



Basics of Land Use Law

Sarah Everhart
Agriculture Law Education
Initiative
Adjunct Faculty
University of MD Francis K.
Carey School of Law

Property Rights

- Fee simple ownership to land comes with certain rights that are protected by law.
- What are the fundamental property rights?
- The right to possess
- The right to use
- The right to exclude
- The right to alienate

In the beginning...

- Before there was planning and zoning land use disputes were mostly based in nuisance.
- Planning and zoning were established to prevent nuisance actions.
- Land use law is based in the principles of balancing a person's right to use property vs. the impact on another's right to quiet enjoyment.

Basics of Zoning

- Which came first the zoning or the planning?
- Zoning- 1924 first Standard State Zoning Enabling Act (SSEA) is published.
- Why?
- Due to industrialism there was a need for the adoption of zoning laws to protect single-family districts, the local tax base and property values.

Basics of Zoning

- 1928- Standard City Planning Enabling Act- promoted the use of a separate comprehensive plan
- Because in most areas- zoning came before planning- 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)- this is the basis for zoning and land use regulation
- The State power is delegated to local governments through State constitutions and statutes.

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.”
- Generally, “takings” occur when a property owner is deprived of “reasonable and significant use” of the property.
 - Physical
 - Regulatory
 - A law restricts use to such an extent that the land is taken

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 (safety/welfare) and
 - 2. there must be a rational connection between the restriction imposed and a legitimate governmental purpose.
 - Referred to as the rational basis test

- *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.
- On November 13, 1922, the village council passed a zoning ordinance dividing the village into several districts.
- Ambler Realty's land spanned multiple districts, and the company was significantly restricted in the types of buildings it could construct on the land.
- Ambler Realty filed suit against the village, claiming the ordinance violated the Fourteenth Amendment's protections of liberty and property described in the Due Process and Equal Protection Clauses.

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.
 - Town claimed zoning was needed so fire departments could access all properties, decreasing traffic accidents, and improving the overall quality of life for residents.
- There must be a “rational basis” for zoning laws.
- *Euclid* led to the proliferation of local zoning.

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

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. (this extends 5th amendment taking protection to states)
- EP requires that any distinctions or classifications made by regulations must give similar treatments to persons in similar situations.
 - Land in same zone must be subject to same 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, national origin, ancestry) or fundamental rights (First Amendment rights, right to vote, right to interstate travel, etc.) are subject to strict scrutiny by the court and are unlikely to be upheld.

Basic Zoning Tools

- Maryland's municipalities and counties use three basic zoning tools to control land use within their boundaries.
- Power to prepare a comprehensive or master plan, a zoning ordinance, and subdivision regulations.

Comprehensive Plans

- Legislatively adopted by the local governing body
- Spell out the manner in which an area will develop
- Include maps showing proposed future land use and anticipated transportation and community facilities.
- Include policies for protecting environmental features, etc.

Zoning and Subdivision Regulations

- Zoning Ordinance- establishes permitted uses and development standards in each zone.
- Includes zoning map. The map is a legal document that is signed and dated.

Zoning ordinance amendments should be drafted:

- (1) in accordance with the comprehensive plan;
- (2) with reasonable consideration for, among other things, the character of the district or zone and its suitability for particular uses; and
- (3) with a view to conserving the value of property and encouraging orderly development and the most appropriate use of land.

Subdivision Ordinance/Regulations

- Contains the procedures by which land is divided into individual building lots;
- the information that the landowner must provide to the approving authority which is generally the county or municipal planning commission; and
- The manner and format in which this information must be provided.

- Land use law is intensely intergovernmental and interdisciplinary.
- Zoning evolves as local boards and agencies review, approve and condition developments, subdivisions, and permits.
- The decisions made by boards and agencies at the local level constitute the primary regulatory influence on the land.
- You get to practice before a variety of public bodies and work with developers, engineers, planners, environmental experts, regulators, local government staff, etc.

Recommended Resources

- Maryland has a Planning Commission (PC) Education Course on the Maryland Department of Planning website.
- 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 PC /Board of Appeal (BOA) proceedings.
- Consider serving on a PC or BOA- warning-it can create conflicts if you practice in the area but if that is not a concern, it is a great experience.