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## **They Do Teach That in Law School: Incorporating Best Practices into Land Use Law**

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# They Do Teach That in Law School: Incorporating Best Practices into Land Use Law

PATRICIA E. SALKIN\*

## I. INTRODUCTION

When my colleague Professor John Nolon and I set out to update our land use law casebook in 2007,<sup>1</sup> a discussion ensued about the teacher’s manual that would accompany the book. We were certain we wanted to include ideas and examples of “hands-on” exercises and problems that, through “active learning”<sup>2</sup> methodologies, would encourage students to develop an “up close and personal” relationship with the types of documents and forms they would undoubtedly work with after law school and engage in the types of problem-solving and analysis a land use lawyer would engage in on a routine basis. As we started to share with each other our own experiences with various assignments and tasks that we had individually incorporated into our own

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\* Patricia E. Salkin is the Raymond & Ella Smith Distinguished Professor of Law, Associate Dean and Director of the Government Law Center. Special thanks to my colleague Professor Mary Lynch of Albany Law School, Director of the Center for Excellence in Law Teaching, who has been a source of inspiration and cutting edge information on curricular design and teaching. Thank you also to my colleague Professor Keith Hirokawa of Albany Law School, who, with Professor Lynch, offered insightful feedback on early drafts of this essay, and to my research assistant, Dominic Donato, 2012. A special thank you to my colleague, mentor, collaborator and friend, Professor John Nolon, who made this symposium happen “on the ground.”

1. See JOHN R. NOLON ET AL., *LAND USE AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS* (7th ed. 2008).

2. See Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Learning*, 54 *J. LEGAL EDUC.* 551, 552 (2004) (“Active learning recognizes that, during classroom time, students should be engaged in behavior and activities other than listening. Active learning requires students to undertake higher-order thinking, forcing them to engage in analysis, synthesis and evaluation.”). For a bibliography on active learning, see PAULA M. YOUNG, *BIBLIOGRAPHY OF BOOKS AND ARTICLES ON ACTIVE LEARNING AND OTHER TECHNIQUES FOR TEACHING LAW* (2008), available at <http://lawteaching.org/resources/bibliographies/young-paula-activelearningbibliography200807.pdf>.

teaching, we each provided the other with new ideas which led to further brainstorming about more creative ways of teaching the course to supplement the traditional Langdellian casebook method.<sup>3</sup> We also considered that if we were experimenting with problem-based learning, site visits, and use of actual zoning ordinances, then our colleagues across the country must also be using additional teaching tools to cover the curriculum. Meanwhile, nationally at about the same time, both the Carnegie Report and Best Practices in Legal Education report<sup>4</sup> were being discussed, and as a faculty at Albany Law School, we were discussing the changing landscape of legal education.<sup>5</sup>

Curiosity got the best of us, and we decided to develop a survey instrument to learn how the teaching of land use law was changing. The survey methodology and results are detailed in our recent article in the *Journal of Legal Education*.<sup>6</sup> To coincide with the publication of this article, we decided to create a forum where land use law, environmental law and sustainable development law faculty could convene to learn from each other's

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3. See, e.g., Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 600 (2007) ("The fact is, Langdell's case method is good for some things, but not good for others. We are not talking about fancy goals here; we are talking about teaching students how to 'think like a lawyer.' Langdell's case method fails in this mission. It fails because lawyers increasingly need to think in and across more settings, with more degrees of freedom, than appear in the universe established by appellate decisions and the traditional questions arising from them.").

4. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) ("BEST PRACTICES"); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) ("Carnegie Report").

5. Professor Mary Lynch maintains the leading blog for all interested in trends and development. The blog explains that the "site was created with two goals in mind: (1) to create a useful web-based source of information on current reforms in legal education arising from the publication of Roy Stuckey's *Best Practices for Legal Education* and the Carnegie Foundation's *Educating Lawyers*; and (2) to create a place where those interested in the future of legal education can freely exchange ideas, concerns, and opinions." See Mary A. Lynch, *About this Blog*, BEST PRACTICES FOR LEGAL EDUC., <http://bestpracticeslegaled.albanylawblogs.org/about/> (last visited June 11, 2011).

6. See Patricia E. Salkin & John R. Nolon, *Practically Grounded: Convergence of Land Use Law Pedagogy and Best Practices*, 60 J. LEGAL EDUC. 519 (2011).

creativity in the classroom.<sup>7</sup> Although my roles were facilitator and moderator during the program, I was motivated by the varied approaches discussed to share my own thoughts in the form of this essay.

## II. GOALS, OUTCOMES, AND ASSESSMENTS

I have been teaching land use law for more than a dozen years, both for graduate students in urban planning and for law students.<sup>8</sup> Without knowing the current proposed policies being debated by the Section on Legal Education at the American Bar Association concerning the development of goals and outcomes for what it is we expect our students to know,<sup>9</sup> I set my own for the

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7. See Matt Festa, *Practically Grounded Conference on Best Practices in Teaching Land Use*, LAND USE PROF BLOG (May 8, 2011, 3:04 PM), [http://lawprofessors.typepad.com/land\\_use/2011/05/practically-grounded-conference-on-best-practices-in-teaching-land-use.html](http://lawprofessors.typepad.com/land_use/2011/05/practically-grounded-conference-on-best-practices-in-teaching-land-use.html) (conference summary).

8. Unfortunately, these courses have been taught at different schools and for the most part, the students are not often cross-disciplinary. Some of our colleagues who teach land use law have shared at various meetings that their courses often enroll both planning students and law students in the same section, and they have reflected upon the exciting teaching opportunities that exist when students from different disciplines study the same material together.

9. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT OF THE OUTCOME MEASURES COMMITTEE (2008), available at <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measure%20Final%20Report.pdf>. Prof. Mary Lynch's Best Practices for Legal Education blog follows the work of the ABA Standards Review Committee. See, e.g., Lynch, *supra* note 5, at <http://bestpracticeslegaled.albanylawblogs.org/2011/03/25/input-needed-newest-src-accreditation-revisions-chicago-meeting> (Mar. 25, 2011). There is also a category on the blog for Best Practices, Outcomes & Assessment Techniques. See *id.* at <http://bestpracticeslegaled.albanylawblogs.org/category/best-practices-outcomes-assessment-techniques/> (last visited June 11, 2011).

