

Higher Ground

THE MYSTERIOUS POWER OF LAND USE LAW

JOHN R. NOLON

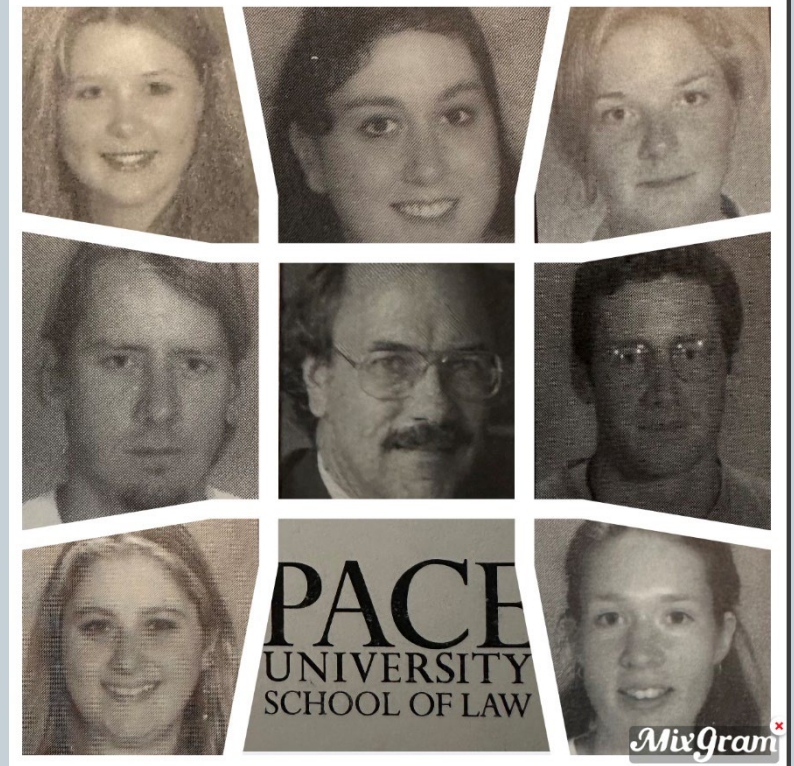


Land Use Law Center by the Numbers

- 2023 is our 30th Year
- 104 staff years
- 300+ student researchers
- 2500 trainees
- Annual Conferences
- Today: A look back and a look forward

Lessons Learned: The System is Well Grounded

New Challenges call on us to move to higher ground



Merlin in the Monastery



Dillon Rules in 1993



“The limited powers of zoning do not include the power to impose a moratorium on land development. Such conclusion is dictated by settled doctrine that a municipality has only those powers, and especially land use powers, delegated or necessarily implied.”

-Judge Breitel dissenting in Golden (1972)

Many planners and lawyers agreed!



Dillon and the “No You Can’t Crowd”



- Floating Zones
- Phased Growth: Moratoria on Development
- Bonus Density Zoning
- Planned Unit Development
- Overlay Zoning
- Transfer of Development Rights

“These techniques are not explicitly allowed nor necessarily implied in delegated powers.”

Rodgers v. Tarrytown 1951



- Floating Zoning was invented 70 years ago
- **“The village's zoning aim being clear, the choice of methods to accomplish it lay with the board.”**
- Dillon was dead but his ghost remained



Golden v. Ramapo 1972



Growth control through phased development and a moratorium.

- Holding: “... there is a rational basis for “phased growth” and hence, the challenged ordinance is not violative of the Federal and State Constitutions.
- Breitel dissenting again “Existing enabling legislation does not grant the power upon which the Ramapo ordinance rests.”

Well Grounded Tools 1993



- If the zoning objective is reasonable, the choice of techniques is within the powers of the local legislature.
- Example: Lewisboro adopted Bonus Density Zoning c. 1974
- Land Use Law was Well Grounded



Clinton's Commission 1993



WILLIAM J. CLINTON

42nd President of the United States: 1993 - 2001

**Executive Order 12852—
Presidents Council on
Sustainable Development**

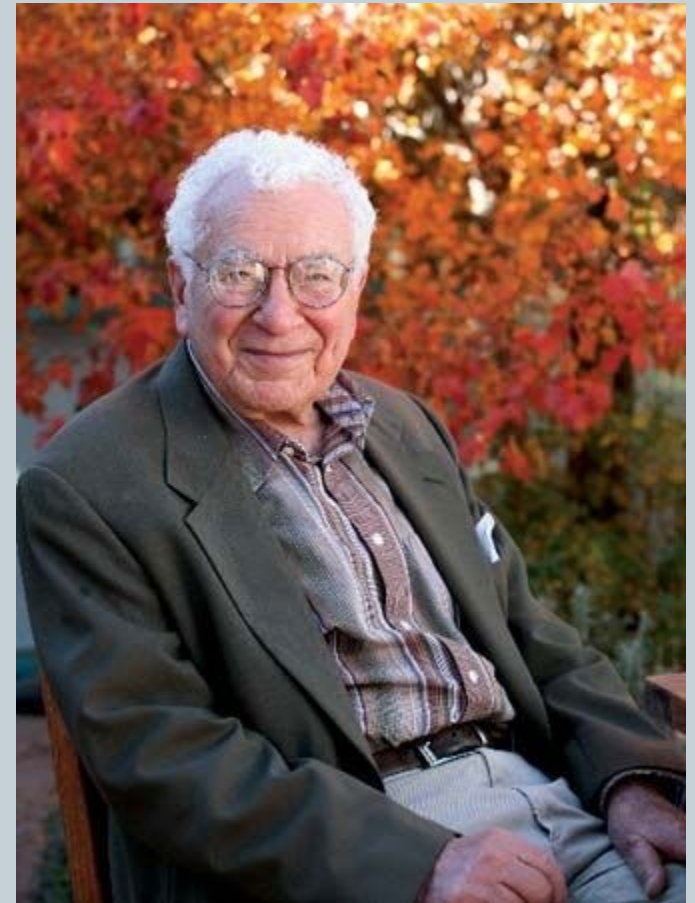
“Sustainable development’ is broadly defined as economic growth that will benefit present and future generations without detrimentally affecting the resources of biological systems of the planet....”

