

Introduction to Law for Planners

DCRP PLAN 724 (3 credits)

Spring 2021

SYLLABUS

Version 1, 1/15/21

INSTRUCTOR

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Office Hours: Generally 9:00 to 5:00, Mondays to Fridays (call or email for appointment)

TEACHING ASSISTANT

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CLASS MEETINGS: Mondays and Wednesdays, 12:45-2:00, January 19 – May 5

Zoom: <https://unc.zoom.us/j/91925285045?pwd=cEFmV2U3d3FCcDN4UmFKV2ZUeVZRZz09>

Meeting ID: 919 2528 5045

Passcode: PLAN724

COURSE WEBSITE: The course will use UNC Sakai, listed as PLAN724.001.SP21

COURSE COVERAGE: This course covers the legal authority for land use regulations, the basic structure of zoning ordinances and other development regulations, legal requirements for adopting, amending and repealing ordinances, and legal requirements for making quasi-judicial land use decisions. Given the importance of state-enabling authority and caselaw for the rules of local land use, this course focuses on North Carolina law with occasional comparisons to other states. Particular attention will be given to spot and contract zoning, conditional zoning, vested rights, nonconformities, and statutory and constitutional limitations on land use regulations (particularly regulatory takings). Subdivision regulations, historic district, and environmental regulations are reviewed. While the focus of the course will be local land use regulation, state and federal programs are also addressed to some extent. The course is designed to provide a grounding in relevant principles of likely interest to those involved in real estate development, land use planning, representation of local governments, and community activists.

COURSE LEARNING OUTCOMES: This course is designed to assist students in achieving the following learning outcomes. Students will be able to

- Explain the conceptual and legal framework underlying traditional and modern land use planning techniques including zoning, subdivision regulation, development agreements, and specialized strategies for dealing with aesthetic, historic preservation, environmental, and growth management issues, with an eye to both national and North Carolina trends
- Explain key constitutional principles (including due process, equal protection, regulatory takings,

and the First Amendment) pertinent to land use regulation and apply them in areas of considerable uncertainty relating to land use regulation

- Engage in effective problem solving to address common land use problems through deployment of relevant cases, statutes, ordinances, and other documents and strategies.
- Communicate effectively orally and in writing, using plain English to provide relevant legal advice regarding land use issues to government officials, colleagues, and supervisors

COURSE REQUIREMENTS: This course is designed to provide students with hands-on experience that should allow them to feel better prepared to research, write, and speak on topics of land use law. To that end, the course requirements are as follows:

- 20% Participation (attendance & participation, quizzes, forum contributions)
- 20% Memo 1 Ordinance Review (3-5 pages); due **2/3**
- 20% Memo 2 Hearing Comparison (4-6 pages); due **3/5**
- 20% Memo 3 Problems (4-6 pages); due **4/14**
- 20% Memo 4 Approval Process Memo (5-7 pages); due **5/7**

ATTENDANCE POLICY: Regular and punctual class attendance is required by accrediting authorities and is part of each student's required work in classes. Students are expected to attend all classes, except in cases of emergency or prior approval from the instructor, and in no event shall a student miss more than twenty percent of classes. For purposes of this class, "attendance" in class means that students have read the required material and are prepared to engage in discussion. Attendance will be taken through Sakai. Failure to satisfy this minimum requirement may lead to a decision by the professor to drop the student from the course or impose a lower grade. In addition, students who miss class or fail to participate (even if meeting the minimum threshold) may fail to gain available points for class participation. Please email the instructor in advance if you plan to be absent.

COURSE RESOURCES/MATERIALS:

Required Texts:

All required readings will be available through the course site on Sakai. The primary reading text will be David Owens' Land Use Law in North Carolina (3rd edition, 2020). A pdf version of the text is on the Sakai site. Required cases, statutes, and additional readings also will be posted there.