"The core goal of legal education should be the same as all other forms of professional education, which are, according to the authors of the Carnegie Foundation's report on legal education, 'to initiate novice practitioners to think, to perform, and to conduct themselves (that, is to act morally and ethically) like professionals.' The Carnegie authors observed that toward the goal of knowledge, skills, and attitude, education to prepare professionals involves six tasks: (1) Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research; (2) Providing students with the capacity to engage in complex practice; (3) Enabling students to learn to make judgments under conditions of

students in the land use course,<sup>10</sup> and I share them with the students in writing and review them on the first day of class. I continue to refine the outcomes and assessments each semester I teach the course based upon feedback from students and evolving ideas and concepts in the literature on legal education and on teaching.<sup>11</sup>

Goals for students in my land use law course are to ensure that students:

- Develop a solid knowledge of national theories and concepts in land use law;

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uncertainty; (4) Teaching students how to learn from experience; (5) Introducing students to the disciplines of creating and participating in a responsible and effective professional community; and (6) Forming students able and willing to join an enterprise of public service. The Carnegie Foundation's report concluded that it is important for law schools to address all of these purposes. 'Since in essence, these tasks of professional education represent commonplaces of professional work, a normative model in which each feature is essential, we believe that the more effective the preparation for the profession is to be, the more consciously the educational program must actually address all these purposes.'). STUCKEY ET AL., *supra* note 4, at 41-42 (recommendations of the Carnegie Report as discussed in BEST PRACTICES).

10. To help identify learning outcomes appropriate to individual courses, Professor Barbara Glesner Fines of the UMKC School of Law distributed a list of twenty questions to identify learning outcomes at the September 2008 Crossroads Conference. See Barbara Glesner Fines, *Twenty Questions to Identify Learning Outcomes: Crossroads Conference – September 2008*, UMKC Sch. of Law, <http://www.law.umkc.edu/faculty/profiles/glesnerfines/BGF20Q.htm> (last visited June 11, 2011). Some of these questions I found particularly helpful, such as: "Why do students take your course? What expectations do the bench and bar have for students who have taken your course? What do you think students will most remember from your course in three years? What role(s) do lawyers play in the field of practice connected with your course? How does your course introduce students to that role? Who are the clients your students encounter in this course? What do they learn about those clients and their world? What central dilemma faced by attorneys practicing in your subject area do your students have an opportunity to face and resolve in this course?" *Id.*

11. Over the years, many faculty members have offered suggestions as to what would be appropriate skills for law students to acquire during their formal education. See, e.g., Judith T. Younger, *Legal Education: An Illusion*, 75 MINN. L. REV. 1037, 1039 (1991); Eric Mills Holmes, *Educating for Competent Lawyering – Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 578-80 (1976). Much of the recent literature focuses on articulating institutional competencies that can then inform the decisions of individual faculty.

- Develop a working knowledge of the planning and zoning enabling statutes and laws in New York;
- Be able to access updated current zoning laws which are not indexed and available on Westlaw or Lexis;
- Be able to read and interpret provisions in local zoning codes;
- Be familiar with the content and organization of comprehensive land use plans;
- Understand the roles, responsibilities and powers of the various players in the land use game;
- Understand the intergovernmental and political dynamics of land use regulation;
- Appreciate and practice different types of writing that may be required of land use attorneys; and
- Develop a set of research tools to best support information gathering and client representation.<sup>12</sup>

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12. These goals follow closely the calls in the Carnegie Report integration of legal analysis, practice competence, and professional identity development. *See, e.g.*, WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW – SUMMARY 8-10 (2007), available at [http://www.albanylaw.edu/media/user/celt/educatinglawyers\\_summary.pdf](http://www.albanylaw.edu/media/user/celt/educatinglawyers_summary.pdf). (“Recommendation 1 . . . To build on their strengths and address their shortcomings, law schools should offer an integrated, three-part curriculum: (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth; (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work. . . . Recommendation 5: Design the Program so that Students – and Faculty – Weave Together Disparate Kinds of Knowledge and Skill. Although the ways of teaching appropriate to develop professional identity and purpose range from classroom didactics to reflective practice in clinical situations, the key challenge in supporting students’ ethical-social development is to keep each of these emphases in active communication with each other. The demands of an integrative approach require both attention to how fully ethical-social issues pervade the doctrinal and lawyering curricula and the provision of educational experiences directly concerned with the values and situation of the law and the legal profession. As the example of medical education suggests, these concerns ‘come alive’ most effectively when the ideas are introduced in relation to students’ experience of taking on the responsibilities incumbent upon the profession’s various roles. And, in teaching for legal analysis and lawyering

Since I teach the course as a seminar and require a publishable quality paper in lieu of a written exam, I had to find alternative ways to assess whether the students were meeting the stated learning objectives. To accomplish this, I give the students ten homework assignments each semester that supplement the required course readings and classroom discussions and account for different learning styles.<sup>13</sup> Although the assignments require varying levels of effort, each assignment is worth a total of 10 points for a grand total of 100 points towards their final grade. I instruct the students that for each day an assignment is late, one full point will be deducted, and an assignment will not be awarded credit if it is submitted after the conclusion of the class following the week that it was initially due. In addition to the assignments, which are weighted, final grades incorporate the grade on their paper as well as class participation.<sup>14</sup> The next section briefly describes many of the assignments I have used and explains how they relate to individual outcome assessments.

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skills, the most powerful effects on student learning are likely to be felt when faculty with different strengths work in a complementary relationship.”).

13. Students have diverse learning styles, and exposure to different teaching strategies that go beyond the traditional case method help to ensure that the professor will reach more students in the class. See, e.g., Shawn L. Whiting, *Breaking With Tradition: A Two-L's Perspective on the Case Method*, 3 PHOENIX L. REV. 381 (2010); M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139 (2001) (explaining why law professors should be concerned with learning styles, highlighting different types of learning styles, and offering suggestions on accommodating different style for absorbing and processing information.).

14. This combines formative and summative assessment, whereby students are given feedback on multiple assignments throughout the course and also graded upon the completion of a final project, indicating their level of achievement. See Heather Zuber, *A Fresh Look At Assessing Students' Work Product: What Is Assessment, Why We Assess, And How To Do So Effectively and Efficiently*, 19 No. 1 PERSP.: TEACHING LEGAL RES. & WRITING 20, 21 (2010) (“... it is imperative for professors to provide students with both formative and summative assessments, with frequent formative assessment being a key factor to student success.”).



