Survey of Planning Law

Illustrative Course Outline for Graduate Students in Planning

Course Description

This proposed course builds on the traditional foundation of U.S. planning law while emphasizing its application to contemporary planning practice. Through judicial decisions, statutory and regulatory materials, and New Jersey-specific examples, students will examine how legal authority shapes land use decisions across federal, state, regional, and municipal institutions. Case-based instruction is complemented by applied exercises addressing development regulation, environmental justice, climate adaptation, and infrastructure siting – with an emphasis throughout on legally-informed planning analysis.

Learning Objectives

1. **Interpret foundational planning law doctrines** governing land use regulation – including constitutional limitations, property rights, zoning authority, and relevant federal and state statutes.
2. **Analyze judicial decisions and apply legal principles** to planning scenarios, identifying relevant legal issues, precedents, and implications for professional planning practice.
3. **Navigate the regulatory frameworks governing land use**, distinguishing the roles and powers of federal, state, regional, and municipal authorities, with particular attention to NJ planning law.
4. **Evaluate how planning laws can shape development and community outcomes**, including residential segregation, housing affordability, environmental justice, historic preservation, and more.
5. **Learn to develop and communicate legally-informed planning recommendations** by interpreting statutes, ordinances, and regulations, and articulating their legal and practical implications.

Primary Textbooks

- **Miller:** Miller, S. R. (2025). *Advanced Introduction to U.S. Land Use Law,* 1st ed.
- **Burke:** Burke, B. (2026). *Understanding the Law of Zoning and Land Use Controls,* 4th ed.

Assignments

In-class case law presentation	15%
In-class short-answer midterm exam	25%
In-class exercise participation (5% for each of 3 exercises)	15%
Post-exercise 1-2 page summaries (5% for each of 3 exercises)	15%
Scenario-based, long-answer final exam: applications of planning law	25%
General participation and preparation in class discussions	5%

Course Modules

Week 1: Introduction to Planning Law and Land Use Authority

- Provide an initial overview of real property rights, police powers, nuisance law, and key zoning concepts. Examine the relationship between constitutional law, state enabling legislation, and municipal authority – discussing Dillon's rule and home rule, and introducing the NJ MLUL.
- **Case Law:** *Village of Euclid v. Ambler Realty Company* (1926)
- **Readings:**
  - Miller Ch1 (Intro. to Land Use Law) & Ch2 (Authority to Engage in Land Use Regulation)
  - Burke Ch6 (The Structure of Zoning: The *Euclid* Case)
  - NJ Municipal Land Use Law
  - U.S. Courts, *About Federal Courts* (Court Role & Structure; Comparing Federal & State Courts)
- **Supplemental Readings:** National League of Cities, *Principles of Home Rule for the 21st Century*

Week 2: Property Rights, Eminent Domain, and Regulatory Takings

- Examine governmental authority to acquire and regulate private property. Briefly introduce voluntary property acquisition as a contemporary application, distinguishing buyouts from eminent domain.
- **Case Law:** *Pennsylvania Coal Company v. Mahon* (1922); *Penn Central Transportation Company v. New York City* (1978); *Kelo v. City of New London* (2005)
- **Readings:**
  - Miller Ch11.1 (Takings)
  - Burke Ch2 (The Takings Clause and Its Public Use Requirement – incl. *Kelo*), Ch3.3-5 (Regulatory Takings – incl. *Mahon*), Ch4.1-5 (*Penn Central*)
  - Georgetown Climate Center, *Managed Retreat Toolkit* (Takings Overview)

Week 3: Constitutional Limitations and Judicial Review

- Examine due process, equal protection, regulatory takings, and justiciability doctrines governing access to judicial review. Consider how constitutional protections constrain governmental land use regulation.
- **Case Law:** *Lucas v. South Carolina Coastal Council* (1992); *Knick v. Township of Scott* (2019)
- **Readings:**
  - Miller Ch11.2-3 (Due Process; Equal Protection)
  - Burke Ch17.4 (Total Takings – incl. *Lucas*), Ch13 (Judicial Review of Zoning Actions – incl. *Knick*)

