

PL 206
INTRODUCTION TO LAW FOR PLANNERS
FALL 2006

Class Outline, Schedule and Assigned Readings.

Overview

I. The Context

- A. Natural Systems and Processes
- B. History of Urban Development and Development Management
- C. Values
- D. Institutional Framework
- E. The Legal System
- F. Real Property
- G. Policy Approaches
- H. Constitutional Law

II. Areas of Concern

- A. Land Use
- B. Design
- C. Housing
- D. Economic Development
- E. Transportation
- F. Energy
- G. Biodiversity
- H. Environment
- I. Air
- J. Water
- K. Preservation of Natural Areas
- L. Natural Hazards
- M. Toxic Substances
- N. Regional Scale Concerns

III. Conclusion

INTRODUCTION TO LAW FOR PLANNERS

**indicates case has been presented before*

Introduction to Law for Planners: Managing Development

Session Number	Session Date	Topical Outline
	Reading Assignment	
<hr/>		
1	8.24.06	I. The Context A. Natural Systems and Processes
2	8.29.06 <i>LUP 13-41</i>	B. History of Urban Development and Development Management <ol style="list-style-type: none">1. Feudal2. Lake towns3. Rome4. Paris5. Etc. C. Values <ol style="list-style-type: none">1. Whose Values are Maximized?<ol style="list-style-type: none">a. Private sector<ol style="list-style-type: none">1) Market2) Libertarianb. Public sector<ol style="list-style-type: none">1) Urban planning<ol style="list-style-type: none">a) the rational planning modelb) outlines of typical comprehensive urban plans2) Growth management: public sector should be actively (consciously) involved<ol style="list-style-type: none">a) all urban growth is managedb) growth management definedc) de facto growth management (unintended consequences)2. Some Current Examples of Sets of Values<ol style="list-style-type: none">a. Smart growthb. New Urbanismc. Low impact developmentd. Cluster developmente. Regional planning: definition of a region

- f. Biodiversity
- g. Sustainable development

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 1-36

D. Institutional Framework

1. National Government—National Development Policy

Examples

- a. Clean Water Act
- b. Clean Air Act
- c. Coastal Zone Management Act
- d. Endangered Species Act
- e. National Flood Insurance Program
- f. Disaster Mitigation Act of 2000
- g. Internal Revenue Code
- h. Coastal Barrier Resources Act
- i. Fair Housing Act
- j. Americans with Disabilities Act
- k. Religious Land Use and Institutionalized Persons Act of 2000

2. State Government—State Development Policy

Examples

- a. Vermont Act 250
- b. NC Coastal Area Management Act
- c. Maryland Smart Growth Program
- d. New Jersey Pinelands
- e. NY Adirondack Park Agency
- f. Oregon Measure 37

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LUP 43-53
Local
Government
Law in a
Nutshell
 1-63
 Burns &
 Peltason 674-
 695

3. Local Governments

- a. Dillon’s Rule
- b. Enabling Acts
- c. Home Rule
- d. Types of local governments
 - 1) County
 - 2) Municipal
 - 3) Township
 - 4) Special District
 - 5) Metropolitan government
 - 6) Regional government
 - a) county
 - b) council of governments
 - c) others
 - i. Chesapeake Bay
 - ii. Adirondack Park Agency
 - iii. Tahoe Regional Planning Agency

- iv. Portland
- v. Pinelands
- e. Organization of Local Government
 - 1) Legislative body
 - 2) Executive and staff
 - 3) Boards and commissions
- f. Boundaries
 - 1) Corporate limits
 - a) Annexation
 - b) Extra-territorial jurisdiction
- g. Urban Development Policy
 - 1) Regulation
 - a) Zoning
 - b) Subdivision
 - c) Others
 - 2) Acquisition and management of land
 - 3) Taxation
 - 4) Spending
 - 5) Education

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 Burnham
 37-78,
 167-195

E. The Law or The Legal System

1. The Law: Some Definitions (See Black's *Law Dictionary*)

- a. The regime that orders human activities through systematic application of the force of politically organized society
- b. The aggregate of legislation, judicial precedents, and accepted legal principle; the body of authoritative grounds for judicial and administrative actions
 - 1) Constitution
 - a) The takings clause
 - b) Procedural due process
 - c) Substantive due process
 - d) Equal protection
 - e) Commerce clause
 - f) Freedom of speech
 - 2) Statutes
 - 3) Regulations
 - 4) Judicial decisions
 - 5) Executive Orders: Homeland Security
 Presidential Directives, etc.
 - 6) Guidance
- c. A set of rules or principles dealing with a specific area of the legal system.