Optional Resources

Recommended Resources focusing on North Carolina

- David Owens, *Introduction to Zoning and Development Regulation* (4th edition, 2013) (UNC School of Govt.) (nutshell) (copy on reserve)
- David Owens and Adam Lovelady, *Quasi-Judicial Handbook: A Guide for Boards Making Development Regulation Decisions* (2017) (copy on reserve)
- Adam Lovelady, *Land Subdivision Regulation in North Carolina* (2015) (copy on reserve)
- UNC School of Government Planning and Land Use Development Resource Page: <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation> (includes summaries of key issues, reports of surveys of NC practices, litigation and legislative summaries, and links to NC and national planning sites)

Treatises: single volume, hard copy

- Mandelker, *Land Use Law* (also available on Westlaw)
- Jurgensmeyer & Roberts, *Land Use Planning and Development Regulation Law* (3rd ed. 2007)

Treatises: multi-volume

- Rathkopf, *Law of Zoning and Planning*
- Salkin, *American Law of Zoning*
- Williams, *American Law Planning Law*

Blogs

- Coates Canons (UNC School of Government): <http://canons.sog.unc.edu/>
- Law of the Land (Dean Patricia Salkin, Touro Law School): <http://lawoftheland.wordpress.com/>
- NC Legal Landscapes (Tom Terrell): <http://nclegallandscapes.wordpress.com/>
- Womble Carlyle, North Carolina Land Use Litigator: <http://nclanduse.blogspot.com/>

Specialized Journals

- *The Urban Lawyer*

Other Websites

- American Planning Association: www.planning.org
- Lincoln Institute of Land Policy: <http://www.lincolnst.edu/>
- Planetizen: <http://www.planetizen.com/>
- SmartGrowth: <http://www.smartgrowth.org/>

HONOR CODE OBLIGATIONS: The University of North Carolina at Chapel Hill has had a student-led honor system for over 100 years. Academic integrity is at the heart of Carolina and we all are responsible for upholding the ideals of honor and integrity. The student-led Honor System is responsible for adjudicating any suspected violations of the Honor Code and all suspected instances of academic dishonesty will be reported to the honor system. Information, including your responsibilities as a student is outlined in the Instrument of Student Judicial Governance. Your full participation and observance of the Honor Code is expected.

The Honor Code is in effect in this class and all others at the University. I am committed to treating Honor Code violations seriously and encourage all students to become familiar with its terms set out at <http://instrument.unc.edu>. If you have questions, it is your responsibility to ask me about the Code's application. All written work and other projects must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

ACCOMMODATIONS: The University of North Carolina at Chapel Hill facilitates the implementation of reasonable accommodations, including resources and services, for students with disabilities, chronic medical conditions, a temporary disability or pregnancy complications resulting in difficulties with accessing learning opportunities. All accommodations are coordinated through the Accessibility Resources and Service Office. See the ARS Website for contact information: <https://ars.unc.edu> or email ars@unc.edu. Relevant policy documents as they relation to registration and accommodations determinations and the student registration form are available on the [ARS website under the About ARS tab](#).

READING ASSIGNMENTS. Below is a table outlining the topics and reading assignments for each class. I will update this calendar as the semester progresses. All readings will be on Sakai or linked from this table. "LUL" refers to Land Use Law in North Carolina. "GS" refers to the General Statutes of North Carolina (copy GS Chapter 160D provided on Sakai).

