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# Learning in Context: Land Use and Community Lawyering

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# Learning in Context: Land Use and Community Lawyering

ANDREA MCARDLE\*

## I. INTRODUCTION

A crucial challenge for law schools is keeping legal education focused upon and relevant to the practice-based contexts that law school graduates will encounter, and to prepare law graduates to approach law practice competently and ethically. Fortunately, legal educators have the benefit of two recently published, complementary frameworks for designing a curriculum and honing a pedagogy to implement carefully thought-through curricular goals. In the Clinical Legal Education Association's Best Practices for Legal Education: A Vision and a Roadmap ("Best Practices")<sup>1</sup> and the Carnegie Foundation's Educating Lawyers: Preparation for the Profession of Law ("Carnegie"),<sup>2</sup> legal educators and learning theorists have diagnosed problems and unfulfilled promises in delivering legal education, and have also offered guidance on how law schools can do better.<sup>3</sup> The

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\* Professor of Law, City University of New York School of Law. This essay is based on a presentation at Practically Grounded—Best Practices for Skill Building in Teaching Land Use, Environmental, and Sustainable Development Law on May 5, 2011, at Pace Law School. Many thanks to the conference organizers, Professor John R. Nolon of Pace Law School and Professor Patricia E. Salkin of Albany Law School, and the staff of the Pace Land Use Center, including Graduate Fellow Meg Byerly. Thanks also to panel moderator Professor Mary A. Lynch of Albany Law School, and co-panelist Professor Karl Coplan of Pace Law School, for helpful conversations, and to all those at the conference who offered their insights.

1. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES REPORT].

2. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT].

3. Both studies continue a focus on recognizing the importance of an instructional program featuring lawyering skills and values to prepare for the practice of law. For an influential statement from the national bar, see ROBERT MACCRATE, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (hereinafter

principal problems encompass, according to the Carnegie report, a lack of sufficient attention to preparing students for the clinical and ethical-social dimensions of law practice.<sup>4</sup> The recommendations of the Best Practices report describe the challenge as the need to better prepare law students for problem solving and professionalism, which it defines broadly to capture a similar range of value-based concerns that should inform an approach to law practice.<sup>5</sup>

Ideally, the design of a law school course should proceed with these complementary frameworks as starting points. As legal educators, we should consider whether and how any course we propose to teach will prepare students for competent and ethical law practice as part of a searching, rigorous process that encompasses defining goals for course content and scope, class size, format, and materials; relating those goals to a set of achievable learning outcomes; and developing appropriate pedagogical approaches and assignments that serve and further those learning outcomes. Thus, the course design process should consider generally how the course fits within the professionalization mission of legal education — how it helps students develop analytic and skills-based competence and promotes attention to ethical precepts and professional values<sup>6</sup> — while addressing more specifically how the course serves the mission and student population of the law school at which one teaches. It should address as well how the course might be effectively conceptualized in conjunction with other disciplinary perspectives, confront any institutional constraints in offering the course, and identify the benefits and any drawbacks in allocating

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MACCRATE REPORT), *available at* [http://www.americanbar.org/groups/legal\\_education/publications/maccrate.html](http://www.americanbar.org/groups/legal_education/publications/maccrate.html).

4. CARNEGIE REPORT, *supra* note 2, at 188.

5. BEST PRACTICES REPORT, *supra* note 1, at 79-91 (identifying professionalism as encompassing a commitment to justice; respect for the rule of law; honor, integrity, fair play, truthfulness, and candor; sensitivity and effectiveness with diverse clients and colleagues; nurturing quality of life).

6. In addressing these concerns, such a process approximates the three apprenticeships of professional education described in the Carnegie Report: cognitive-analytic, practice-based, and professional identity-based. CARNEGIE REPORT, *supra* note 2, at 28.

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personal and institutional resources to the course over other possible choices.

The premise behind the conference for which this essay has been written — identifying Best Practices for Skill Building in Teaching Land Use, Environmental, and Sustainable Development Law — engages these concerns very concretely with respect to a specific subject area and offers as well a suggestive road map for course design in other domains of law. In this essay I trace the trajectory of a process for designing a two-credit upper-level course, Land Use and Community Lawyering, that I will introduce in the Fall 2011 semester at the City University of New York School of Law (CUNY), an institution with a social-justice mission, dedicated both to preparing students to practice law in the service of human needs and to diversifying the legal profession.<sup>7</sup> First, I address the multiple goals of this interdisciplinary, interdoctrinal course, the desired learning outcomes associated with those goals, and the instructional methods and assessment devices I have chosen. I relate the design of the course to CUNY's institutional mission and curricular commitments and consider how it has been informed by both the Best Practices and Carnegie frameworks. Next, I discuss possible constraints and costs associated with undertaking the course and show why I believe that the anticipated benefits of offering the course justify the commitment of institutional resources. Finally, I discuss an early iteration of the syllabus, included as an Appendix to this essay, in an effort to concretize the goals, learning outcomes, and methods of the course and to situate them in the Best Practices framework.

