

Thursday Nights (7:00 – 9:30pm)
Main Conference Room

Fall 2007
Professor Joseph Schilling

UAP 5554
LAND USE & PLANNING LAW
Syllabus and Reading Assignments

Planning and the law are inseparable. Virtually every land use decision implicates the legal rights and responsibilities of property ownership, legal principles of real estate, and the regulatory or police powers of state and local government. Supreme Court Justice William Brennan wrote, **“After all, if the policeman must know the constitution, then why not the planner?”** San Diego Gas and Electric vs. the City of San Diego (1981).

Planning, development, and design professionals need a good grasp of legal processes and terminology so they can effectively accomplish their goals and objectives of planning, designing, building, and maintaining livable communities. The same holds true for land use policy makers (e.g., planning commissioners, city/county elected officials, federal and state land managers, etc.). Policymaker AND practitioners must work in tandem with lawyers, law enforcement, and judges. Confusion and frustration sometimes results from these close partnerships as lawyers fail to fully appreciate the policy dimensions of the law and/or land use professionals fail to fully understand the legal dimensions of their decisions.

The primary goal of this course is to provide planners, architects, developers, and citizens with a solid foundation in how legal principles influence land use policy AND development decisions. By the end of the course you should better understand and perhaps even appreciate HOW lawyers and judges make decisions—how they go through the process of legal reasoning. As a result, the course will require students to be conversant with the language of the law and the primary mode for understanding and applying the law—federal and state appellate court decisions. While the course will also study statutory law (primarily state statutes and local ordinances), lawyers and judges focus on case law in determining the scope of existing and future land use powers. Thus, the primary text for the course is a recent land use case book that includes many of the current aspects of land use planning (e.g., Smart Growth, New Urbanism, Eminent Domain, and Takings).

This course also satisfies a number of UAP curriculum goals and objectives:

- Administrative, Legal, Policy, and Political Aspects of Planning and Zoning Adoption, and Implementation
- History of Planning and Zoning Processes and Practices
- Written and Oral Presentations, with special emphasis on policy analysis and legal advocacy
- Government Institutions and Citizen Participation in a Democratic Society and the Balancing of Individual and Collective Rights and Interests
- Respect for Diversity of Views and Ideologies
- Collaborative Problem Solving and Conflict Resolution Through Legal Processes

Reading Texts

REQUIRED TEXTS:

- **Land Use Cases and Materials—6th Edition by Gitelman, Nolon, Salkin, and Wright (Thompson/West Publishing 2004)**
- **Land Use Law in a Nutshell, Nolan and Salkin (Thompson/West, 2005).**
- **Albemarle County Land Use Law Handbook (2001) (Blackboard)**

RECOMMENDED/SUPPLEMENTAL (but not required):

- **Introduction to the Study of Law by Geyer & Richardson (1999) (Reference Only)**
- Land Use Planning & Control Law, Juergensmeyer & Roberts (Thompson/West, 2003).
- Land Use Regulation, Salsich & Tryniecki (American Bar Association 2003 or 2005).

Course Modules

We cannot possibly examine all of the major legal issues that might arise under land use planning, the following topics should equip students with the ability to identify and understand the basic legal principles that may come into play:

Module One: Overview and Orientation to Legal Systems and Local Government 101

Module Two: Land Use Law Fundamentals: Common Law Foundations and Nuisance Law

Module Three: Zoning—Administration, Flexibility, and Procedural Due Process

Module Four: Critical Constitutional Limitations on Land Use: Equal Protection and Discriminatory Zoning, State Preemption, Takings, and the 1st Amendment

Module Five: Economic Development, Eminent Domain and Redevelopment Powers and Tools

Module Six: Environmental Law, Smart Growth, and Growth Management Tools and Techniques

Reading Materials

The **Nolon/Salkin Case Book** includes introductory text that highlights the policy issues surrounding the different areas of land use law and provides a few passages from law review articles or treatises. The majority of the book is devoted to excerpts from key federal and state appellate court decisions so the students can review and analyze the legal principles directly from the primary source—case law. Unlike a casebook, the Nolan/Salkin Nutshell contains the general principles of land use law and offers background and general explanations.