	Framework and Perspectives	
1/20	1. Development Regulation Overview	LUL: Ch. 2 & 6
1/25	2. Legal Research and Reading; Property Law Legal Research Worksheet Assigned	How to Read a Legal Citation; Legal Research in a Nutshell, Ch. 1; Property Law Basics Video Szypszak, Real Estate and NC Law (excerpt)
1/27	3. Individual & Community Legal Research Worksheet Due Memo 1 Assigned	S: Euclid, 272 US 365 S: Aydlett, 201 NC 602
2/1	4. Race & Zoning	Rothstein, Color of Law, Ch. 3 Clinard v. City of Winston-Salem, 217 N.C. 119 (1940) Village of Arlington Heights, 97 U.S. 555 (1977) Brown v. Davidson, 113 N.C. App. 553 (1994)
2/3	5. Growth Machine and Homevoters Memo 1 Due Memo 2 Assigned (due 3/5)	Fishel, Ch. 7, Zoning and Suburban Development Been, et al, Are Homevoters Overtaking? (you can skim the statistics) Zoning Disagreements Pit Neighborhoods against Developers
	Types of Decisions	
2/8	6. Local Government and Jurisdiction Bluestein	LUL: Ch. 5 CC: Is North Carolina a Dillon's Rule State
2/10	7. Role of Planning	G.S. 160D-501 to -503 Lewyn, The (Somewhat) False Hope of Comprehensive Planning LUL 425-434 CC: Consistently Inconsistent
2/15	Wellness day	
2/17	8. Legislative Decision-Making (procedures, considerations)	GS 160D-601 to -605 S: Heaton, 277 NC 506 LUL: Ch. 11
2/22	9. Quasi-Judicial (procedures, variance)	LUL: 231-259; 283-295 GS: 160D-406 & -705 S: Humble Oil, 284 NC 458

2/24	10. Administrative Decisions <i>Travis Crane</i>	LUL: 377-388 GS: 160D-401 to -405 County of Lancaster, 334 NC 496
	Limitations and Administration	
3/1	11. Inspections and Enforcement	LUL: 388-401 Zoning Practice: Enforcing the Zoning Code
3/3	12. Interpreting the Ordinance and Appeals	CC: Interpreting the Zoning Ordinance GS 160D-405 Interpretation Problems
3/5	Memo 2 Due	
3/8	13. Nonconforming Situations, Vested Rights, and Permit Choice	LUL: Ch 19-20 Discussion Problem
3/10	14. Statutory Limits (Bona Fide Farms) <i>David Owens</i>	LUL: 415-424 CC: https://canons.sog.unc.edu/what-does-the-farm-exemption-from-zoning-regulation-include/
3/15	15. Constitutional Limits/ First Amendment (signs)	LUL: 569-588 CC: https://canons.sog.unc.edu/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/
3/17	16. Spot zoning & Contract Zoning	LUL: Ch. 12-13 Chrismon, 322 NC 611 Hall, 323 NC 293
	Design and Improvements	
3/22	17. Zoning, Sprawl, and the Environment	
3/24	18. Subdivision and Site Plan Standards and Review	GS 160D-801 to -808 LUL Ch 7 Discussion Problems
3/29	19. Local Environmental Regulation and Development <i>Jim Joyce</i>	LUL Ch 10
3/31	20. Growth Management Tools <i>Orange County Planner</i>	LUL: Ch 9
4/5	Wellness day	
4/7	21. Takings	LUL: Ch 24 S: Lucas, 505 US 1003

	Memo 3 Assigned (Due 4/14)	S: Finch, 325 NC 352
4/12	22. Costs, Impacts, and Exactions	GS: 160D-804 S: Lanvale Properties, 366 N.C. 142 S: Dolan
4/14	23. Flexible Zoning: Conditional Zoning, Special Use Permits, and Development Agreements <i>Developer Speaker</i> Memo 3 Due	LUL 215-218, 265-269, 321-332 Example Conditional Approvals and Review Questions
4/19	24. Form-Based Codes <i>Chapel Hill Planner</i>	S: Blue Hill Form District S: Ch 4 in A Legal Guide to Urban and Sustainable Development
4/21	25. Historic Preservation	S: ASP 298_N.C._207 LUL: 436-441 Discussion Problem
	Change and Reform	
4/26	26. Process and Engagement <i>Raleigh planner</i>	S: Holder, Raleigh Wants to Raze . . .
4/28	27. Housing Reform <i>Durham Planner</i>	Durham Staff Memo Zoning Practice: Housing Reform Through State Legislation and Local Zoning; A Framework for Promoting Equity Through Zoning
5/3	28. Resilience NCoRR Planner Memo 4 Assigned (Due 5/7)	Zoning Practice: Facing Water-Based Challenges with Sustainable Development Codes; Zoning for Coastal Flood Resilience; Using Smart Growth to Adapt to Climate Change
5/5	29. Make Up/ Catch Up	
5/7	Memo 4 Due	