Syllabus
LEGAL ISSUES IN PLANNING
PPPM 612; CRN 25824; 4 CREDITS
MONDAY/WEDNESDAY 8:30 - 9:50; 248 GERLINGER HALL
CRP MAJORS GRADED, OTHERS OPTIONAL GRADING
Final Exam: Due 10:15 AM, Thursday, March 21st, (Take–home)
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COURSE DESCRIPTION: In this course, the role and influence of statutory and case law on land use and environmental planning will be discussed.

OBJECTIVES OF THE COURSE: This course is intended for the non–lawyer, such as land use planners or governmental administrators, who wish to understand how the law affects the operation of governments as it relates to planning, land use, zoning, land division, environmental protection and infrastructure installation. The three main objectives of the course are:

1. To acquaint future planners and administrators with the important legal concepts and issues affecting land use planning and development.

2. To provide the tools necessary to work in a land use planning environment that has been heavily legalized. These tools include an understanding of the sources and limitations on regulatory land use planning, an ability to research statutory and case law, and the ability to understand how case law affects long term and over–the–counter planning implementation.

3. To develop an appreciation of the importance of the fundamental legal powers of governments as they affect land use and the judicial limitations on these powers.

COURSE METHODOLOGY: The course will be taught mainly through the discussion of court decisions. After a brief initial instruction in how to analyze court decisions, students are expected to have read the materials assigned for each class session and to come prepared to discuss the facts and holdings of the assigned cases. The course will lean heavily on the Socratic method of teaching and class participation will be an important part of each grade. THIS IS NOT INTENDED TO BE PRIMARILY A LECTURE CLASS! Students will be expected to have read the materials assigned for the first week of class before the first class begins.

GRADING: There will be a take–home mid–term, a class project (mock hearing), and a take–home final exam. The exams will be generally in the form of written fact patterns where the student is expected to apply the applicable case law or statutory law to determine how a court might rule on the issues in question. Final grades will be determined as follows: mock hearing (5%); classroom preparation and participation (10%); mid–term exam (35%); final exam (50%). The tests will be graded on a percentage basis as follows:

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<tr>
<th>Score</th>
<th>Grade</th>
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<tr>
<td>100</td>
<td>A+</td>
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<tr>
<td>85–89</td>
<td>A</td>
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<tr>
<td>70–74</td>
<td>B+</td>
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<tr>
<td>55–59</td>
<td>C+</td>
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<tr>
<td>45–49</td>
<td>D+</td>
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<td>&lt;45</td>
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95–99  A
90–94  A–
80–84  B
65–69  C
50–54  D
45–49  D–

I strive to keep the test questions as objective as possible but because they are largely narrative and are based upon hypothetical fact patterns, I do not always achieve that goal. If you feel that there are multiple “correct” answers to a question or that I misunderstood your answer don’t hesitate to argue your point. More than one student has had their grade changed after they presented a well–articulated defense of their position. And in a one instance an entire question was thrown out because it wasn’t written as clearly as it should have been.

Make–up exams are allowed and, if possible, should be arranged prior to the scheduled exam time. Permissible reasons for make–up exams include but may not be limited to serious illness and family emergencies.
PROFESSIONAL PRACTICE: This is a core course in the PPPM Masters Program. As such, students are expected to strive to be professional at all times. (This applies to the course instructor also!)

- Treat each other and the instructor with professional courtesy and respect as you would in a workplace. This means arriving on time so that the instructor does not have to wait to start discussions or repeat what has been discussed.
- All communications relating to the course and all work turned in should reflect professional standards in tone, presentation, formatting, grammar and spelling.
- Tests should be completed using a word processor and in the format the test was given. The test questions will be emailed to all students and the completed tests will be emailed back to the instructor. **Test scores will be reduced 1 point for each 5 minutes that they are submitted beyond the due time.**
- If concepts are not being presented clearly or the course direction is too confusing don’t hesitate to let me know. This course combines a number of legal disciplines that would normally have an entire course devoted to each in law school and sometimes they don’t seem to mesh well. While I endeavor to provide as much meaning as I can to how legal principles apply to planning and administration, there is no “unified theory” that ties everything neatly together. In fact, you will find that the search for platonic legal truths can be very discouraging as a surprising amount of judicial law (as determined by the U.S. Supreme Court) has been enumerated by highly divided courts where even the majority cannot agree upon the legal framework supporting their decision.

