Suggested Texts:

Date               Title and Description

January 22, 2018  Topic 1: Course Overview, Framework for Land Use Planning and The Origin of Land Use Planning and Control in the United States; Fundamentals of Land Use Planning: A Logical Process

What is land use planning and land use law in America today? What steps should be taken to establish a meaningful and effective ‘plan’? What size region/territory can be “planned”? What laws—if any—should guide the planning process? During this week’s class, we will explore the “ingredients” of a successful plan and debate whether even a properly completed plan can be effective without the employment of regulations and non-regulatory tools. We will discuss techniques of binding local governments to their plans and policies. We will analyze the public process employed in the development of plans and polices and critique their effectiveness, as well as attempt to define “smart growth”. We will discuss the planner’s role in land use planning, land use law and development permit approvals.

January 29       Topic 2: Planning and Plans: The Comprehensive Plan Based on Statutory Requirements
Almost half of the fifty states require local governments to prepare a land use plan as a prerequisite to adopting certain land use controls. What are these plan ingredients and are they successful in ensuring that local governments make decisions in the context of a logical plan? What happens in the non-plan states (e.g. Massachusetts and Connecticut)? Discussion will center on the elements of mandatory planning of various states such as Hawaii, California, Vermont and Rhode Island in comparison with non-plan states such as Massachusetts, as well as the distinction between the “Unitary View”, “The Plan as a Factor” and the “Plan as an Impermanent Constitution”. We will discuss why imposition of regulatory controls in the absence or contravention of a comprehensive plan almost always gives rise to the possibility of a court challenge. We will review the unfortunate experiences of non-plan states as they attempt to impose growth management controls in the absence of comprehensive plan legislation. Text: 33-61. California Building Industry Association v. City of San Jose, 61 Cal.4th 435 (2015), Farmers for Fairness v. Kent County Levy Court, 2012 WL 295060 (Chancery Court, Del., 2012) Arbor Properties, Inc. v. Lake Jackson Protection Alliance, Inc. 51 So.3d 502 (2010), Rando v. Town of North Attleborough, 44 Mass.App.Ct. 603 (1998), Lesher Communications, Inc. v. City of Walnut Creek, 802 P.2d 317 (1990), Rancourt v. Town of Barnstead, 129 N.H. 45 (1986), Udell v. Haas, 21 N.Y. 2d 463, (1968) and National Amusements, Inc. v. City of Boston, 29 Mass.App.Ct. 305 (1990). (See also, if of interest: “Legal effect of adopting a comprehensive plan”, 1 Am.Law. Zoning s.5:16 (2015); “Smart Growth: State Strategies in Managing Sprawl”, 45 Urb. Law 349 (2013) and “Comprehensive Planning”, 34 Urb. Law 945 (2002)).

February 5

Topic 3: Fundamentals of Land Use Planning: Constitutional Principles

Several federal and state constitutional provisions and principles, whether implemented at the local, regional or state levels, strictly control land use planning. What are these provisions, how do they work, and what do they mean to the practicing planner and lawyer? Discussion will focus in detail on the explicit and implied powers of government to

February 12, 26

**Topic 4:** How Far Can Government Go? The Takings Issue (2 classes)

Governments are generally empowered to condemn—take—private property for public uses. While government is often required to pay more than it originally offered the landowner, few eminent domain actions are reversed. However, landowner challenges based on regulatory taking claims are often upheld by state and federal courts and some local governments have been forced to pay large damage awards to regulated landowners, whereby the challenged regulation has been voided as well. These classes will focus on the taking issue and try and resolve the controversy that has inspired bills at the federal and many state levels to restrict government’s ability to impose regulatory controls on private property. Do these proposals conflict with government’s police power obligations? How far can regulations go in limiting development before the regulation serves as a “de facto” physical taking? Is it equitable that government can regulate private property without paying the landowner for the loss incurred? If so, under what circumstances? Text: 86-188. Horne et al. v. US Department of Agriculture, 135 S.Ct. 2419 (2015), Koontz v St. Johns River Water Management District, 133 S.Ct. 2586 (2013), Arkansas Game and Fish Commission v United States, 133 S.Ct. 511 (2012), Lingle v. Chevron

March 12, 26, April 2, 9

**Topic 6:** Tools for Land Use Planning (4 classes)

Given the limitation imposed on local governments by state and federal constitutional rules, what tools—techniques—are available for local governments as they implement their comprehensive plans or attempt to protect certain natural or built resources? The following classes explore these tools in detail. Each class is designed so that the participant develops a comfortable and working knowledge of the techniques, their
application, their strengths and their limitations. The majority of regulatory tools to be analyzed fall within the broad category of zoning, although some discussion will include innovative subdivision control and health regulations. Discussion begins with an analysis of zoning authority in a handful of states.


**Nonconforming Uses/Structures:** Palitz v. Zoning Board of Appeals of Tisbury, 470 Mass. 795 (2015), Deadrick v. Zoning Board of Appeals of


April 23

**Topic 7:** Inclusionary Zoning: "Affordable" Housing

A key element of local land use plans is the provision of affordable housing within the community. “Affordable” is a function of many factors, as affordable in one city or town may be highly un-affordable in another. What have states done to encourage—or require—affordable housing in local governments? What are inclusionary ordinances and how do they work? We will review these questions and present a series of regulatory approaches to mandating affordability. We will explore a

April 30

Course Review and Summary

We will review the entire semester, leave time for open-ended questions and discussion and discuss the final “take home” exam.

Course Grade: The course grade is based upon class attendance, participation and a final, take home exam.

• I am pleased to answer questions raised during the course and discuss matters related to it anytime. Please feel free to schedule an appointment with me; I am willing to meet with you on campus at your convenience or talk via telephone anytime.
• I am best reached at: 617-827-9056.
• My e-mail address is: jon.witten@tufts.edu