- 1) Civil
- 2) Criminal
- 3) Administrative
- 4) Torts
- 5) Real Property
- 6) Environmental
- 7) Constitutional
- 8) Local Governments
- 9) Land Use
- d. The judicial and administrative process; legal action and proceedings
- 2. Legal Materials
 - a. The Law Library
 - 1) Codes
 - 2) Cases
 - 3) Treatises
 - 4) Law reviews
 - 5) Periodicals
 - b. The Internet
- 3. Finding Cases
 - a. Citations
 - b. Find Law
 - c. Shepardizing
- 4. Administrative Law
 - a. Administrative Agencies
 - b. Rule-Making Functions of Administrative Agencies
 - c. Adjudicatory Functions of Administrative Agencies
 - d. Judicial Review of Agency Action
 - e. Presidential and Congressional Control of Administrative Agencies

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F. Real Property

- 1. Definitions
 - a. Real Property
 - b. Personal Property
- 2. Personal Property
 - a. Spatial
 - 1) Width
 - 2) Length
 - 3) Depth: mineral rights
 - 4) Height: air rights
 - b. Time (Duration)

- 1) Current
- 2) Concurrent
- 3) Future: time certain; time determinable

3. Bundle of Sticks

a. Rights

- 1) Right of possession
- 2) Right to use--timber, agriculture, water rights, development rights, etc.
- 3) Right to control and exclude
- 4) Right to quiet enjoyment
- 5) Right of disposition

b. Duties

- 1) Nuisance: *sic utere tuo*: coming to the nuisance Taxes
- 2) Regulations
- 3) Covenants (see below)
- 4) Support

4. Types of Ownership

- a. Fee Simple Absolute
- b. Life Estate
- c. Future Interests
- d. Condominiums and Cooperatives
- e. Leaseholds

*Real Property
in a Nutshell*
171-209

- f. Easements)
 - 1) express
 - 2) implied

210-221, 225-236

- g. Covenants
- h. Options
- i. Trusts: TNC, other trusts
- j. Public trust doctrine

5. Ownership as a Growth Management Device

- a. Remove land from the development stream
- b. Land Banking
- c. Redevelopment: Restrictive covenants; mandatory action
- d. TDR's

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6. Conveyancing

- a. Deed / Title
- b. Recording
- c. Title insurance
- d. Liens / mortgages

- e. Adverse possession
- f. Prescriptive easements & easements of necessity
- g. Eminent domain / condemnation
- h. Tax forfeiture
- i. Wills
- j. Intestacy

Graphics on reserve

7. Description

- a. Metes and bounds
- b. Federal Land Survey
- c. Plat (subdivision control ordinances)

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G. Policy Objectives and Approaches

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H. Constitutional Law

Introduction

LUP 442-451;
Constitutional Law in a Nutshell
192-201,
211-212,
239-240

1. Substantive Due Process

Village of Euclid v Ambler Realty Co.
Nectow v City of Cambridge
Village of Belle Terre v Boraas
Moore v City of East Cleveland

LUP
452-455;
C/L Nutshell
253-257

2. Procedural Due Process

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456-463
C/L Nutshell
274-284

3. Equal Protection

New Orleans v Dukes
City of Cleburne v Cleburne Living Center
Village of Arlington Heights v Metropolitan Housing Development Corporation
Village of Willowbrook v Olech

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LUP
396-441;
C/L Nutshell
201-210

4. The Taking Issue

a. Physical Invasion

Loretto v. Teleprompter Manhattan

CATV Corp.

b. Regulatory Impact

Pennsylvania Coal v. Mahon

Penn Central Transportation Co. v. New

York City

Agins v. City of Tiburon

Lingle v. Chevron

Williamson County Regional Planning

**Commission v. Hamilton Bank 473 U.S.
172 (1985)**

Just v. Marinette County

c. Essential Nexus

Nollan v. California Coastal

Dolan v. City of Tigard

d. Economic Impact

Lucas v. South Carolina Coastal

Council

**Keystone Bituminous Coal Association
v. DeBenedictis**

e. Investment Backed Expectations

Palazzo v. Rhode Island

f. Unit of Property

Tahoe-Sierra Preservation Council, Inc.

v. Tahoe Regional Planning Agency*

Loveladies Harbor, Inc. v. United States

g. Functional Equivalency

Lingle v. Chevron*

h. Compensation

First English Evangelical Church v.