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7. See *Philosophy and Mission*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/about/philosophy.html> (last visited June 11, 2011); see also *History*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/about/History.html> (last visited June 11, 2011).

## II. CONTEXT-BASED LEARNING: CHARTING COURSE GOALS, LEARNING OUTCOMES, AND INSTRUCTIONAL METHODS

A course that simultaneously engages land use issues and community lawyering may at first blush appear to conjoin several potentially incompatible domains: the first, land use, grounded in a set of doctrinal concepts and rules; the second, lawyering, addressing practice-based skills; and the third, focused on the idea of community, related to the responsibilities of client representation and justice aspirations that, in turn, implicate the professional-identity or ethical-social dimensions of a lawyer's role, to use the language of the Carnegie report.<sup>8</sup> Recognizing the complexities inherent in this structure, the joining of these domains was in fact a key component of the course design.

### Course Goals:

When I conceptualized the course, I was guided by a number of considerations: (1) to bring together my own professional and scholarly interest in urban studies and state and local institutions with CUNY Law's community lawyering orientation; (2) to help students develop the knowledge base and lawyering skills needed to represent community stakeholders—that is, typically less resourced communities affected by actions taken by local government or initiatives of private developers related to urban redevelopment and the urban environment; and (3) to address these issues of equity and access as they arise in the historically and spatially specific context of New York City, reflecting both the law school's location and its public-interest mission.<sup>9</sup>

Thus, from the outset, I have imagined the course as a way to engage law students at multiple levels. First, I hope to bring a

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8. CARNEGIE REPORT, *supra* note 2, at 176-80.

9. For perspectives on the founding principles that, with some changes in detail over the years, continue to guide CUNY's curriculum, see Charles Halpern, *A New Direction in Legal Education: The CUNY Law School at Queens College*, 10 NOVA L.J. 549 (1986); see also Haywood Burns, *Bad News, Good News: The Justice Mission of U.S. Law Schools*, 40 CLEV. ST. L. REV. 397 (1992). The authors were the first and second Deans, respectively, of CUNY Law School.

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broader urban studies focus into the specificity of New York City in the post-World War II era, by directing attention to developments in public policy and political economy and the attendant social costs that have affected the built environment and the dynamics of community formation.<sup>10</sup> These developments include efforts to implement post-war urban renewal initiatives and the famous resistance to those efforts,<sup>11</sup> the constraints imposed by a fiscal crisis in the 1970s,<sup>12</sup> and the pro-development ethos that has dominated New York City politics since the early 1980s.<sup>13</sup> At the same time, the course will consider the legal implications of land use decisions, including eminent domain and environmental clean-ups as well as zoning and landmark designations, and address the kinds of lawyering work — both doctrinal analysis and problem solving, including negotiation, drafting, and advocacy — needed to provide effective representation for communities with a stake in these decisions.

In this way, the course design takes account of the commitments and concerns that animate CUNY's mission to prepare students to become excellent public-interest lawyers and provide legal services to underserved clients and communities. The design of the course seeks to do that by introducing students to specific domains of knowledge and lawyering skills that they will need to acquire to represent community stakeholders in controversies involving empowered government actors and well-resourced developers and investors. The course also seeks to engage a critical perspective, to make students aware of the political and economic context within which land use law has

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10. The course will problematize rather than assume a monolithic or unitary meaning for the term “community.” See, e.g., Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 367-69 (2008).

11. See, e.g., SAMUEL ZIPP, *MANHATTAN PROJECTS: THE RISE AND FALL OF URBAN RENEWAL IN COLD WAR NEW YORK* (2010).

12. See, e.g., Steven R. Weisman, *City in Crisis II*, in *AMERICA’S MAYOR: JOHN V. LINDSAY AND THE REINVENTION OF NEW YORK* 193-209 (Sam Roberts, ed., 2010); SEYMOUR P. LACHMAN & ROBERT POLNER, *THE MAN WHO SAVED NEW YORK: HUGH CAREY AND THE GREAT FISCAL CRISIS OF 1975* 75-166 (2010).

13. See, e.g., ROBERT FITCH, *THE ASSASSINATION OF NEW YORK* 145-84 (1993); JONATHAN SOFFER, *ED KOCH AND THE REBUILDING OF NEW YORK CITY* 259-63 (2010).

developed and is practiced in New York City and its real estate sector-fueled growth bias.<sup>14</sup> By inviting students to consider how representing community-based clients is an opportunity to create new strategic resources to empower communities to intervene proactively in land use decisions in which they have a stake, the course promotes identification with social-justice aspirations and an ethos of community service that go to the heart of the law school's public-interest orientation.<sup>15</sup> In this effort to further the law school's mission, the course seeks to do the integrative work of the doctrinal-analytic, the practical, and the ethical-social that both the Carnegie<sup>16</sup> and Best Practices<sup>17</sup> reports call upon legal education to undertake.

