COURSE SYLLABUS & SCHEDULE

Course Summary:
An introduction to the legal mechanisms used to protect historic resources in the built environment, focusing on the legal principles underlying preservation laws, including constitutional issues related to governmental regulation of real property, as well as federal, state, and local historic preservation laws.

Instructor: Anne Nelson, 202-588-6142 (work), 214-734-8952 (cell), anelson@savingplaces.org

Office Hours: By appointment Fridays. Accessible by phone, email, and text as well.

Course Objectives:
1. To provide students with an understanding of the legal platform on which the preservation network is constructed, including a broad understanding of the relevant legal foundations for historic preservation activities; procedures of federal, state, and local historic preservation efforts; and the legal constraints on these activities and procedures.
2. To provide students with a common vocabulary and understanding of policies and programs in historic preservation at the federal, state, and local levels so they can establish a dialogue with peers and allied professionals within the field.
3. To provide students with an understanding of the legal and advocacy tools, strategies, and responsibilities of public and private organizations in the historic preservation field.
4. To provide sufficient information so students will be able to identify legal issues, know resources for information and assistance on those issues, communicate effectively with attorneys, and be stronger advocates.

Required Course Texts: Historic Preservation Law by Sara Bronin and Peter Byrne
Additional readings will be on Canvas or distributed in class.

Course Requirements & Grading:
- Class Participation & Attendance (25% of grade)—Each student should complete assigned readings, assignments (questions & case briefs), and participate actively in class discussions.
- Mid-Term Examination (25% of grade)—A short mid-term exam will be administered in class.
- Final Examination (25% of grade)—A “take home” final exam will be an essay format.
- Local Preservation Ordinance Analysis (25% of grade)—Each student will select a preservation ordinance and prepare: (a) a written summary and analysis of the local law; and (b) an evaluation of the likely effectiveness of the ordinance.
- Auditors—Auditors are expected to do all of the reading, participate in class discussion as well as the Local Preservation Ordinance Analysis. Auditors will not be required to take the midterm or final exam.

Academic Integrity:
Please read the University’s Code of Academic Integrity, which is available at: https://next.catalog.upenn.edu/pennbook/code-of-academic-integrity/
SYLLABUS:

Class #1, Friday, January 17, 2020

Introduction to Course

Courts, Cases & How (and Why) to Write a Case Brief

Who’s Who in Historic Preservation

Brief Overview of Federal Preservation Laws

Readings:
1. United States Constitution (Note especially Article I, clause 7-8; Article II, clause 1; Article III, clauses 1-2; and the First, Fifth, and Fourteenth Amendments.)
2. Chart of the United States Courts of Appeals (with geographic boundaries)
3. About the ACHP Fact Sheet
4. What is a Case Brief?

Class #2, Friday, January 24, 2020

Constitutional Law and Historic Preservation: Takings & Eminent Domain

- Fifth Amendment of the Constitution
- Regulatory Takings (Penn Central)
- Evolution of the Penn Central test (Lucas)
- Eminent Domain (Kelo)

Readings:
1. U.S. Constitution: Fifth Amendment (and 14th Amendment)
6. Duerksen, Christopher and Richard Roddewig, Takings in Plain English (skim)

Due: Two questions based on reading due by email the day prior to class. Case briefs of Penn Central and District Intown Properties Limited Partnership v. DC due in class.

Class #3, Friday, January 31, 2020

The Federal Government’s Role in Historic Preservation

- Section 106 & 110 of the National Historic Preservation Act
- Section 4(f)
- National Environmental Policy Act
- Common Legal Challenges under Federal Preservation Laws

Guest Speaker: Elizabeth Merritt, Deputy General Counsel, National Trust

Readings:
1. Authority—Bronin & Byrne, pp. 1-18, pp. 50-56 (incl. US v. Gettysburg Electric Railway Company) (skim)
2. National Register Designation—Bronin & Byrne, pp. 57-73
4. Section 4(f) — Bronin & Byrne, pp. 212-229 (incl. Citizens to Preserve Overton Park, Inc. v. Volpe)
6. NEPA — Bronin & Byrne, pp. 180-193 (incl. Recent Past Preservation Network v. Latchar (Cyclorama))
8. Section 106 Regulations, 36 C.F.R. Part 800 (particularly Sections 800.1, 800.5, 800.6) (skim)

Due: Two questions based on reading due by email the day prior to class. Case briefs of National Trust v. Blanck and Citizens to Preserve Overton Park v. Volpe due in class.

