastal Regional Commission (CA 1976). Text 136-141

Week 10: October 28

Week 11: November 4