

LAND USE & THE LAW

ELI SUMMER SCHOOL (JULY 24, 2014)

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I. Land use regulation is based on (1) common law norms, (2) the inherent “police power” of state governments, (3) constitutional authority.

II. In the US, most land use regulation is done by local governments. Local governments are “creatures” of the states.

III. Authority of local governments is defined by state land use planning and zoning enabling legislation, enacted by state legislatures, and within authority of state constitutions.

IV. Federal and State Constitutions have important implications for land use regulation – 1st amendment, 5th amendment, 14th amendment, among others.

V. Land use planning and zoning hierarchy: comprehensive plan, zoning map and text, subdivision regulation, other regulations and ordinances. Who adopts? How?

VI. Administrative process, judicial review – typical grounds for challenge, which courts.

VII. Federal land use regulation: federal domain, territorial sea and EEZ, influence via CZMA, Transportation laws, Clean Air Act, Clean Water Act, Endangered Species Act.

VIII. Examples of land use regulation and the environment: Euclidean regulation (uses, density) overlay zones, growth management, buffers, TDRs/PDRs.

IX. Critiques of land use regulation/Euclidean zoning

X. Examples --See excerpt of pages from John Nolon, [Open Ground](#); and Town of Dryden case; both provided on the website materials for this session.