



# Basics of Land Use Law

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## In the beginning...

- Before there was planning and zoning land use disputes were dealt with through nuisance claims.
- Planning and zoning were established, in part, to prevent these actions.
- Land use law is based on nuisance principles.
  - 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- (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 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
- How best to conform zoning to planning remains a problem.

- What part of the Constitution allows states to regulate land use?
- According to the 10<sup>th</sup> 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 10<sup>th</sup> 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 to regulate land use is often delegated to local governments through state constitutions and statutes.

# 5<sup>th</sup> 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

# 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

# 14<sup>th</sup> 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 5<sup>th</sup> amendment taking protection to states)
- 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, national origin, ancestry) or fundamental rights are subject to strict scrutiny by the court and are unlikely to be upheld.

- *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.
- In 1922, the village council passed a zoning ordinance dividing the village into several districts.
- Ambler Realty's land spanned multiple districts, and it was significantly restricted in the types of buildings it could construct on the land.
- Ambler Realty claimed 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.

# Basic Zoning Tools

- Municipalities and counties typically use three basic zoning tools to control land use within their boundaries.
  - A comprehensive or master plan;
  - A zoning ordinance; and
  - Subdivision regulations.

# Comprehensive Plans

- Spell out the manner in which an area will be developed into the future (5-10 years).
- Include an overview of existing conditions and future goals and objectives.
- Include maps showing proposed future land use and anticipated transportation and community facilities.
- Policy not law but the zoning ordinance and approvals often need to be consistent with the comprehensive plan.

# Zoning Ordinances

- Laws that establish use areas, called zoning districts, depicted on the zoning map.
- In each district, there is permitted, non-permitted, and conditionally permitted uses and provisions controlling the type and intensity of development.
- Zoning laws attempt to balance private property rights against the need to protect the public interest.
- The intent of zoning is to separate incompatible uses to avoid conflicts.

# Subdivision Ordinance/Regulations

- Laws that outline 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.
- You get to practice before a variety of public bodies and work with developers, engineers, planners, environmental experts, regulators, local government staff, etc.
- 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.

## 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.