AGRICULTURAL ECONOMICS 445
ENVIRONMENTAL SCIENCE and MANAGEMENT 445

Course Syllabus for Spring Semester 2011

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Office Hours: MW – 2:00 – 3:30 p.m.
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CLASS: Tuesday and Thursday at 2:00 – 3:15 p.m.

TEXTBOOK: Land Use, John Nolon and Patricia Salkin, 2006 and additional readings as assigned.

COURSE OBJECTIVES:
1. Students will be able to apply their knowledge of local, state and federal government structures that create laws and regulations to land use planning and sustainable agriculture.
2. Students will be able to analyze the interplay of these laws/regulations as it relates to land use planning and sustainable agriculture.
3. Students will be able to apply the principles of property law and environmental law as it relates to land use planning and sustainable agriculture.
4. Students will learn about the legal issues surrounding land use and sustainable agriculture production.
5. Students will understand the historical analysis and legal trends in the cases discussing public vs. private property rights.
6. Students will acquire the skills to analyze legal cases and present their findings in class.
7. Students will be able to analyze the new federal and state statutes and regulations to address alternative methods of food production and energy production.

EXAMS AND GRADING:

Midterm Exam ................................................................. 100 points
Comprehensive Final Exam............................................. 150 points
Graded Assignments.......................................................... 70 points
Legal Research Paper......................................................... 100 points
Presentation of Legal Research Paper............................. 30 points
Class Participation.......................................................... 50 points

Total.............500 points

Graded assignments involve writing up and reporting on assigned cases. Up to five points will be awarded for written preparation and up to five points will be awarded for presentation in class.

For the legal research assignment, you will write a 10 page paper on the legal research topic of your choice that relates to land use planning or sustainable agriculture. More details will be handed out later.
All assignments must be **typed** and printed on both sides of the paper. Late assignments will not be accepted nor given credit unless there are extenuating circumstances; even then you will be docked 10% of the grade for each day that your assignment is late.

There will be no makeup time for exams unless you talk to me prior to the exam or have an emergency the day of the exam, in which case talk to me as soon as possible (at least before the next class time) to set up the makeup date. While there is no formal attendance policy, attendance is expected and will obviously affect your grade in class participation.

### Course Outline

I. Introduction and Logistics

   **Goal #1:** to have the students realize their sense of place and be able to remember it when we talk about it land use;

   **Goal #2:** to have the students realize the many ways that we interact/use our environment

   **Instructions for the Exercise:**
   - Move apart to sit by yourself
   - Close eyes
   - Envision your "place" (home, farm field, job etc)
   - Remember smells, feel plants, hear sounds……
   - Think of how you interact with the environment (land, water, etc…)
   - Open eyes - take a moment to write down all the ways you interact with the environment (land, water, etc…)
   - Share with the rest of the class how you interact with the environment (land, water, etc…)
   - On the board – I will create a “map” of our class’s combined interactions/uses of the environment.
   - After the map is done we will discuss where the law is involved in each of these interactions/uses

II. Federal, state and local government structures that create laws/regulations that impact land use and sustainable agriculture & the interaction between these structures and the laws they create (PAL ch 1, LU 1-10)

III. Legal Research, Use of Internet Sites and Writing Case Summaries

IV. Property Law

   Kinds of Property Rights (Crass 2)
   - Property rights – bundle of sticks (Crass 3)
   - Mahurin (handout)
   - Sprecher (handout)

   Limits of Land Ownership (Crass 3) (LU 9-12)
   - State v Shack

V. Nuisance

   History of nuisance (LU 13-16)
   - Public Nuisance
   - Private Nuisance
   - Clark
Mitchell
Bower (PAL 11-46)
Valasek (PAL – 11-49)

VI. Zoning and the Law of Nuisance (LU 16)

History

Village of Euclid (See also LU12-13, 76-78)
Hadacheck
Powell

The Effect of Zoning on the Law of Nuisance (LU 19-20)

Maykut
Prah
WIS Stat 66.0401, 66.0403
State of WI ex rel Numrich (D2L)
Ecker (D2L)

Modern Zoning and Nuisance Principles

Lucas (more detail later under “Takings”)

Modern nuisance

Spur Industries (PAL 11-49, LU 22-24)
“Right to Farm” Statutes as a Defense to Nuisance Claims (LU 191-192, PAL Handouts)

Flansburgh
Northville
Keuhl
Borman (192)
Gack (D2L)

Genetically Modified Organisms (GMOs) as a Nuisance Claim

Jost (D2L)
In re Starlink (D2L)

VII. Servitudes: Easements and Covenants (LU 24)

Introduction (linked to Nuisance)

How Established

Terminology

Easements

Affirmative
Fontainbleau (PAL 7-10)

Negative
Coty (PAL 7-10)

Covenants (LU 26)
Servient Estates
Dominant estates
Turner (D2L)

Modern Applications (LU 28)

West Alameda
Rofe

Common Interest Communities (LU 29)

Introduction
Prior to zoning
After zoning
Equitable Servitudes (LU32)
Sanborn (1925)
Neponsit

Conservation Easements (LU34)
Authority
Purchase of Development Rights
Example, Lime Hollow Farm
Pheasant Hill Farm (Dir Mktg 113)
Transfer of Development Rights (LU 230)
City of Hollywood
Olson Ct of Apps 2006 (D2L)
Olson WI Sup Ct 2008 (D2L)