CLASS PARTICIPATION: As mentioned above, this course relies heavily on student participation and meaningful participation relies upon class preparation. This course contains a lot of reading, both in a textbook format and in the form of case law. It is imperative that everyone comes to class having read the assigned materials and being prepared to discuss those materials. The first session of the class will include a discussion on methods of efficiently reading and briefing court opinions.

DOCUMENTED DISABILITIES: Students who have a documented disability and anticipate needing accommodations in this course should make arrangements to see the instructor as soon as possible. They should also request that the Counselor for Students with Disabilities send a letter verifying the disability.

ACADEMIC MISCONDUCT: You are expected at all times to do your own work. Copying content from other students and submitting it as your own work is grounds for failing the class. The University Student Conduct Code (available at conduct.uoregon.edu) defines academic misconduct. Students are prohibited from committing or attempting to commit any act that constitutes academic misconduct. By way of example, students should not give or receive (or attempt to give or receive) unauthorized help on assignments or examinations without express permission from the instructor.

PLAGIARISM: Students should properly acknowledge and document all sources of information (e.g. quotations, paraphrases, ideas) and use only the sources and resources authorized by the instructor. If there is any question about whether an act constitutes academic misconduct, it is the students’ obligation to clarify the question with the instructor before committing or attempting to commit the act. Additional information about a common form of academic misconduct, plagiarism, is available at: www.libweb.uoregon.edu/guides/plagiarism/students

EMAIL COMMUNICATION: I prefer to communicate via email rather than through the Blackboard. If you have questions about assignments, upcoming tests, or would like to notify me about a scheduled absence you can use either of the email addresses I have provided on the first page of this syllabus. Most of the course materials other than the required textbook will be provided via a CD placed in your departmental mailbox. Additional materials may be provided during the course of the term but if there is an expectation that they will be subject to class discussion they will be provided several days prior to that discussion.

DUTY TO REPORT: The UO is committed to providing an environment free of all forms of prohibited discrimination and sexual harassment, including sexual assault, domestic and dating violence and gender-based stalking. I support Title IX and have a duty to report relevant information.

MAKE UP EXAMS: **Midterm Exam:** Students who miss the midterm exam will receive a grade of zero for that exam unless there is a legitimate reason for missing the midterm exam (e.g. serious illness or family emergency). If the midterm exam is missed for a legitimate reason, the final exam weight will be increased by the amount of the midterm exam weight. This must be arranged prior to the scheduled midterm exam time.

MAKE UP EXAMS: **Final Exam:** Students must take the final exam to receive a grade in the course. The date and
time for the final exam will not be changed to accommodate scheduling conflicts. Final exams will not be given early under any circumstances. A make up final exam will be scheduled for students who miss the regularly scheduled final exam due to serious illness or family emergency.

COURSE SCHEDULE: The following schedule is an attempt to identify the subject matter that will be discussed during any particular week. Staying on this schedule largely depends upon the amount of class discussion each topic or case might generate. Also, new topics may be introduced if there is enough student interest. For instance, a specific housing element was introduced a few years ago due to the request of several students. Finally, the time allotted to any one topic may be increased if there is enough desire among the class. I urge each student to review the schedule closely and be prepared to offer suggested changes at the first class meeting.

WEEK 1 (Jan. 7/9):

- Introductions, class direction and logistics.

- Overview of legal principals
  - Judicial hierarchy: the court system in the US
  - Judicial review: what is it?
  - Common legal definitions: deference; standing, legal precedent/stare decisis; reversal vs. remand; ripeness; exhaustion

- Legal Research: How to read and cite a case. (Supp. materials)


- The legal basis for land use controls: U.S. Constitution, state constitutions, statutes, ordinances, administrative rules, policies, etc. (Supp. materials)

- Limitations on land use controls:
  - Eminent domain: Kelo v. City of New London (Mandelker, pp. 82 – 96)

- Regulatory takings (Mandelker, pp. 97 – 126; 133–188)

WEEK 2 (Jan. 14/16):


- Removal of “Substantially Advances” Test: Lingle v. Chevron USA Inc. (Mandelker, pp. 172–183)

- Inverse Condemnation Remedy: (First English Evangelical Lutheran Church of Glendale v. County of Los Angeles; (Mandelker, pp. 196–212)


- Temporary Takings: Tahoe–Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, Inc.; (Mandelker, pp. 230–244)

- Legislative Response to Takings Law: (Mandelker, pp. 244–251)

- Substantive Due Process Limitations: George Washington University case (Mandelker, pp.
WEEK 3 (Jan. 23):

