

U207/C207
DEVELOPMENTAL CONTROL (LAND USE) LAW AND POLICY
[54500,52610]

Joseph F. DiMento
Winter 2010



Time and place: Tuesdays

9:30 am – 12:20 pm in [SSPASocial Science Plaza A 1165](#)

Office hours: Tuesday 3:30, Social Ecology I, 212E
And by e-mail, jfdiment@uci.edu

Teaching Assistant: Ms. Lyndsey Christoffersen, Office hours: Tuesdays at 12:30-1:30,
lchristo@uci.edu

TEXT: D.P. Selmi and James A. Kushner, **Land Use Regulation: Cases and Materials.**
[Third Edition, Aspen 2008]. [It will be also helpful to have a legal dictionary, such as Black's,
available at the book store.]

REQUIREMENTS: weekly attendance and active participation in the course plus a short mid-course
examination, a final examination, a prepared outline (described below), and a few mini—assignments.

COURSE INTRODUCTION: We focus on the legal framework and some institutional aspects of development and land use control. The perspective is national but there will be a special focus on California and Orange County. Our aim is to master fundamental legal principles that are implicated in the regulation of private property and in establishing the relationships between private interests and public interests as they play out over the use of land. Among the questions we will address:

- What factors give rise to the need for land use regulation?
- What are the boundaries of the right to develop land? Who sets those limits? Is development of land a right or a privilege?

Who are the players in the “games” of development control? Who is doing the regulation? How do professional planners get involved? How do land use lawyers get involved?

At what point does a land use regulation become of constitutional dimension?

What should be the balance in land use control as between economic interests and environmental interests?

- Through which institutions are the legal constraints on development channeled and implemented? What are the major interactions and tensions among those institutions, such as between local governments and federal courts?
- In the United States what has been the history of development control law? What mechanisms have been most commonly advocated and used? What have been the trends in judicial attitudes toward regulation of land? How different are the new regulatory controls from the classics, including zoning? Which jurisdictions are implementing the most ambitious and/or innovative approaches to land use control?
- How do land use controls attempt to realize social and environmental goals (managing growth, rebuilding the urban core, providing affordable housing, protecting human health and environmental resources, fostering design and aesthetic choices)? What are acceptable objectives of land use control? Are health, aesthetics and morals among them?

COVERAGE: Each week you will be responsible for a chapter or a section of the text. In order to make discussion and treatment manageable we will usually focus on a single case or two within the assigned section. This will be the material we will analyze in detail. However, familiarity with the total assigned section is required: for each session please be prepared to discuss the appropriate subject matter.

MINI-ASSIGNMENTS: [~15% of the final grade] Approximately every third week, you will be responsible for submitting a one-page commentary on an issue that we are covering in the course. The specific questions will be presented in class. The first mini-assignment, due on Tuesday, January 12 is the following:

Should land use regulations be founded on a land-use ethic? Why or why not? Regardless of your answer to that question, if you were to so base land use regulation, which land ethic would you advocate?[Please base your answer on materials from the Text]

Also, clip from a magazine or a newspaper or reproduce from newspaper archives an article on any local land use controversy.

The second mini-assignment will be a short report on your attendance at a city or county planning commission meeting or a meeting of a city council or board of supervisors at which a land use issue is discussed. [Meetings of advisory committees are not acceptable for this assignment.] *Please summarize: the time and forum of the meeting; the issue or project addressed; the positions presented on the subject (by the public, officials, and staff); the resolution, if any, of the matter.* (Due February 9)

CLASS PRESENTATIONS: In order to maximize coverage of our course and to provide an opportunity for practice of presentation skills, in a small number of sessions class members will prepare and discuss assigned material. This will involve laying out the facts in the case and/or suggesting issues for analysis.

EXAMINATIONS: The mid-course examination will be short [40-50 minutes]—aimed at introducing you to a form of examinations in land use law [~20% of the final grade.] The final examination will cover all the materials assigned for the course [~30% of the final grade]. It will be a short answer, hypothetical/analysis, and essay style examination. Copies of examinations administered in prior offerings of this course will be available on our web page. Examinations are open book and open notes but computers are not allowed.

OUTLINE [~30% of the final grade] : By the time of the examination, you will also complete the following:

Outline a short scholarly article that you could write on land use law [development control law] topic. Present at the end of your outline a *Bibliography* [article title, author, citation] of at least three law review articles. Include in traditional outline form:

Title, Introduction and Rationale for your article; (~ 5-8 sentences)

and two *Major Legal Issues* raised in the area of inquiry (in traditional briefing form).

[The outline itself should be one page long—single space equivalent.] Statements on topic choices are due on Week Four. *Note: You will not write the article, only its outline. You are not outlining some other scholar's article; rather you are using the work of others to generate your own article outline.* You are required to use law review articles—not magazines, newspapers or journals from other disciplines.]

SPECIAL FOCUS: Land Use and Climate Change. Extra credit [2 points]. By January 26 please find and briefly summarize a description of California's new law on land use and climate change.

SPECIAL GUESTS: Periodically, we may host local elected officials and land-use law specialists for informal class "chats."

SOME FINAL POINTS:

For some students, the approach used in this course will be relatively new. Others have more experience with a law-school oriented approach to learning (case analysis, dialogue, a bit of Socratic method analysis, and application of concepts and doctrines derived from judicial opinions). For some of you this way of learning will take a little getting used to. We will move relatively slowly and we will be explicit about the approach we are using. If you take the course seriously, the analysis, reading, and method should be exciting and enjoyable. If you are rusty on basic knowledge of lawmaking and the branches of government in the United States please do some background reading, of an encyclopedic type, on the topics.

1. Please remember your name card/tag every session.
2. Office hours can be in small groups as appropriate.
3. If you are having difficulties following the material, please see one of us right away during office hours.
4. Keeping a glossary ["a side bar"] of new terminology may prove helpful to your learning.

We will use our class web page and email list for several communications. Please check the webpage weekly including for further assignments and schedule..

SCHEDULE: To be communicated on a regular basis.

SESSION I: January 5, 2010

Warm up.....And

Introduction: Circumscribing the Field of Land Use Control

Reading: Chapter 1
Zoning and Land Use Regulation: Classic to Contemporary

Reading: Chapter 2, pp. 49-70, [Euclid; Gaffney]

Euclid--as example of reading a judicial opinion [OPINION BRIEF] and

Fundamental lessons of Euclid

ANALYSIS:

The Supreme Court held: "Under [the circumstances involved]..it is enough to determine...that the ordinance in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority." The Court leaves "other provisions to be dealt with as cases arise directly involving them."

1. In your opinion does Euclidean zoning promote the public health, safety and welfare?

2. What was the constitutional basis of the challenge in Euclid?
3. What are the grounds for the conclusion that the exclusions in the zoning ordinance bear a rational relation to the public health, safety and welfare?
 3. Specifically, according to the Court, what is the reason to exclude apartment houses from residential zones?
Do you, apartment dwellers, concur?
4. What is the standard of judicial review which the Court employs? What is standard of judicial review? What alternatives exist?
5. What is the relationship between zoning and nuisance law?
6. What are the implications of characterizing a zoning act as legislative, as opposed to judicial or quasi-judicial or adjudicative?
7. At what point does zoning give rise to a taking challenge? a successful taking challenge?
8. What does NECTROW add to the constitutionality of zoning?