Week 4: Comprehensive Planning, Municipal Zoning, and Land Use Regulation

- Examine comprehensive planning, zoning ordinances, zoning districts, and land use controls, applying these concepts to NJ municipal planning and legal authority. Explore the history of racial zoning and judicial enforcement of racially restrictive covenants.
- **Case Law:** *Buchanan v. Warley* (1917); *Shelley v. Kraemer* (1948); *Riggs v. Tp. of Long Beach* (1988, NJ)
- **Readings:**
  - Miller Ch3 (The Comprehensive Plan), Ch4.1 (Zoning)
  - Burke Ch7 (Euclidian Land-Use Controls, Accessory and Non-Conforming Uses)
  - Rothstein, *The Color of Law,* Ch3 (Racial Zoning – incl. *Buchanan*), Ch5 (Private Agreements, Government Enforcement – incl. *Shelley*)
  - NJ Courts, *Zoning & Planning* (*Riggs* excerpt)
- **Supplemental Readings:** New Brunswick Zoning Ordinance and Maps

Week 5: Industrial Land Uses, Nuisance, and Environmental Justice

- Examine the regulation of commercial and industrial uses, nuisance law, and incompatible land uses. Explore how historical zoning and segregation shaped the distribution of environmental burdens. Consider facility siting under NJ's EJ Law and contemporary debates over data centers.
- **In-Class Exercise 1:** Students evaluate a hypothetical waste transfer facility, identifying relevant land use and environmental permitting authorities, legal standards, and procedural obligations.
- **Case Law:** *Bove v. Donner-Hanna Coke Co*. (1932); *S. Camden Citizens in Action v. NJDEP* (2001)
- **Readings:**
  - Miller Ch8 (Land Use and the Environment)
  - Burke Ch16.8 (Civil Rights and Environmental Justice)
  - Mandelker et al., *Planning & Control of Land Development,* Ch1.E (*Bove* summary)
  - NJ Environmental Justice Law
  - The Environmental Law Reporter, *South Camden Citizens in Action v. NJDEP* (case summary)
- **Supplemental Readings:** Newark's proposed Data Centers Moratorium Ordinance

Week 6: Protected Land Uses, Housing Policy, and Civil Rights

- Examine constitutional and statutory protections for particular land uses, including religious uses and disability rights. Contrast these with historical federal housing policies that reinforced segregation.
- **Case Law:** *Village of Belle Terre v. Boraas* (1974); *City of Cleburne v. Cleburne Living Ctr.* (1985)
- **Readings:**
  - Miller Ch10 (Federal Interests in Land Use), Ch11.4.1 (Religious Uses)
  - Burke Ch18 ("Family" and Group Homes – incl. *Belle Terre*), Ch19.4 (Zoning and Religion – incl. *Cleburne*)
  - Rothstein, *The Color of Law,* Ch4 (Own Your Own Home)
  - The Religious Land Use and Institutionalized Persons Act

Week 7: Contemporary Zoning Reform and Urban Development

- Examine alternatives to conventional zoning – including mixed-use development, transit-oriented development, and form-based codes. Discuss NJ's Transit Village and redevelopment frameworks, alongside recent federal efforts to incentivize local zoning reform and housing development.
- **Case Law:** *Gallenthin Realty Development, Inc. v. Borough of Paulsboro* (2007, NJ)
- **Readings:**
  - Miller Ch4.2-3 (Zoning Flexibility; Euclidean Zoning Alternatives), Ch7 (Land Use and the Structure of Local Government)
  - Burke Ch12 (Non-Euclidean Rezoning: Administrative Flexibility in Zoning)
  - Supreme Court of NJ, *Gallenthin Realty Dev., Inc. v. Borough of Paulsboro* (case overview)
  - NJ Local Redevelopment and Housing Law
- **Supplemental Readings:** NJ DOT Transit Village Init. FAQ; CRS *The 21st C. ROAD to Housing Act*

Week 8: In-Class Midterm

- Test foundational planning law principles and assess students' ability to interpret judicial decisions, identify relevant authorities, and apply doctrines to land use scenarios.

Week 9: Exclusionary Zoning, Affordable Housing, and Fair Housing

- Examine zoning's role in housing segregation, including discriminatory intent and disparate impact claims. Trace NJ's Mount Laurel doctrine through judicial and legislative developments.
- **Guest Speaker:** Representative from the Fair Share Housing Center
- **Case Law:** *Mount Laurel I* (1975, NJ); *Village of Arlington Heights v. Metro. Housing Dev. Corp.* (1977); *Mount Laurel II* (1983, NJ); *TDHCA v. Inclusive Communities Project, Inc.* (2015)
- **Readings:**
  - Miller Ch9.3 (Housing)
  - Burke Ch15 (Exclusionary Zoning – incl. *Mount Laurel I & II*), Ch16.1-5 (Civil Rights and Exclusionary Zoning – incl. *Arlington Heights* and *TX Dept. of Housing & Comm. Affairs*)
  - NJ DCA *Affordable Housing Obligations for 2025-2035 (Fourth Round): Methodology & Background* (Introduction through Present Need & Deficient LMI Occupied Housing)

