INTRODUCTION TO PLANNING LAW

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University of Wisconsin-Milwaukee
Campus Office: Online
School: Architecture and Urban Planning,
Department: Urban Planning
Course Number: 702, Sec. 002
Day and Time: Thursday, 6:00-8:40pm
Semester: Fall 2020
Course Room: ONLINE-https://goldininstitute.zoom.us/j/93961093271

OFFICE HOURS: Thursday, 4:45pm-6:00pm, After Class or by Appointment
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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 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 the government is broadly charged with balancing the individual’s rights and interests in land with that of the “public interest and need.” The 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 the state’s delegation of police power. It is important for planners to understand the constitutional dimensions and limitations of the local authority with respect to the regulation of 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 the local government. As we examine an array of legal issues related to local government 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 the governmental exercise of land use authority.
**Required Materials**

*Pocket Constitution

*Handouts as provided

**Class #1 & 2, October 8th & 15th**

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 way in which the governmental structure is organized for each of the municipal forms of government.
3) Where does the zoning function reside in each of the forms of government?

**Resource starting point for your research:**
League of Wisconsin Municipalities
131 Wilson Street, Suite 505
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) **The Emergence of Local Government Zoning**

Setting the Stage: Unplanned and Unregulated Environment, Callies, Freilich, and Saxer, pgs. 1-34

**Class #3 & 4-October 22nd & October 29th**

**Basics of Zoning**
Zoning: Classic to Contemporary, Callies, Freilich, and Saxer, pgs. 67-94
*Richard H. Chused, Euclid’s Historical Imagery, Case Western Reserve Law Review, pgs 579-616
Traditional Zoning: Uses Flexibility and Design, Callies, Freilich, and Saxer, pgs. 95-130

The Comprehensive Plan as Law
*Zoning and the Comprehensive Plan, Zoning News, pgs. 1-4
The Consistency Doctrine, Callies, Freilich, and Saxer, pgs. 47-65

Discussion of Contemporary Comprehensive Planning Effort
From Sprawl to Sustainability: Growth Management and Smart Growth, Callies, Freilich, and Saxer, pgs. 825-846

Class # 5, 6 & 7-November 5th, November 12th & November 19th
Changes to the Comprehensive Plan
The Variance, Callies, Freilich, and Saxer, pgs. 227-240
Nonconforming Uses, Callies, Freilich, and Saxer, pgs. 241-250
Vested Rights, Callies, Freilich, and Saxer, pgs. 251-265
Planned Unit Development, Callies, Freilich, and Saxer, pgs. 169-181

Subdivision Controls
History, Planning Context, Authority, and Process, Callies, Freilich, and Saxer, pgs. 507-519, 541-551

Governmental Taking of Property
Taking, Callies, Freilich, and Saxer, pgs. 331-398, Due Process (Substantive and Procedural) in Taking 407-422
Redevelopment and Eminent Domain, Callies, Freilich, and Saxer, pgs. 711-745
*Because We Can Doesn’t Mean We Should and if We Do: Urban Communities, Social and Economic Justice, and Local Economic-Development-Driven Eminent Domain Practices, pgs. 245-261.

City Development and Comprehensive Planning
Development Agreements and Community Benefit Agreements, Callies, Freilich, and Saxer, pgs. 266-281
New Urbanism, Callies, Freilich, and Saxer, pgs. 313-323
Transit Oriented Development, Callies, Freilich, and Saxer, pgs. 762-778

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MIDTERM EXAM-NOVEMBER 19th

UWM Thanksgiving Recess-November25th to November 29th

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Class # 8 & 9-December 3rd & December 10th

Special Issues in Land Use Controls
Aesthetic Controls, Callies, Freilich, and Saxer, pgs. 281-289
Historic Preservation: Districts and Landmarks, Callies, Freilich, and Saxer, pgs. 289-312
First Amendment, Callies, Freilich, and Saxer, pgs. 422-468
Exclusionary Zoning and Inclusionary Zoning, Callies, Freilich, and Saxer, pgs. 637-696
Nontraditional Living Arrangements, Callies, Freilich, and Saxer, pgs. 696-709

Course Review Based on Student Questions

FINAL EXAM-DECEMBER 17th

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 case readings and convey this in their class participation. Students are also expected to relate the case readings to broader legal concepts and theories 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, rule, 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 must evenly divide among group members the opportunity to present cases or some portion of assigned cases. A group grade 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 1-2 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

STUDENT WORKLOAD EXPECTATION

This class meets once weekly for 2 hours and 40 minutes, for a total of 26.7 hours of required lecture time. You should expect to have at least 40 hours’ worth of case readings and including various other readings over the course of the semester. There are also group assignments that you should expect to require at least 25 hours of your time over the course of the semester. In the aggregate, this class is likely to take approximately 92 hours of your time.