The Commission asked us to study the Hudson Valley region and its sustainability under current growth patterns. Our conclusion: not sustainable.

The Man Who Knows Everything



- The Quark and the Jaguar
- A Nobel Prize 1969
- Complex Adaptive Systems
 - Particles and their interactions
- The Connectivity Imperative
- “Train Local Leaders”



LULA and the “Can We?” Crowd



- 1995 First Training Program
- Land Use and Community Decision Making
- APA National Award for Planning Advocacy 2009
- Tiffany:
 - How many training programs? Trainees? States? Success stories? “Can we?” Questions? Student research projects?



“Yes, We Can!”



- The spotted salamander - Local Environmental Law
- Smart Growth - Priority Growth and Conservation Districts
- Sustainable Development – Clustering and Conservation Districts
- Climate Change Mitigation – Low Carbon Land Use



Housing Crisis

State Preemption and Direction



Four Pandemics Double Down



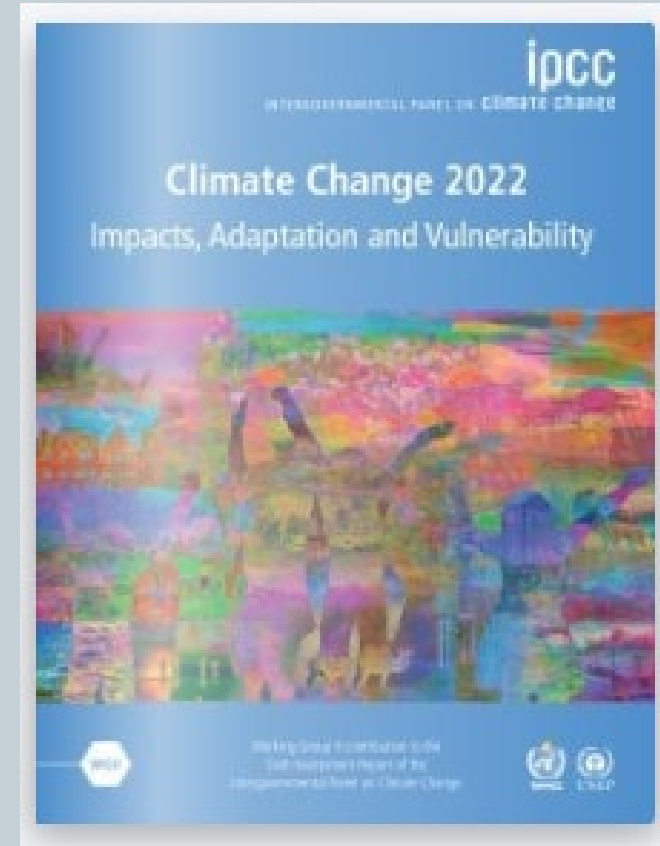
- Corona Viruses
- Housing Crisis
- Racial Inequity
- **Climate Change**



- Daily evidence of these four severe challenges seen on the streets and in neighborhoods: At the local level
- Can we solve these problems turns into We must solve these problems

Global Call for Local Action

- Intergovernmental Panel on Climate Change, 2022 Sixth Assessment Report
- Feb. 27th Report placed heavy emphasis on Climate Resilient Development (CRD)
- CRD is an approach that “integrates *adaptation* measures and *mitigation* to advance *sustainable development for all*.”



CRD Components



1. Mitigation
2. Adaptation
3. Resilience
4. Equity
5. Feasibility

Call to Action in IPCC's Words



“Planning for CRD can support both adaptation and mitigation via effective land use, promoting resilient and low-carbon infrastructure, protecting biodiversity and integrating ecosystem services...and equitable development processes.”