Week 10: Zoning Administration, Variances, and Development Approvals

- Examine variances, conditional uses, vested rights, site plan review, and subdivision approvals. Use NJ examples to distinguish legislative & adjudicative decisions, including their procedural requirements.
- **Case Law:** *Medici v. BPR Co.* (1987, NJ); *Kaufmann v. Planning Board for Warren Tp.* (1988, NJ)
- **Readings:**
  - Miller Ch5 (Land Use Administration), Ch9.e (Property and Contract Interests in a Project)
  - Burke Ch10 (Admin. Relief from Zoning Ord.), Ch21.1-5 (Vested Rights to Substantial Reliance)

- NJ Courts, *Zoning & Planning* (*Medici* excerpt)
- Supreme Court of NJ, *Kaufmann v. Planning Board for Warren Township* (selected excerpt)

Week 11: Floodplain Zoning and Flood Risk Management

- Examine floodplain zoning and other legal tools for managing flood risk, including development moratoria, takings constraints, and intergovernmental coordination in reducing hazard exposure.
- **In-Class Exercise 2:** Students compare floodplain zoning, building requirements, disclosure obligations, and acquisition strategies for a neighborhood, identifying legal authorities and constraints.
- **Case Law:** *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, Inc.* (2002)
- **Readings:**
  - Miller Ch4.4 (Growth Management)
  - Burke Ch9.1-3 (Moratoria; Interim Zoning Controls; Growth Controls)
  - Mandelker et al., *Planning & Control of Land Development,* Ch2.A.5 (*Tahoe-Sierra* summary)
  - NJ OPA's *Municipal Climate Resilience Planning Guide*
  - NJ Flood Disclosure Law

Week 12: Subdivision Regulation, Exactions, and Infrastructure

- Examine subdivision controls, PUDs, exactions, and impact fees. Explore constitutional limits (essential nexus & rough proportionality) as applied to monetary and legislatively imposed exactions.
- **Case Law:** *Nollan v. California Coastal Commission* (1987); *Dolan v. City of Tigard* (1994); *Koontz v. St. Johns River Water Management District* (2013); *Sheetz v. County of El Dorado* (2024)
- **Readings:**
  - Miller Ch6 (Subdivisions), Ch9.4 (Impact Fees)
  - Burke Ch14 (Subdivision Regulations, Impact Fees, Linkage Fees, and Exactions – incl. *Nollan, Dolan,* and *Koontz*), Ch12.4 (Planned Unit Developments)
  - Utah Department of Commerce, *Sheetz v. County of El Dorado* (case summary)

Week 13: Historic Preservation, Conservation, and Growth Management

- Examine legal approaches to historic preservation, design and sign regulation, and growth management – and explore regional conservation in the case of the NJ Pinelands.
- **Case Law:** *Gardner v. NJ Pinelands Commission* (1991, NJ); *Reed v. Town of Gilbert* (2015); *City of Austin v. Reagan National Advertising of Austin, LLC* (2022)
- **Readings:**
  - Miller Ch9.1-2 (Design Guidelines and Standards; Historic Preservation), Ch11.4.2 (Signs and Billboards – incl. *Reed* and *Austin*)
  - Burke Ch8 (Aesthetics & Zoning), Ch9.3-11 (Growth Controls to Urban Bdries.), Ch12.5 (TDR)
  - The Environmental Law Reporter, *Gardner v. NJ Pinelands* (case summary)
- **Supplemental Readings:** NJ Pinelands Commission's *Comprehensive Management Plan*

Week 14: Renewable Energy Siting and Intergovernmental Governance

- Examine the legal challenges of renewable energy siting through NJ offshore wind development, including NEPA review, state coastal permitting, municipal authority, and intergovernmental conflicts.
- **In-Class Exercise 3:** Students map the federal, state, and local authorities involved in an offshore wind project, assess potential legal conflicts, and recommend a coordinated planning approach.
- **Readings:**
  - Plater et al., *Environmental Law & Policy*, Ch10.A-B (NEPA; NEPA in Court)
  - CRS *Offshore Wind Energy Development: Legal Framework*
  - CRS *Offshore Wind: Status and Issues for the 119th Congress*