### III. LAND USE PRACTICE AS A MODEL FOR LAND USE LEARNING<sup>15</sup>

The first challenge I face each semester that I prepare to teach land use is deciding what material is essential to cover and what the students can afford to learn later on their own if necessary.<sup>16</sup> Since this is an upper level elective course, I start with a number of assumptions: students have some basic idea of what zoning is from their property course; nuisance law, eminent domain and regulatory takings have at least been mentioned in property courses and in some classes they were explored in depth; in constitutional law courses, students have been exposed to basic First Amendment concepts that apply to the regulation of signs and billboards; some students may have taken a seminar in the First Amendment and they will be more familiar with issues involving regulation of adult entertainment facilities and religious land use; and some, but not all students, may have taken state and local government law, indicating that not all students will have basic understanding of home rule and the legal and political structure of local governments.<sup>17</sup>

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15. See SULLIVAN ET AL., *supra* note 4, at 87 (“Learning to think like a lawyer is . . . the main occupation of students’ first phase in law school. But developing lawyers must at some point learn another set of demanding skills, all the while negotiating the complex transition from the stance of student . . . to that of apprentice practitioner.”).

16. A recent article suggests that non-traditional teaching approaches may be more effective than lectures, even when lectures are able to provide more complete coverage of course materials. See *An Alternative Vote: Applying Science to the Teaching of Science*, THE ECONOMIST, May 12, 2011, [http://www.economist.com/node/18678925?story\\_id=18678925&fsrc=rss](http://www.economist.com/node/18678925?story_id=18678925&fsrc=rss); see also Bridgit Burke, *New Study Confirms Benefit of Non-Traditional Teaching Methods*, BEST PRACTICES FOR LEGAL EDUC. (May 17, 2011), <http://bestpracticeslegaled.albanylawblogs.org/2011/05/17/new-study-confirms-benefit-of-non-traditional-teaching-methods>.

17. As an upper level course, this seminar assumes that students have achieved a basic understanding of the structure and content of relevant legal principles. As such, this course attempts to integrate practical and theoretical knowledge of concepts specifically pertaining to land use law, in accordance with studies regarding the efficacy of integrated coursework. See generally Brian K. Landsberg, *Integrated Legal Education*, J. EXPERIENTIAL LEARNING LEGAL EDUC., 166, 167-68 (2010) (describing study that recommends “integration of student learning of theoretical and practical legal knowledge and professional identity.”).



### A. Obtaining a News Article

Because not every student has familiarity with the breadth and reach of daily land use decision-making, the first task I assign is for them to search through a news source – either in print or online – and to bring to class an article that describes a current land use controversy in any community of their choice. In addition, so that all students in the course have access to the information, I ask students to post a link to their article and a brief summary on our course TWEN site. On the due date, we quickly go around the room and each student talks about the situation they selected.<sup>18</sup> Because there are so many stories, rarely have two students selected the exact same article. This exercise enables me to demonstrate up front a number of things: the variety of issues that the course will address throughout the semester; the importance of community participation and input throughout the land use process (e.g., many of the articles indicate why projects are controversial from the community’s perspective); various boards and various levels of government may be involved in project reviews; the time that it may take for projects to receive approval, which can also lead to a preview of the discussion on the economics of land use control; and the realization that so many issues are interconnected in a land use context – such as transportation, housing, the environment, and economic development.<sup>19</sup> Every few years, rather than a news article, someone will bring in an official public notice for a public hearing, and this also provides a good teaching moment about why these notices are in the paper, what they must contain, and how they may be easily overlooked by members of the public just scanning the headlines. This exercise contributes to my course

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18. See Afra Afsharipour, *Integrating the Financial Crisis in the Business Associations Course: Benefits and Pitfalls*, 5 J. BUS. & TECH. L. 5, 8-9 (2010) (“Including discussions about relevant current events gives students context for the fundamental legal concepts they are learning, provides real-world examples of these concepts in action, and allows active engagement with the course materials in a way that traditional Socratic and judicial opinion analysis methods do not allow.”).

19. See STUCKEY ET AL., *supra* note 4, at 227-28 (demonstrating the ability of classroom discussion to foster student engagement and to meet the teacher’s educational goals more efficiently and effectively).

goal of making sure the students develop an understanding of the intergovernmental and political dynamics of land use regulation.

### **B. Land Use Law on the Internet**

Since so many people today get information from the Internet, I want students to be able to develop their own sense of good or credible information that is available on the Internet as contrasted with less than credible information in the land use law context.<sup>20</sup> I ask students to familiarize themselves with web sites and blogs that contain information for planning and zoning issues. Their assignment is to select the ten most interesting sites to them for law-related information and to email me: a list of the ten sites with the name of the site and the IP address, a two or three sentence description of what type of legal information/subject matter is available on each site, and a note on who maintains/publishes the site and when it was last updated. I then compile a comprehensive listing of all of the sites submitted and post the list to the course website so the entire class can access the sites for assistance in research throughout the semester.<sup>21</sup>

This assignment accomplishes a number of goals or objectives, including being able to effectively use the Internet for legal research and for non-legal information gathering.<sup>22</sup>

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20. The use of internet resources for online legal research has significantly increased since 2003, illustrating the importance of students' abilities to filter out less credible information. See DAVID I.C. THOMPSON, *LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE* 48-49 (2009) (stating that over 95 percent of today's attorneys use the internet to conduct legal research). Many people are also writing about the use of technology for teaching millennial students. I should note that I also integrate other types of technology into the classroom including the use of power point presentations, the use of TWEN wikis, and, at times, a recording of an oral argument before a state high court.

21. This indirectly introduces a collaborative element to the class, as students must complete the assignment while considering the long-term benefits of compiling a list of accurate and trustworthy sources for the class to use in conducting research. See MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 19 (2009) (noting the benefits of cooperative learning between students).

