

## Local Regulation and Land Use

**Professor:** Kirk E. Harris, J.D., Ph.D  
**University of Wisconsin-Milwaukee**  
**Campus Office:** Room 220  
**School:** Architecture and Urban Planning,  
**Department:** Urban Planning  
**Course Number:** 710  
**Day and Time:** Thursday, 6:00-8:40pm  
**Semester:** Fall 2005  
**Course Room:** AUP 144

**OFFICE HOURS:** After Class or by Appointment  
**HOME OFFICE PHONE:** (708) 922-9588  
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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 government is broadly charged with balancing the individual's rights and interests in land with that of the "public interest and need." 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 its legal establishment under state law and the state's delegation of the police power. It is important for planners to understand the constitutional dimensions and limitation of local authority with respect to regulating 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 local government. As we examine an array of legal issues related to local governmental 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 ethical considerations related to governmental exercise of land use authority.

### **Required Material**

\*David L. Callies, Robert H. Freilich, and Thomas E. Robert, Cases and Material on Land Use, Fourth Edition. West Publishing Co: St. Paul. 2004.

\*Pocket Constitution

\*Handouts as provided

**Class #1 & 2, October 20<sup>th</sup> & 27<sup>th</sup>**

**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 governmental structure for each of the municipal forms of government.
- 3) Where does the zoning function reside in each of the forms of government?

**Resource for your research:**

League of Wisconsin Municipalities

202 State Street, Suite 300

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)

**Introduction:**

**A) Role of Law in Society & Understanding Constitutional Basis for Zoning and Its Evolution**

**B) Local Government Structure and Zoning Administration**

Setting The Stage: Unplanned Environment, Callies, Freilich, and Roberts, pgs. 1-18

**Class #3 & 4-November 3<sup>rd</sup> & November 10<sup>th</sup>**

**Basics of Zoning**

Zoning: Classic to Contemporary, Callies, Freilich, and Roberts, pgs. 19-33

Return to Euclid, *Planning*, November 1996, pgs. 4-8

Enabling Legislation, Callies, Freilich, and Roberts, pgs. 33-45

Zoning Districts, Callies, Freilich, and Roberts, pgs. 45-68

Zoning Administration, Callies, Freilich, and Roberts, pgs. 83-118

**The Comprehensive Plan as Law**

Zoning and the Comprehensive Plan, *Zoning News*, pgs. 1-4

The Consistency Doctrine, Callies, Freilich, and Roberts, pgs. 463-476

**Discussion of Contemporary Comprehensive Planning Effort**  
Wisconsin Smart Growth Legislation

**Class #5 & 6-November 17<sup>th</sup> and December 1<sup>st</sup>**

**Changes to the Comprehensive Plan**

The Variance, Callies, Freilich, and Roberts, pgs. 118-126  
Nonconforming Uses, Callies, Freilich, and Roberts, pgs. 126-135  
Vested Rights, Callies, Freilich, and Roberts, pgs. 135-156  
Development Agreements, Callies, Freilich, and Roberts, pgs. 156-170  
Planned Unit Development, Callies, Freilich, and Roberts, pgs. 170-185

**Subdivision Controls**

History, Planning Context, Authority, and Process, Callies, Freilich, and Roberts, pgs. 186-231

*MIDTERM EXAM-November 17th*

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**Thanksgiving Recess-November 24<sup>th</sup> to November 27<sup>th</sup>**

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**Class # 7 & 8-December 8<sup>th</sup> & December 15<sup>th</sup>**

**Governmental Taking of Property**

Regulatory Taking: Past, Present, and Future, *National Bar Association Magazine*, pgs. 18-21

Takings, Callies, Freilich, and Roberts, pgs. 283-380, Due Process in Taking 397-405

Redevelopment and Eminent Domain, Callies, Freilich, and Roberts, pgs. 605-628

When One Little Guy Rolls Another, *Fast Small Business Magazine*, pgs. 16, 18

**Special Issues in Land Use Controls**

First Amendment, Callies, Freilich, and Roberts, pgs. 419-462

Aesthetics, Callies, Freilich, and Roberts, pgs. 520-534

Exclusionary Zoning, Callies, Freilich, and Roberts, pgs. 534-585

Equal Protection, Callies, Freilich, and Roberts, pgs. 405-419

Nontraditional Living Arrangements, Callies, Freilich, and Roberts, pgs. 585-604

*Course Review Based on Student Questions-December 15th*

**Final Exam- December 22<sup>nd</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 readings and convey this in their class participation. Students are also expected to relate the readings to broader themes and ideas 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, 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 members must evenly divide the opportunity to present cases or some portion of assigned cases among group members.** A group grades 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 and 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