### **Learning Outcomes:**

Related to these goals is a set of more specific learning outcomes that can be envisioned for students. The Best Practices report discusses learning outcomes in terms of what students "should know, understand, and be able to do" when they enter practice<sup>18</sup> and identifies seven principles that should guide law

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14. For an explanation of how the real estate sector both drives and depends on growth, see TOM ANGOTTI, *NEW YORK FOR SALE: COMMUNITY PLANNING CONFRONTS GLOBAL REAL ESTATE* (2008). Angotti writes from the perspective of community-oriented urban planning.

15. See *Philosophy and Mission*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/about/philosophy.html> (last visited June 11, 2011); see also *History*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/about/History.html> (last visited June 11, 2011).

16. See CARNEGIE REPORT, *supra* note 2. Doctrinal-analytic competency, referred to in the Carnegie Report as the "intellectual" or "cognitive" apprenticeship, entails an "academic knowledge base." *Id.* at 28. In the context of law school, it refers to rule-based analysis of legal doctrine and encompasses learning legal concepts and developing an understanding of how rules are interpreted and applied. The practical or practice-based apprenticeship encompasses a range of skills that lawyers need for the effective practice of law, and is engaged by participation-based learning, including use of role-plays or simulations, and clinical education. *Id.* The ethical-social domain, also referred to as the apprenticeship of identity and purpose, is values-based, and encompasses "ethical standards, social roles, and responsibilities that mark the professional." *Id.*

17. See generally BEST PRACTICES REPORT, *supra* note 1.

18. *Id.* at 55.

schools in setting them.<sup>19</sup> As detailed in the appended syllabus, the learning outcomes cover the spectrum of gaining core knowledge, understanding, and the ability to apply knowledge to specific lawyering activities. The course contemplates that students will gain an understanding of concepts in constitutional law (eminent domain/public use), property law (land preservation trusts, zoning, affordable housing), contract law (community benefits agreements), state and local government law (the procedures relating to the Uniform Land Use Review Process), and administrative law (New York City regulations governing uses such as community gardens). The course also requires students to apply that doctrinal understanding in context-specific, simulation-based exercises in drafting and negotiating a community benefits agreement and in planning for advocacy related to land use decisions before a local board. By the end of the course, students should also have a more nuanced understanding of the political economy and community impact of land use policies and laws in New York as a result of their exposure to the historical perspectives, grounded pedagogies, and conceptual frameworks of urban studies.

### Teaching Methods:

The course design draws on a number of teaching methodologies and in that hybrid approach is informed by principles of adult learning theory.<sup>20</sup> Conceived of as a seminar with a cap in the 20-student range, the course assumes that a significant portion of each class session will build on the active, student-driven aspects of discussion-based learning.<sup>21</sup> The course

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19. *Id.* at 49-50. Outcomes for a program of instruction should be developed in conjunction with multiple constituencies, should further a law school's mission, should be the result of a deliberative process, should be measurable, stated explicitly, should be reasonable in number, and reasonable in light of the capacity of students and faculty. *Id.*

20. See, e.g., Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995); JACK MEZIRROW AND ASSOCIATES, *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* (1990).

21. For an explanation of discussion-based learning, see BEST PRACTICES REPORT, *supra* note 1, at 226-31. See also generally STEPHEN D. BROOKFIELD &

will also incorporate periodic role plays and simulated lawyering activities and associated writing to be drawn from actual cases, either recently concluded or ongoing, including the Columbia University expansion and eminent domain controversy in West Harlem, and will place students in a variety of stakeholder roles in that learning context. The lawyering approach is one with which CUNY students are well familiar as the law school already requires students to complete three lawyering seminars (twelve credits) during the first two years of the program.<sup>22</sup> The seminar will adopt a problem method approach in the sense that it will focus students' attention as legal problem solvers over a series of classes on multiple facets of the recently concluded Columbia case.

The content of the course is also designedly topical, to keep students engaged and motivated by fostering a sense of relevance and immediacy. The seminar will draw from ongoing controversies such as the forty-plus-year Seward Park Urban Renewal Area dispute over use of a fourteen-block urban renewal tract in the Lower East Side,<sup>23</sup> and the Willets Point Redevelopment project in Northern Queens.<sup>24</sup> The course design also incorporates collaborative learning practices by building the major course assignment around group projects that will take as their object the generation of new knowledge and analysis about current land use development projects and their community impact.

Further, the seminar contemplates that students will approach legal problem solving with an understanding of the historical and sociopolitical context of land use disputes in New

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STEPHEN PRESKILL, DISCUSSION AS A WAY OF TEACHING: TOOLS AND TECHNIQUES OF DEMOCRATIC CLASSROOMS (1999).

22. *Lawyering Seminars*, CUNY SCH. OF LAW, <http://www.law.cuny.edu/academics/curriculum/Lawyering.html> (last visited June 11, 2011).

23. For background on that dispute and an apparent recent breakthrough in stalled negotiations over allocation of uses in the disputed land parcel, see Cara Buckley, *Board Backs Development of Site on Lower East Side With Housing*, N.Y. TIMES, January 26, 2011, A20, available at <http://www.nytimes.com/2011/01/26/nyregion/26seward.html?r=1&emc=tnt&tntemail=y>.

