WEDNESDAY, MARCH 7
FUNDAMENTALS OF REAL ESTATE LAW

This full-day workshop designed for young professionals introduces how real estate transactions work, from basic property law and covenants to the important role of government and planners in transactions. A team of panelists will cover a range of topics designed to give both planners and lawyers a strong understanding of basic real estate law.

Speakers Include:
- Brian Connolly, Otten Johnson Robinson Neff + Ragonetti
- Polly Jessen, Kaplan Kirsch & Rockwell
- Jason Morris, Withey Morris
- Evan Seeman, Robinson + Cole
- David Silverman, Ancel Glink
- Brian Smith, Robinson + Cole

REGISTER ONLINE AT:
LAW.DU.EDU/RMLUI
Your Panelists

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Your Panelists

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Session Outline

- Parties to the real estate transaction
- Basics of real property law
  - Possessory interests
  - Non-possessory interests
  - Conveyancing
- Title issues
- Government interests in real property
- Panel discussion
  - Role of planning and zoning in real estate transactions
  - The planner’s role in real estate transactions
Things to Remember

• Planners have important roles in real estate transactions—whether you know it or not

• Basic overview

• Real estate law is state-by-state law: use this presentation with caution!

• Always consult attorneys when real estate transactions are involved
PARTIES TO THE REAL ESTATE TRANSACTION
Parties to Real Estate Transaction

- Buyer-Seller
- Broker
- Lenders
- Title Company
- Surveyors
- Lawyers
Role of the Planner

• How are planners involved?
  1. A savvy broker/owner may seek to determine the “highest and best” use of the property to maximize development potential and financial return
  2. Zone changes, text amendments to zoning regulations, and subdivisions may be needed

*We will return to “highest and best” use later
Role of the Planner (continued)

• Buyer’s Due Diligence
  1. Purchase and Sale Agreement may be contingent on securing zoning approval (highest and best use responsibility of buyer)
  2. Prospective purchaser may just want to know the development potential of the property
POSSESSORY INTERESTS IN LAND
Possessory Interests in Land

- Fee simple
- Defeasible (conditional) title
- Trusts
- Adverse possession
Adverse Possession

- Nonpermissive
- Actual use
- Open and visible
- Notorious and adverse
- Exclusive
- Continuous for x-years
NON-POSSESSORY INTERESTS IN LAND

“At the time we bought it I didn’t know what an ‘easement’ was!”
Some Types of Non-Possessory Interests in Land

- Easements
- Licenses
- Right-of-ways
- Profits
- Servitudes and covenants
- Security interests
  - Mortgages, deeds of trust, liens
Types of Easements

- **Affirmative vs. negative easements**
  - **Affirmative**: A has a right to use E’s land (e.g., access easements, some utility easements)
  - **Negative**: A has a right to prevent uses on B’s land (e.g., conservation easement, viewshed easement)

- **Easement appurtenant vs. easement in gross**
  - **Appurtenant**: easement rights are tied to property and run with the land (e.g., Town has an easement across B’s property to access the garbage dump)
  - **Gross**: easement rights are unrelated to other property and personal to the grantee (e.g., Town has a conservation easement across E’s property)

- **Exclusive vs. nonexclusive easements**
  - Means different things to different people in different states
The owner of Lot B has an appurtenant easement across Lot A to gain access to the lake. The utility company has an easement in gross across both parcels of land for its power lines. Note that Lot A also has an appurtenant easement across Lot B for its driveway.
Formation of Easements

• Express grant or deed of easement
• Deed reservation
• Implication
• Necessity
• Prescription
• Subdivision Plat
Important Elements of an Easement

Absolutely necessary:

• Who holds the easement?
• What land is subject to the easement?
• What are the permissible uses of the easement?
  – Cannot “overburden” easement
Location of Easement

- Is the easement fixed and located?
- Is the easement “floating”?
- What effect can easement have on development rights?
Effect on Development
Termination of Easements

- Express Release
- Conditions (durational, based on holder, specific purpose)
- Abandonment of Easement
- Renegotiation
Licenses

- Right to use the land of another
- Personal to grantee, not assignable
- Revocable
- Some states: license is not really an interest in land
Covenants and Servitudes

- Agreements, promises, etc. regarding use of land
  - “Private zoning”
- Must “touch and concern” land
- Run with the land, bind and benefit subsequent owners

- Restrictive vs. affirmative covenants
  - Restrictive: thou shall not...
  - Affirmative: thou shall...
Covenants and Servitudes

• Relationship to public policy
  – Covenant controls are generally unrestricted by law—buyers of property are assumed to have notice of recorded covenants
  – Constitutional provisions don’t apply (mostly)
  – Restrictions on some pursuant to public policy
    • Discriminatory restrictive covenants
    • Restrictions on green development
    • Other state-by-state limitations

• Relationship to zoning and planning
  – Zoning generally can’t dictate what covenants say
  – Covenants broadly control use of land, but may conflict with zoning
  – Who prevails?
What Is An Agency To Do?

