

LAND USE

Spring 2019

Credits: 3

Time: 10:30–11:50 a.m. Tuesday/Thursday

Location: TBA

Professor Kellen Zale

University of Houston Law Center

Email: kbzale@central.uh.edu

Phone: 713.743.0325

Office: BLB-128

Overview and Learning Objectives: This course examines land use law and policy. Land is one of the most fundamental and valuable resources to individuals and communities, and a wide array of public regulation as well as private controls shape the use and development of land. Specific topics that will be covered in the course include planning, zoning, subdivision regulation, aesthetic and historic preservation, regulatory takings, inclusionary housing, environmental review, private covenants, and the role of markets. Throughout our study of these issues, we will consider competing ideas about how, when, and why land use should be regulated and the comparative advantages and disadvantages of various land uses controls. The objectives of this course are to: (1) gain a foundation in the substantive law of the subject matter; (2) apply critical legal thinking to identify and understand constitutional, statutory, and regulatory constraints applicable to the subject matter; (3) recognize the policy implications and ethical questions related to the subject matter; and (4) integrate the doctrinal study of the subject matter with the analytical and practical skills necessary to the practice of law. Classes will be a combination of lecture and interactive discussion.

Required Reading:

- The required casebook is Sterk, Peñalever, Bronin, *LAND USE REGULATION* (Foundation, 2nd ed. 2016). Students should always have the casebook with them in class unless otherwise instructed.
- Additional required readings will be posted on the course website (Blackboard). Students are responsible for all assignments listed on the syllabus, whether the assignment is in the casebook or is a supplemental reading posted on Blackboard.

Course Website: Please check Blackboard regularly for assignments and other updates related to the course. You can log on through the UH website (<http://www.uh.edu/blackboard/>). The course website is where I will post all announcements relating to the class, as well as all supplemental readings, class handouts, sample exam questions (with model answers), and the like. Please access the class website early in the semester and regularly check it and your UH email account.

Assessment Method: The final grade will be primarily based on a take-home final exam (90%) and a report on a public hearing (10%). Final grades may be modified up or down by one-third of a letter grade based on class participation (see “Participation” below).

- **Final exam (90%):** The final exam will be take-home essay exam. The final exam is scheduled for [TBA] (*exam dates are subject to change by university administration so always check the UH website for the most current information*). The exam will be open book. All answers must be exclusively your own work. You may not consult with others about the exam once the exam period has started. Additional details on the exam will be provided mid-semester, and a final exam review will be held on the last day of class.

- **Report on a public land use hearing (10%):** Each student must attend at least one hearing conducted by a local public body addressing a land use issue during the semester and submit a short report on it. Attendance may be person, or if the meeting is streamed online by the government, via electronic means. The purpose of this exercise is to expose students to the formalities (or lack thereof) of public meetings and to provide an opportunity for students to observe and analyze how policymakers make decisions. Land use attorneys are often required to participate in public hearings before local boards on behalf of their clients, and as you will see in the readings over the course of the semester, the vast majority of cases that end up in litigation result from the decisions of local boards, so observing a local board land use meeting “live” provides an important practical perspective on the doctrinal materials we are studying. Students must complete the report and email it to me by **5:00 pm on Wednesday, April 17** to receive a grade in the course (you may turn it in earlier if you would like). Additional information about the content and format of the report will be provided on the first day of class.

Participation: Classes will be a combination of lecture and discussion. Students are expected to be prepared for every class. Any student is welcome to volunteer or ask questions at any time. To facilitate class discussion, I will call on students, both to discuss assigned cases, notes/problems, and any supplemental materials assigned, as well as to comment on the issues and hypotheticals we are discussing. If you are unprepared for class, you may utilize a “pass” up to **four times** during the semester by signing the “pass sheet” in advance of class. You may do this **four times** during the semester without any impact to your class participation grade; however, additional passes will impact your class participation grade. Final grades may be modified up or down by one-third of a letter grade (i.e., from a B to a B+ or A to A-) based on class participation. The decision to drop a grade for participation is at my discretion and can result from exceeding the pass limit or from a combination of unpreparedness, not paying attention in class, inappropriate use of technology, repeated lateness and absences (even if you have fewer than 20% absences). In exceptional circumstances, students may have their grade raised by one-third of a letter grade.