22. See Aliza B. Kaplan & Kathleen Darvil, *Think [And Practice] Like A Lawyer: Legal Research for the New Millenials*, 8 *J. ASS'N LEGAL WRITING DIRECTORS* 1, 4 (2011) ("In order to best prepare our students to practice law, legal research instruction should be integrated throughout the law school

Addressing non-legal information gathering first, students will find a host of tools available on the Internet that include data in geographic information systems, blogs or websites set up by project sponsors or project opponents, census data, etc., that prove very effective in supporting or defeating a project application. Familiarity with these secondary sources can be a critically important tool for effective client representation, and this type of information will not be available on traditional law-related commercial databases. While there is a growing presence of primary source information available, the Internet still remains fertile ground for good secondary source material. This may take the form of articles posted, reported cases digested, compilation of news sources and other secondary sources related to narrow subject matters, blogs, and law firm and planning firm websites that contain varied substantive information.

To effectively complete this assignment, students must dig into the site and be able to identify who maintains the site. If they cannot find the site creator, moderator or sponsor, they may not use the site on their list of sources. By identifying the site sponsor, the students are able to consider whether the sponsor has a point of view, whether the information is neutral, and whether the information is filtered. Even if the information is biased or slanted towards a particular point of view, this is in and of itself not a bad thing – it is just important for the user to be aware. Furthermore, requiring the students to identify when the site was last updated causes them to pause to consider whether the information and analysis contained on the site is current. It would be most embarrassing, not to mention malpractice, for a lawyer to rely on outdated information or reversed cases. Unlike reported cases that can be plugged into a cite check program, there is no such filter for information obtained from general websites and blogs. Lastly, by taking the time to write a description of what information is actually contained on the site, students must spend a reasonable amount of time reviewing the various pages on the site, allowing them to further assess the

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curriculum, taught by those with the appropriate level of expertise, and should incorporate the resources and technology used by practitioners.”).

quality and perhaps general reliability of the information on the site.<sup>23</sup>

By compiling a comprehensive class list of the sites identified by each student, they become accountable to the class in that their list becomes a “top ten” recommended list of sources for their classmates. Bad judgments may lead others astray in researching Internet based sources for their final course paper. Although I stress students should not over-rely on Internet-based sources for their legal research paper, almost every paper contains links and other Internet sources.

### **C. Players in the Land Use Game**

An effective land use lawyer understands the backgrounds and relationships of the players or stakeholders in the land use planning and decision-making process. An awareness of who these people are – what training they may bring to the job, whether they are subject to standards or codes of ethics, how they are hired and fired (e.g., merit, political appointees, etc.), and powers and authorities they have – are critical insights to help provide effective counsel to clients. Although cases in the textbook refer to various boards and commissions, planners, engineers, clerks, legislators and others, the cases never explain the backgrounds that these people bring to their roles, and the cases rarely focus on the powers and duties of these players. To address this knowledge gap, during the first week of class each student signs up (using TWEN) to research and assume the role of one of the following players in the land use game: Professional Planner; Town Supervisor/City Mayor; Town/City Attorney; Zoning Board/Commission Member; Planning Board/Commission Member; Town Board Member/City Council Member; Town/City Engineer; Town/City Clerk; Zoning Enforcement Officer; and

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23. See Coleen M. Barger, *On The Internet, Nobody Knows You're A Judge: Appellate Courts' Use of Internet Materials*, 4 J. APP. PRAC. & PROCESS 417, 426 (2002) (“... ‘Publication on the Web can often bypass . . . traditional methods of filtering information for quality, thus making the end user of the information more responsible for the evaluation process.’ Those traditional methods include determining that ‘an authoritative source’ has written or published the information; that the information has been ‘authenticated by editorial review’; and that it has been ‘evaluated by experts, reviewers, subject specialists or librarians.’”).

Building Inspector.<sup>24</sup> They must then prepare to answer/discuss the following in class, as it pertains to their “player” on the assignment due date:

- 1) How did you get your job/position?
- 2) Who do you work for?
- 3) What are your qualifications for this job/position?
- 4) How long will you hold your job/position?
- 5) What is your average compensation?
- 6) What is your general role/responsibility with respect to land use?
- 7) Are you required to complete ongoing formal training for your job?
- 8) What ethical codes or laws are you subject to?<sup>25</sup>

To answer these questions, students are instructed that at a minimum, they should consult the casebook, the Internet, and statutes in states of their choice. Students have also occasionally called local government offices and interviewed actual people in these job titles. In addition to a verbal information exchange through discussion in class, students are required to post their written summaries on a class wiki located on our TWEN site. The written work product is required to include citations to all sources consulted.

Multiple learning outcomes from this assignment are achieved. In addition to the obvious awareness of the players and how they are connected to each other, to the municipality and to the review or enforcement processes, students develop a sense of the training or lack thereof required for these positions.

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24. This simulation activity is designed to promote active learning of the casebook material and land use law. Role playing adds an element of reality to the reading and therefore engages students in a manner that would not be possible by simply requiring them to brief cases. See SCHWARTZ ET AL., *supra* note 21, at 18-19 (discussing the benefits of active learning, including better thinking skills, ability to understand concepts, lawyering skills, and professional values).

25. See Keith Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1, 21 (2009) (“... a land use course should incorporate the professional perspectives which make up the practice of land use law. Students need to understand not just that other disciplines are important to the resolution of land use controversies, but also the roles that such professionals play.”).

Additionally, classroom discussion is able to highlight the various statutes that must be consulted in finding answers to some of these questions.<sup>26</sup> For example, all of the stakeholders in the land use game are not described in the planning and zoning enabling acts. Some positions may appear in other sections of state statutes governing the organization of local governments. Furthermore, depending upon the player selected, in addition to general local government ethics laws that might govern their conduct, students discover that land use ethics issues are addressed in some states in the planning and zoning enabling acts, and in other states they may be in an entirely different section of the law. Professional ethics codes may apply to some players – such as lawyers, professional planners and engineers – and students have to find those codes of ethics that may be tied to licensing or certification requirements and standards. Realizing that some players are paid a “regular” salary and others receive a modest stipend for public service, while some serve for no remuneration, sensitizes students to potential external factors that may have subtle impacts on behaviors.

#### D. Obtaining a Zoning Ordinance

It may seem a bit old fashioned in the technology age, but I require all of my students to obtain an actual copy of a local zoning ordinance from a municipality of their choice. While I stop short of requiring students to spend their money to purchase the hard copy (they can later access an electronic copy for other class purposes), I do require that they make an in-person effort (or telephone if they are interested in a municipality out of the region) to obtain a copy of a local law.<sup>27</sup>

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26. Land use law is complex, because it involves a number of different federal, state, and local statutes and includes a wide variety of players. Therefore, increasing students’ awareness of the complexity of land use law is an important goal in itself. *See id.* at 20 (“[A] land use course could be used to simplify the structure of land use law. Students should learn how to identify and research local, state, and federal laws; how to prioritize and contextualize those sources; how the procedures affect the substance of relevant rights; and how to differentiate among the local variations.”).