The supplemental texts (**Juergensmeyer and Salsich**) are practitioner desk books (e.g., specialized land use law encyclopedias) that offer general explanations of the “black letter” law. For those of you who have a strong interest or work regularly on land use legal issues, any of these supplemental texts can help you fully understand land use law in more depth and are handy desk references for your planning and development practice.

Since many of you will likely work/practice in Virginia another required text is the **Albemarle County Land Use Law Handbook (2001)**. Written by the County Attorney’s Office, the

Handbook provides planning staff and land use decision makers with an orientation to land use law and relatively recent discussions of Virginia court decisions. The entire Handbook is posted on Blackboard and I will assign particular excerpts throughout the course so we get a better idea of how Virginia law compares with other states. I will also post relevant articles, hot topics, and recent excerpts from cases as the courts render new decisions every week.

Class Calendar & Reading Assignments

August 23rd **Introductions & Course Overview:** Legal Processes & Legal Terminology, Local Government 101, and How to Brief a Court Case.

NOLON AND SALKIN—Introduction and Sunrise Scenario, pages 1-14

HANDOUTS—Assigned Readings

- Introduction to Land Use & Planning Control Law by Juergensmeyer, pages 1-12
- Sources of Law from LexisNexis, pages 1- 7
- Legal Aspects of Community Government, ICMA Small Communities Handbook, pages 29-42
- The Tapestry of Local Governments by Platt, pages 237-259
- Briefing exercise: Bove v. Donner/Hanna Coke Corp (1932) and Hadacheck v. Sebastian (1915)

August 30th **Common Law Foundations of Planning and Land Use Controls—the Law of Nuisance**

NOLON AND SALKIN—Common Law Foundations, pages 15-31

NOLON AND SALKIN—The Law of Nuisance

- Overview of Public Nuisance, pages 32 to 37
- Del Webb and Boomer cases, pages 57 to 70
- Private Nuisance Actions—Prah case, pages 88 to 95
- Nuisance in Zoned Areas, Green pages 104 to 108

Handout—Police Power Genealogy

Sept. 6th **Basics of Zoning—the Workhorse of Planning**

NOLON AND SALKIN

- History of Zoning, pages 279 to 291
- Early Cases, pages 291 to 308: Goldman, Harper, and Euclid cases
- Zoning, Rezoning and Conformance with the Plan, pages 309 to 317 and 323 to 326: Bartram and Huntington cases

HANDOUTS—Assigned Readings

- Introduction and Chapter One (Powers and Duties of the County and its Boards/Commissions): Albemarle County Handbook

Sept 13th Zoning Administration and Flexibility—Practice and Policy

NOLON AND SALKIN

- Introduction, pages 327-332
- Variances, pages 349 to 361, Larsen and Sasso cases
- Home Occupation, pages 408 to 415, Baker and Sullivans Island cases
- Accessory Uses, 398 to 404, Collins and Greentree cases

Albemarle County Land Use Law Handbook, Chapter 12 Zoning

Sept 20th Zoning Administration and Flexibility & Land Use Hearings and Procedural Due Process

NOLON AND SALKIN

- Conditional Zoning, pages 335 to 349, Giger and Montgomery County cases
- Special Use Permits, pages 364 to 371, Chicago Heights case

HANDOUTS: ICMA Report on Procedural Due Process and Land Use Decision Making

Sept 27th Non-Conforming Uses AND Zoning on Trial (THEESIS STATEMENTS DUE)

NOLON AND SALKIN

- Non Conforming Uses, 371-397, Perry, Hunt, Silva, Moffatt, AVR cases

EXERCISE: Zoning on Trial

Oct 4th Constitutional Limitation on Zoning—Equal Protection Clause and Definition of Family and Overcrowding