24. For background and a summary of the development plan for the project, see *Willets Point Redevelopment*, N.Y.C. ECON. DEV. CORP., <http://www.nycedc.com/ProjectsOpportunities/CurrentProjects/Queens/WilletsPointDevelopmentDistrict/Pages/WilletsPointDevelopmentDistrict.aspx>.

York City related to post-war urban renewal, fiscal crises, and gentrification. For that reason it will draw some assigned texts from the disciplines of urban planning,<sup>25</sup> public health,<sup>26</sup> and historiography.<sup>27</sup> Finally, in an effort to promote understanding of how political economy and social dynamics interact with the built environment, the seminar will model a literally grounded study of urban space by a planned walk for students through a New York City neighborhood undergoing transition or development.<sup>28</sup> Students will produce a reflective writing in connection with the walk and related interdisciplinary reading to review and record insights that they have drawn from these distinct approaches to engaging with course material. The reliance on different modes of writing throughout the semester (reflective, responsive to readings, lawyering-related, and project/presentation-summative) also draws on principles from the literature on writing across the curriculum, particularly on the concept that writing can solidify understanding of core knowledge and practice in a subject area.<sup>29</sup> The aim in combining these approaches is to promote active learning that is at once performative and discursive, collaborative and experiential. In relying on a variety of methods and in de-emphasizing Socratic dialogue, the course design seeks to follow the recommendations of the Best Practices report.<sup>30</sup>

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25. See, e.g., ANGOTTI, *supra* note 14.

26. See, e.g., JULIE SZE, NOXIOUS NEW YORK: THE RACIAL POLITICS OF URBAN HEALTH AND ENVIRONMENTAL JUSTICE (2006).

27. ZIPP, *supra* note 11.

28. For a reflection on a grounded-observational approach to understanding the built environment, see Robert Sirman, *Built Form and the Metaphor of Storytelling*, in WHAT WE SEE: ADVANCING THE OBSERVATIONS OF JANE JACOBS 159 (Stephen A. Goldsmith & Lynne Elizabeth, eds., 2010).

29. For the canonical elucidation of this idea in writing across the curriculum literature, see Janet Emig, *Writing as a Mode of Learning*, in 28 C. COMPOSITION & COMM. 124-26 (1977) (identifying a range of writing activities that can promote learning, such as case briefing. For a thoughtful application of the concept to law school pedagogy, see Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 LEGAL WRITING 1, 20-24 (2000) (identifying a range of writing activities that can promote learning, such as case briefing, responding to questions, outlining, and lawyering assignments).

30. BEST PRACTICES REPORT, *supra* note 1, at 132-41.

### III. CONSIDERING POTENTIAL COSTS AND CONSTRAINTS

An essential component of any course design process is assessing the reasons not to offer a course, reasons associated with the institutional mission, institutional resources, and institutional need to cover the subject in relation to other course offerings, student interest, and faculty availability and engagement in the subject matter. At CUNY Law School, a threshold consideration is always whether and how a course comports with CUNY's social-justice and access missions, and its related goal of preparing students who are "practice-ready" upon graduation to represent underserved individual and community clients. Thus, any new offering must be justifiable not only as one that is "mission-worthy" but also as one that complements institutional efforts to prepare students with a strong lawyering- and clinically-oriented program of study. The decision to develop a seminar in land use and community lawyering reflected that calculus. I considered how a New York City land use-focused course could address specific practice contexts in which CUNY graduates would likely operate. Further, I addressed the utility of a seminar format in which to do this.

To address those questions, I begin with the premise that the economic and political contexts in which land use law and policy have developed in New York City have led to real inequality of position in access to resources and opportunities to shape the content and application of land use doctrine, policy, and practice.<sup>31</sup> Thus, in my view, a course that focuses on strategies for effective representation of the least-resourced stakeholders does implicate the law school's mission. However, the question of whether a seminar format, as distinguished from a real-client clinic or an externship offering, is an appropriate vehicle for accomplishing the goals of the course consistently with the law school's mission, requires further analysis. Certainly, offering actual practice opportunities is a curricular priority at CUNY. At the same time, the costs of offering a clinic in terms of labor intensiveness of case supervision and the necessarily small

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31. See, e.g., ANGOTTI, *supra* note 14, at 179-246.

student-faculty ratios are substantial.<sup>32</sup> Externship courses entail their own sets of costs, associated with building and sustaining relationships with legal services providers willing to devise educationally beneficial experiences for law students and to supervise those students in the work.<sup>33</sup>

By contrast, a seminar format is less time and labor intensive, and thus allows an instructor to teach other courses. Also, to the extent that the seminar includes lawyering methodologies, such as role-plays and actual case studies, the course can bring the practice context of local land use law into focus. A separate advantage of a seminar is the opportunity it affords to incorporate readings and perspectives that students can engage effectively using discussion-based learning approaches. During the process of planning and now placing the course on the schedule, anecdotal information gathering and preliminary enrollment numbers suggest that initial student interest is high. This interest may indicate that students see the course as relevant to the lawyering work they came to CUNY to prepare for. Further, the specificities of the planned course coverage do not overlap significantly with other course offerings at the law school. From the perspective of this instructor, the course engages areas of scholarly and pedagogical interest and creates an opportunity to put them in conversation, which is generally seen as a “plus.”