Class #4, Friday, February 7, 2020

Constitutional Law and Historic Preservation: Due Process
- Understanding and Applying Procedural Requirements

Public Lands Issues
- Antiquities Act of 1906
- Wilderness Act of 1964

Guest Speaker: Sharee Williamson, Associate General Counsel, National Trust

Readings:
2. Society Hill Civic Association v. Philadelphia Board of License, Commonwealth Court of Pennsylvania, 2006
4. Antiquities Act—Bronin & Byrne, pp. 430-432
7. Wilderness Act of 1964 (selected portions)
8. Wilderness Watch, Building New History in Wilderness, blog (July 27, 2011)
10. Williamson, Sharee, Olympic National Park: Preserving History in Wilderness Areas, Preservation Leadership Forum (June 2017)

Due: Two questions based on reading due by email the day prior to class. Case brief of Metropolitan Baptist Church v. D.C. due in class. Identification of town/city for preservation ordinance analysis.

Class #5, Friday, February 14, 2020 (Travel Week)

Constitutional Law and Historic Preservation: RLUIPA & Funding of Religious Properties

Third Church of Christ Mock Hearing

Guest Speaker: Autumn Rierson Michael

Readings:
5. *Third Church of Christ, Scientist v. DC Historic Preservation Review Board*, pleadings: (a) Complaint for Injunctive Relief (August 2008), (b) Defendant’s Motion to Dismiss, and (c) National Trust’s *amicus* brief

Due: Two questions based on reading due by email the day prior to class.
Case brief of *St. Bartholomew’s Church v. City of New York* and position statement for mock hearing due in class.

Class #6, Friday, February 21, 2020 (Career Fair)

**Why Old Places Matter—The Right to Preserve and the Development of Preservation Laws**
- Relationship to Other Themes of the Class—Property, Societal Rights, Religion

**Archaeological Protections**
- Antiquities Act; Archaeological Resources Protection Act; NAGPRA
- Shipwreck Act
- Relationship to Other Historic Preservation Laws
- Statutory Interpretation and Cases
- National Marine Sanctuaries

**Guest Speaker:** Thompson Mayes, Chief Legal Officer and General Counsel, National Trust

**Readings:**
2. *Antiquities Act*—Bronin & Byrne, pp. 430-432 (particularly Section 232)
3. *U.S. v. Diaz*, 499 F.2d 113 (9th Cir. 1974)
7. NAGPRA, ARPA NHPA Comparison Chart

Due: Two questions based on reading due by email the day prior to class.
Case briefs of *U.S. v. Smyer* and *U.S. v. Corrow* due in class.

Class #7, Friday, February 28, 2020

**The State Government’s Role in Historic Preservation**
- SEPA’s
- State 4(f)s
- State Historic Registers
- State Enabling Legislation

**Midterm Review**

**Readings:**
1. SEPA’s—Bronin & Byrne, pp. 197-211 (incl. *Architectural Heritage Association v. County of Monterey*)
2. *Amici Curiae* Memorandum of National Trust et al. for *State of Connecticut, Department of Economic and Community Development v. WMC Realty, LLC*
4. Pennsylvania Constitution, Article 1, Section 27.5 (skim)
6. Pennsylvania History Code, Title 37 (skim)
7. PHMC Policy for Determining Historical Significance of Local Historic Districts and Boundary Justification Pursuant to PA Historic Districts Act & Checklist to Establish a Historic District

Due: Two questions based on reading due by email the day prior to class.
Case briefs of Architectural Heritage Association v. County of Monterey and Reiter v. The City of Beloit due in class.