27. By completing this assignment, students are improving their fact-finding and legal writing skills, which have been identified as areas of concern for graduate students entering the profession. *See* Gary S. Laser, *Legal Education I:*

The purpose of this assignment is multi-fold. Lawyers must have a copy of the current zoning law or ordinance in the applicable municipality to represent and advise their clients. These local laws are not currently available on Westlaw or Lexis. While some may be available on-line through commercial indexers such as General Code<sup>28</sup> or MuniCode,<sup>29</sup> the codes on these sites are not updated immediately following the board meeting where legislative changes may be made to the law (e.g., updates may only be made quarterly or semi-annually). Although many municipalities post their zoning laws to municipal websites, these may not always reflect the most current version of the law. Furthermore, many state enabling statutes define the zoning ordinance as consisting of the written text and a zoning map,<sup>30</sup> and these on-line sources do not provide the map, only the narrative text. Through a couple of “simple” questions to guide class discussion, it quickly becomes apparent that the meters and bounds descriptions in the narrative text that describe the location of various zoning districts/boundaries offer little to lawyers who must also visually locate their client’s parcel on the zoning map.

In addition to requiring students to bring a copy of a zoning ordinance to class, students must first post a written wiki entry on our course site with the following information: the name of the municipality whose zoning ordinance/law they have obtained; description of how the zoning ordinance was obtained (e.g., who/what office did they call; were they referred somewhere else; was there a charge, and if so, did this get them to change to a different municipality; did they have to complete paperwork to obtain the law (such as completing a Freedom of Information Law

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*Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 277 (identifying gaps in students’ practical legal skills, including written and oral communication, fact finding, and counseling).

28. *E-Codes: Municipal Codes on the Internet*, THE GENERAL CODE ADVANTAGE, <http://www.generalcode.com/webcode2.html> (last visited June 11, 2011).

29. *Municode Library*, MUNICODE.COM, <http://www.municode.com/library/library.aspx> (last visited June 11, 2011).

30. See, e.g., AM. PLANNING ASS’N, GROWING SMART LEGISLATIVE GUIDEBOOK, § 8-201(3) (Stuart Meck ed., 2002), available at <http://www.planning.org/growingsmart/guidebook/eight02.htm#8201>.



request); how easy or difficult was it to obtain; was a copy of the map included with the written text; what is the date the zoning ordinance/law was adopted; and has the law been amended, and if so, when was the last amendment.<sup>31</sup> The learning outcomes from this part of the assignment include: research skills in finding laws governing client actions where the laws are not available on commercial websites and are not typically found in law libraries; questions regarding the ease or difficulty in accessing local laws that community members are required to follow; policy considerations as to whether members of the public should be required to pay for a copy of the law they must follow (which leads to discussions of state Freedom of Information Laws that permit governments to charge a fee for the reasonable cost of producing a copy of the requested document); and the benefits and legal pitfalls of relying on ordinances that are posted to a website and might not represent the most current version of the law.

The zoning ordinances are then used to supplement multiple classes during the semester. Typical casebooks do not contain reprints of zoning ordinances nor do they contain substantial excerpts from these local laws. Students are reading cases with outcomes that hinge on language in these laws and ordinances, yet almost no one has ever seen an actual copy of a zoning law.<sup>32</sup> This assignment provides students with familiarity of the organization, language and substantive content of these laws. For example, our casebook contains a brief outline of what is typically found in a zoning ordinance based on the Standard Model Zoning Enabling Act from 1928. In class, students are asked to consider how their zoning ordinance is different and

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31. This assignment, along with several others, requires students to reflect on their practical experiences. In turn, students are increasing their self-directed learning skills and are better prepared for practice upon graduation. See STUCKEY ET AL., *supra* note 4, at 128 (“By taking the time to organize their thoughts and write them down, [students] will improve their self-reflective skills.”).

32. Supplementing the casebook by requiring students to find tangible documents lends a sense of reality to an otherwise abstract text. As a result, students are able to grasp difficult topics that might otherwise escape them. See SCHWARTZ ET AL., *supra* note 21, at 45 (discussing the importance of using textbooks that may not extensively cover all topics, but can be easily supplemented with other materials).

similar to this Act, from which many modern ordinances are still modeled. Students are asked to determine how many different zoning districts are in the municipality and how many types of housing, business and commercial districts there are. Students are also asked to determine whether the zoning ordinance contains subdivision regulations (as these may be separate) and to locate sections on special use permits, variances, nonconforming uses, and enforcement.

A second learning objective is to demonstrate the variety of approaches in local zoning ordinances and how different they are, even if they follow similar formats.<sup>33</sup> Starting with the definition section, I identify a series of words that may be defined and ask students to volunteer to read the definition in their zoning ordinance. Students immediately realize that they must read these laws closely and that they cannot make assumptions. For example, I use the word “kennel.” Some students observe that this word is not defined in their ordinance. Another student volunteers a definition that includes the keeping of dogs or cats for a fee during the day and/or overnight. Another student offers that the definition in their ordinance has a limitation on the number of dogs or cats that may be kept for a fee, with an exemption for puppies or kittens under a certain age. Yet another student volunteers that the definition in their ordinance is not conditioned on a commercial purpose and that merely housing three or more dogs satisfies the definition of kennel. When they realize some people may have three or four dogs as personal pets but that kennels are not permitted in a residential district, the importance of being aware of definitions rings loud and clear.<sup>34</sup> Another good teaching moment with the ordinances is tied to our unit on nonconforming uses. While the casebook

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33. This accords with recommendations for incorporating concrete, measurable goals into the course. *See id.* at 39 (“Avoid goals that entail grasping ideas . . . . Instead, focus on how your students would show their appreciation and understanding, such as . . . generating a statutory analysis that emphasizes the indeterminacy of a proposed statute to the types of problems that may arise.”).

34. Providing examples is a method of clarifying difficult concepts, or otherwise increasing student engagement and participation. *See id.* at 20-21 (discussing the importance of using examples as a means of improving communication with students).