For all of these reasons, a hybrid seminar that offers context-based learning through a variety of lenses and learning modalities seems, at least at this course-planning juncture, to meet concerns about institutional resources and pedagogical appropriateness, and to serve the particularities of CUNY’s mission.

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32. See, e.g., James H. Backman, *Where Do Externships Fit? A New Paradigm Needed: Marshaling Law School Resources to Provide an Externship for Every Student*, 56 J. LEGAL EDUC. 615, 621 (2006) (discussing costs of in-house clinics).

33. Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611, 612, 619-25 (2004) (describing supervision challenges).

#### IV. EXAMINING THE SYLLABUS

This early iteration of the course syllabus, set out in its entirety in the Appendix, is an effort to fit together the multiple goals and learning outcomes of the course design and to reflect a “best practices” orientation in terms of methods and assignments. It reflects feedback received at the Best Practices conference concerning whether the design of the course achieves an appropriate balance among types and number of assignments, given the credit allocation, and whether the approaches chosen are appropriate for course goals.

##### **Learning Objectives:**

The syllabus identifies four objectives that engage the Best Practices concepts of knowledge, understanding, and doing, and the Carnegie Report’s apprenticeships: (1) acquiring knowledge and understanding of specific doctrinal areas (property, constitutional, contract, state and local government law, and administrative law) related to selected land use issues; (2) gaining opportunities to practice specific lawyering skills in in-role exercises (drafting, negotiation, and planning for negotiation and advocacy) derived from actual cases; (3) gaining situated, grounded knowledge of the urban built environment and community formation and mobilization through a planned walk and observation of a New York City site; (4) developing an interdisciplinary understanding of the community impact of land use policies using an urban studies lens.

##### **Required Texts:**

To provide context for contemporary land use disputes, the seminar will assign texts that offer interdisciplinary perspectives on the contentious history of post-war urban renewal in New York City,<sup>34</sup> on the racial politics and public health implications of siting noxious environmental uses,<sup>35</sup> and on the interplay between urban planning, the real estate sector, and community

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34. ZIPP, *supra* note 11.

35. SZE, *supra* note 26.

activism in New York.<sup>36</sup> The course will also entail study of New York City's Uniform Land Use Review Procedure, which will be treated as a required text, and will assign primary authorities (judicial decisions, statutes, administrative regulations) and other legal materials (community benefit agreements, proposed legislation, court briefs) in actual cases, as well as secondary authorities and legal commentary (bar association report, law review articles). Given the seminar's New York City focus and selective topic coverage, I do not plan to assign a land use text but will consult, and place on reserve as reference texts, leading casebooks in the area, including Nolon, Salkin and Gitelman's *Land Use and Community Development: Cases and Materials*,<sup>37</sup> and Mandelker's *Land Use Law*.<sup>38</sup>

### Assignments:

My goal in developing assignments is to reflect and to reinforce student understanding of issues, materials, and activities highlighted in the course, to provide opportunities to practice a number of lawyering skills implicated in this work, particularly drafting, negotiation, and planning for these lawyering tasks,<sup>39</sup> and to promote reflection about professional role and identity as students prepare to work with diverse client communities in an equity- and justice-seeking context. The first graded assignment, a reflection memo, will ask students to draw insights from a walk that I will guide at a site that has been at the center of community debate about redevelopment (most likely the Tompkins Square Park and East Village areas in Manhattan), and to relate those insights about the complex

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36. ANGOTTI, *supra* note 14.

37. JOHN R. NOLON, PATRICIA E. SALKIN & MORTON GITELMAN, *LAND USE AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS* (7th ed. 2008).

38. DANIEL R. MANDELKER, *LAND USE LAW* (5th ed. 2003).

39. The MacCrate Report particularly recognized planning as a significant lawyering skill. For example, the report incorporates planning as a component of problem solving (Skill §1 .3), factual investigation (Skill § 4.2), and negotiation (Skill § 7.1). See MACCRATE REPORT, *supra* note 3, at 138-39, available at [http://www.americanbar.org/groups/legal\\_education/publications/maccrate.html#Fundamental%20Lawyering%20Skills](http://www.americanbar.org/groups/legal_education/publications/maccrate.html#Fundamental%20Lawyering%20Skills).

relationship between sense of place and community formation<sup>40</sup> to designated interdisciplinary course readings. In conjunction with a series of classes on the Columbia University extension in West Harlem, students will complete a written assessment of the community benefits agreement negotiated between the West Harlem Local Development Corporation and Columbia University.<sup>41</sup> To prepare for an in-class renegotiation role-play, students will draft a separate written planning document that includes attention to legal issues associated with enforcement of community benefits agreements.<sup>42</sup> The third major assignment will comprise a collaborative project, in which groups of three to four students will investigate and present on a current land use project in New York City, accompanied by individually authored written reports of their work for the study. Students in each group will agree on a division of labor that will include addressing the historical and sociopolitical context of the project, the legal and administrative procedures implicated, the legal issues, and the concerns and issues elicited among affected community stakeholders in the land use application. These projects contemplate that students will engage in legal research and fact investigation, and, if feasible, attend hearings or meetings associated with the application. The objectives of the assignments are to create a framework for students to engage in collaborative, inquiry-based learning, to engage their interest with a pending matter that they can monitor during the semester, to encourage critical, interdisciplinary analysis, and to promote the generation of multidimensional knowledge about the project as students memorialize their research, investigation, and analytic work in written form.