XIII. Legal Reasearch Module (LU Appendix) Additional analysis of how to conduct legal research on land use and sustainable agriculture legal issues

IX. Land Use Plans and the Planning Process (LU 38 – 66)
Introduction to Planning and Land Use Law
Economic Issues and Land Use
Historical Development of Land Use Planning
Participants in Land Use
Ethical Considerations in Land Use Planning (CTLUL Chapter 10 on Reserve)

Walden
Fleming
Fabiano
United Artists
Keystone
City of Hobart

Land Use Plans
Creative Displays
Bone
Haines

State Planning –
WI Smart Growth Planning (Handouts)
WI Working Lands Initiative (Handouts)
State Control Limits Local Control (LU 190-192)
Craig
Wisconsin Livestock Siting Law
Township of Franklin (D2L)

Regional Planning
Intermunicipal Planning
Interstate Compacts

X. Zoning Districts and the Separation of Land Uses (LU 67-106)
Introduction
Overview
Authority
Local Zoning and Board Procedures

Frac Sand Mining Module as a Case Study of a Controversial Land Use Issue
Goal: to have the students understand the complexity of a controversial land use e.g. numerous sides that individuals can take in a complex issue
government entities that regulate land use: federal, state, county, township
understand how prevalent the frac sand mining issue is in MN/WI
understand how close to home the issue is happening

Day 1: Assignment for Day 2
Read: newspaper articles, website information from, the industry, Land Stewardship Project, Save the Bluff, Houston County Protectors, Winona Area Citizens Concerned About Silica Mining, Minnesota Trout Unlimited, Friends of Wabasha,
Audubon Minnesota, Winona organization "Myths of Frac Sand Mining" (ask for from Kathleen), postings from community members concerned about jobs, community members concerned about environment

Complete worksheet questions which will be collected:
- Who in the articles/websites is for the frac sand mine?
- What are four reasons they give for mining there?
- Who in the articles/websites is against the frac sand mine?
- What are four reasons they give against the mine?
- What government entities regulate land use regarding this mine?
- What does each of their regulations say about the mining operation?

Day 2: Watch the DVD "Price of Sand"; (I review the worksheets for their answers during the DVD, hand back after viewing the DVD)

Class discussion based on readings and DVD the following questions:
- Who in the DVD is for the frac sand mine?
- What are four reasons they give for mining there?
- Who in the DVD is against the frac sand mine?
- What are four reasons they give against the mine?
- What government entities regulate land use regarding this mine?
- What does each of their regulations say about the mining operation?
- What process is being used to resolve this controversy?
- What process could be used that would be more effective to resolve this issue?

Assessment: Questions on Final Exam

Who should decide whether frac sand mining should be allowed in the community? Why?

How should they decide whether to locate a frac sand mine in a community? Why?

Note: I will be grading these questions based on the comprehensiveness of the student’s answer, whether their answers are logical and well supported by their arguments, not on whether I agree with their opinion or not.

The Early Legal Cases
- State ex rel Carter

Administration and Flexibility
- Variances
  - Janssen
  - Matthew
  - Kisil
  - McMorrow
  - Ziervogel
- Special or conditional use permits
  - Emerging Energies (D2L)

Amendments or Rezoning
- Spot Zoning
  - Cassel
  - Griswold

Contract or Conditional Zoning
Church
Nonconforming Uses
Amortization

Limit of Expansion or Extension
State v. Perry
Discontinuance or Abandonment
Destruction
Moffatt
Accessory Uses
Collins
Home occupation
Enforcement
Frankland
People v Multari

XI. Law s Affecting Direct Marketing (The Legal Guide to Direct Marketing, Chapter 8)
Introduction
Farmstands
Demarest v Borough of Hillsdale, 386 A.2d 875 (1978)
Ecker v. Dayton 234 A.2d 584 (1996)
Prime v Zoning Board of Appeals of Norwell, 680 N.E. 2d 118 (Mass App Ct 1997)

XII. Subdivision Control and Other Methods of Community Building (LU 107-125)
History and Authority
Subdivision Approval Process
Cluster Development and Conservation Subdivisions
Chrinko
Orinda
Exactions
Jordan (Wis 1965)
Developer Rights
Avco Community Developers

XIII. Fifth Amendment Limits on Land Use Regulations (LU130 -161) (Crass overview)
Constitutionally protected property rights (LU 130)
The Due Process Clause (LU 131)
Lingle
Regulatory Takings Distinguished (LU 134-138)
Lingle
Four Categories of Regulatory Takings Cases - Overview
Permanent Physical Invasions
Total Takings
Forced Entry Exactions
All Other Alleged Regulatory Takings
Penn Central Transportation Co (1978)
Judicial Test for Determining Regulatory Takings
Per se Cases (Permanent Physical Invasions and Total Takings)
Loretto
Lucas
Exaction Cases (LU 143-146)
Nollan
Dolan
All other Cases: The Balancing Test
Penn Central
Other Takings Concerns (LU148)
Pre-existing regulations
Palazzolo
Ripeness
Investment Backed Expectations
Total Taking
Total Takings and the Public Trust Doctrine (LU 154)
Wisconsin Public Trust Doctrine (Crass 15)
The Total Parcel Rule
Tahoe-Sierra
Remedies
First English

Housing and Urban Redevelopment (LU 234-242) Transferring private property from one private property owner to another (Crass 12-14)
Berman
Kelo
WI Blight Elimination and Slum Clearance Act – WI Stat 66.1333 (Crass 16)
Grunwald
David Jeffrey