Planning Law & Administration

URBPL 6260-001  Spring 2009  3 Credit Hours
ARCH 229         Tuesdays & Thursdays  12:25 to 1:45

Instructor: Keith Bartholomew, J.D. – Assistant Professor of City & Metropolitan Planning, College of Architecture + 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).

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, 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 practice of urban planning.

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 “case book,” containing excerpts of judicial opinions issued by courts from around the country. The process of reading and learning from a case book is very 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, case books provide many pages of judicial opinions 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 preparation for class sessions is essential.

**Course Objectives:** The objectives of the course are:

1. To 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 statutes, administrative regulations, and zoning and subdivision ordinances; and
   - How the various types of planning law manifest themselves in local permitting decisions;

2. To 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. To gain knowledge in how the law is expressed and implemented in the following subject areas:
   - Zoning and subdivision control;
   - Discrimination, especially in housing;
   - Smart growth and growth management; and
   - Utah zoning and planning statutes.

**Texts:** The required texts for this course are *Land Use and Community Development: Cases and Materials* by Nolon, Salkin, and Gitelman (7th ed., 2008) and *A Utah Citizen’s Guide to Land Use Regulation* by Craig Call (2005) (available on-line at [http://www.utahlanduse.org/pages/Citizens_Guide_Links.html](http://www.utahlanduse.org/pages/Citizens_Guide_Links.html)). There will also be a series of supplemental readings that will be assigned as necessary during the semester. Most of these supplemental texts will be available on the course WebCT site or the Marriott Library’s electronic reserve website.
Schedule

Week 1: Intro/Orientation to Law
Jan 13: Intro
Jan 15:
  Nolan: Chapter 1
  §§ 1-4
  Call: Chapters 1 & 2

Weeks 2 & 3: Common Law Foundations
Jan 20: No class
Jan 22:
  Nolan: Chapter 1
  § 5
Jan 27 & 29:
  Nolan: Chapter 1
  §§ 5 & 6

Week 4: Land Use Plans & The Planning Process
Feb 3 & 5:
  Nolan: Chapter 2,
  §§ 2 & 4
  Call: Chapters 3 & 4

Weeks 5 & 6: Basics of Zoning
Feb 10 & 12:
  Nolan: Chapter 3
  § 1(A), (B), Euclid
  § 2 (all except Enterprise)
  § 3(A), Giger, (C)
  Call: Chapters 5, 10 & 11
Feb 17 & 19:
  Nolan: Chapter 3
  §§ 4-6

Weeks 7: Subdivision Control & Infrastructure
Feb 24 & 26:
  Nolan: Chapter 4
  § 1(A), (C), (E (intro, (1) (181 Inc. only), (2))
  § 2 (Headley only)
  § 3
  Call: Chapter 6
Week 8: Review & Mid-term
Mar 3: Review
Mar 5: Mid-term

Weeks 9 & 10: Fed’l Constitutional Limits to Land Use Regulation (5th & 14th Amends.)
Mar 10 & 12:
Nolan: Chapter 5
§ A (except Goldblatt)
§ B
Call: Chapters 7 & 14
Mar 24 & 26:
Nolan: Chapter 5
§§ C-F
Chapter 8
§ 3(E) – Kelo

Week 11: Federal Statutory Limits to Land Use Regulation
Mar 31 & Apr 2:
Nolan: Chapter 6
§ 1(A) (except Fifth Ave) – religious uses
§ 1(B) – housing discrimination
§ 1(C) – disabilities
§ 1(D) – telecommunications

Week 12: State Statutory Limits to Land Use Regulation
Apr 7 & 9:
Nolan: Chapter 6
§ 2(A), (B) – preemption
§ 3 – intergovernmental conflicts

Week 13: Smart Growth/Growth Management
Apr 14 & 16:
Nolan: Chapter 7
§ 1 – Ramapo
§ 2 – moratoria
§ 3(A) – growth limits
§ 3(B) – access to infrastructure
Chapter 8
§ 4 (Forte only) – downtown development
§ 6 – inclusionary zoning
Week 14: Aesthetics, Architectural Control & Historic Preservation
Apr 21 & 23:
   Nolan: Chapter 10
   § 1(A) (Metromedia only) – sign regulation
   § 1(C) – architectural review
   § 2 – historic preservation

Week 15: Preparation for Final
Apr 28 & 30: Review

Final Exam:
   Thursday, May 7, 10:30 am – 12:30 pm

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

- Class Participation (20%): Law is an oral, as well as written, tradition (why else would *Law & Order* be so popular). 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.**

- Mid-term (30%): The mid-term will use several exam formats, including essay. The exam will be closed book.

- Final (50%): The final will follow a format similar to the mid-term, and will be comprehensive. It will also be closed book.

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%.

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 drop this class (without a “W”) is Jan 21; the last day to add it is Jan 26; the last day to late add is Feb. 2; the last day to withdraw is March 6.
**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.

**WebCT:** The course will employ WebCT software to share information about newsworthy events and articles, provide supplemental course readings, facilitate discussions outside of class, and give instant access to grades. You have “constructive notice” (a concept we’ll cover in class) of any information posted on the course WebCT 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. If you are not already familiar with WebCT, you can learn about it at: http://webct.utah.edu.

**Academic Misconduct:** The course website contains a statement from the University Student Handbook on academic misconduct. It also contains a link to the Code of Ethics of the American Institute of Certified Planners (AICP). As students at the University of Utah and beginning planners, you should consider yourselves bound by both sets of ethical standards. By the second class session I will assume that each student has read both the statement from the Handbook and the AICP Code.