Basics of Land Use Law

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In the beginning...

- Before there was planning and zoning there were nuisance claims.
- P&Z were established, in part, to prevent these actions.
- Land use law is based on nuisance principles.
- The right to use property vs. your neighbor’s right to quiet enjoyment.
Basics of Zoning

- **Zoning** - (Early examples in LA and NYC) 1924 first Standard State Zoning Enabling Act is published.

- **Why?**

- Due to industrialism there was a need for the adoption of zoning laws to protect single-family homes, the local tax base, and property values (stability).
Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)

The Ambler Realty Company owned 68 acres of land in the village of Euclid, Ohio, a suburb of Cleveland.

The village council passed a zoning ordinance dividing the village into several districts.

Zoning was needed to ensure access to the fire department, decrease traffic accidents, and improve the overall quality of life for residents.
Euclid

- U.S. Supreme Court ruled that zoning, as long as it is not done in an arbitrary and/or capricious way, is a valid use of the police power.
- There must be a “rational basis” for zoning laws.
- *Euclid* led to the proliferation of zoning and the term Euclidean zoning.
Basics of Zoning

- 1928 - Standard City Planning Enabling Act promoted the use of a separate comprehensive plan
- How best to conform zoning to planning remains a problem.
What part of the Constitution allows states to regulate land use?

According to the 10th Amendment, the powers not specifically delegated to the federal government are reserved to the states or to the people.

This is the allocation of power that results in the states being able to regulate how private land is used.
Powers Under 10th Amendment

- States have the power to pass laws to protect public health, safety and welfare (police powers).
- The state power to regulate land use is often delegated to local governments through state constitutions and statutes.
- Most land use law is inherent local.
5th Amendment

- Due Process & Taking: “. . . nor shall any person be deprived of . . . property without due process of law; nor shall private property be taken without just compensation.”

- Taking: when a property owner is deprived of “reasonable and significant use” of property.
  - Physical
  - Regulatory
    - A law restricts use to such an extent that the land is taken
Procedural DP

- Citizens have the right to notice of pending government action (openness/fairness)

- Examples:
  - Public hearing
  - Cross examination
  - Creation of a record
  - Written determination
  - Right of appeal
Substantive DP

- The right to be free from unreasonable or arbitrary governmental interference.

- A land use regulation must be:
  1. pursuant to valid police power and
  2. there must be a rational connection between the restriction imposed and a legitimate governmental purpose.

- Referred to as the rational basis test
14th Amendment

- No State shall deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

- EP requires that classifications created by regulations must provide similar treatment to persons in similar situations.
  - Land in same zone must be subject to the similar regulations.
Equal Protection

● Classifications are permitted if they are rational, non-arbitrary and reasonable in relation to the objective of the law.

● Classifications based on suspect classes (race, religion, national origin, and alienage are unlikely to be upheld.)
Hearings and Appeals

- Zoning bodies are not bound by the technical rules of evidence. You should be thinking, however, about building the record in case of an appeal.

- Does your client have standing to appeal?
  - Is the client a nearby or adjoining owner or are they far removed from the property at issue?

- Have you exhausted all administrative remedies prior to appeal?
Standard of Review

- Quasi-judicial decisions are typically reviewed based on the record created below and the standard is the substantial evidence test.
  - Were the factual findings that lead to the decision made based on substantial evidence?
  - The determination of the zoning authority will be upheld if reasoning minds could reasonably reach the conclusion from facts in the record.
    - Remember when I told you to build that record?
Intergovernmental and interdisciplinary
Never dull.
Ever evolving
The decisions made by boards and agencies at the local level constitute the primary regulatory influence on how land can be utilized.
Recommended Resources

- Sign up for Patricia Salkin’s “Law of the Land” blog - weekly overview of national land use law cases of import.
- Attend your town/county’s Planning Commission (PC) /Board of Appeal (BOA) proceedings.
- Consider serving on a PC or BOA - warning - it can create legal conflicts if you practice in the area but if that is not a concern, it is a great experience.