County of Los Angeles

i. Ripeness

Williamson Co. v. Hamilton Bank*

MacDonald v. Yolo County

j Taking Legislation

10 **9.28.06**
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 C/L Nutshell
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5. The Power to Regulate Commerce
Rancho Viejo v. Gale Norton
Cuno v. Daimler-Chrysler, Inc.

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6. The Spending Power

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C/L Nutshell
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423-467,
485-505

7. First Amendment
Metromedia, Inc. v. City of San Diego
City of Ladue v. Gilleo
Young v. American Mini Theatres
City of Littleton v. Z. J. Gifts
City of Renton v. Playtime Theatres

11 **10.03.06**
 LUP
 1-65

II. Areas of Concern

A. Land Use Controls

1. Zoning

a. Overview

- 1) The teeth of the zoning ordinance
- 2) How does zoning work
 - a) zone district map
 - b) district requirements
- 3) History of zoning
- 4) Authority to zone
- 5) Standard State Zoning Enabling Act

b. Zoning and the comprehensive plan

- 1) Standard State Zoning Enabling Act
- 2) Interpretive cases

c. Actors

- 1) Legislative (elected)
- 2) Planning Commission (appointed)
- 3) Board of Adjustment / Board of Zoning Appeals (appointed)
- 4) Planning Department (employees)
- 5) Affected Parties
 - a) development industry

- b) citizen participants
- c) the community as a whole
- d. Legislative and Administrative Decisions
- e. Constitutional parameters of zoning p 46
 - 1) **Village of Euclid v. Ambler Realty Co.***
 - 2) **Nectow v. City of Cambridge***
 - 3) Challenges: Facial v. as Applied
- f. Types of Zones / Districts
 - 1) Residential
 - 2) Commercial
 - 3) Industrial
 - 4) Public uses
 - a) local government
 - b) schools
 - c) state government
 - d) federal government
 - 5) Semi-public uses
 - a) churches
 - b) private schools
 - 6) *Ad Infinitum*
 - 7) Types of regulations
 - a) Cumulative v. Exclusive
 - b) Performance v. Prescriptive
 - c) Of Right v. Administrative Findings

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 LUP
 68-92

- g. District Requirements
 - 1) Use
 - a) permitted uses
 - b) single family use--**Miller v. Board of Public Works**
 What is a family?
 - i. **Village of Belle Terre v. Boras***
 - ii. **Moore v. City of East Cleveland***
 - c) group homes---**City of Cleburne v. Cleburne Living Center***
 - d) home occupations
 - e) zoning regulates use, not ownership
 - f) agricultural uses
 - g) commercial uses
 - h) industrial uses
 - i) accessory uses

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104-109
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121-126
126-131

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134-135

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 92-103

- j) buffer zones
- k) governmental and community uses
- l) favored status
- m) immunity
- n) public utilities
- o) public-private distinctions
- p) schools
- q) religious uses

Religious Land Use and Institutionalized Persons Act of 2000

San Jose Christian College v. City of Morgan Hill (March 8, 2004, Ninth Circuit Court of Appeals)

