

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

Urban Planning & Policy Development Program

Survey of Planning Law Principles
34:970:517:01

Andrew R. Davis
Fall 2008

Monday, 6:10 to 8:40 P.M.
Civic Square Building, Room 369

This course is a survey of major planning law principles. Subjects will include zoning, subdivision, growth management, redevelopment, takings, nuisance, affordable housing, aesthetics and historic preservation. Key provisions of the New Jersey Municipal Land Use Law will be examined and selected court decisions will be analyzed.

COURSE SYLLABUS

Class 1 – September 8	Readings
OVERVIEW OF THE AMERICAN LEGAL SYSTEM Constitutions, statutes and regulations Executive, legislative and judicial branches Common law, statutory law and administrative law	PDFs
AN INTRODUCTION TO LAND USE PLANNING AND CONTROL LAW Chapter 1	Chapter 1 [do not read §1.5]
COMPREHENSIVE PLANS AND THE PLANNING PROCESS Chapter 2 Section I. Planners and planning Section II. Antecedents of local government planning Section III. Relationship of planning and zoning Section IV. The process of planning comprehensively Section V. The legal status of the comprehensive plan	Chapter 2, Sections I through V
Class 2 – September 15	Readings
MLUL – Planning board	<u>N.J.S.A.</u> 40:55D-23 through 27
MLUL – Preparation of the master plan, and reexamination	<u>N.J.S.A.</u> 40:55D-28, 89, 89.1

NUISANCE

PDF

ZONING: HISTORY, SOURCES OF POWER, AND PURPOSES

Chapter 3

Chapter 3, Sections I, II, III and IV

Section I. Introduction

Section II. The history of zoning

Section III. Sources of zoning power

Section IV. Purposes of zoning

D.L. Real Estate Hldgs v. Point Pleasant Bch. Plng. Bd.
(NJ S.CT. 2003)

PDF

Class 3 – September 22 **Readings**

Euclid v. Ambler Realty

PDF

Nectow v. Cambridge

PDF

TYPES OF ZONES AND USES

Chapter 4

Chapter 4, Sections I and II

Section I. Introduction

Section II. Use zones

Class 4 – September 29 **Readings**

Section III. Height, bulk, and setback controls

Chapter 4, Sections III - VI

Section IV. Zoning with flexibility

[Do not read Section V]

Section VI. Nonconforming uses

MLUL – Zoning process and contents of ordinances

N.J.S.A. 40:55D-62
through 69

McGovern v. Borough of Harvey Cedars

PDF

Class 5 – October 6 **Readings**

TYPES OF ZONING RELIEF

Chapter 5

Chapter 5, Sections IV and V

Section IV. Variances

Section V. Special Permits

MLUL – Variances

N.J.S.A. 40:55D-69
through 70.2

One Meridian Partners v. ZBA Philadelphia

PDF

North Brunswick v. ZBA No. Brunswick

PDF

Class 6 – October 13**Readings****SUBDIVISION CONTROL LAW**

Chapter 7

Section I. Introduction

Section II. Subdivision regulations

*Section III. Mapping for future streets and
other future improvements**Section IV. Planned unit developments*

MLUL – Subdivisions

MLUL – Subdivision and Site Plan variances

D.L. Real Estate Hldgs v. Point Pleasant Bch. Plng. Bd.
(App. Div. 2005)Chapter 7, Sections
I, II, *Skim III, IV*N.J.S.A. 40:55D-37
through 40N.J.S.A. 40:55D-51
PDF**Class 7 – October 20****Readings****EXCLUSIONARY ZONING**

Portion of Chapter 6

Vickers v. Gloucester (Dissent)Mt. Laurel II (Excerpt) [*do not brief this excerpt*]Mt. Laurel – Toll Bros. (Excerpt) [*do not brief this excerpt*]Chapter 6, Sections
6.1 – 6.7

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Class 8 – October 27***Mid-Term Examination – NO CLASS SESSION*****Class 9 – November 3****Readings****GROWTH MANAGEMENT**

Chapter 9

§ 9.1 – The growth management concept

§ 9.2 – Growth management programs

§ 9.3 – Power of local government to establish programs

§ 9.4 – Limitations on power of local governments

§ 9.4.1 – Regional planning

§ 9.5 – Moratoria and interim controls

§ 9.6 – Capital improvement programming

§ 9.9 – TDRs

MLUL – Capital improvement plan

MLUL – Impact Fees

Selected Sections
and MLUL sectionsN.J.S.A. 40:55D-29
through 31N.J.S.A. 40:55D-42

MLUL – Moratoria and interim zoning
Mt. Laurel v. MiPro Homes (App.Div. 2005)

N.J.S.A. 40:55D-90
PDF

Class 10 – November 10

Readings

CONDEMNATION/EMINENT DOMAIN

Twp. of West Orange v. 769 Associates
Kelo v. New London

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Class 11– November 17

Readings

OPEN SPACE & REDEVELOPMENT TAKINGS

Article: “Mt. Laurel’s New Legacy?” (NJLJ)
Article: “Curing the Chaos” (NJLJ)
Mt. Laurel v. MiPro Homes (NJ S.CT. 2006)
Gallenthin Realty v. Paulsboro (NJ S.CT. 2007)
Gallenthin supplements (NJ statutes)
Article: “Condemnation Conundrum” (NJ Lawyer)

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Class 12 – November 24

Readings

INVERSE CONDEMNATION/REGULATORY TAKINGS

Constitutional Limitations on Land Use Controls Chapter 10, Sections 10.1-10.4

Class 13 – December 1

Readings

Lingle v. Chevron

PDF

Class 14 – December 8

Readings

**AESTHETIC REGULATION AND
HISTORIC PRESERVATION**

Chapter 11
MLUL – Historic Preservation

Chapter 11

N.J.S.A. 40:55D-107

Class 15 – December 15

Final Examination

REQUIRED READING: Text Book; PDFs; MLUL Excerpts

Text - Juergensmeyer and Roberts, Land Use Planning and Development Regulation Law, (Hornbook Series), ISBN 0-314-25780-2, West Group (2003).