5) Attendance: Except in case of emergency or some other legitimate reason, attendance in the class is mandatory

6) Make-ups and the Incomplete Grade: At the discretion of the instructor students may be able to do a make-up assignment or receive an incomplete grade. Every request for either a make-up assignment or an incomplete grade will be evaluated as the circumstance arises and will be based on the merits of the request.

# PLANNING LAW AND LAND USE: The Land Use Component

Urban Planning 745-710 (Fall 2004)

Class meets **THURSDAYS 6:00-8:40 PM**  
Office Hours: by appointment and after class

Sigurd Strautmanis  
Phone: 262-240-4605  
e-mail: [sig@generalcapitalgroup.com](mailto:sig@generalcapitalgroup.com)

## COURSE DESCRIPTION

The six-week land use component introduces students to the evolution and application of contemporary land use planning in the United States. The course emphasizes the four primary tools of development regulation: comprehensive planning, zoning, subdivision regulation and capital improvement programming. While most in-class examples and discussion focus on Wisconsin, an effort will be made to offer examples from around the country. The course is presented in a combination lecture and hands-on format to give students maximum exposure to the concepts and techniques covered.

## SCHEDULE and CONTENT

- September 8**      Where it Started: Early Human Settlements and the Evolution of Cities  
Birth of Land Use Planning and Regulation in the United States  
Cornerstones of Contemporary Development Regulation  
Unintended Consequences of Traditional Development Regulation  
VIDEO: *Subdivide and Conquer*  
*Distribute and Discuss Course Project*
- September 15**    Legal Foundations and Landmark Supreme Court Cases  
Government Organization as it Relates to Planning  
Comprehensive Planning: Concepts and Application  
*Course Project Phase I DUE*
- September 22**    Overview of Zoning: Reading and Using the Code  
Alternative Zoning Mechanisms
- September 29**    Subdivision Regulation and How to Review a Plat  
Site Plan Review  
Effective Report Writing  
Capital Improvement Programming  
What's New in Growth Management, Conservation Development and New Urbanism  
VIDEO: *Beyond Sprawl*
- October 6**        The Many Faces of the Planning Profession  
Course Wrap Up and Open Mic  
*Course Project Presentations*
- October 13**      **Final Exam**
- October 20**      **Kirk Harris Course Section Start**  
*Final Project Document Due in BOX in SARUP Main Office by 5PM*

## GRADING

Grades for this third of the course will be based on a weighted combination of class participation, individual work product, group work products, group presentation and final exam. Class attendance is mandatory. While there is no reader, materials will occasionally be placed on reserve at the SARUP media center.

*Please let me know immediately if you have any special requirements or issues and I will attempt to help in any way I can.*

## **IMPORTANT NOTES**

### ***Participation by Students with Disabilities***

If you need special accommodations in order to meet any of the requirements of this course, please contact me as soon as possible.

### ***Accommodation for Religious Observances***

Students will be allowed to complete examinations or other requirements that are missed because of a religious observance.

### ***Academic Misconduct***

The university has a responsibility to promote academic honesty and integrity and to develop procedures to deal effectively with instances of academic dishonesty. Students are responsible for the honest completion and representation of their work, for the appropriate citation of sources, and for respect of others' academic endeavors.

### ***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.

### ***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. These procedures are available in writing from the respective department chairperson or the Academic Dean of the College/School. A more detailed description of the grade Appeal Policy may be found in UWM Selected Academic and Administrative Policies, Policy #S-28 and UWM Faculty Document #1243.

### ***Sexual Harassment***

Sexual harassment is reprehensible and will not be tolerated by the University. It subverts the mission of the University and threatens the careers, educational experience, and well being of students, faculty, and staff. The University will not tolerate behavior between or among members of the University community which creates an unacceptable working environment.