

## **INTRODUCTION TO PLANNING LAW**

**Professor:** Kirk E. Harris, M.P.A., J.D., Ph.D., Esq.

**University of Wisconsin-Milwaukee**

**Campus Office:** AUP 322

**School:** Architecture and Urban Planning,

**Department:** Urban Planning

**Course Number:** 702, Sec. 001

**Day and Time:** Thursday, 6:00pm-8:30pm

**Semester:** Fall 2023

**Course Room:** AUP 345

**OFFICE HOURS:** After Class or by Appointment

**OFFICE PHONE:** (708) 955-3015

**E-mail:** [keharris@uwm.edu](mailto:keharris@uwm.edu)

### **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

\*David L. Callies, Robert H. Freilich, and Shelly Ross Saxer, Cases and Material on Land Use, Eight Edition. West Publishing Co: St. Paul. 2021.

\*Pocket Constitution

\*Handouts as provided

**Class #1 & 2, October 12<sup>th</sup> & 19<sup>th</sup>**

**Course Requirements and Highlights**

Course Overview and Requirements

Discussion Case Preparation

Place Students into Groups

Overview of Governmental and Court Structure and Functions

**Place Students into Groups and Assign Project**

- 1) What are the distinguishing characteristics of the following governmental form: Village, Town, City, Unincorporated Area, Special Districts, TIF Districts, and County?
- 2) Identify the governing structure of the particular form of government.
- 3) What is the nature of the zoning function and the jurisdictional authority of 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](http://www.lwm-info.org)  
E-mail: [league@lwm-info.org](mailto:league@lwm-info.org)

**Class #3 & 4-October 26<sup>th</sup> & November 2<sup>nd</sup>**

**Common Law Nuisance**, Callies, Land Use, pgs. 1-26

**Private Land Use Controls**, (Covenants, Conditions, and Restrictions -CC&Rs) Callies, Land Use, pgs. 26-37

**Legislative Land Use Controls**, Callies, Land Use, pgs. 37-65

\* The Walls We Won't Tear Down, New York Times, August 3, 2017

### **The Comprehensive Plan**

\*Zoning and the Comprehensive Plan, *Zoning News*, pgs. 1-4  
The Consistency Doctrine, *Callies, Land Use*, pgs. 65-84

**Evolution of Modern Planning and Zoning**, *Callies, Land Use*, pgs. 84-92

**Zoning Uses and Design**, *Callies, Land Use*, pgs. 93-119

**Zoning Administration: Legislative, Quasi –Judicial, Initiatives or Referendum**, *Callies, Land Use*, pgs. 206-236

### **From Sprawl to Sustainability:**

\*The Curse of Urban Sprawl: How Cities Grow, and Why this has to Change. *The Guardian News US*, pgs. 1-6.  
Techniques to Limit or Stop Growth, *Callies, Land Use*, pgs. 794-804

### **Class # 5, 6 & 7-November 9<sup>th</sup>, November 16<sup>th</sup> & November 30<sup>th</sup>**

#### **Changes and Challenges to the Comprehensive Plan**

The Variance, *Callies, Land Use*, pgs.150-161  
Spot Zoning, *Callies, Land Use*, 161-170  
Contract and Conditional Zoning, *Callies, Land Use*, pgs. 170-182  
Nonconforming Uses, *Callies, Land Use*, pgs. 236-244  
Vested Rights, *Callies, Land Use*, pgs. 244-256  
Planned Unit Development, *Callies, Land Use*, pgs. 197-206

**Subdivision Controls, Approval Process, and Official Maps**, *Callies, Land Use*, pgs. 480-504

#### **Governmental Taking of Property**

Taking, *Callies, Land Use*, pgs. 269-323  
Redevelopment and Eminent Domain, *Callies, Land Use*, pgs. 643-662  
\*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 Revitalization**

Exactions: Physical and Monetary, *Callies, Land Use*, pgs. 506-542  
Development and Community Benefit Agreements, *Callies, Land Use*, pgs. 256-267  
Addressing Abandonment and Deterioration, *Callies, Land Use*, pgs. 722-751  
Joint Public-Private Partnerships, *Callies, Land Use*, pgs. 714-722

