

## **Planning and Development Law**

Wayne State University

UP 6650 - 001

Adjunct Professor Peter Webster

Winter 2017

### Course Information

Meeting Time: Mondays, 5:30 pm – 8:15 pm

Location: Alex Manoogian Hall, Room 128

Contact Information: (248) 433-7513 (Work)  
[pwebster@dickinsonwright.com](mailto: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 be spent 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.

### Required Reading

The required text for the course is Mandelker, Payne, Salsich & Stroud, Planning and Control of Land Development: Cases and Materials, 8th Ed. (LexisNexis). I will post copies of the readings on Blackboard. Additional required readings include several articles and court decisions, which you will find on the Blackboard site.

### 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, use of writing services, 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 listed below 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        January 9        Class Introduction - The Basics of Legal Environment**
  - Mandelker Table of Contents. (Blackford)
  - Ann Arbor Planning Flow Chart 2013 (Blackboard)
  
2.     **Week 2        January 16        No Class - MLK**
  
3.     **Week 3        January 23        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 14<sup>th</sup> Amendment (§§ 1 & 5) in particular. (Blackboard)
  - Michigan Constitution – Differences from U.S. Constitution, esp. in structure and in Art. I, §§ 1 through 5, and Art. X, § 2. (Blackboard)
  - How to Brief a Case (Blackboard)
  - Why Land Use Controls? -- Mandelker, pp. 1-25 7<sup>th</sup> Ed./1-31 8<sup>th</sup> Ed.
  - Nuisance Law –
    - Mandelker, pp. 63-67 8<sup>th</sup> Ed., including:
      - Bove v. Donner-Hanna Coke Co.
      - Spur Industries, Inc. v. Del E. Webb Development Co.
      - Boomer v. Atlantic Cement Co.
    - McMorran v Fitzgerald, 106 Mich 649, 652 (1895). (Blackboard)
  
4.     **Week 4:        January 30        Planning and Zoning Authority**
  - Zoning
    - The Early History – Mandelker, pp. 223-234 8<sup>th</sup> 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 8<sup>th</sup> Ed.**
    - Nectow v. City of Cambridge, 277 U.S. 183 (1928). (Blackboard)
    - Clements v. McCabe, 210 Mich. 207 (1920). (Blackboard)
    - Michigan Zoning Enabling Act (Blackboard)
  - Planning
    - The Local Comprehensive Plan – Mandelker, pp. 33-41 8<sup>th</sup> Ed.
    - Statutory Authorization for Comprehensive Planning – Mandelker, pp. 42-61 8<sup>th</sup> Ed.
    - Michigan Planning Enabling Act (Blackboard)
  - Judicial Review of Zoning Disputes – Mandelker, pp. 258-269 8<sup>th</sup> Ed.
    - Standing – Mandelker, pp. 235-244 8<sup>th</sup> Ed.
    - Exhaustion of Remedies – Mandelker, pp. 244-252 8<sup>th</sup> Ed.

5. **Week 5: February 6 Recurring Issues in Zoning Law**
- Density and Intensity of Use – Mandelker, pp. 270-285 8<sup>th</sup> Ed.
  - Residential Districts – Mandelker, pp. 285-304 8<sup>th</sup> Ed. (Separation of single-family and multifamily uses, nontraditional families, accessory apartments).
  - Manufactured Housing – Mandelker, pp. 304-309 8<sup>th</sup> Ed.
  - Commercial and Industrial Uses – Mandelker, pp. 312 8<sup>th</sup> Ed.
  - Districting and Nonconforming Uses – Mandelker, pp. 340-353 8<sup>th</sup> Ed.
6. **Week 6: February 13 The Zoning Process**
- The Role of Zoning Change – Euclidean Zoning Gives Way to Flexible Zoning – Mandelker pp. 537-539 8<sup>th</sup> Ed.
  - The Zoning Variance – Mandelker, pp. 558-573 8<sup>th</sup> Ed.
    - Includes *Ziervogel v. Washington County Board of Adjustment*
  - Special Exceptions, Special Use Permits, and Conditional Use Permits – Mandelker, pp. 573-585 8<sup>th</sup> Ed.
  - Amendment of the Zoning Ordinance / Vested Rights – Mandelker, pp. 585-597 8<sup>th</sup> Ed.
  - “Spot” Zoning – Mandelker, pp. 598-599 8<sup>th</sup> Ed.
  - Downzoning – Mandelker, pp. 620-626 8<sup>th</sup> Ed.
  - Other forms of Flexible Zoning – Mandelker, pp. 626-638 8<sup>th</sup> Ed.
7. **Week 7: February 20 Eminent Domain and Regulatory Takings**
- Eminent Domain
    - *Kelo v. City of New London*, 545 U.S. 469 (2005) -- Mandelker, pp. 74-80 8<sup>th</sup> Ed. (and Blackboard)
    - *Poletown Neighborhood Council v. City of Detroit*, 410 Mich 616 (1981) (Blackboard)
    - **County of Wayne v. Hathcock**, 471 Mich 445; 684 N.W.2d 765 (2004) (Blackboard)
    - Uniform Condemnation Procedures Act, MCL 213.51 et seq. (Blackboard)
  - Regulatory Takings
    - Early cases – Mandelker, pp. 86-88 8<sup>th</sup> Ed.
    - *Pennsylvania Coal Co. v. Mahon*\* -- Mandelker, pp. 88-93 8<sup>th</sup> Ed.
    - The Balancing Test – *Penn Central Transportation Co. v. City of New York* – Mandelker, pp. 108-126 8<sup>th</sup> Ed.
    - Physical Occupation – *Loretto v. Teleprompter Manhattan CATV Corp.* – Mandelker, pp. 122-124 8<sup>th</sup> Ed.
    - Total Takings – *Lucas v. South Carolina Coastal Council*\* – Mandelker, pp. 144-160 8<sup>th</sup> Ed.
    - Dedications, Exactions, and Impact fees –
      - *Nollan v. California Coastal Commission* -- Mandelker, pp. 126-133 8<sup>th</sup> Ed.
      - *Dolan v. Tigard* -- Mandelker, pp. 706-728 8<sup>th</sup> Ed.
    - Misc. Issues
      - Inverse Condemnation Remedy – *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* – Mandelker, pp. 133-144 8<sup>th</sup> Ed.
      - Moratoria – *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, Inc.* – Mandelker, pp. 160-172 8<sup>th</sup> Ed.