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contains a few cases that address abandonment and discontinuance and expansion or enlargement of nonconforming uses, the actual zoning ordinances obtained by the students are used to demonstrate the fact that each municipality handles the nonconforming use issue differently. For example, some require intent to abandon while others do not. Some ordinances provide that abandonment occurs where the use has not been in operation on the property for six months, one year or more; and some ordinances specify the timeframe must be consecutive or within a twelve month period. Students also can learn from each others' ordinances that some municipalities allow for the reconstruction or repair of the nonconforming use if it was destroyed less than 50 percent, 60 percent or 75 percent. Again, the lesson here is the flexibility and choices local governments have when drafting these laws/ordinances.

#### **E. Attendance at a Planning or Zoning Board Meeting**

Students are required to attend a planning or zoning board in a municipality of their choice during the first half of the semester.<sup>35</sup> The assignment directs students to call the planning department (or clerk's office) or to check the municipal website to determine when and where the planning and/or zoning meetings are scheduled. Determining how to get this information and realizing the (in)frequency of the meetings is important information to have when determining how to best advise clients. I prefer to let the students figure this out for themselves rather than organizing a class visit to one board meeting. By asking the students to visit different municipalities (although two or three students often wind up going to the same meeting), our classroom discussion is more robust.

In preparation for classroom discussion, students are asked to reflect on observations at the meeting with respect to, among other things: the conduct of the meeting; the number of people on the board/commission; where the board counsel sat and the role

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35. Land use law provides a unique opportunity to engage in problem-based learning, as students have access to zoning board meetings and local professionals. See Hirokawa, *supra* note 25, at 20 (discussing the unique opportunities to engage in problem-based learning presented by land use issues, including the access to local officials, property, and meetings).

the counsel played; the number of people in the audience; the issues before the board; how decisions were or were not made at the meeting; whether a printed agenda was available to attendees; and participation by planners, engineers, lawyers and other professionals during the meeting. Students are required to write a one to two page summary of their observations of the meeting and post it to the course discussion board.<sup>36</sup>

This assignment is scheduled/due after the students have completed the players in the land use game assignment, after we have discussed in class the powers and duties of planning and zoning boards, and after we have studied variances. This enables the students to incorporate substantive knowledge into their observation summary.<sup>37</sup> For example, they might make assumptions/observations about board members present, the use of alternate members (and where alternates might sit), whether a zoning board properly applied statutory tests, etc. Most semesters, the discussion following these meetings demonstrates that boards do not necessarily function the same from jurisdiction to jurisdiction. This is an important opportunity to explain how effective legal representation may require familiarity with the culture and operation of the board that a lawyer may have to appear before on behalf of a client. It leaves a lasting example of the idea that preparation may include board observations at meetings in advance of the date when a client's application is scheduled for consideration, and this is not the type of information typically contained in traditional casebooks.<sup>38</sup> Depending upon the student experiences and observations, it can

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36. These observation pieces are articulating "theories of practice," whereby students reflect on the behaviors they have observed throughout the zoning board proceeding and then adjust expectations for their own behavior as aspiring professionals. See STUCKEY ET AL., *supra* note 4, at 172 ("These theories [of practice] provide a basis upon which students can evaluate behaviors they observe and their own performances.").

37. This exemplifies the integration approach, as students are applying substantive law to the observations they have made while attending the zoning board meeting. See *generally* Landsberg, *supra* note 17.

38. This demonstrates the value of experiential learning – or learning by doing – in becoming an attorney. See STUCKEY ET AL., *supra* note 4, at 170 ("There is no more effective way to help students understand what it is like to be a lawyer than to have them perform the tasks that lawyers perform or observe practicing lawyers at work.").

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also be an opportunity to raise a number of other teaching points related to public participation and the meetings of land use decision-making bodies, applicants' need of legal representation, issues related to civility at public meetings, and applicability of open meetings laws.

#### F. Drafting a Memo Advising the Zoning Board

Following the units on nonconforming uses and variances (which occur after the students have developed some familiarity with the organization and language of local zoning ordinances), students are provided with a mock agenda for a zoning board of appeals meeting and instructed to prepare a memo with suggested guidance for the board in terms of how they might analyze the applications before the board.<sup>39</sup> Students are directed to consult with a zoning ordinance from a particular municipality (which is posted on the course website) and are told to use the language from the zoning ordinance to support their recommendations. Two of the agenda items focus on permit requests for uses that may or may not be permitted in the particular zoning district. To further reinforce the importance of the definitions in zoning ordinances which we explored earlier in the semester, the proposed uses in these cases are not defined in the ordinance, but other similar uses are defined.<sup>40</sup> Students are challenged to be resourceful in making an argument that either the use is so similar that it should be considered the same and allowed, or the use is not similar to that which is allowed and therefore, the use should not be allowed. In addition to the definition issue, the proposed uses require students to consult

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39. This assignment is most akin to the problem approach touted in the literature as a preferred method for training lawyers. See, e.g., Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992); Hirokawa, *supra* note 25.

40. The design of this problem attempts to build upon doctrinal legal concepts learned throughout the course, giving students a deeper understanding of the practical difficulties that lawyers must effectively address. See Hirokawa, *supra* note 25, at 11-12 (“[Problem-based learning’s] emphasis on design recognizes that appropriate problems, combined with calculated problem management, a challenging context in which to apply knowledge, and a constructive environment in which to perform and reflect on the process, will further the learning process.”).

other sections of the zoning ordinance to ascertain parking requirements and signage issues. The nonconforming use/variance item requires students to analyze the nonconforming use section of the ordinance to determine whether or not there was an abandonment or discontinuance of the use. If they determine that the use was abandoned or discontinued, then they must conduct an analysis as to whether, under state statute, the applicant can meet the test for a use variance.<sup>41</sup>