Implementation Through Land Use



- Transit Oriented Development
- Green Buildings and Green infrastructure
- Infill and adaptive reuse
- Retrofitting buildings
- Complete Streets
- Adding equity, resilience, and avoiding maladaptation

2022 New Project: CRD



- Summer Extern Program: students wrote a guide to evaluating local strategies
- Published by the Environmental Law Institute in November
- 40 Researchers looking for CRD-type strategies
- Evaluating them to focus on all components
- The results are just being handed in at the end of the semester

Recent CRD Land Use Strategies



Criteria for selection:

Uniqueness

Significance

Effectiveness

Innovative CRD Strategies



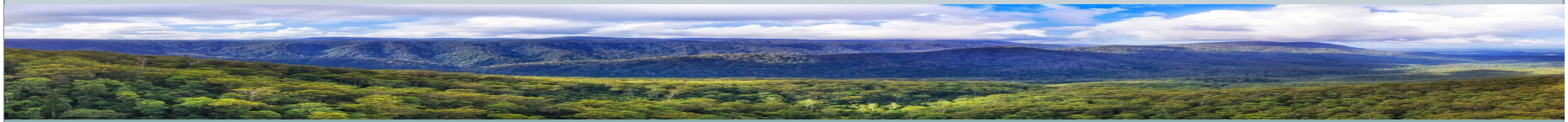
- Low Carbon Building Materials, such as low carbon cement, cross laminated timber, and other building products and methods that greatly mitigate CO₂ emissions. Efforts to amend building codes locally to allow and facilitate.
- Orlando, Florida requires developers to install EV charging stations in all new buildings



Innovative CRD Strategies



- Cities being certified by US Green Building Council's new LEED for Cities and Communities rating system gaining points for protecting natural systems, transportation and land use, and water efficiency among other CRD type initiatives.
- Charles County, Maryland, Forest Conservation Program achieves **no net tree loss**. Developers submit a **Forest Conservation Plan** indicating what techniques will be used so that the maximum amount of existing forest on the proposed site will be retained.



Innovative CRD Strategies

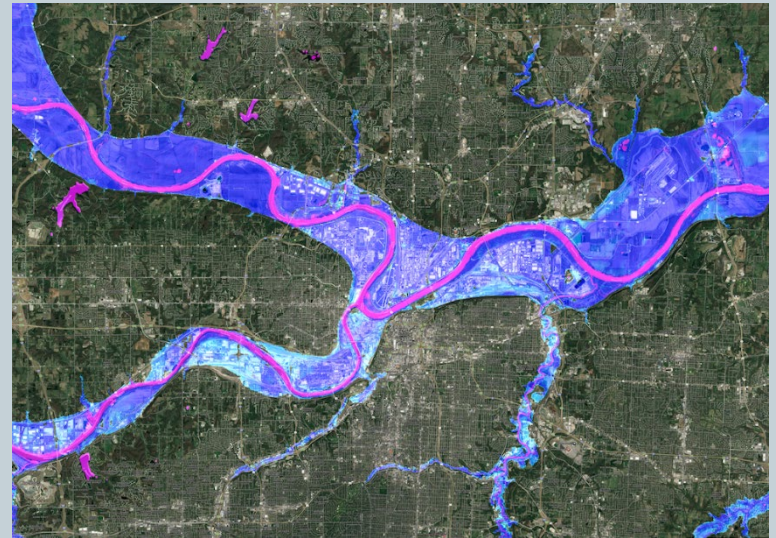


- Raleigh, NC amended its TOD Overlay to integrate social equity, including eliminating parking requirements, designing for pedestrian connections, and offering density bonuses for affordable housing and employment opportunities.
- NYC Local Law 97 requires existing buildings larger than 25,000 square feet to reduce emissions through retrofitting by 80% by 2050. Buildings are responsible for 70% of emissions in the city.

Innovative CRD Strategies



- Des Moines's Complete Streets Policy will result in a complete multi-modal transportation system and reduction in emissions by focusing on compact development along transportation corridors and targeting protection of vulnerable populations in Environmental Justice Areas.
- Pierce County, Washington is re-delineating its inaccurate floodplain maps, significantly expanding the land subject to floodplain regulation and prioritizing based on level of risk and degree of benefit.



Innovative CRD Strategies



- Galveston, Texas created a dune conservation zone where development is largely prohibited.
- Montgomery County Code requires a racial impact statements for every zoning text amendment that the Council considers.



CRD Components



1. Adaptation
2. Mitigation
3. Resilience
4. Equity
5. Feasibility

Take Aways



- Local officials and stakeholders can begin the process of adopting CRD and its components in their climate management strategies and land use plans.
- In the process, they will learn more about the collaboration needed horizontally at the local level and vertically at the state, federal, and global levels. They will create flexible networks and institutional resilience.

Take Aways



- These challenges require nothing less than a **transformation in governance**. Local, state, and federal law and policymakers must better understand the system within which climate change occurs and their role within that system.
- CRD's key components require governments to take a broader and deeper view of their role, responsibilities, and partnerships.

Celebrate! Atlantic Magazine Reinvention of America



- “The more we traveled, the more parallels and resonances we saw. . . . Every place had its local features, but together these efforts formed a pattern whose sweep and power can be hard to discern from any single instance. . . .” “And the evidence of past waves of reform, from the labor-rights and women’s -suffrage movements of the early 1900s through the civil-rights and environmental movements of mid-century, suggests that **national transformations must start from local roots.**”

CELEBRATE is the Word