- Equal Protection Limitations: Village of Willowbrook v. Olech (Mandelker, pp. 263–269)
- Other Limitations on Legislative Actions: Federal remedies; due process actions, municipal immunity, etc. (Mandelker, pp. 269–277)
- Barriers to Judicial Review: Ripeness, Abstention and Exhaustion: Williamson County Regional Planning Commission case (Mandelker, pp. 277–294); Ben Lomand, Inc. v. Municipality of Anchorage (Mandelker, pp. 321–327)

- History and the Implications of Judicial Review
  - History and structure of zoning (Mandelker, pp. 275 – 308)
  - Securing Judicial Review and Remedies in Land Use Cases: Coppie v. City of Lincoln; City of Richmond v. Randall, Krause v. City of Royal Oak (Mandelker, pp. 427–347)

- Zoning – Recurring Issues
  - Regulating density and intensity of use: Johnson v. Town of Edgartown, (Mandelker, pp. 348–358)
  - Agricultural zoning: Gardner v. New Jersey Pinelands Commission; (Mandelker, pp. 358–370; Hildebrand v. City of Adair Village; (Mandelker, pp. 1002–1017)
  - Control through site development requirements: (Mandelker, pp. 370–376)

WEEK 4 (Jan. 28/ 30):

- Control of competition through zoning: Hernandez v. City of Hanford (Mandelker, pp. 425 – 442)

- Zoning – Exceptions

WEEK 5 (Feb. 4/6):

- Zoning – Amendments
  - Downzoning: Stone v. City of Wilton (Mandelker pp. 795–803)

- Zoning – Uses entitled to special protection
  - Uses protected by free speech: City of Renton v. Playtime Theatres, Inc. (Mandelker, pp. 463–480)
  - Other free speech issues: *Metromedia, Inv. v. City of San Diego* (Mandelker, pp. 1039–1065); Supp. Materials: *Reed v. Town of Gilbert*

• Take–home mid–term (Individual, not collaborative exercise.) *Due Feb. 13th.*

WEEK 6 (Feb. 11/13):

• Administrative Law
  - The Administrative Procedure Act (APA) – Brief lecture
  - Oregon land use system: administrative and statutory procedural law (Supp. Materials: “Planning Basics,” “Better Findings Through Modern Case Law” & the *Fasano* case)
    - quasi-judicial decisions;
    - standards and criteria;
    - interpretations;
    - standard of evidence;
    - findings and conditions of approval.

• Mock Hearing Parts Assigned

WEEK 7 (Feb. 18/20):

  - Conflict of interest;
  - *Ex parte* contacts;
  - Bias;
  - Open Meetings Law;
  - Public Records Law.

• Tort Liability

• Social Justice and Equity Issues in Land Use
  - What is Social Justice?

• Land Divisions and Property Law
  - Land division regulations and zoning differentiated.
  - Property law concepts: easements, trespass, covenants, etc.

WEEK 8 (Feb. 25/27):

• Conservation easements (Presentation by Dan Terrell)

WEEK 9 (Mar. 4/Mar. 6):
Environmental and Agricultural Land Use Regulations:
- Overview of statutory and common law (Supp. Materials: “Environmental Law Handout”)

Oregon land use system (Time permitting)

WEEK 10 (Mar. 11/13):
- Mock Hearings
- Take–home Final (Individual not collaborative exercise.)

Final Exam Due, Thursday, Mar. 21st, 10:15 am
Course Resources

Required Reading


Supplemental Handouts: Available on Canvas for each student enrolled in the class. There may be other supplemental materials handed out during the term as necessary (i.e. a recent US Supreme Court case that is relevant to the materials we are or will be covering.).

Supplemental Materials (not required)

Planning and Environmental Law, American Planning Association

Norman Williams, American Land Planning Law (1974) (Five volume treatise available at the law school.)

On Line Resources

For Court of Appeals and Oregon Supreme Court Cases: (Or. App and Or):
www.oregon.gov
- Government
- State Government
- Judicial/Courts: Court of Appeals
- Appellate Opinions
  Court of Appeals
  Supreme Court

or go directly to: www.publications.ojd.state.or.U.S.

For Federal Supreme Court Cases (U.S. @):
http://supct.law.cornell.edu/supct/ is the Cornell Web Site
- Archive of Decisions
- Search by Party (put in first name in cite)
http://www.supremecourtU.S..gov/opinions/opinions.html is the official site

For LUBA opinions (Or LUBA @):
www.luba.state.or.U.S.
- opinions

For general inquiries:
http://www.findlaw.com/ is a general, free, legal research site with access to cases and statutes.