

Planning and Development Law

Wayne State University

UP 6650 – 001 CRN 32527

Adjunct Professor Peter Webster

Spring – Summer 2023

Course Information

Meeting Time: Wednesdays, 6:00 pm – 9:00 pm

Location: 279 MANO (Manoogian Hall)

Contact Information: (248) 433-7513 (Work)

pwebster@dickinsonwright.com

Please use this email and not Pipeline

Office Hours:

By appointment.

Description

This course provides an overview of planning and land use and development, including institutional structures, sources of, and limits on, legal authority, and traditional and evolving approaches to land use and development control. This course will principally focus on planning as public policy and the laws that enable and limit planning initiatives. Substantive topics include private property rights, the planning process, traditional zoning, aesthetic and historic preservation, exclusionary and inclusionary zoning, exactions, due process and equal protection issues, takings, First Amendment issues, and environmental issues.

Format

The class will include a mix of class discussion, questions and lecture. Please be prepared to participate in the discussion and to respond to questions. One of the better ways for you to learn is to engage in discussion of the law and its development and application. Our class time will focus more on discussions than lectures, and I will often ask for your comments on a subject even when you have not volunteered. Please be prepared. Please read and reflect on the assigned material before class. The class format may be changed or sharpened at my discretion to promote the goals of the course. The course will be in person as opposed to virtual and synchronous, unless otherwise stated.

Required Reading

There is no requirement to purchase a text. I will reference Mandelker, Payne, Salsich & Stroud, Planning and Control of Land Development: Cases and Materials, 8th Ed. (LexisNexis). I will post copies of the readings on Canvas. Additional required readings include other materials, articles, and court decisions,

which you will find on Canvas.

Grading

- Class participation = 15% of final grade
- Two short legal case briefs = 30% of final grade
- Final exam = 55% of final grade.

Attendance

Participation is important to both yourself and your classmates. Attendance is expected at all classes. If you expect to miss a class, please notify me by e-mail in advance. If you unexpectedly miss a class, please contact me via email as soon as practical to make sure that you have any reading or class assignments.

Academic Integrity

Integrity is critical. I assume that all work you submit is yours alone. If I discover any form of academic dishonesty (whether it be cheating, plagiarism (including based on AI), or otherwise) you will receive a failing grade on the assignment and for the class. You may also be subject to disciplinary action by the University (including dismissal from the University). If you have any questions about this policy or what constitutes academic dishonesty, please contact me for clarification.

Services for Students with Disabilities

All students should feel able to participate fully in campus life at the University, regardless of any disability. This is especially true in the classroom setting. The Office of Education Accessibility Services is available to assist in this goal. Students are encouraged to use the Office's services, which include note-taker

services, alternative testing arrangements, interpreters, and other reasonable accommodations. More information about the Office may be found in the Graduate Bulletin.

Reading Assignments

The reading assignments provided represent my best estimate of the material we will cover each class. I will likely make some adjustments through the semester. If you miss a class, please check with me or a classmate for any adjustments to the reading assignments listed here. I may issue a revised syllabus later in the semester.

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Assignments

1. **Week 1** **May 10** **Class Introduction - The Basics of Legal Environment**
2. **Week 2** **May 17** **Introduction to Planning and Zoning Civics Primer; Legal Citation; Introduction to Land Use Controls**
 - U.S. Constitution – (Articles I, II, and III), read First, Fifth and 14th Amendment (§§ 1 & 5) in particular. (Canvas)
 - Michigan Constitution – Differences from U.S. Constitution, esp. in structure and in Art. I, §§1 through 5, and Art. X, § 2. (Canvas)
 - How to Brief a Case (Canvas)
 - Why Land Use Controls? -- Mandelker, pp. 1-31 8th Ed.

- Nuisance Law –
 - Mandelker, pp. 63-67 8th Ed., including:
 - Bove v. Donner-Hanna Coke Co.
 - Spur Industries, Inc. v. Del E. Webb Development Co.
 - Boomer v. Atlantic Cement Co.
 - McMorrان v Fitzgerald, 106 Mich 649, 652 (1895). (Canvas)
- 3. Week 3 May 24 Planning and Zoning Authority**
- Zoning
 - The Early History – Mandelker, pp. 223-234 8th Ed. (Standard Zoning Enabling Act and contemporary zoning enabling laws, a typical zoning ordinance)
 - **Village of Euclid v. Ambler Realty Co. -- Mandelker, pp. 93-107 8th Ed.** (Canvas)
 - Nectow v. City of Cambridge, 277 U.S. 183 (1928). (Canvas)
 - Clements v. McCabe, 210 Mich. 207 (1920). (Canvas)
 - Michigan Zoning Enabling Act (Canvas)
 - Planning
 - The Local Comprehensive Plan – Mandelker, pp. 33-41 8th Ed.
 - Statutory Authorization for Comprehensive Planning – Mandelker, pp. 42-61 8th Ed.
- 5. Week 5: June 7 The Zoning Process / Site Plan Review / Planned Unit Developments / Subdivision Control**
- The Role of Zoning Change – Euclidean Zoning Gives Way to Flexible Zoning – Mandelker pp. 537-539 8th Ed.
 - The Zoning Variance – Mandelker, pp. 558-573 8th Ed.
 - Includes Ziervogel v. Washington County Board of Adjustment
 - Special Exceptions, Special Use Permits, and Conditional Use Permits – Mandelker, pp. 573-585 8th Ed.
 - Amendment of the Zoning Ordinance / Vested Rights – Mandelker, pp. 585-597 8th Ed.
 - “Spot” Zoning – Mandelker, pp. 598-599 8th Ed.
 - Downzoning – Mandelker, pp. 620-626 8th Ed.
 - Other forms of Flexible Zoning – Mandelker, pp. 626-638 8th Ed.
 - Waterford Township Special Approval Process (Canvas)
 - Waterford Township Site Plan Review Process (Canvas)
 - Checklist (Canvas)
 - Site Plan Review - Mandelker, 638-655 8th Ed.
 - Planned Unit Development - Mandelker, pp. 747-765 8th Ed.

