Land Use Law, Fall 2008

Class materials are available on my class website.

- You may access them by going to
  http://www.law.uh.edu/faculty/mburke
  and clicking on the class link for Land Use
  OR
- You may go directly to the page for the class
  http://www.law.uh.edu/faculty/mburke/
  Classes/Land_Use_Current_Year/Land_Use_
  Homepage.html

Goals of the Course

1. To learn the basic concepts, legal rules, and principles of land use law.

2. To become familiar with the most important U.S. Supreme Court and Texas land use cases.
Goals of the Course Cont’d

3. To understand the variety of roles played by the judiciary, state and local officials, attorneys, developers, community members, and others.

4. To become familiar with the available legal resources on land use law and how to access them.

Differences from Other Courses

• Local government
• Discretion
• Emotion
Themes of the Casebook

• The Benefits and Dangers of Discretion.
• The Dynamic Nature of Land Use Regulation.
• Land Use and Unattainable Political Goals.

Themes of the Casebook Cont’d

• The Tension Between Regulatory Methods and Constitutional Protections.
• The Rise of Third Party Rights.
• The Cost of Growth.
• Regulation and Social Equity.
Themes of the Casebook Cont’d

- The Friction Between Urbanization and Environmentalism.
- Regionalism and the Appropriate Level of Government for Land Use Regulation.
- The Future—Evaluation and Reform.

Organization of the Casebook

- The basic tools of land use regulation
- The limits of regulation
- Growth and housing
- The variety of ways in which land use law addresses and attempts to effectuate important government policies

1. Who are the players?
2. What are their legal arguments?
3. What are their policy arguments?

The Players

• Saint Mary’s Cathedral
• Steve Francis and his neighbors
• The Texas Historical Commission
• The developer
• Galveston city government and city council
The Players Cont’d

• Texas Commission of Environmental Quality (TCEQ).
• The General Land Office (GLO).
• Preservation groups, historic districts, and the Galveston Historical Foundation (GHF).
• Environmental groups.
• Texans, state congressional members, U.S. citizens, and the world.

Saint Mary’s Cathedral

• This Land is My Land.
• Going through the proper procedures.
• The proposed building does not affect the historical character of the neighborhood.
Saint Mary’s Cathedral Cont’d

• The proposed building may enhance the neighborhood by bringing more attention to it and a stronger economy (including broader tax base) to support its preservation.

• Community center and school improvements

Steve Francis and His Neighbors

• Historical District.
• Frustration of investment-backed expectations.
• Trying to fend off unwanted intrusion into neighborhood.
• Quality of life issue: increased traffic, strain on infrastructure.
Steve Francis & His Neighbors Cont’d

• Abuse of process. Closed-door meetings.
• Concern about discretion of THC. Those living in the neighborhood should make the decision.
• Concern about precedential value of the resolution of the dispute.

Texas Historical Commission

• State agency established to preserve Texas’ architectural, archeological and cultural landmarks.
• Impartial expertise, yet appointed by the Governor.
• Tries to work with citizens and organizations. This is more reasonable design.
Texas Historical Commission Cont’d

• The money raised from the sale of the condos will be used to continue renovating the church, thus furthering the Commission’s mission.

• Already fits with the 5- and 8-story buildings.

• Any approval would require that the façade be consistent with rest of the neighborhood.

Developer

• Interfering with his business – a corporate taxpayer, an employer, and an entrepreneur.

• Role in the economy (construction jobs, financing, investors).

• Promises to make it architecturally similar to the buildings in the area to minimize impact.
City of Galveston/City Council

• Increased property taxes in time of record deficits.
• Preserving character of city for tourism.
• Maintaining relationship with constituents.

City of Galveston/City Council Cont’d

• Politics. Trying to achieve political goals through decisions on what development is allowed.
• Due process was followed.
TCEQ & the GLO

- *Impartial* expertise. Head of TCEQ appointed by the governor. Head of GLO elected.
- Clean Water Act - Wetlands.
- Beach erosion.

TCEQ & the GLO Cont’d

- Coastal Zone Management Acts – state and federal (sensitive area?).
- Open Beaches Act.
- Economy.
- Keeping beaches open for all Texans.
Preservation groups, historic districts, and the Galveston Historical Foundation (GHF)

- Partial expertise with a cause
- Concerned about THC’s work

Environmental Groups

- Partial expertise with a cause
- Concerned about TCEQ’s work and the GLO’s work.
Texans, U.S. Citizens, and the World

- Concerned about the beach.
- Other neighborhoods worried about the precedential value of the resolution of the dispute.
- Future generations