- Removal of the “Substantially Advances” Test – Mandelker, pp. 172-180 8<sup>th</sup> Ed.
  - Federal and State Takings Legislation – Mandelker, pp. 180-188 8<sup>th</sup> Ed.
8. **Week 8: February 27 Substantive and Procedural Due Process**
- Procedural Due Process – Mandelker pp. 205-206 8<sup>th</sup> Ed.
    - US Constitution Am XIV (Blackboard)
    - Michigan Constitution Art 1, Sec 17 (Blackboard)
    - Crown Enterprises, Inc. v City of Romulus, Michigan Court of Appeals, May 20, 2010, No. 286525. (Blackboard)
  - Substantive Due Process – Mandelker, pp. 188-194 8<sup>th</sup> Ed.
9. **Week 9 March 6 Equal Protection and Exclusionary and Inclusionary Zoning**
- Exclusionary Zoning – Mandelker pp. 457-495 8<sup>th</sup> Ed.
    - Southern Burlington County NAACP v. Township of Mount Laurel (I)
    - Southern Burlington County NAACP v. Township of Mount Laurel (II)
  - Inclusionary Zoning / Affordable Housing – Mandelker pp. 495-505 8<sup>th</sup> Ed.
  - Discriminatory Zoning Under Federal Law – Mandelker, pp. 505-527 8<sup>th</sup> Ed.
  - Discrimination Against Group Homes for the Handicapped – Mandelker, pp. 527-536 8<sup>th</sup> Ed.
10. **Week 10 March 13 No Class – Spring Break**
11. **Week 11 March 20 Site Plan Review / Planned Unit Developments / Subdivision Control**
- Site Plan Review - Mandelker, pp. 638-655 8<sup>th</sup> Ed.
  - The Structure of Subdivision Control – Mandelker –681-706 8<sup>th</sup> Ed.
  - Planned Unit Development – Mandelker, pp. 747-765 8<sup>th</sup> Ed.
    - Waterford Township Special Approval Process (Blackboard)
    - Waterford Township Site Plan Review Process (Blackboard)
    - Checklist (Blackboard)
12. **Week 12 March 27 Partial Recap and Review and Introduction to First Amendment / Ethics / Open Government**
- First Amendment – Mandelker, pp. 355-378 8<sup>th</sup> Ed., and pp. 840-864 8<sup>th</sup> 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) (Blackboard)
13. **Week 13 April 3 First Amendment and Open Government**
- Open Government
    - Open Meetings Act, PA 267 of 1976; MCL 15.261 et seq. (Blackboard)

- Freedom of Information Act (FOIA), PA 442 of 1976; MCL 15.231 et seq. (Blackboard)
- Conflicts of Interest, PA 318 of 1968 (Blackboard)

**14. Week 14 April 10 Growth Management**

- Introduction to Growth Management – Mandelker, pp. 767-773 8<sup>th</sup> Ed.
- Moratoria and Interim Controls on Development – Mandelker, pp. 773 8<sup>th</sup> Ed.
- Growth Management Strategies
  - Quota Programs – Mandelker, pp. 773-774 8<sup>th</sup> Ed.
  - Facility-related Programs – Mandelker, pp. 784-827 8<sup>th</sup> Ed.
- Preserving Agricultural Land – Mandelker, pp. 389-413 8<sup>th</sup> Ed.
- Farmland Open Space Preservation, MCL (Blackboard)

**14. Week 15 April 17 Zoning and Planning Practical Issues**

- Hesse, 61 Mich App 319 (1975) (Blackboard)
- Materials will be posted on Blackboard.
  - Record on Appeal
  - Special Land Uses
  - Site Plans
  - Variances
  - Non-Estoppel
  - Depositions

**16. Week 16 April 24 Wrap Up and Review Session**

**17. Week 17 May 1 Final Exam – 5:30 p.m.**

### **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. 11-43.

#### The Judicial System

- Fine, Toni M. "Basic Concepts of American Jurisprudence." *American Legal Systems: A Resource and Reference Guide*. Cincinnati: Anderson Publishing Co., 1997.
- Abrahamson, Shirley. "Land-Use Law in the Courts: One Judge's Observations." *Planning Reform in the New Century*. Ed. Daniel Mandelker. Chicago: Planner's Press, 2005. 251-59.
- 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).