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40. See TOKARZ, *supra* note 10, at 367-68.

41. West Harlem Community Benefits Agreement between the West Harlem Local Development Corporation and the Trustees of Columbia University in the City of New York, May 18, 2009 (on file with author).

42. See, e.g., Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities, and Community Organizations*, 26 UCLA J. ENVTL. L. & POL'Y 291, 324-28 (2008).

**Class-by-class Coverage:**

In a seminar that meets once weekly, settling upon a focus for each two-hour class session presents challenging choices and has made it necessary to exclude many worthwhile topics, such as financing real estate transactions and a more extensive treatment of urban zoning. My hope is that the group projects will address more of the issues that are not explicitly covered in the syllabus. Certainly it will be important to reflect on, and perhaps rethink, these choices in course design with the benefit of some experience teaching the course.

As the syllabus indicates more fully, the class meetings tend to be thematic, taking up in one or successive sessions concepts and issues related to the questions of equity and access in land use that are core concerns of the course. With these considerations in mind, I have opted to begin the seminar with a class that introduces course themes and methods by engaging the meaning of “community.” Specifically, I will raise questions concerning community formation and mobilization as they pertain to land use: What factors, in addition to geographic proximity, contribute to the constitution of a community? How do public controversies attached to land use influence or intensify community identification? In contests over proposed land use decisions, who speaks for “the community”? Where community stakeholders assert various and divergent interests over land use, what is an appropriate process for engaging conflicting claims for priority and voice? As the context for this discussion, we will address the conflict over the proposed construction of an Islamic Cultural Center near Ground Zero, where the former World Trade Center stood in lower Manhattan, which has an intensely local character linked to a proposed use of an emotionally freighted, iconic area, but also has a national dimension by reason of that very iconicity.<sup>43</sup>

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43. For contemporary accounts of the group-based conflict over the proposed cultural center, see Michael M. Grynbaum, *Proposed Muslim Center Draws Opposing Protests*, N.Y. TIMES, Aug. 23, 2010, at A14, available at <http://www.nytimes.com/2010/08/23/nyregion/23protest.html?ref=park51>; see also Paul Vitello, *Islamic Center Exposes Mixed Feelings Locally*, N.Y. TIMES, Aug. 20, 2010, at A1, available at <http://www.nytimes.com/2010/08/20/nyregion/20muslims.html>.

The second session will take up urban renewal in New York City in the post- World War II period and its present-day remnants, focusing on how that issue became a lightning rod for neighborhood opposition and activism against top-down planning and architectural decision-making about “slum” clearance during a heyday of modernist sensibilities.<sup>44</sup> Continuing a focus on historical and sociopolitical context, the third session will consider the contributing causes to fiscal crisis and disinvestment in real estate in New York City in the mid-1970s and the resort to self-help, urban homesteading, and the birth of the community gardens movement.<sup>45</sup> Week four will situate the students in the formerly disinvested Tompkins Square Park and East Village areas to access “grounded” knowledge about the built environment, gentrification, and community responses.<sup>46</sup> This class will lay a foundation for a subsequent class on contemporary affordable housing initiatives.

In week five the seminar shifts focus to local use of the eminent domain power for redevelopment projects, examining community impacts and ensuing struggles. In this session the seminar will consider the Supreme Court’s efforts to address the meaning and scope of the concept of public use in *Kelo v. City of New London*<sup>47</sup> and the New York Court of Appeals’ discussion of public use under state law in *Matter of Goldstein*,<sup>48</sup> involving the controversial Forest City Ratner’s Atlantic Yards project to redevelop downtown Brooklyn. The focus on eminent domain continues in a series of classes addressing Columbia University’s expansion in West Harlem. The first of these sessions will analyze the appellate opinions<sup>49</sup> responding to legal challenges to the use of eminent domain in the university’s expansion. The next class, still in the context of the Columbia expansion,

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44. ZIPP, *supra* note 11, at 9-10.

45. See, e.g., CHRISTOPHER MELE, *SELLING THE LOWER EAST SIDE: CULTURE, REAL ESTATE, AND RESISTANCE IN NEW YORK CITY* 200-12 (2000).

46. For discussions of struggles over gentrification and access to affordable housing in the East Village, see *id.* at 236-54; see also Janet L. Abu-Lughod, *The Battle for Tompkins Square Park*, in *FROM URBAN VILLAGE TO EAST VILLAGE: THE BATTLE FOR NEW YORK’S LOWER EAST SIDE* 233-66 (1994).

47. *Kelo v. New London, Conn.*, 545 U.S. 469 (2005).