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6. **Week 6: June 14 Eminent Domain and Regulatory Takings**
- Eminent Domain
 - Kelo v. City of New London, 545 U.S. 469 (2005) -- Mandelker, pp. 74-80 8th Ed. (and Canvas)
 - Poletown Neighborhood Council v. City of Detroit, 410 Mich 616 (1981) (Canvas)
 - **County of Wayne v. Hathcock, 471 Mich 445; 684 N.W.2d 765 (2004)** (Canvas)
 - Uniform Condemnation Procedures Act, MCL 213.51 et seq. (Canvas)
7. **Week 7: June 21 Regulatory Takings**
- Early cases – Mandelker, pp. 86-88 8th Ed.
 - Pennsylvania Coal Co. v. Mahon* -- Mandelker, pp. 88-93 8th Ed.
 - The Balancing Test – Penn Central Transportation Co. v. City of New York – Mandelker, pp. 108-126 8th Ed.
 - Physical Occupation – Loretto v. Teleprompter Manhattan CATV Corp. – Mandelker, pp. 122-124 8th Ed.
 - Total Takings – Lucas v. South Carolina Coastal Council* – Mandelker, pp.144-
8. **Week 8 June 28 Substantive and Procedural Due Process Equal Protection and Exclusionary and Inclusionary Zoning**
- Procedural Due Process – Mandelker pp. 205-206 8th Ed.
 - US Constitution Am XIV (Canvas)
 - Michigan Constitution Art 1, Sec 17 (Canvas)
 - Substantive Due Process – Mandelker, pp. 188-194 8th Ed.
 - Top Ten Due Process Attributes
9. **Week 9 July 5 Introduction to First Amendment / Ethics / Open Government**
- First Amendment – Mandelker, pp. 355-378 8th Ed., and pp. 840-864 8th Ed., including:
 - City of Renton v. Playtime Theatres, Inc.
 - Civil Liberties for Urban Believers, Christ Center, Christian Covenant Outreach Church v. City of Chicago
 - Metromedia, Inc. v. City of San Diego
 - Lighthouse Community Church of God v. Southfield, 382 F.Supp.2d 937 (2005)

- 10. Week 10 July 12 Open Government and Growth Management Zoning**
- Open Government
 - Open Meetings Act, PA 267 of 1976; MCL 15.261 et seq. (Canvas)
 - Freedom of Information Act (FOIA), PA 442 of 1976; MCL 15.231 et seq. (Canvas)
 - Conflicts of Interest, PA 318 of 1968 (Canvas)
 - Introduction to Growth Management – Mandelker, pp. 767-773 8th Ed.
 - Moratoria and Interim Controls on Development – Mandelker, pp. 773 8th Ed.
 - Growth Management Strategies
 - Quota Programs – Mandelker, pp. 773-774 8th Ed.
 - Facility-related Programs – Mandelker, pp. 784-827 8th Ed.
 - Preserving Agricultural and Open Space Land – Mandelker, pp. 389-413 8th Ed.
- 11. Week 11 July 19 Practical Issues**
- Hesse, 61 Mich App 319 (1975) (Canvas)
 - Materials will be posted on Canvas.
 - Record on Appeal
 - Special Land Uses
 - Site Plans

Additional Non-required Reading

- Barlow Burke, Understanding the Law of Zoning and Land Use Controls, 3rd ed. Lexis Nexis, ISBN 978-0-7698-6377-1; eBook ISBN978-0-3271-8528-4.
- Federal System
- Feinman, Jay M. "Constitutional Law and Constitutional Politics." Law 101: Everything You Need to Know About the American Legal System. Oxford: Oxford University Press, 2000.
- The Judicial System
- Fine, Toni M. "Basic Concepts of American Jurisprudence." American Legal Systems: A Resource and Reference Guide. Cincinnati: Anderson Publishing Co., 1997.
 - Faulhaber, Stratton S. and Cynthia B. Brown. "Units of Local Government." Local Government Law and Practice in Michigan. Ed. John J. Rae; Sue A. Jeffers. Ann Arbor: Michigan Municipal League and Michigan Association of Municipal Attorneys, 2005. 1-

1 through 1-34.

- Michigan Laws of Interest to Municipalities, Handbook for Municipal Officials – Appendix 3, published by the Michigan Municipal League, July 2004.
- Gerald A. Fisher, et al, Michigan Zoning, Planning, and Land Use, Michigan Institute of Continuing Legal Education (ICLE).

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