The purposes of this exercise is related to persuasive writing and statutory analysis. The first thing that the students realize is that there are no clear-cut answers in the ordinance for any of the scenarios presented. At first, this sometimes leads to frustration, but students are quickly reminded that if the answers were always obvious, lawyers would not have clients. Students are also told that they are not being graded on their conclusion but rather on the reasoning used to arrive at the recommendation. They must demonstrate how they apply the language of the ordinance and any other source to support their recommendation (e.g., did they consult Black's Law Dictionary for definitions, etc.) and show that they considered all applicable sections of the zoning law. In addition to reviewing analysis and recommendations in class, I am able to demonstrate to the students the importance of having a good argument constructed ahead of time since there is a significant likelihood that the applicant or a neighbor (depending on who prevailed) may challenge the decision in court and the attorney may be called upon to defend the board's position. Where lawyers can provide thoughtful and well-reasoned information to a reviewing board (and granted, the boards may not always follow the advice of counsel), this helps the board to articulate a decision that is not arbitrary nor capricious and one based on substantial evidence that is more likely to be upheld by a reviewing court. Additionally, this exercise allows the professor to provide

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41. This attempts to replicate the complexity of problems faced by attorneys practicing in the field, by posing a number of issues for students to consider. See Moscovitz, *supra* note 39, at 250 (encouraging teachers to adopt problems which implicate several different statutes and cases, thereby resembling a real-life scenario).

substantive feedback on writing skills as students are working on a course paper.<sup>42</sup>

### **G. Drafting a Reasoned Decision Based on Substantial Evidence**

To further demonstrate the variety of types of drafting demanded of land use lawyers, as well as to explain the terms “reasoned decision” and “substantial evidence” that often appear in court opinions,<sup>43</sup> some years students are asked to assume the role of counsel to the zoning board for purposes of drafting a board decision. Specifically, they are presented with a fact scenario that includes an application for a variance, a written record of the public hearing and discussion at a zoning board meeting, and are told how the board voted on the application.<sup>44</sup> Students are then asked to draft the written decision of the board.<sup>45</sup> I use a variance request because the state enabling statutes in New York (which we use for purposes of this exercise)

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42. Although the course paper is not the subject of this article, as noted earlier in the essay, students are required to submit a topic for approval, an outline, and an optional rough draft.

43. A reviewing court will typically not disturb a discretionary conclusion of a local land use board so long as the board has made a reasoned decision that is not arbitrary or capricious and is based on substantial evidence in the record.

44. In the future, I am considering identifying an actual public hearing where a variance request is being discussed, obtaining a copy of the application, and asking the students to attend this hearing, take notes, and draft a decision for the board (choosing whether they believe the board is likely to grant or deny the application). Having to draft something “real time” based on reading an actual/current application and actively listening to and observing the public hearing may further demonstrate how difficult it can be sometimes to base a decision on substantial evidence, and, depending upon the application/hearing, students will experience what it is like for the board to deal with a controversial application that attracts neighbor/community opposition. It is one thing to read in a reported case opinion how boards may not simply rely on community opposition in reaching their decision, but it is quite a learning experience when students witness first-hand the passion that can sometimes fuel land use controversies and are confronted with how to address such emotion and the impact that it may have on decision-makers.

45. Drafting exercises incorporate a simulation element into the course, which is capable of helping students learn more effectively and efficiently. See STUCKEY ET AL., *supra* note 4, at 181 (“There is general agreement that simulation-based courses can be an important site for developing the professional skills and understandings essential for practice, including self-directed learning skills.”).



provide a neat four or five prong test depending upon whether the requested variance is one for area or use. This writing exercise, shorter than the recommendations based on the zoning board agenda described above, teaches the students how to identify the factors in the test and collect and articulate the supporting information relied on by the board for each factor in reaching its ultimate conclusion. In New York, the test for use variances requires that all four prongs must be met,<sup>46</sup> while the test for area variances mandates a balancing of five prongs.<sup>47</sup> Aware from the textbook that a reviewing court will not disturb a decision that is based on substantial evidence and is not arbitrary or capricious, students can appreciate how important it is to clearly address each of these factors in the written decisions, indicating specifically what evidence was relied on to evaluate the factor and to support the ultimate decision. From a preventive law standpoint for municipal attorneys and their clients, this drafting exercise also allows for in-class discussion about the appropriate role of land use attorneys in communicating with

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46. N.Y. TOWN LAW § 267-b(2)(b) (McKinney 2011) (“No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located that (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) the alleged hardship has not been self-created.”).

47. *Id.* § 267-b(3)(b) (“In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.”).

their clients to explain the law and to help board members articulate appropriate justifications to arrive at a “reasoned decision.”

#### **H. Attending an Oral Argument and Drafting a Brief Memo to the Judge**

One benefit of Albany Law School’s location is its close proximity to the New York Court of Appeals (New York’s highest state court). In addition to the more obvious doctrinal teaching points that emanate from attending an oral argument at a state high court, from a skills standpoint, this experience enables students to observe the conduct of an actual argument before the court and ponder the preparation required of attorneys arguing the case and the preparation required of judges sitting as a “hot bench.”<sup>48</sup> It also provides an opportunity for another type of drafting experience, discussed below.

Almost every semester I have taught land use, there has been an oral argument scheduled before the Court of Appeals on a land use issue. Some of the recent topics of the arguments have focused on vested rights, takings, and eminent domain. One year I had students simply attend the oral argument after reading the trial court and appellate decisions. After the argument, we were able to gather in a conference room at the courthouse and meet with one of the lawyers who argued the case.<sup>49</sup> A couple of years ago I refined the assignment when the Court heard the case of *Goldstein v. New York State Urban Dev. Corp.*<sup>50</sup> involving the controversial Atlantic Yards development project. Following the oral argument, the students were instructed to write a brief three to five page memo to any one of the Judges on the Court of Appeals recommending how they should decide the case.

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48. See Jennifer Kruse Hanrahan, *Truth In Action: Revitalizing Classical Rhetoric As A Tool For Teaching Oral Advocacy In American Law Schools*, 2003 BYU EDUC. & L.J. 299, 308 (2003) (suggesting that observation of oral arguments has successfully been used to develop students’ oral advocacy skills).

49. In this way, students received valuable practical advice about the proper preparation and execution of oral arguments before the court. See STUCKEY ET AL., *supra* note 4, at 157-58 (recommending the use of practicing lawyers and judges as teaching resources).

50. 13 N.Y.3d 511, 921 N.E.2d 164 (2009) *reargument denied*, 14 N.Y.3d 756, 925 N.E.2d 88 (2010).

