SYLLABUS

Community Economic Development Law
Fall 2005

Professor Andrew Foster     Office: Room 2192
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613-7076       Classroom 3041
Mondays 3:00-4:50

OVERVIEW

Historically, legal activities designed to remedy poverty in the United States focused predominantly on rights-based litigation. Over the past twenty-five years, however, community-based organizations and individual entrepreneurs have begun to utilize market-based strategies to increase economic opportunities in low-wealth communities. These community economic development (“CED”) strategies require the active engagement of lawyers with expertise in corporate, tax, real estate and other areas of business law. In this class, we will explore the role of lawyers in CED work. Additionally, we will focus in detail on the programs and doctrines with which a lawyer must be familiar in order to effectively represent CED clients. Finally, it is hoped that this course will provide students with an opportunity to continue to develop certain core skills that all lawyers need, regardless of the substantive area in which they practice. These skills include: statutory and regulatory analysis, strong drafting capabilities and strategic thinking.

We will use a coursepack in this class. It may be purchased from the Law School and all reading assignments listed on this syllabus are in the course pack or will be distributed in class.

There is no final exam for this course. Instead, students will be primarily evaluated on the preparation of two “cases” that will be distributed over the course of the semester. Each of these cases will cover one or more of the substantive topics that we have recently covered in class. Additionally, each will be structured to resemble a matter that lawyer practicing in this area is likely to encounter. Class participation will also be included in the final class grade.

ASSIGNMENTS

Part I: Introduction

August 22: Introduction and Overview
Andrew Foster’s CV (optional)
Will Blythe, “Blue Blood” (optional)
Excerpt from John P. Kretzman and John L. McKnight, Building Communities from the Inside Out
Video: A Time to Build

August 29:  A Brief History and Critique of The Federal Response
Guest Speaker: Dr. Roland V. Anglin, Rutgers University
A Brief Overview of the Federal Role, Foster
Excerpt from Alice O’Connor, Swimming Against the Tide in Urban Problems and Community Development, Ferguson and Dickens, Editors

Part II: Non-Profit Law as Applied to the CED Context

September 5: The Law of Tax-Exempt Organizations
Part A: Is CED Charitable?
Excerpt from Bruce Hopkins, The Law of Tax-Exempt Organizations
Outline of Steps in Formation Process
IRC § 501
Treas. Reg. § 1.501(c)(3)-1(d)(2)
Rev. Proc. 96-32; Rev. Rul. 74-587; Rev. Rul. 77-111; Rev. Rul. 81-284

Part B: UBIT and Associated Structuring Strategies
Excerpt from Hopkins, The Law of Tax-Exempt Organizations
Stephanie Smith, Do You Need a Subsidiary
IRC § 511, 512 and 513

Review and prepare to discuss Tax Exempt Problems 1-3.  Note: All problems are in Part VI of the Coursepack.

September 12: Small Group Presentations
Case Study handed out on September 5 (not graded)

September 19: No Class

Part III: Housing

September 26: Housing Affordability and the Low-Income Housing Tax Credit
Introduction from NLIHC Report, State of Nation’s Housing, 2004
Descriptions of the LIHTC by ESIC and RHOL
Allocation Process: IRC §§ 42(m); 42(h)(3)(c); 42(h)(5)(A)
Calculating the Credit: IRC §§ 42(a); 42(f)(1); 42(b); 42(f)(2); 42(e)(3)
Treas. Reg. §§ 1.42-3(a); 1.42-16

Review and prepare to discuss Low-Income Housing Tax Credit Problems 1 – 6.

October 3: Low-Income Housing Tax Credit: Continued & Concluded
Calculating the Credit (continued): IRC §§ 42(c); 42(d); PLR 9948025
What Buildings Qualify: IRC §§ 42(c)(2); 42(i)(1); 42(g)
Basic Operations: IRC §§ 42(g)(1); 42(i); Treas. Reg. §§ 1.42-9, 1.42-15
Exit Strategies: IRC §§ 42(h)(6); 42(i)(7); Ronald A. Shellan, Thinking About Year Fifteen of a Low-Income Housing Tax Credit Partnership

Review and prepare to discuss remaining Low-Income Housing Tax Credit Problems

Assignment of Case Study #1, due October 19, 2005
NOTE: Each student should prepare this case study independently

October 10: Fall Break

October 17: A Practitioner’s Perspective on Affordable Housing Finance
Guest Speakers: Gregg Warren, Natalie Connell and Sam Eyre of DHIC
CLASS MEETS AT HIGHLAND VILLAGE IN CARY

October 24: Access to Capital/Predatory Lending
Guest Speaker: Keith Ernst (Law ’96), Assistant General Counsel with the Center for Responsible Lending.
Readings will be distributed prior to this class meeting

Part IV: Commercial Development

October 31: Joint Ventures Between Charitable Organizations and For-Profit Business
Mark Grant, Commercial Development Joint Ventures
Plumstead Theatre Society, Inc. v. Comm’r of Internal Revenue
Rev. Rul. 2004-51
Excerpt from Mary Jo Salins and Robert Fontenrose, Housing Partnership Agreements

Review and prepare to discuss the Joint Venture Problem

November 7: Tax Financing for Commercial CED Projects
Part A: The Historic Rehabilitation Tax Credit
“Federal Historic Preservation Tax Incentives,” published by the National Park Service

Part B: New Markets Tax Credit: Overview and Introduction
NMTC Flow Chart (Foster)
NMTC Fact Sheet from Nixon Peabody LLP
Calculating the Credit: IRC §§ 45D(a); 45D(b)(1), 45D(c)
Maximizing the Credit: Rev. Rul. 2003-20

Review and prepare to discuss the New Markets Tax Credit Problems 1 – 4
November 14: **New Markets Tax Credit: Continued**

What Can the NMTC be Used For: IRC §§ 45D(d); 1397(d); 168(e)(2)
Treas. Reg. § 1.45D-1(d)

Where Can it be Used: IRC§ 45D(e)
Compliance Issues: IRC§ 45D(b)(l)(B); 45D(b)(2)(3); 45D(g)
Treas. Reg. §§ 1.45D-1(c)(5); 1.45-1(d)(2)

**Review and prepare to discuss the remaining New Markets Tax Credit Problems**

November 21: **State Support for Redevelopment & Economic Development**

Constitutional Considerations: NC Const. Art. V §§ 2 and 4
Statutory Authority: NCGS §§ 158-7.1
Maready v. City of Winston Salem

**Review and prepare to discuss the State Economic Development Incentive Problems**

**Assignment of Case Study #2: Due After Classes End**

Note: This case study should be done in small teams of 3 or 4 students and the team presentations will be made in the first few days after classes conclude. If you are having problems organizing a team, please let me know.

**Part V: Conclusion**

November 28: **The Lawyer’s Role in CED**

Brian Glick and Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice*
COURSE HOMEPAGE AND CLASS EMAIL LIST

The homepage for this course may be found at:
http://www.law.duke.edu/curriculum/courseHomepages/fall2005/314_01/
From time to time, I may put course notes, optional readings and links to related web sites on the home page. I will do my best to give you notice when new materials are put on the homepage.

In the event that there are announcements that I need to disseminate to the entire class, I will utilize the class email list. Such announcements may include changes to the assignments set forth on this syllabus, or responses to questions on one or more of the assigned cases that I believe will be beneficial for the entire class to read.

OFFICE HOURS

I will have regular office hours on Wednesdays from 3:30 – 5:00. If you need to meet outside of this time, please contact me by phone or email to arrange an appointment.