- r) airports
- s) hospitals

2) Height

3) Bulk

Teton County v. Crowe

4) Setback

Gorieb v. Fox

Lucas v. South Carolina Coastal

Council

5) Floor–area ratio

6) Density

7) Yard size

8) Parking

9) Signs

h. Flexibility

1) Floating zones

Rogers v. Tarrytown

Eves v. Zoning Board

2) Conditional zoning

Chrismon v. Guilford County

3) Incentive zoning

Municipal Art Society v. NYC

4) Performance zoning

DeCoals v. BZA

5) Interim zones

6) Overlay zones

A-S-P Associates v. City of Raleigh

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- LUP*
186-199
- LUP*
200-206
- 157-166
- LUP*
152-156
- 207-224
- 157-165
- 221-224
229-261
- i. Non-conforming Situations
1) **Hadacheck v. Sebastian**
2) **Los Angeles v. Gage**
3) **Las Cruces v. NEFF**
- j. Variances
1) Use variances
2) Other variances
Topanga v. County of Los Angeles
- k. Special Permits pp200-206
City of Cleburne v. Cleburne Living Center *
Rockhill v. Township of Chesterfield
- l. Changing the Ordinance (Re-zoning)
1) Generally
2) Extraordinary majorities
3) Grounds for rezoning
Robinson v. City of Los Angeles
4) Legislative or quasi-judicial action?
Fasano v. Board of County Com'rs of Washington County
5) Spot zoning
Bartram v. Zoning Comm'n
6) Contract zoning
Church v. Town of Islip
Dacy v. Village of Ruidoso
7) Piecemeal zoning
8) Uniformity
9) Rezoning and the comprehensive plan
10) SLAPP suits
Protect Our Mountain Environment v. District Court in and for Jefferson County
- m. Vested Rights
Avco Community Developers Inc. v. South Coast Regional Comm'n
County of Kauai v. Pacific Standard Life Insurance Co.
Parkview Associates v. City of New York
- n. Initiative and Referendum
City of Eastlake v. Forest City Enterprises
Cuyahoga Falls v. Buckeye Community Hope Foundation
- o. Development Agreements
- p. Exclusionary Zoning
Board of Supervisors of Fairfax County v. DeGroff Enterprises, Inc.
Village of Arlington Heights v. Metropolitan

Housing Development Corp.*
Southern Burlington County NAACP v.
Township of Mount Laurel 456 A. 2d 390
(N.J. 1983)
Village of Euclid v. Ambler*
Robinson Township v. Knoll
Huntington Branch NAACP v. Town of
Huntington
City of Edmonds v. Oxford House Inc.
 Fair Housing Act
 Americans with Disabilities Act
 q. Frustrations of Traditional Zoning
 r. Form Based Zoning

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- 2. Subdivision Control
 - a. Process
 - b. Plats
 - c. Documents
 - e. Dedication
 - f. HOA
 - g. Design requirements
 - h. Exactions

Youngblood v. Board of Supervisors of San
Diego County
Brous v. Smith
Jordan v. Village of Menomonee Falls

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 288-301

- 3. Planned Unit Developments
 - Cheney v. Village of New Hope, Inc.**
 - Evans v. Teton County**

16. **10.26.06**
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 348-373

- 4. Impact Fees and Other Developer Funding of Infrastructure

302-320

- 5. Building Codes

339-341

- 6. Housing Codes
- 7. Moratoria
 - Tahoe-Sierra Preservation Council v. Tahoe**
Regional Planning Agency

341-348

- 8. Capital Improvements and Infrastructure
 - a. Adequate public facilities
 - b. Concurrency
- 9. Land Ownership
 - a. fee simple
 - b. less than fee

- 1) easements; conservation easements
- 2) covenants
- 3) homeowner associations

- c. land bank
- d. eminent domain

Poletown Neighborhood Council v. City of Detroit

Wayne County v. Hathcock

Lingle v. Chevron

Kelo v. City of New London

Hawaii v. Midkiff, 1984

10. Incentives

Maready v. City of Winston-Salem

Cuno v. Daimler-Chrysler

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11. Transfer of Development Rights

12. Growth Management Revisited

Golden v. Planning Board Town of Ramapo

Construction Industry Association of Sonoma

County v. Petaluma

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B. Design

1. Aesthetic Regulation and Architectural Control

Berman v. Parker

City of Ladue v. Gilleo*

Metromedia, Inc. San Diego*

Member of Los Angeles City Council v.

