

LAND USE

Spring 2021

Credits: 3

Time: 2:30-4:00 p.m. Mon/Wed

Location: Remote/Distance Learning

Professor Kellen Zale

Associate Professor, University of Houston

Office: BLB 128

Email: kbzale@central.uh.edu

Staff Assistant: Lillian White, lawwhite@central.uh.edu

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 primarily synchronous/live classes involving lecture and interactive discussion, as well as some pre-recorded/asynchronous class sessions and other remote learning activities.

Note about Spring 2021 - Distance Learning: The situation regarding the COVID-19 pandemic is an ever-evolving one, and the information in this syllabus is thus subject to change. See below for more information on distance learning, technology protocols, and the anticipated schedule. *Flexibility will be essential as we go through the semester – I greatly appreciate your patience and understanding as we navigate these uncertain times together!*

Required Reading:

- The required casebook is Sterk, Peñalever, Bronin, LAND USE REGULATION (West, 3rd ed. 2020). Students should always have the casebook with them during 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, open book final exam consisting of essay questions (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 information regarding the exam format and content will be provided during the semester, including practice exam questions (and model answers).
- **Report on a public land use hearing (10%):** Each student must attend (remotely) at least one hearing conducted by a local public body addressing a land use issue during the semester and submit a short report (and contribute to a class discussion) on it. Attendance should be via electronic/remote attendance (even prior to the pandemic, most public meetings were streamed online and now almost all public meetings are conducted via online platforms). 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 Mon. Apr. 19 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 and which types of local public bodies are eligible for (remote) attendance for this report will be provided on the first day of class.

Class Format and Schedule: Due to the COVID-19 pandemic, we will be meeting in a distance learning (remote) format. The anticipated format will be a combination of primarily live class sessions, as well as some pre-recorded class sessions and/or other remote learning activities.

Live/synchronous classes:

- The class will primarily be conducted via live/synchronous class sessions, which will be a combination of class discussion, lectures, small group exercises (via breakout rooms on Zoom), and other learning modalities
- All live (remote) class sessions will be conducted via Zoom. Additional information regarding policies and technology protocols for live classes will be provided in the full syllabus prior to the first class.
- All live class sessions will be recorded, per the UH policy. Links to the recordings will be posted on the course website under the “Live Zoom class recordings” tab shortly after class ends.

- If a live class session must be cancelled because of unforeseen circumstances, a make-up class session will be scheduled, consistent with the Law Center’s policies.

Asynchronous/pre-recorded classes and other remote learning activities:

- Depending on the class pace and learning needs, some live/synchronous class sessions (or portions of sessions) may be replaced with asynchronous/pre-recorded lectures and/or remote learning activities.
- When assigned, pre-recorded lectures will be divided into individual 10-20 minute recordings by sub-topic (multiple 10-20 minute recordings may be assigned on a particular topic); individual links to any pre-recorded lectures will be posted on the course website under the “Asynchronous Lectures” tab at least one week in advance of the live class session in which the materials will be discussed. *Students should complete the assigned reading for the week prior to watching the pre-recorded lectures: just as with traditional in-class lectures, the pre-recorded lectures are conducted with the understanding that the students have already read the material being covered in the recorded lecture.*
- When assigned, the time commitment for any asynchronous/pre-recorded lectures will be calibrated to ensure that the total amount of time required to complete reviewing these materials is reflected in a reduction in time allotted to live/synchronous lectures for that week.

Participation: Live/synchronous classes will be a combination of lecture and discussion. Students are expected to be prepared for every class, which includes: presenting cases; responding to prompts/questions that were raised in pre-recorded lectures or remote learning assignments or during our in-class discussions; analyzing material in the notes and problems in the casebook; analysis/discussion of any required supplemental materials (if assigned). Because of time limitations, we will not always cover every problem or note in the assigned materials during our live classes, but students are responsible for all assigned materials for purposes of the exam. Thus, if a student has questions about assigned material that we did not have time to cover in class, please either raise the question during class or during office hours or via email.

On-call system: Depending on class size, for purposes of class discussion, we may utilize on-call groups. If so, students would be divided into several groups (on-call group assignments will be provided prior to the first day of class once enrollment has been finalized) and each on-call group would be assigned specific days on call. Students who are not on call are always welcome to volunteer or ask questions. Note that if class size does not warrant separate on-call groups, then all students are on-call for every class (see “pass system” below for opting out of being on-call).

Pass system: If you are unprepared to be called on for a class session, you may utilize “pass” up to three times over the course of the semester. To utilize a pass, you must email me by 2:00 p.m. on the day of the class you are passing. If you exceed three passes, it will be considered a lack of preparation and result in a deduction to your final grade.

Participation component to final grades: 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 lower a grade for participation is at my discretion and may result from exceeding the pass limit, or from a combination of unpreparedness or inattention in class, inappropriate use of technology, failure to complete any assigned remote learning assignments in a timely manner, or repeated lateness and absences. In exceptional circumstances, students may have their grade raised by one-third of a letter grade.

Attendance: Attendance for each synchronous session will be taken through an online sign-in process using Google Forms (link will be provided on the first day of class). At the start of each class session, I will assign a passcode for the day. Students should enter their last name and the passcode for the day on the Google form. The Google form attendance sheet will be closed 10 minutes after class ends; if you attend class but miss signing in or make a mistake in doing so, please notify me promptly. Students do **not** need to email me in advance if you will be absent. For asynchronous recorded lectures, I will take attendance by tracking whether you have accessed the video. UHLC policy requires students to attend at least 80% of class meetings; excessive absences (absent extenuating circumstances) will be considered a lack of preparation and result in a deduction to your final grade.