The law is well established that restrictive covenants in a deed as to the use of property are distinct and separate from provisions of zoning law and have no influence or part in the administration of zoning law. (Internal quotation marks omitted.) Anniello v. Town of Vernon Planning & Zoning Commission, Superior Court, judicial district of Tolland, Docket No. CV-93-0052916-S (August 14, 1995, Klaczak, J.), quoting 83 Am. Jur. § 1006. In Moscowitz v. Planning & Zoning Commission, 16 Conn. App. 303, 311-12 n.8, 547 A.2d 569 (1988), the court noted, “[A] planning commission cannot base its denial of subdivision approval on the existence of a deed restriction if the application otherwise meets the regulations. . . . The responsibility of enforcing restrictive covenants in deeds is allocated to neighboring landowners, not to a municipal commission.”
Role of Planners re Property Interests

• C.G.S. Section 22a-359(a): “The Commissioner of Energy and Environmental Protection shall regulate dredging and the erection of structures ... with proper regard for the rights and interests of all persons concerned.”

• Considerations for Approving Special Permit:
  – Prior to approving any application for a special permit ... the Commission shall consider ... (b) The nature of the applicant’s (and property owner’s, if different) interest in such property and proposal and [a]ny covenants, easements, or other provisions to the development and maintenance of the proposal ... necessary for the welfare and maintenance of development.”
Exercise

Working with others, answer the following questions about the [easement, license, or declaration of covenants] that has been left for you:

- What is the interest that is conveyed by the document?
- Why was this particular type of interest chosen?
- Who benefits from the document? Who is burdened by the document?
- For what purpose(s)?
- What are the conditions on which the document can be amended or terminated?
- Was the document required as part of a zoning or other land use approval?
CONVEYANCING
Types of Deeds

- **Warranty Deeds (and permutations):** Guarantees buyer gets what seller has or should have.

- **Quitclaim Deeds:** Buyer only gets what seller has, which might be everything or nothing.
Brooklyn Bridge

One of the Most Quitclaimed Fixtures in the World!
Deeds (continued)

• By adverse possession
  – “Sorry I built a fence on your of the border but hey you said nothing for years so….

    It is mine all mine!”

    Whose is it for zoning purposes
Grant of Easements

- Many types including:
  1. Rights of Way – highways, trails, etc.
  2. Utilities
  3. Avigation (think glidepaths)
  4. Signs, Fences
  5. View and more!
Grant of Easement Continued

- **Prescriptive Easements**

  “I just kept walking down the trail and it became my right to continue”

Sounds like a great show-tune!
Plat Dedications

- Upon approval filing the plat (subdivision) map
- Allows sale of newly created parcels of real estate
- Frequently require dedication of open space roadways and land for utilities
Eminent Domain
“"I feel like I got taken”"

What is eminent domain?
1. The right of the government to condemn land for public purposes
2. Public purpose definition in dispute. See *Kelo v. City of New London*
3. If public purpose is valid, what is “just compensation”?
4. Planners role in these disputes
Eminent Domain (continued)

Must one private owner give up her land for benefit of another private owner because of a finding of blight?
Eminent Domain (continued)

If land is undervalued the government may be in for a costly surprise

Amount of judgment was $125 million
...AND I MARKED MY TERRITORY BY DOING THE DEED HERE AND HERE AND HERE...

AT THE CANINE REGISTRY OF DEEDS
Why Record?

- County registries exist for one purpose: **NOTICE**
- Recording system was established to provide notice to subsequent owners and interest holders of a party’s interest in land
- Provides record evidence of conveyances, government action, etc.
Effect of Recording

- Recording an instrument provides constructive notice of interests in property to subsequent interest holders.