NOLON AND SALKIN

- Introduction, pages 1101-1107 (McDermott)
- Non traditional families, pages 1107-1116 (Village of Belle Terre and Oyster Bay)

HANDOUTS: Frank Alexander lecture on family and Mini Dorm Case Study
Albemarle County Chapter 7: Constitutional Limitations on Land Use Powers

Oct 11th Exclusionary Zoning, Affordable Housing,

NOLON AND SALKIN

- Judicial and Legislative Oversight of Discriminatory Zoning, pages 1192-1201, 1208-1231, (Mount Laurel, Toll Brothers, Napa, Fairfax County)

Oct 18th

Constitutional Limitations on Land Use Controls—Regulatory Takings

NOLON & SALKIN

- Foundations of Regulatory Takings, pages 911-920 (Mugler and Pennsylvania Coal)
- Regulatory Takings, pages 923-933 (Penn Central)
- Categorical Takings Rules, pages 938-957 (Lucas)
- Recent Supreme Ct Edicts, pages 957-963 (Palazzolo)

ALBEMARLE HANDBOOK—Chapter 6, pages 6-10 on Takings

Oct 25th

The Property Rights Movement as a Limitation on Land Use Powers: Takings Part II, Measure 37, and Eminent Domain (OUTLINE DUE)

Guest Lecture TBA

HANDOUTS: TBA from the guest instructors

Nov 1st

Community Revitalization, Economic Development, Brownfields Redevelopment

NOLON & SALKIN

- Introduction and Housing Code, pages 622-629 (Javins)
- Urban Redevelopment Techniques (eminent domain, TIFs, etc.), pages 629-643 (Minneapolis)

HANDOUTS: Eminent Domain Cases Kelo & Hathcock; ABA Articles on Eminent Domain; Save Our Cities Article; Blueprint Buffalo;

EXERCISE—TALE OF TWO CITIES

- Nov 8th** **Smart Growth Strategies and Tools**
- NOLON AND SALKIN
- Introduction, pages 550-564 (Ramapo)
 - Moratoria, pages 564-566, 571-576 (Middletown)
 - Developer Agreements and Vested Rights, pages 538-549 (Avco and Bollech)
 - Impact Fees/Exactions, pages 466-474 (Divan Builders)
 - Nollan and Dolan, pages 491-513
- HANDOUTS: TBA—Gerrit Knapp’s article
- Nov 15th** **Local Comprehensive Planning and Active Living**
- NOLON AND SALKIN
- History of Planning, Consistency of Comprehensive Plans, pages 230-243 (Florence, Elysian Heights)
- Waves of Planning and Wisconsin’s Comprehensive Planning Law of 1999
- Nov 22nd** **Thanksgiving**
- Nov. 29th** **Latest Developments and Trends in Land Use Law—First Amendment Limitations on Land Use Powers (Cases and Readings TBA)**
- Adult Entertainment
 - Signs
 - Religious Freedom
- Dec 6th** **Latest Developments and Trends in Land Use Law Integration of Environmental and Land Use Law—the march towards sustainable development law**
- Assignments and Readings TBA
- Dec 10th** **Monday—FINAL PAPERS DUE!!!!**
- Dec 13th** **PAPER DISCUSSION FORUM—Presentation of Final Papers**

Class Assignments & Grading

Grading for the class is divided among class participation (30% for briefing teams and classroom exercises), final paper research and outlining (30%) and the final paper itself (40%) on a topic that you select. We will provide a list of possible paper topics to give you some ideas and will work with you throughout the semester with research ideas and legal analysis. Recognize that contemporary planning and land use topics intertwine a maze of legal, political, social, and economic issues and often include issues of local and national significance. **Since this is a land use law class, a significant part of the paper must identify and discuss the important legal issues within the context of land use planning and policy.** We will devote the last Thursday during finals week to an open discussion of your papers—the Land Use Law Paper Forum.

