



Basics of Land Use Law

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

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.