- Recording—in and of itself—does NOT accomplish a conveyance, rezoning, subdivision, etc.
  - Although some local code provisions may require recording for the process to be complete.
"For the sake of full disclosure, I am obligated to inform you that this property is located on a planet besieged by war, poverty, disease, political unrest and rampant stupidity."
Title Companies

• What is it? What does it do?
• Understanding the Title Commitment
• Understanding Zoning Endorsements
GOVERNMENT INTERESTS IN LAND
Government Interests in Land

- Fee interests
- Easement rights
- Right of way
- Dedications
Role of Zoning & Subdivision in Real Estate Transactions

Panel Discussion

- Subdivision regulations
- Governmental approvals as closing conditions
- Governmental certifications
- Zoning endorsements
- Public approvals and private real estate matters
Planners Role in Real Estate Transactions

Panel Discussion

- Private party transactions
- Private conveyances to public entities
- Intergovernmental transactions
- Due diligence assistance
- Recordation
Fundamentals of Real Estate Law: Government Interests in Land

Presented by: David Silverman, AICP, Esq. & Evan J. Seeman, Esq.
Overview

- Fee interests
- Easement rights
- Rights of way
- Dedications
- Eminent domain
- Riverbeds
- Public trust
Fee Interests

Government as seller
- State statutes
- “Surplus” property
- Vote requirements
- Terms of same
- Bids and prices
- Conveyance instrument
- Reverter
Fee Interests

Government as purchaser

• State statutes
• Necessary for “public purpose”
• Private market participant
  • Due diligence
Easement Rights

• Easements for public purposes
• Easement agreements
• Subdivision plat dedications
Rights of Way

- Acquiring right of way
- Right of way access agreements
- Subdivision plat dedications
  - Lien waivers
  - Bills of sale
Dedicated Lands

• State statutes
  • Parks
  • Schools
• Constitutional considerations
  • Nexus
  • Rough proportionality
  • Specifically and uniquely attributable
Eminent Domain

• What is eminent domain?
  • The right of government to condemn land for a “public purpose”
  • If public purpose is valid, what is the “just compensation”
Eminent Domain

Must one private owner give up her land for the benefit of another private owner because of a finding of blight?

Eminent Domain

- Planners’ roles in eminent domain disputes
  - Whether the land is necessary for redevelopment
  - The “highest and best” use for purposes of just compensation
- Municipal planners and private planning consultants
Eminent Domain
Ownership of Riverbeds

Public Trust

- Littoral and riparian rights
- Public Trust
- Balancing of private property rights with public trust
- Mean high water line
Q & A

Q&A Questions Answers
Thank You

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Fundamentals of Real Estate Law: Drafting & Negotiating the Purchase Sale Agreement

Presented by: David Silverman, AICP, Esq. & Brian R. Smith, Esq.
Overview

- Introduction
- Parties to the transaction
- Transaction preliminaries
  - Hypothetical: publicly owned land being sold to redeveloper
- Anatomy of the deal
- Recordation
Parties to the Transaction

• Buyer-Seller
• Brokers
• Lenders
• Title company
• Surveyors
• Lawyers
Transaction Preliminaries

Hypothetical:
Publicly owned land being sold for redevelopment to a private sector entity
Transactional Preliminaries

• What is that we are selling?
• Why? To who?
• Process to find a purchaser
• Zoning and subdivision entitlements
• Economic incentives
• Instruments to convey property
  • Reversionary interest
• Preliminary title commitment and ALTA survey
Anatomy of the Deal

• The Real Deal
Anatomy of the Deal

• Town ground leased land to skating coach/operator to build ice rink
• Town controls over ground lease
Anatomy of the Deal

- New skating operation with Russian Olympic stars sought to purchase original skating operator’s interest in ground lease
Anatomy of the Deal

• The PSA for transfer and town’s role.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT dated as of this 8th day of May, 1996 by and between WORLD SKATE OF CONNECTICUT, L.L.C., a Connecticut limited liability company ("Seller"), and U.S. ICE FORUMS, L.L.C., a Delaware limited liability company, or its assigns ("Buyer").

WITNESSETH:

WHEREAS, Seller is the tenant pursuant to a certain Ground Lease between World Skate, Inc., as lessee, and the Town of Simsbury, Connecticut ("Lessor"), dated April 18, 1994 (the "Ground Lease"), pursuant to which Ground Lease Seller leases approximately 17 acres of real property located in Simsbury, Connecticut (the "Leased Land"); and

WHEREAS, Seller has constructed upon the Leased Land an ice skating facility commonly known as "International Skating Center of Connecticut" and owns all personal property located thereon and used in connection therewith (including trade equipment, such as rental skates and skate sharpeners used in connection with the facility), with the exception of the retail shop inventory and the display cases located in the retail shop and the restaurant inventory and equipment (the "Excluded Personality"); and

WHEREAS, Seller desires to sell to Buyer all of Seller’s interest in the Ground Lease and such personal property, upon the terms more particularly set forth below.

NOW THEREFORE, in consideration of the mutual undertakings and covenants herein contained, Seller and Buyer hereby covenant and agree as follows:
Recording of Documents & Timing Issues

- What purpose does recordation serve?
- What’s the advantage or disadvantage of the municipality handling recordation?
- Recordation tips
Thank You

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