PDFs - Supplemental reading material, including cases and articles, will be posted as PDFs on the Sakai@Rutgers Course Website, <https://sakai.rutgers.edu/portal>. Supplemental handouts may be distributed in class or posted to the site during the semester.

MLUL Excerpts – Selected sections of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*, which may be retrieved and printed from: <http://policy.rutgers.edu/cgs/PDFrc/NewJerseyMunicipalLandUseLaw12-23-2005v2.pdf> Alternatively, go to <http://www.njleg.state.nj.us>. Scroll down on the left side to the “Laws and Constitution” section, and click on Statutes. In the white search box that will appear at the bottom of the screen, put into quotations the sections noted in the syllabus; *e.g.* “40:55D-23”

COURSE REQUIREMENTS and OTHER ADVICE:

1. **PREPARING FOR CLASS:** You are expected to have read all of the assigned reading material *prior to* class, and be prepared to discuss issues meaningfully *during* class.
2. **CLASS PARTICIPATION:** This is very important, and accordingly, attendance is very important. (You cannot participate if you are not in class.) “Participation” means meaningful input, not mere recitation of personal opinions, and not simply discussion of information or knowledge you’ve acquired elsewhere. If you do not generally participate in discussions voluntarily, I may call upon you to answer to a question.
3. **LEGAL BRIEFS:** You are required to write a Legal Brief on every assigned court opinion. These opinions are underlined on the syllabus, above. You are strongly encouraged to read each opinion twice. You most likely will not adequately comprehend the significance of the cases after only one reading. Legal Briefs are to be prepared in Microsoft Word (not PDF) and must be posted on the Course Website by 6:00 P.M. on the night before the class for which they are assigned. You should also bring the briefs with you to class. I will provide comments on your briefs where necessary. Briefs will not be graded, but please note: timely submission is a course requirement, and lack of submission, late submissions, or consistently poor quality submissions may result in a lowering of your final grade.
4. **GRADING:** 50% of the grade will be based on a “take-home” mid-term exam/paper, and 50% of the grade will be based on an “in-class” final exam. You cannot get a decent grade if you do not read the materials *before* class, or if you do not attend and participate in class discussions.

5. **CELL PHONES = BAD:** Cell phones must be turned off before you come into class.
6. **DO NOT DESPAIR!** If you do the work and follow these pointers, I can almost guarantee that you will enjoy the course, and more importantly, learn a lot of information that you will use throughout your career.

COMMUNICATING WITH ME:

To schedule a meeting or communicate generally, contact me at adavis@psands.com, as I am on that account regularly. I also have a Rutgers e-mail account, which is: ardavis@rci.rutgers.edu. However, I do not check the Rutgers account regularly, and thus cannot guarantee that I will respond promptly to messages sent there.

APPENDIX: ACADEMIC INTEGRITY STATEMENT

Academic Misconduct: A Bloustein School Perspective

Academic misconduct includes cheating, plagiarism, failure to cite sources, fabrication and falsification, stealing ideas, and deliberate slanting of research designs to achieve a pre-conceived result. We talk about misconduct and ethical behavior in classes and expectations are set forth in student handbooks and catalogues. For example, it is presented on pages 545-547 in the New Brunswick Undergraduate Catalogue for the years 2003 through 2005 and on pages 16-18 of the Edward J. Bloustein catalogue for the years 2003 through 2005. We are not repeating that material here. Note, however, that penalties for misconduct can range from failing an assignment/exam or dismissal from the university.

The Bloustein School is appending this memorandum to your course syllabus because we recently have detected obvious cases of plagiarism. We have found far fewer cases of other forms of academic misconduct, but we find several every year. It is imperative that you understand that unethical academic conduct is intolerable, and it is completely preventable.

Academic misconduct almost always happens for two reasons. One is ignorance of academic rules and practices. For example, in virtually every recent plagiarism case in the School, material has been taken from an Internet site and placed in text without appropriate note or attribution. You must learn the proper rules for attribution. If you are not sure, ask your instructor! If you do not know the rules that govern the use of data sets, attribution, analysis and reporting of these sets, the faculty will help you. There is no such thing as a stupid question regarding this subject. Pressure is the second common reason for academic misconduct. Students, faculty, every one of us is subject to deadline, financial, self-worth, peer, and other pressures. If you are potentially allowing pressure to drive you to misconduct, please step back and resist that urge. You can cope with pressure in a positive way by reaching out to friends, counselors, and faculty members. Within the Bloustein School community, you will find understanding people and positive direction.

The Bloustein School plays an important role in the planning and public policy agenda. Our work and our students must be above reproach.