30% Class Participation—Briefing Teams and Exercises

A critical aspect of the class is the evaluating and analyzing the court cases from Nolon/Salkin or case handouts posted on Blackboard. During the first class we will explain the basic law school format for briefing cases and give you a modified template for how you should evaluate or “brief” cases. Every week students will have several cases to brief as we will discuss these cases in depth during a large part of that class. From time-to-time we will also have group exercises that will require students to take sides on a particular case or issue and defend their position with relevant examples and legal arguments. Thus, it is extremely important that students spend an hour or two before each class reading the cases and making their notes following the briefing template.

In order to facilitate and enhance class discussion, each week TWO students will “volunteer” to join a briefing team for the following week’s cases. They essentially will act as the discussion leaders to start the class discussion and will share the results of the case briefs. They can decide among themselves how to present their briefs and how to organize them. The team can provide handouts or outlines if it wants or other visual aides to enhance the discussion of the case. They could also split up the cases among them or tackle them together as a team. Depending on the number of students, everyone in the class should have the opportunity to participate in a briefing team at least once...perhaps twice...during the semester. **Those students who are NOT part of the briefing team should do their own brief as they may identify issues the briefing team overlooked.**

30% Paper Thesis Statement and Outline

Step One: Read through the list of possible paper topics that we will provide/post. Conduct preliminary research to scope out a topic that interests you—scan recent journal and newspaper articles...talk with other students and professors...send us e-mails with your preliminary ideas. Identify the legal issues that are involved with this contemporary land use planning issue. Submit a thesis statement (one to two paragraphs in length) that explains the goals/outcome of your research—what your paper intends to show, prove, and discuss. **Submit your thesis statement via e-mail on or before September 27th.** You can send it earlier. The earlier you send it, the sooner we can provide feedback and you can start on your outline and research—step two

Step Two: Prepare and submit a **DETAILED** outline of your research paper on or before **OCTOBER 18th**. The outline should be a minimum of **FOUR** pages in length, set forth the major themes/arguments of your paper (e.g., the major headings and subheadings of the outline), and integrate the results/sources from your preliminary research. Steps One and Two account for 30% of your grade, so take the time to seriously assess the topic you select and the research resources that you have found.

40% Individual Papers (papers due on MONDAY DECEMBER 10TH)

Paper Format: We will provide more detailed guidelines later in the semester that will help focus your papers on the analysis of both the policy AND legal issues associated with the topic/problem you select. You can choose to do your individual papers following the Chicago Style Manual (Endnotes) or the Blue Book for Law Review articles (Footnotes). Alternatively, instead of a traditional academic paper/journal article you could also write your paper in the form of a professional memorandum, complete with recommendations and footnotes, addressed to mythical clients or colleagues. Final papers must be minimum of 20 pages (excludes any cover sheet, table of contents, or appendices) and follow the UAP style guidelines.

Paper Open Forum: we will devote that last class during finals week (**December 13th**) to an open discussion of the student papers. Each of the authors will make a brief 10 minute presentation about their papers...highlight the key legal and policy insights from their paper's research and analysis and provide some overall observations about next steps or recent development. Following the presentations, we will have an open forum with the entire class to discuss their reactions and assessment of the papers.

GRADUATE HONOR CODE

The tenets of the Virginia Tech Graduate Honor Code will be strictly enforced in this course, and all assignments shall be subject to the stipulations of the Graduate Honor Code as outlined in the 2006-2007 Graduate Catalog. For more information on the Graduate Honor Code, please refer to the GHS Constitution, located online at <http://fbox.vt.edu/studentinfo/gradhonor>. Please contact the instructor immediately if you have questions.

SPECIAL ACCOMMODATIONS

Students with special needs or circumstances are encouraged to meet with the instructor after the first class or a.s.a.p. Please do not wait until later in the semester. In all cases, please feel free to contact the instructor, should you have any questions.

INSTRUCTOR CONTACT INFORMATION

E-mail is often the best/preferred approach for reaching Professor Schilling, unless it is something more urgent, then a telephone call is fine: jms33@vt.edu Phone: 703-706-8102. My office is on the second floor right next door to Myriam's Office.