Attendance: An attendance log will be silently passed around each class; initial the log to mark your attendance. Falsifying attendance violates the Law Center’s Honor Code. Pursuant to Law Center’s policy, you must attend at least 80% of the classes (though you should strive to attend every class). The Law Center attendance policy does **not** distinguish between excused and unexcused absences: an absence is an absence, regardless of the reason, except for absences covered by the University and Law Center religious holiday policy. If you miss more than 20% of the classes, I reserve the right to take appropriate disciplinary action, consistent with the Law Center’s policies, including dropping the student from the course.

Lateness: Students entering the classroom late can be very distracting to me as well as to your classmates. Out of respect for everyone, please make every effort to be on time for class. If there is an exceptional situation where an outside commitment or emergency requires you to arrive late, please let me know if possible. Unless you have received permission from me, students are required to attend the entire class session in order to sign the attendance sheet.

Schedule & Make-up Classes: The University advises students to visit uh.edu/emergency for updates on campus closures. If a class must be cancelled for weather or any other reason, a make-up class will be scheduled, consistent with the Law Center’s policies.

Video recording of classes: All classes will be video recorded using the Law Center’s Mediasite video recording system. The video recordings will be available to view via a UH Mediasite link, which will be provided by the tech department at the start of the semester.

Office Hours: TBA. If you would like to meet at another time, please email or call to schedule an appointment.

Use of Technology: Computers are permitted, but should only be used for note-taking purposes. I reserve the right to treat violations of this policy as lack of preparation, and adjust class participation grade downward accordingly. Please ensure all other electronic devices (cell phones, etc.) are in silent mode or turned off during class.

Accommodation: If you have a disability and require an accommodation, please contact the Center for Students with Disabilities.

Counseling and Psychological Services: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

Course Structure: Below is an outline of the topics to be covered during the semester. Anticipate that the coverage will be approximately 25-35 pages per class. Note that in addition to reading from the casebook, supplemental material will be posted during the semester on the course website (Blackboard) that students are responsible for. The schedule below is subject to adjustment if necessary as the semester progresses. You will be given notice of any changes in the schedule or supplemental materials in class and/or via the course website. If we do not finish covering the assigned material for a particular day, we will start the next class with the leftover material before moving onto the current day's assignment. All students should be prepared to discuss the leftover material if such a situation arises.

Syllabus

1. Introduction to Land Use Law; Comprehensive Planning
2. Planning (cont.); Zoning Basics
3. Zoning Basics (cont.)
4. Beyond Zoning: Regulating Large Developments – Subdivision Regulations
5. Beyond Zoning: Regulating Large Developments (cont.)
6. Beyond Zoning: Historic Preservation
7. Beyond Zoning: Aesthetic Regulation; Developer Challenges – State Law
8. Developer Challenges: State Law (cont.)
9. Developer Challenges: State Law (cont.)
10. Federal Law: Takings

11. Federal Law: Takings; Exactions
12. Federal Law: Equal Protection Challenges
13. Federal Law: Anti-Discrimination Protections
14. Federal Law: Free Speech Claims; Sexually Oriented Businesses; Religious Freedom Claims
15. Neighbor Challenges to Land Use Decisions
16. Standard of Review for Challenges to Land Use Decisions
17. Environmental Review of Land Use Decisions
18. Development Problem Hypo (In-Class)
19. Development Problem Hypo (In-Class)
20. Private Restrictions on Land Use and Common Interest Communities
21. Private Restrictions on Land Use and Common Interest Communities (cont.)
22. The Problem of Scale in Land Use Lawmaking
23. The Problem of Scale in Land Use Lawmaking (cont.)
24. Development Problem Hypo (In-Class)
25. Development Problem Hypo (In-Class)
26. Public Land Use Hearing Reports
27. Final Exam Review