

Land Use Law

CMP/REDEV 6260

Spring 2019

3 Credit Hours

BU C 107

Tuesdays & Thursdays

3:40 to 5:00

Instructor: Keith Bartholomew, J.D. – Associate Dean of Academic Affairs, College of Architecture + Planning; Associate Professor of City & Metropolitan Planning; former Associate Director of the Wallace Stegner Center for Land, Resources and the Environment at the S.J. Quinney College of Law; former staff attorney for 1000 Friends of Oregon, one of the nation’s leading growth management advocacy organizations ([see http://www.friends.org](http://www.friends.org)).

Introduction: The subject of urban planning in the U.S. can hardly be broached without directly incorporating some aspect of the American legal system. Our methods and processes for planning in cities and towns are not just about (hopefully) good ideas, but also about how those ideas become expressed in public policies that can, and will, be implemented. Whether those policies are substantive or procedural, distributive or regulatory, their implementation almost invariably involves some expression of what we commonly call “the law” (Anderson 2003).

At its core, **the term *law* refers to the principles and norms of a community, as articulated by an authoritative source, that regulate behavior, the compliance with which is ensured by binding sanctions** (Random House 1987). Thus, the laws that govern our society include many expressions of policy beyond the statutes passed by legislative bodies, such as Congress or state legislatures. Also included are the federal and state constitutions, the regulations and (sometimes) guidelines adopted by administrative agencies (e.g., EPA and DEQ), the orders issued by courts, and the ordinances and permit decisions adopted by local governments. This course will explore all of these types of law, as they are expressed in the modern planning practice.

Teaching Approach: The course will be taught using materials and techniques common in American law schools. The primary text for the course will be a collected series of excerpted judicial opinions issued by courts from around the country. The process of reading and learning from judicial opinions is different from other, more typical, course texts. Whereas the typical text book will provide the principles important to the subject in a more or less organized and digested fashion, judicial opinions provide real life examples that exemplify the important principles. Most of the opinions contain a great deal of information that is important to understanding the background and context of the dispute in question, but the legal principles that are important to this course will likely be scattered throughout the text, frequently intertwined with other legal doctrines. It is your job as the reader to extract the principles yourself, decide which are important to your inquiry, and then organize those principles into an overall framework (usually in the form of a detailed course outline).

In a similar fashion, class sessions will utilize a style of teaching known as the Socratic Method. Instead of delivering lectures in which the important themes are presented in

ready made fashion, an instructor using Socratic Method asks questions of the students. The resulting answers help the class derive the themes that are important to the course. Needless to say, with this style of teaching **class attendance and preparation for class sessions is essential.**

Course Objectives: Throughout this course, students:

1. Obtain a comprehensive understanding of:
 - The common law and constitutional bases of modern planning law;
 - The basic mechanics of how planning law is expressed in judicial opinions, statutes, administrative regulations, and zoning and subdivision ordinances; and
 - How the various types of planning law manifest themselves in local entitlement (permitting) processes and decisions;
2. Master skills of inquiry and learning necessary to:
 - Read and understand judicial opinions, administrative regulations, and local government ordinances;
 - Extract important concepts from large volumes of information;
 - Assemble those concepts into larger constructs and systems;
 - Apply those systems in a variety of experience-based contexts and situations; and
 - Express understanding of the systems and their constituent concepts verbally and in writing.
3. Gain knowledge in how the law is expressed and implemented in the following subject areas:
 - Zoning and subdivision control;
 - Rights and duties of property ownership;
 - Permitting and development entitlement procedures;
 - Discrimination, especially in housing; and
 - Utah zoning and planning statutes.

Texts: The required texts for this course are all on, or accessed through, the course Canvas page (and free!):

- A collection of excerpted judicial opinions.
- *A Utah Citizen's Guide to Land Use Regulation* by Craig Call (2005) (available to download at <http://utahlanduse.org/product/the-citizens-land-use-guide-free-download/>)
- Utah Land Use, Development, and Management Act (LUDMA)
- Salt Lake City Master Plans and Zoning and Subdivision Ordinances
- Other readings, as assigned.

Schedule

Law, Practice of Law, and Property

Jan 8: What is law?

Jan 10: What is the practice of law? What is property?

Call: Chapters 1 & 2

Utah Land Use, Development, and Management Act
(LUDMA) secs. 10-9a-301 to 305

Care, *The City Planner and the Unauthorized Practice of Law*

Common Law Foundations – Nuisance, Covenants & Easements

Jan 17, 22 & 24: *Clark v. Wambold*
Bove v. Donner-Hanna Coke
Prah v. Maretti
Neponsit Property Owners v. Emigrant Industrial Savings
West Alameda Heights HOA v. Jefferson County
Thornton v. Hay

Land Use Plans & the Planning Process

Jan 29 & 31: *Creative Displays v. Florence*
Bone v. Lewiston
Osiceki v. Huntington
Elysian Heights Residents Ass'n v. Los Angeles
 Call: Chapters 3-5
 LUDMA 10-9a-102, 401 to 408
 SLC East Bench Master Plan

Basics of Zoning

Feb 5 & 7: *Hadacheck v. Sebastian*
Euclid v. Ambler
Larsen v. Pittsburgh
Chicago Heights v. Living Word Outreach Full Gospel
State v. Perry
Morehouse v. Hunt
Moffatt v. Forrest City
AVR v. St. Louis Park
Parks v. Killeen
 Call: Chapters 6 & 11
 LUDMA 10-9a-501 to 503, 505, 507, 511
 Salt Lake City Zoning Ordinance (City Code: Title 21A)

