



Basics of Land Use Law

Sarah Everhart, Esq.

- Agriculture Law Education Initiative
- Adjunct Faculty
- University of Maryland Carey School of Law

In the beginning...

- Before there was planning and zoning as we know it today, land use disputes were based in nuisance and restrictive covenants.
- Zoning laws were established to prevent nuisance actions.
- Land use law is about balancing a person's right to use property vs. the impact of that use on another's right to quiet enjoyment.

- 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.
- **States have the power to regulate in order to protect public health, safety and welfare (police powers)** - this is the basis for state zoning and land use regulation
- States give local jurisdictions most of this power.

Due Process

- Due Process rights-
- 5th-“No person shall . . . be deprived of life, liberty, or property, without due process of law . . .” (applies to federal govt. action)
- 14th- “. . . nor shall any State deprive any person of life, liberty, or property without due process of law. . .” (applies to state and local govt. action).

Due Process

- What does Due Process do?
- Ensures fairness
- In what way?
 - In the way a zoning regulation is adopted or a zoning decision is made (procedural due process), and
 - In the scope and implementation of the zoning regulation (substantive due process).

Due Process

- Procedural DP - citizens have the right to notice of pending government action
 - Public hearing
 - Cross examination
 - Creation of a record
 - Written determination
 - Appeal

Due Process

- Substantive DP - Land use regulations and actions must substantially advance legitimate governmental interests. (health, safety & welfare)
- To succeed on a substantive due process claim, a plaintiff must establish:
 - (1) that it possessed a cognizable property interest, rooted in state law, and
 - (2) that the government deprived it of this property interest in a manner so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency.

Equal Protection

- Equal Protection rights
- “. . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”
- Classifications are permitted if they are rational, non-arbitrary and reasonable in relation to the objective of the law.
- Classifications made based on suspect classes- race, national origin, fundamental rights- 1st amendment rights (are not likely to be upheld)

Takings

- 5th- “[N]or shall private property be taken for public use, without just compensation.” (Applies to state and local govt. action through 14th amendment)
 - Physical
 - Regulatory
 - Regulation or decision deprives an owner of all or substantially all economically beneficial use of the property;
- Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)- zoning is a valid use of police power and not a taking when it is not arbitrary and capricious-rationally related to police power.

State Enabling Authority

- Local governments possess no inherent power to regulate land use, and are limited to the powers granted to them by the State.
- Important and confusing in Maryland!
- Is the County:
 - Code Home Rule,
 - Charter, or
 - Commissioner?
- You have to know the type of County and make sure you are looking at the right enabling authority.

- Local Government Article – Enables charter counties to enact local planning and zoning laws.
- Land Use Article, Division I – Enables non-charter counties and municipalities to implement planning, zoning and subdivision.
 - Also applies to charter counties, in specific areas such as required and optional elements for comprehensive plans.

- Other planning-related state statutes relate to required water and sewer planning, smart growth, stormwater management, forest conservation, non-tidal wetlands, tidal wetlands, endangered species, floodplain management, etc.

Basic Zoning Tools

- Maryland's municipalities and counties use three basic zoning tools to control land use within their boundaries. What are they?
- 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.
- Updated every 10 ten years - Planning Commission starts the process years before

Consistency with the Plan

- In Maryland the following must be consistent with the Comprehensive Plan:
 - zoning and subdivision ordinances
 - special exceptions (for non-charter counties and municipalities only)
 - water and sewer amendments and
 - Critical Area growth allocations

- In PFAs (municipalities, inside the beltway, etc.) land uses and densities must “further, and not be contrary to” the following parts of the Comprehensive Plan:
 - (1) policies;
 - (2) timing of the implementation of the plan;
 - (3) timing of development;
 - (4) timing of rezoning; and
 - (5) development patterns.

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.
- How to appeal?
 - Look to the law!
- 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?
- Exception- error of law

- Land use law is intensely intergovernmental and interdisciplinary.
- 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

- *County Council of Prince George's County v. Zimmer Development Company*, 444 Md. 490 (2015)
- 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-this can create a conflict if you practice in the area.