Taxpayers for Vincent

Reid v. Architectural Board of Review

510-530

2. Historic Preservation

Penn Central Transportation Co. v. New York*

Vestry of St. Bartholomew's Church v. City of

New York

530-574

3. Agricultural Land Preservation

C. Housing

1. National Housing Policy: Intergovernmental Framework

2. Governmental Housing Policies and Programs

a. Public Housing

b. Assisted Housing

c. Mortgage Insurance

d. Interest Subsidy Programs

e. Grants

f. Taxation

3. Tenants' Rights

a. Private Sector Tenants

- b. Public Sector Tenants
- 4. Urban Redevelopment
 - a. Housing Codes
 - b. Redevelopment
 - c. Relocation
- 5. Access to Housing: Race and Class
 - a. Equal Protection
 - James v. Valtierra**
 - Village of Arlington Heights v. Metropolitan Housing Development Corporation**
 - b. Legislative Equal Opportunity Policies
- 6. The Real Estate Market

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D. Economic Development
Kelo v. City of New London*
Cuno v. Daimler-Chrysler*
Private Property Rights Protection Act
William Maready v. the City of Winston-Salem*

E. Transportation
www.dot.gov

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*Energy,
 Economics
 and the
 Environment,
 Cases and
 Materials*
 Chapter One,
 Introduction 1-
 23.
*Energy Law in
 a Nutshell,*
 Chap. 2,
 Energy Policy;
 Chap. 3,
 Administration
 of Energy;
 Regulation,
 Chap. 11,
 Alternative

F. Energy

Energy
Sources

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11.09.06
*Biodiversity
Conservation
Handbook,*
19-24

G. Biodiversity

1. What is biodiversity and why do we care?

BDH
Part V,
199-366

2. Legal Mechanisms for Biodiversity Conservation

Part VI,
367-480

3. Innovation in the Protection of Biodiversity

Endangered Species Act

Tennessee Valley Authority v. Hill 437 U.S. 153 (1978)

**Babbitt v. Sweet Home Chapter of Communities for a
Great Oregon, 515 U.S. 687 (1995)**

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*Environmental
Law in a
Nutshell, 1-20;
21-44; 45-57*

H. Environment

1. Introduction

2. National Environmental Policy Act

**Citizens to Preserve Overton Park, Inc. v. Volpe, 401
U.S. 402 (1971)**

**Calvert Cliffs Coordinating Committee v. Atomic
Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971)**

Sierra Club v. Morton, 405 U.S. 727 (1972)

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*Environmental
Law in a
Nutshell,*
78-103

I. Air

Clean Air Act

Water Law in a Nutshell, 1-15; 15-73; 74-189; 217-236; 237-307

J. Water

1. Introduction
2. Riparian Rights
3. Prior Appropriation
4. Rights to Use the Surface of Waterways
5. Groundwater

Environmental Law in a Nutshell, 104-121

SWANCC v. Army Corps of Engineers
Rapanos v. United States
Clean Water Act

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Environmental Law in a Nutshell, 223-267

K. Preservation of Natural Areas

1. Preservation (or perhaps conservation?)
2. Restrictions on the Development of Private Land
 - a. The Taking Problem
 - b. The Public Trust Doctrine
 - c. Navigational Servitudes
3. Protecting Coastal Waters
 - a. Outer Continental Shelf Lands Act
 - b. Coastal Zone Management Act
 - c. Clean Water Act
 - d. Oil Pollution Act
4. Protection of Public Lands
5. Preserving Endangered Species

Tennessee Valley Authority v. Hill*
Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*

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L. Natural Hazards

1. National Flood Insurance Program
2. Hazard Mitigation Act of 2000

Environmental Law in a Nutshell, 155-212

M. Toxic Substances

1. Pesticides
2. Toxic Substances Control Act
3. Genetically Modified Organisms
4. Comprehensive Environmental Response, Compensation and Liability Act (Superfund)

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337-339;
241-244

N. Regional Scale Concerns

1. Adirondack Planning Agency
 2. Chesapeake Bay Program
 3. Portland Metro
 4. Dallas Plan
 5. Tahoe Regional Planning Agency
 6. Georgia Regional Transportation Authority (Clean Air Act)
 7. River Basin Planning
 8. Biodiversity
 9. Regional Planning Agency (1922)
 10. Metropolitan Council (1967)
- SAVE v. City of Bothell**

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12.05.06

III. Conclusion