---

***MIDTERM EXAM-NOVEMBER 16<sup>th</sup>***

---

***UWM Thanksgiving Recess-November 23<sup>rd</sup> to November 26<sup>th</sup>***

---

**Class # 8 & 9-December 7<sup>th</sup> & December 14<sup>th</sup>**

**Other Issues in Land Use Controls**

Aesthetic Controls, Callies, Land Use, pgs. 128-135

Historic Preservation: Districts and Landmarks, Callies, Land Use, pgs. 184-193

First Amendment & Religious Freedom, Callies, Land Use, pgs. 371-412

Exclusionary and Inclusionary Zoning (Fair Share Obligations), Callies, Land Use, pgs. 551-587

Equal Protection & Federal Housing Act, Callies, Land Use, pgs. 368-371 & 587-607

Nontraditional Living Arrangements, Callies, Land Use, pgs. 628-641

***Course Review Based on Student Questions***

---

***FINAL EXAM-DECEMBER 21<sup>st</sup>***

---

**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) Governmental Form Presentations and Case Report Presentations: 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) Each group will be required to do research on a municipal government form and present on that research as identified in weeks 1-2 of the syllabus.
- b) Groups will do Case Report Presentations. A PowerPoint 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 the dispute (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.

3) Exams: The mid-term and final exams will cover key concepts, issues, and definitions discussed in class. The exams will take place during normal class hours

4) Grading:

15%-Forms of Municipal Government Presentations

30%-Case Report Presentations

15%-Mid-Term Exam

40%-Final Exam

### **STUDENT WORKLOAD EXPECTATION**

This class meets once weekly for 2 hours and 30 minutes, for a total of 25 hours of required lecture time. You should expect to have at least 40 hours 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 30-35 hours of your time over the course of the semester. In the aggregate, this class is likely to take approximately 90-100 hours of your time.

## COURSE STUDY GUIDE

### Foundational Understandings

- Understand differences between a Town, City, and Village, Special Districts, Unincorporated Area, and County based on the materials shared and discussed in class.
- Understand the basic structure of a City, its functioning elements. i.e. 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."
- Understand the constitutional concept of "chilling effect."

**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.

\*\*\*\*\*

## **STUDENTS IN NEED**

Any student who faces challenges securing their food, housing, or technology, or is struggling with mental, physical, or emotional health, and believes this may affect their performance in the course is urged to contact the Dean of Students ([dos@uwm.edu](mailto:dos@uwm.edu)) for support. Furthermore, please notify the professor if you are comfortable doing so. This will enable them to provide any resources that they may have and can connect you to the Dean of Students as well.

## **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. Please see additional guidance and expectations related to academic conduct at: <https://uwm.edu/deanofstudents/academic-misconduct/>.

## **COVID-19 SYLLABUS STATEMENTS, FALL 2022**

**Panther Community Health and Safety Standards:** UWM has implemented reasonable health and safety protocols, taking into account recommendations by local, state and national public health authorities, in response to the COVID-19 pandemic. As a member of our campus community, you are expected to abide by the Panther [Interim COVID-Related Health & Safety Rules](#), which were developed in accordance with public health guidelines. These standards apply to anyone who is physically present on campus, UWM grounds, or participating in a UWM-sponsored activity:

- You should check daily for COVID-19 symptoms and not come to campus if you are feeling sick.

Additional details about student and staff expectations can be found on the [UWM COVID-19 webpage](#).

## **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%201-13.%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%205-1.%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](mailto: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/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%201-10.%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/>
12. Smoke and Tobacco-Free campus. UWM prohibits smoking and the use of tobacco on all campus property. <https://apps.uwm.edu/secu-policies/storage/other/SAAP%2010-8.%20Smoke%20and%20Tobacco-Free%20Campus%20Policy.pdf>
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%201-9.%20Final%20Examinations.pdf>