48. *Goldstein v. N.Y. State Urban Dev. Corp.*, 13 N.Y.3d 511 (N.Y. 2009).

49. *Kaur v. N.Y. State Urban Dev. Corp.*, 15 N.Y.3d 235 (N.Y. 2010).

considers the role of community benefits agreements as a device to create equity for community stakeholders in massive redevelopment projects. The following session will continue to test the advantages and potential drawbacks of the community benefits agreement in a lawyering role-play: assuming a variety of attorney roles (for one or more affected community groups, the city, and the developer), students will stage a renegotiation of the Columbia community benefits agreement. As currently planned, the final class in this unit will address the question of university expansion as a problem of sustainable development,<sup>50</sup> a class in which we will likely also address New York City's own plan for sustainable development, PlaNYC.<sup>51</sup>

The seminar continues to address issues of urban environmentalism and environmental justice in a session that examines the context for community activism against noxious uses in New York City<sup>52</sup> as well as the legal dimensions of some contemporary controversies. The next class will return to affordable housing, gentrification, and community activism. This class would be an appropriate juncture to bring in a community-oriented urban planner and/or a lawyer working on affordable housing issues as a guest speaker. This session will also begin the group presentations on contemporary New York City zoning, urban renewal, landmark designation or de-designation, and noxious-use challenges. Students will continue these group presentations over the next two classes, and the seminar will conclude by engaging ideas developed by urban social theorist David Harvey and others, reflecting on urbanization, neoliberalism, and urban citizenship: the "right to the city."<sup>53</sup>

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50. See Keith Hirokawa & Patricia E. Salkin, *Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia University*, 37 *FORDHAM URB. L.J.* 637 (2010).

51. For plan details, see *PlaNYC*, CITY OF N.Y., <http://www.nyc.gov/html/planyc2030/html/home/home.shtml> (last visited June 11, 2011).

52. See generally SZE, *supra* note 26.

53. See, e.g., David Harvey, *The Right to the City*, in *SOCIAL JUSTICE AND THE CITY* 315-31 (1973).

## V. CONCLUSION

If the classroom, like a state government, is a laboratory for fresh combinations of ideas and pedagogic experiments,<sup>54</sup> the seminar on Land Use and Community Lawyering is an effort to continue to stretch the limits of the upper-division law school seminar by combining an urban-oriented land use focus with a Best Practices approach to promoting core doctrinal knowledge and understanding, developing law practice-based skills, and engaging an ethical-social approach to professional formation. The proof of the experiment awaits, but the planning, an effort to embed in the course design the integrative work and Best Practices principles that legal educators have been charged with implementing, has been challenging in its own right. Like federalism at its best, the design of this course has been an effort to innovate, to engage questions of locality, community, equity, and access with an urban focus. This planning proceeds from an understanding that controversies around land use can take on a particular urgency and intensity, requiring a commensurate level of professional preparation and skill, when they confront the density, diversity, and dynamism of the urban landscape.

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54. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

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## Appendix

### LAND USE AND COMMUNITY LAWYERING SEMINAR

**Fall 2011: Tuesday, 4 p.m. – 6 p. m.**

**Professor Andrea McArdle**

Office: Room 300A-2

Phone: (718) 340-4348

E-mail: [mcardle@mail.law.cuny.edu](mailto:mcardle@mail.law.cuny.edu)

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#### LEARNING OBJECTIVES FOR THE COURSE:

1. to gain an understanding of concepts in property law, constitutional law, contract law, state and local government law, and administrative law relating to urban land use
2. to gain exposure to and opportunities to build skill in drafting, negotiation, and advocacy before local boards related to land use decisions through role plays derived from actual cases
3. to develop a situated knowledge of the urban built environment and the dynamics of community formation through a guided walk in a redeveloping New York City neighborhood
4. to gain exposure to an interdisciplinary approach to studying the community impact of land use policies in New York by using an urban studies lens

#### REQUIRED TEXTS:

Tom Angotti, *New York for Sale: Community Planning Confronts Global Real Estate* (MIT 2008).

Julie Sze, *Noxious New York: The Racial Politics of Urban Health and Environmental Justice* (MIT 2006)

Samuel Zipp, *Manhattan Projects: The Rise and Fall of Urban Renewal in Cold War New York* (Oxford 2010)

New York City Uniform Land Use Review Procedure,  
<http://www.nyc.gov/html/dcp/pdf/luproc/lur.pdf>  
Additional readings to be distributed

### **SIMULATION ACTIVITIES:**

During the semester, students will participate in role plays related to recently concluded and ongoing cases. These include a (re)negotiation and (re)drafting of sections of a community benefits agreement from the Columbia University expansion, and planning for advocacy before a local board/agency.

### **COLLABORATIVE PROJECT:**

All students will participate in a collaborative project, which will include a presentation and a writing component. Projects will be selected from a list that the class collectively develops of current land use projects and controversies.