Subdivision Control & Infrastructure

Feb 12 & 14: *Ridgefield Land v. Detroit*
Dawe v. Scottsdale
181 v. Salem County
Divan Builders v. Wayne Township
Headley v. Rochester
Avco Community Developers v. So. Coast Regional Comm'n
Bollech v. Charles County
 LUDMA 10-9a-509, 601 to 611
 Salt Lake City Subdivision Ordinance (City Code: Title 20)
 Utah Code 11-36a (Impact Fees)
 Salt Lake City & Park City Impact Fee Schedules

Eminent Domain & Regulatory Takings

Feb 19, 21, 26 & 28: *Kelo v. New London*
Mugler v. Kansas
Pennsylvania Coal v. Mahon
Lucas v. South Carolina Coastal Comm'n
Stevens v. Cannon Beach
Bormann v. Kossuth County
Penn Central v. New York
Murr v. Wisconsin
Nollan v. California Coastal Comm'n
Dolan v. Tigard
Koontz v. St. Johns River Water Management Dist.
Lingle v. Chevron
 LUDMA 10-9a-508

Review & Mid-term

Mar 5: Review
 Mar 7: Mid-term Exam

Spring Break: March 9 – 17

March 19 – April 23: TBD

Final Exam: Tuesday, April 30, 3:30 pm – 5:30 pm

**Note time is different from
regular class sessions**

Evaluation: I will base my assessment of student performance on three sources:

- **Class Participation** (20%): Law, planning, and real estate development are oral, as well as written, traditions. I will keep track of your participation in class discussions, especially when I call on you. As a consequence, **being present in, and prepared for, class is essential.** Each student gets two “passes” for the semester, meaning that a student may twice elect to take a pass rather than respond to my questions. Additional passes can be negotiated in response to personal emergencies.
- **Mid-term** (30%): The mid-term will use short-paragraph and essay formats. It will be closed book. I will provide sample exam questions for you to work through before the mid-term.
- **Final** (50%): The final will also use short-paragraph and essay formats. It will be comprehensive and closed book. Again, I will provide sample exam questions for your practice and study purposes.

Grades: Letter grades for the semester will be earned using the following scale: A ≥ 93.3%; A- ≥ 90.0%; B+ ≥ 86.6%; B ≥ 83.3%; B- ≥ 80.0%; C+ ≥ 76.6%; C ≥ 73.3%; C- ≥ 70.0%; D+ ≥ 66.6%; D ≥ 63.3%; D- ≥ 60.0%; E < 60.0%. I do not curve.

Note: There is a direct correlation between effort invested and grade received.

Keeping up with the assignments, attending class, and actively participating in class discussions will significantly increase your odds of getting a good grade.

Important Dates: The last day to add or drop this class (without a “W”) is Jan 18; the last day to withdraw is March 8.

ADA Statement: The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in the class, reasonable prior notice needs to be given to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD). CDS will work with you and the instructor to make arrangements for accommodations. All written information in this course can be made available in alternative format with prior notification to the Center for Disability Services.

Canvas: I use Canvas software to share information about newsworthy events and articles, provide all of the course readings, facilitate discussions outside of class, and give instant access to grades. You have “constructive notice” of any information posted on the course Canvas site during the semester. That means I will assume you have received information posted to the site, and that you take responsibility for the consequences if you choose to not check the site regularly.

Academic Misconduct: The course website includes a link to the university’s Student Code, which contains the academic conduct standards expected of all University of Utah students. By the second class session I will assume that each of you has read the Code and is willing to abide by its requirements. MCMP students who engage in academic misconduct more than once are subject to the policy of the College of Architecture + Planning, which directs college and department administrators to seek the dismissal of offending students from their academic program.

Electronic Devices: Using tablets and laptops can aid the taking of notes and reference to materials without having to carry printed texts to class. Cell phone conversations, texting, and other use of electronic devices in a manner that does not relate to our classroom conversations is not acceptable. Please be courteous to me and your classmates by not misusing laptops, smart phones, and other devices in class.

Wellness: Personal concerns such as stress, anxiety, relationship difficulties, depression, cross-cultural differences, etc., can interfere with a student’s ability to succeed and thrive. For helpful resources contact the Center for Student Wellness at www.wellness.utah.edu or 801-581-7776. There are also helpful links on the Canvas website, on the Student Wellness Links page.

Addressing Sexual Misconduct: Title IX of the federal Education Amendments of 1972 states, in part: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Under this law, violence and harassment based on sex and gender (which includes sexual orientation and gender identity/expression) is a civil rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, color, religion, age, status as a person with a disability, veteran’s status or genetic information. If you or someone you know has been harassed or assaulted, you are encouraged to report it to the Title IX Coordinator in the Office of Equal Opportunity and Affirmative Action, 332 South 1400 East, Room 112 (Bldg. 73), 801-581-8365, or the Office of the Dean of Students, 270 Union Building, 801-581-7066. For support and confidential consultation, contact the Center for Student

Wellness, 328 Student Services Building (SSB), 801-581-7779. To report to the police, contact the Department of Public Safety, 801-585-2677(COPS).

Preferred Names & Pronouns: Class rosters are provided to the instructor with the student's legal name as well as "Preferred first name" (if previously entered by you in the Student Profile section of your CIS account). While CIS refers to this as merely a preference, I will honor you by referring to you with the name and pronoun that feels best for you in class, on papers, exams, group projects, etc. Please advise me of any name or pronoun changes (and update CIS) so I can help create a learning environment in which you, your name, and your pronoun will be respected. If you need assistance getting your preferred name on your UIDcard, please visit the LGBT Resource Center Room 409 in the Olpin Union Building, or email bpeacock@sa.utah.edu to schedule a time to drop by. The LGBT Resource Center hours are M-F 8am-5pm, and 8am-6pm on Tuesdays.