Students were able to use the decision and sources cited therein from the Appellate Division, as well as the briefs the parties submitted to the Court of Appeals. I typically recommend to the students that they select the judge they may want to write the memo for in advance of the argument, because by watching and following the argument, students may be able to glean individual judge's interests in the matter based on the questions they ask.<sup>51</sup> Later, this often turns into a good classroom discussion trying to guess who might write the opinion and what might be the outcome.

Furthermore, depending upon when the particular oral argument is scheduled and the substantive subject matter that it covers, I have adjusted the course syllabus to make certain that we have covered the topic using our casebook resources. Another interesting teaching moment happened at the oral arguments just before the court was called into session on the day that the *Goldstein v. New York State Urban Dev. Corp.* case was argued. The group from Brooklyn, led by Daniel Goldstein and opposing the government's use of eminent domain, had arrived from Brooklyn in chartered buses to observe the argument. An issue arose because the law students were seated in the courtroom first, and although many interested Brooklyn residents were in the courtroom, there were not enough seats for everyone. The court does not allow observers to stand and had made arrangements for overflow crowds to watch the argument. Some of the people who rode up to Albany on the bus approached the students asking them what part of Brooklyn they were from and what their connection was to the community. Both indirectly and directly, students were asked by other members of the public to give up their seats and leave the courtroom. We were able to later have a discussion about civility and public access to the courthouse, and, perhaps most important, students learned first-hand about the passion that can be drawn from people involved in land use disputes.

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51. This is useful as a learning exercise, as observing oral arguments can expose weaknesses in attorneys' briefs that are not always evident, as well as indicate the subject matter that justices are primarily interested in. See Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education's Signature Pedagogy*, 84 IND. L. J. 589, 591 (2009).

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The following year, the court had an argument scheduled during the semester on another eminent domain case. This time, an Albany Law School alumnus was representing one of the parties. In advance of the oral argument, we were able to hear from attorneys representing both of the named parties plus an *amici*, who shared briefs, the issues they hoped to bring forward and evidence they planned to share. All three lawyers were in the classroom at the same time with the students, and it was a wonderful opportunity to preview the arguments and then be able to assess after the actual arguments whether the earlier articulated strategies and plans had worked.<sup>52</sup>

Many years, because the Court of Appeals typically releases opinions within about one month of the argument, we are able to review the Court's decision in the matter we observed and studied. When this happens, we are able to bring closure to the conjecture in previous classroom discussions. In years when the decision is not handed down before the end of the semester, I email the decision with a brief summary to the students so they can enjoy the final outcome.

### I. Posting a Blog Comment

Social networking has become an accepted form of communication and information exchange for the current generation of law students. However, this media is not without its pitfalls from a variety of ethics and credibility perspectives.<sup>53</sup> Related somewhat to one of the first assignments in class, students are required before the end of the semester to prepare

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52. The opportunity to communicate with attorneys, and assess their arguments, provides valuable experience beyond the classroom, as it demonstrates the decorum and professionalism expected of practicing attorneys. See SULLIVAN ET AL., *supra* note 4, at 135 (“... for students to incorporate the profession's ethical-social values into their own, they need to encounter appealing representations of professional ideals, connect in a powerful way with engaging models of ethical commitment within the profession, and reflect on their emerging professional identity in relation to those ideals and models.”).

53. Increase in the participatory nature of students, particularly via the internet, has potential ramifications for unethical behavior. See THOMPSON, *supra* note 20, at 31-32 (describing the increase in online communal activity, including blogs and social networking sites). See also Patricia E. Salkin, *Social Networking and Land Use Planning and Regulation: Practical Benefits, Pitfalls, and Ethical Considerations*, 31 PACE L. REV. 54 (2011).

and submit a comment suitable for posting as a reaction to a case posted on the “Law of the Land”<sup>54</sup> blog.<sup>55</sup> Since I am the moderator of the blog, I let the students know that I will review all proposed blog postings when they are submitted prior to approving them for public posting. There are several reasons why I have the students complete this assignment. It allows students to pick any topic of interest that we covered in class and see how courts are applying the legal doctrine in real time across the country. It enables students to reflect on key concepts learned and consider whether a reviewing court applied sound legal theory and applicable precedent.<sup>56</sup> It also forces students to take a risk because they are going to have their name attached to an opinion that will be posted on the Internet for anyone to see. Although students may not think twice about what they post to their Facebook pages or private blogs, many become concerned about the implications of posting to a blog they cannot control or edit later. Students therefore learn to put a high level of care and effort into a written public representation of their professionalism and skill.<sup>57</sup> If time allows, we are also able to discuss in class some of the legal issues surrounding the use of social networking sites in the land use context.

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54. LAW OF THE LAND, <http://www.lawoftheland.wordpress.com> (last visited June 11, 2011).

55. There is an expectation that blogging will become more popular as a way of communicating in the classroom and in practice, and students should be capable of adapting professional writing skills to this new media format. See Camille Broussard, *Teaching With Technology: Is the Pedagogical Fulcrum Shifting?*, 53 N.Y.L. SCH. L. REV. 903, 909 (2008/2009) (“Though the chronological structure of blogs may have a different rhetorical purpose than other kinds of classroom writing, learning to write within the blog context will help students prepare for this new way of writing and communicating.”).

56. Allowing the students to pick the topic increases engagement, as students apply course concepts to subjects that they find appealing. Like several other assignments, current events serve as a way to do so.

57. This recognizes the expanding role of technology in legal education and practice, and attempts to assimilate students’ preexisting knowledge of social networking and digital media into an exercise that incorporates professional responsibility and substantive knowledge. See Kristen E. Murray, *Let Them Use Laptops: Debunking the Assumptions Underlying the Debate Over Laptops*, 36 OKLA. CITY. U. L. REV. 185, 192-93 (2011) (noting the centrality of technology in the future of law and the attendant obligation to incorporate technology into legal education).

#### IV. CONCLUSION

In addition to the traditional casebook method, class participation, and course paper to teach and assess student learning outcomes, the infusion of a series of assignments that fosters active learning, outside of the classroom discovery, and a variety of teaching methodologies and assessments creates an environment where, in my experience, students are more engaged learners and form more concrete and realistic visions of what it is like to practice land use law. The course is demanding from a time commitment perspective both for the professor and for the students, but it is consistently well worth the investment of time and energy by all involved. Students leave the class with interesting experiences to talk about on job interviews, potential writing samples, and the doctrinal law applied in context-based settings to better inform perceptions and understandings about the role of a land use lawyer.