### **GRADING:**

Your final grade in this course will be based on all of your work for the class over the course of the semester including:

- Written assessment of a community benefit agreement, including suggested revisions (2-3 pages) (10%)
- Planning and research memo related to renegotiation of community benefit agreement (4-6 pages) (20%)
- Short reflection essay on walk and related reading (3 pages) (15%)
- Class presentation related to group project (15%)
- Final (individual) writing related to group project (8-10 pages) (25%)
- Class participation and evidence of professionalism in approach to course assignments (10%).

A major portion of the seminar is taught through class discussion and in-class activities. Attendance and participation will affect your final grade.

### **Week 1: Introduction to course themes and methods; addressing community formation and community voice;**

**introducing ULURP; canvassing possible group projects****Tues., 8/23:****Readings:** Selections on land use and community conflict at Ground Zero: Islamic Center/Park 51 (to be distributed)**Week 2: Urban renewal and its discontents: community responses, then and now****Tues., 8/30:****Readings:** Zipp (selections to be assigned); Botein, New York State Housing Policy in Postwar New York: The Enduring Rockefeller Legacy, *Journal of Urban History*, Vol. 35, No. 6, 833-852 (2009); Seward Park Community Board guidelines for Seward Park Urban Renewal Area**Week 3: Fiscal crisis, disinvestment, self-help, and the birth of the community gardens movement****Tues., 9/6:****Readings:** Selections on fiscal crisis, urban decline, and community self-help responses (to be distributed); NYC Departments of Housing, Preservation, and Development and Parks and Recreation rules governing community gardens and NYC Community Gardens Coalition Comments; Elder, Protecting New York City's Community Gardens, 13 *N.Y.U. Env't'l L. J.* 769 (2006)**In-class:** Analysis of community garden regulations

**Week 4: Accessing local knowledge, documenting change:  
East Village walk**

**Tues., 9/13:**

**Readings:** Documenting East Village gentrification struggles (reading to be distributed); short readings on ways of seeing; observation and action (to be distributed)

**Assignment:** Reflection on walk (due Friday, 9/16)

**Week 5: Eminent domain: Kelo, public use, and its aftermath**

**Tues., 9/20:**

**Readings:** *Kelo v. City of New London*, 545 U.S. 469 (2005); *Matter of Goldstein (Brooklyn Yards)*, 13 N.Y.3d 511 (2009); *New York Eminent Domain Procedure Law*

**Week 6: No class (Thursday schedule)**

**Week 7: Eminent domain continued**

**Tues., 10/4:**

**Readings:** *Matter of Kaur* (Court of Appeals and Appellate Division 1st Dep't opinions, 15 N.Y.3d 235 (2010), reversing 72 A.D. 3d 1(1st Dep't 2009)); amicus briefs on cert. petition

**Assignment:** Review Columbia CBA and prepare written analysis (due Tuesday, 10/11)

**Week 8: Columbia University expansion and community benefit agreements****Tues., 10/11:**

**Readings:** Foster & Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 Cal. L. Rev. 1999 (2007); New York City Bar, *The Role of Community Benefit Agreements in New York City's Land Use Process* (pdf to be distributed)

**Assignment:** Prepare research and planning memo for renegotiation of community benefits agreement (due Tuesday, 10/18)

**Week 9: Community benefit agreements continued****Tues., 10/18:**

**Readings:** Salkin & Lavine, *Understanding Community Benefit Agreements: Equitable Development, Social Justice, and Other Considerations for Developers, Municipalities, and Community Organizations*, 26 UCLA Envt'l. & Pol'y 291 (2008)

**In class:** Renegotiation of CBA role play (roles to be assigned)

**Week 10: Environmental justice: sustainable development at Columbia University and beyond****Tues., 10/25:**

**Readings:** Hirokawa & Salkin, *Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia University*, 37 Fordham Urb. L. J. 637 (2010); PlaNYC, <http://www.nyc.gov/html/planyc2030/html/home/home.shtml>.

**Week 11: Environmental justice continued**

**Tues., 11/1:**

**Readings:** Sze (excerpts to be assigned); material on Gowanus Canal, Newtown Creek, and Willets Point (to be distributed)

**In class:** Advocacy role play (roles to be assigned)

**Week 12: Community-based planning: preservation, anti-gentrification, and affordable housing; begin group presentations**

**Tues., 11/8:**

**Readings:** Angotti (selections to be assigned); Zipp (selections to be assigned); Initiative For Neighborhood and City-Wide Organizing, *The Making of a Movement: How Organizing is Transforming Housing in New York City* (pdf to be distributed); Davidson & Josephson, *Litigation to Save New York's Subsidized Housing*, 18 *J. Affordable Housing & Comm. Develop. L.* 71 (2009)

**Assignment:** Presentations on group projects

**Week 13: Group presentations continued**

**Tues., 11/15:**

**Assignment:** Presentations on group projects

**Week 14: Group presentations continued**

**Tues., 11/22:**

**Assignment:** Presentations on group projects

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**Week 15: Last class: reflection and celebration**

**Tues., 11/29:**

**Reading:** Harvey, Right to the City (to be distributed)

**Assignment:** Final written submission for group project submitted via TWEN at 11:59 p.m. (due Monday, 12/19)