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

ABA Standard 306 Distance Education

ABA Standard 306 sets out the parameters for earning credit for study offered through distance education and provides that “A law school may award credit for distance education . . . if: (1) there is ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and (2) there is ample monitoring of student effort and accomplishment as the course progresses.” The ABA has approved a waiver request from UHLC for the academic year of Fall 2020 and Spring 2021, which provides for an “emergency variance to exempt from the credit limits on distance education (currently set forth in Standard 306(e)) credits earned in courses offered through distance education during the COVID-19 emergency.”

This course satisfies ABA Standard 306 by providing regular interaction between instructor and students both in and outside of the formal structure of the course for its duration through weekly synchronous classes, asynchronous assignments, and office hours, and provides ample monitoring of student effort and accomplishment as the course progresses through weekly assignments, participation component to the final grade, and the final exam.

Accommodation: UHLC is committed to ensuring that all students enjoy equal access and full participation. If you have a disability and require an accommodation, please contact the Center for Students with DisABILITIES. If you require any support services, you may contact Ms. Samantha Ary, Academic Records Coordinator. Ms. Ary is located in room 44A TU-II in the Office of Student Services suite, and she can be reached at sary@central.uh.edu or 713-743-7466. *Requests for accommodation that involve graded assignments must be directed to Ms. Ary and should be made as soon as possible to allow adequate time to document and to process the request.*

Chosen Names/Preferred Pronouns: I use first names when calling on students and I will honor requests to use alternate/preferred names or gender pronouns. If you wish me to do so,

please advise me of your preference early in the semester so that I may make appropriate changes to my records.

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, which offers a (virtual) drop-in consultation service at convenient hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html. The Texas Lawyers' Assistance Program (“TLAP”) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>.

Other Support Services: Law school can be a challenging experience, and on top of that, we are in an economic depression and a global health crisis. In addition to the resources above, there are other resources on campus to help. If you find yourself food insecure, housing insecure, or in need of mental health or other services, the University has other free resources for students available here: <https://www.uh.edu/dsaes/coogscare/>.

Discrimination and Sexual Misconduct Policy: The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here: <http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>
<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)
<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Diversity and Inclusion: The University of Houston embraces diversity and recognizes our responsibility to foster an open, welcoming environment where students, faculty and staff of all backgrounds can collaboratively learn, work and serve. We value the academic, social, and broader community benefits that arise from a diverse campus and are committed to equity, inclusion and accountability. Diversity enriches our university community and is a driving force instrumental to our institutional success and fulfillment of the university's mission. We commit to engaging in an ongoing dialogue to thoughtfully respond to the changing realities of our increasingly interconnected world. We will continually strive to work together to address the challenges of the future in a way that removes barriers to success and promotes a culture of inclusivity, compassion and mutual respect. The competencies gained through diverse experiences across campus prepare all of our students, staff and faculty to thrive personally and

professionally in a global society. If you feel like your class performance is impacted by your experiences inside or outside of class, please reach out to me. If you feel more comfortable speaking with someone else, Student Services is an excellent resource: 713-743-2182. Students may also bring any issues negatively impacting UHLC's openness to diversity and inclusion to the Law Center's Diversity and Inclusion committee. The D&I committee's charge includes "[building] on the Law Center's strengths as a diverse and inclusive environment." You can contact the committee directly at UHLCD&I@uh.edu.

Honor Code: The Honor Code applies to all aspects of this class. *Students are responsible for knowing all Honor Code provisions and for complying with the Honor Code.* Please ask if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations in the course.

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.

Please note that the schedule is subject to adjustment to account for the pace of class and unforeseen circumstances (i.e., professor illness, extreme weather event, the evolving nature of the global pandemic, etc.). If there are any changes to the schedule, students will be given advance notice of changes by email and/or announcement posted to the course website. Students should regularly check the updated version of this document (link posted on Blackboard under "Syllabus" tab) for the most current version of the syllabus schedule.

If we do not finish covering the assigned material for a particular class, we may start the next class with the leftover material before moving onto the current class's assignment; students should be prepared to discuss the leftover material if such a situation arises. Alternately, depending on the complexity of leftover material and timing constraints, I may notify students that a short supplemental recorded lecture wrapping up the material has been posted on the course website, which will wrap up the material and which students will be responsible for reviewing as part of the assigned materials.

Syllabus – Outline of Topics to be covered (some topics will have multiple classes)

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

8. Federal Law: Takings
9. Federal Law: Exactions
10. Federal Law: Equal Protection Challenges
11. Federal Law: Anti-Discrimination Protections
12. Federal Law: Free Speech Claims; Sexually Oriented Businesses; Religious Freedom Claims
13. Neighbor Challenges to Land Use Decisions
14. Standard of Review for Challenges to Land Use Decisions
15. Environmental Review of Land Use Decisions
16. Development Problem Hypos 1
17. Private Restrictions on Land Use and Common Interest Communities
18. The Problem of Scale in Land Use Lawmaking
19. Development Problem Hypos 2
20. Public Land Use Hearing Reports and Discussion