Class #8, Friday, March 6, 2020

Midterm Exam

Friday, March 13, 2020 No Class

Spring Break

Friday, March 20, 2020 No Class

Extended Spring Break

Class #9, Friday, March 27, 2020

The Local Government’s Role in Historic Preservation
- Reading an Ordinance
- Designations (including objects and interiors)
- Effects of Local Designations & Applying the Ordinance
- Economic Hardship

Readings:
1. Designation—Bronin & Byrne, pp. 73-105 (incl. A-S-P Associates v. City of Raleigh)
2. Ordinances—Bronin & Byrne, pp. 268-290
3. Demolition Delay—Bronin & Byrne, pp. 323-328 (incl. Pansini Custom Design Associates, LLC v. City of Ocean City)
4. New Construction—Bronin & Byrne, pp. 328-335 (incl. Sanchez v. Town of Beaufort)

Due: Two questions based on reading due by email the day prior to class.
Case brief of Sanchez v. Town of Beaufort and Zaruba v. Village of Oak Park due in class.

Class #10, Friday, April 3, 2020

Preservation Practice—Taking Direct Action to Save Historic Places
- Direct Action Case Studies—Union Station (Washington, DC), Shockoe Bottom (Richmond, VA), and Little Havana (Miami, FL)
- Community Outreach and Effective Advocacy

The Local Government’s Role in Historic Preservation (cont.)
New Tools for Community Revitalization (Conservation Districts, Receivership Statutes, etc.)
Common Challenges to Local Ordinances

Guest Speaker: Rob Nieweg, Interim Vice President for Field Services & Attorney, National Trust
Amanda Stevens, Penn Graduate Student

Readings:
8. Conservation Districts—Bronin & Byrne, pp. 343-345
10. Vagueness—National Trust’s Brief of Amici Curiae in Support of City of Chicago (March 5, 2013) (skim)

Due: Two questions based on reading due by email the day prior to class.

Class #11, Friday, April 10, 2020

Federal and State Tax Incentives
- Intro to Federal Historic Tax Credit
- Legal Structures for Syndication of Credit
- Tax Reform Changes to HTC/Saving the Tax Credit
- State Tax Credits, including the Pennsylvania credit

Final Exam Discussion

Readings:
1. Bronin & Byrne, pp. 592-604, 614-619
3. NPS Statistical Analysis, 2013
4. NPS Annual Report (35th Anniversary)
5. One-pager on the Secretary’s Standards for Rehabilitation
7. Rehab Tax Credit ATG from IRS (skim)
8. IRS Procedures (12/2012)

Due: Two questions based on reading due by email the day prior to class.

Class #12, Friday, April 17, 2020

Preservation Easements & Other Preservation Real Estate Tools

Guest Speaker: Ross Bradford, Deputy General Counsel

Readings:
1. Bronin & Byrne, pp. 534-589 (skim)
2. “Easements that Protect the Built Environment” (excerpt from The Conservation Easement Handbook)
4. Fisher-Kahn House Deed of Preservation and Conservation Easement (skim)

Due: Two questions based on reading due by email the day prior to class.
Case brief of Simmons v. Commissioner due in class.
Class #13, Friday, April 24, 2020

Historic House Museums: Issues and Legal Considerations

- Restrictions on historic sites
- Co-stewardship and Shared Use Agreements
- Legal Considerations for reimagining and reuse of historic sites (art installations, artist-in-residence programs, event rentals, filming, etc.)

Presentations on Preservation Ordinance Analyses

Distribution of Final Exam

Readings:
1. Bronin & Byrne, pp. 620-634, 637-646
3. Sample Co-Stewardship Agreements (skim)
4. Sample Shared Use Agreements (skim)
6. Artist Agreement Template (skim)
9. Malone-France, Katherine, When Buildings and Landscapes are the Collection, Forum Journal (Summer 2014)

Due: Two questions based on reading due by email the day prior to class.
- Preservation ordinance analysis and brief class presentations.

Friday, May 1, 2020
No Class

Graduate Final Reviews

Friday, May 8, 2020
No Class

Final Exams Due via E-Mail