COURSE STUDY GUIDE

Foundational Understandings

- Understand 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.

- Understand and describe substantive and procedural due process.
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 process 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.

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?
- Be able to explain the concept of inclusionary and exclusionary zoning.
- Be able to identify what constitutional amendment comes into play when inclusionary and exclusionary zoning is at issue, and what rights that amendment protects.

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

Other Constitutional Issues you should know
- Explain the term "compelling state interest" and describe this in terms of its 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.
COURSE POLICIES

Changes to syllabus: Students are responsible for any changes in this syllabus which are announced.

Academic Misconduct: Any students found guilty of academic misconduct (e.g. cheating, plagiarism) will be given a grade of “0” on the relevant assignment and disciplined according to the UWM Student Academic Disciplinary Procedures.

UNIVERSITY POLICIES REGARDING COURSES & INSTRUCTION

This course adheres to campus policies regarding students with disabilities, religious observances, active military service, incompletes, discriminatory conduct, academic misconduct, complaints about the course, grade appeals and course credit & time spent requirements.

1. Students with disabilities. Notice to these students should appear prominently in the syllabus so that special accommodations are provided in a timely manner. http://uwm.edu/arc/

2. Religious observances. Accommodations for absences due to religious observance should be noted. https://apps.uwm.edu/secu-policies/storage/other/SAAP%201-2.%20Accommodation%20of%20Religious%20Beliefs.pdf

3. Students called to active military duty. Accommodations for absences due to call-up of reserves to active military duty should be noted. Students: http://uwm.edu/active-duty-military/ Employees: https://www.wisconsin.edu/ohrwd/download/policies/ops/bn9.pdf

4. Incompletes. A notation of "incomplete" may be given in lieu of a final grade to a student who has carried a subject successfully until the end of a semester but who, because of illness or other unusual and substantiated cause beyond the student's control, has been unable to take or complete the final examination or to complete some limited amount of term work. https://apps.uwm.edu/secu-policies/storage/other/SAAP%2013.%20Incomplete%20Grades.pdf

5. Discriminatory conduct. Discriminatory conduct will not be tolerated by the University. It poisons the work and learning environment of the University and threatens the careers, educational experience, and well-being of students, faculty, and staff. https://apps.uwm.edu/secu-policies/storage/other/SAAP%201.1.%20Discriminatory%20Conduct%20Policy.pdf

6. Title IX/Sexual Violence. Title IX is a federal law that prohibits sex discrimination in education program or activities, and UWM policy prohibits such conduct (see Discriminatory Conduct, above). This includes sexual violence, which may include sexual harassment, sexual assault, relationship violence, and/or stalking in all educational
programs and education-related areas. UWM strongly encourages its students to report any instance of sex discrimination to UWM’s Title IX Coordinator (titleix@uwm.edu). Whether or not a student wishes to report an incident of sexual violence, the Title IX Coordinator can connect students to resources at UWM and/or in the community including, but not limited to, victim advocacy, medical and counseling services, and/or law enforcement. For more information, please visit: https://uwm.edu/sexual-assault/.

7. Academic misconduct. Cheating on exams or plagiarism are violations of the academic honor code and carry severe sanctions, including failing a course or even suspension or dismissal from the University. https://uwm.edu/deanofstudents/conduct/academic-misconduct/

8. Complaint procedures. Students may direct complaints to the head of the academic unit or department in which the complaint occurs. If the complaint allegedly violates a specific university policy, it may be directed to the head of the department or academic unit in which the complaint occurred or to the appropriate university office responsible for enforcing the policy. https://apps.uwm.edu/secu-policies/storage/other/SAAP%205-1.%20Discriminatory%20Conduct%20Policy.pdf

9. Grade appeal procedures. A student may appeal a grade on the grounds that it is based on a capricious or arbitrary decision of the course instructor. Such an appeal shall follow the established procedures adopted by the department, college, or school in which the course resides or in the case of graduate students, the Graduate School. These procedures are available in writing from the respective department chairperson or the Academic Dean of the College/School. https://apps.uwm.edu/secu-policies/storage/other/SAAP%2010.%20Grade%20Appeals%20by%20Students.pdf

10. LGBT+ resources. Faculty and staff can find resources to support inclusivity of students who identify as LGBT+ in the learning environment. http://uwm.edu/lgbtrc/


13. Final Examinations. Information about the final exam requirement, the final exam date requirement, and make-up examinations. https://apps.uwm.edu/secu-policies/storage/other/SAAP%2010-11.%20Final%20Examinations.pdf