Intersection of Property Rights and Land Use Regulations

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Presenter

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Agenda

• Origins of Planning & Zoning
• Constitutional Issues
• Community Planning
• The Zoning Ordinance
• Common Zoning Problems
• Questions/Discussion
Origins of Planning & Zoning

- Mid-1300s – Bubonic Plague
- Rats blamed for spread of disease
- Millions died, 1/4 of Europe's population
- Literally a life & death issue
- Beginning of modern science and medicine – understanding how disease was spread

Urban Squalor

- Middle Ages – cities had large, poor, dirty slums
- People lived with garbage, sewage, animals, animal waste, rats, fleas
- Realization: the way buildings and cities were arranged affected life and health
Air and Light

• Early public health laws in England many years after Plague required separation, air and light to all dwelling units.

Industrial Revolution

• Smokestack industries burned coal.
• People lived on or near industrial facilities.
• Health problems, deaths associated with smoke, soot.
• Required separation of living quarters and industrial areas.
• First land use “zones” or “districts”.

Nuisances

• The physical isolation of practices such as tar boiling, soap making, fat rendering and dead carcass cremation, was viewed as a reasonable governmental response to the unacceptable imposition of one otherwise legal activity upon another.
Fire Risk

- Thatched roofs were prohibited in London due to fire risk that could spread block to block in a matter of minutes

Revolutionary War

- King George III and Parliament ruled colonies without fair representation
- Colonies wanted rule of law, democratic government
- Our forefathers fought and died to overthrow authoritarian government

Our Forefathers

- Constitution framers - landed gentry, not peasants
- Property rights very important
- “Life, liberty and pursuit of happiness” in Declaration of Independence
- “Life, liberty or property” in Constitution (Bill of Rights)
Constitutional Issues

United States Constitution

- Established Federal Government as one of limited and expressly enumerated powers.
- Grants general police power to the States, rather than the Federal Government.
- States delegate the police power to local government units through the State enabling legislation.

Due Process (5th Amendment)

“No person shall be . . . deprived of life, liberty, or property without due process of law, . . .”
1: Procedural Due Process

- Process, procedure must be fair
- No person may be deprived of use of property without a fair hearing, opportunity to be heard, defend against the proposed action
- Public hearing, with notice given
- Chance to speak to decision makers about the action

2: Substantive Due Process

- Substance, content must be reasonable
- No person may be deprived of use of property under circumstances that are unreasonable, arbitrary, or capricious
- Facts, findings, conclusions must be reasonable

3: Due Process Generally

- Relationship to the stated objectives to be achieved - "rational nexus"
- Rational basis in a comprehensive plan
- Reasonableness of standards
- Rough proportionality
Equal Protection (14th Amendment)

“. . .nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”

Equal Protection

- No law may unduly favor one group over another nor impose a hostile discrimination on any particular group
- “Reasonableness of the classification” - reasons for treating one use or group differently from another can be acceptable

Takings (5th Amendment)

“. . .nor shall private property be taken for public use, without just compensation.”
A “Taking”

- Constitutional prohibition on taking without compensation
- Physical invasion is a taking
- Regulatory taking may or not be a taking

Regulatory Taking

- Denial of all economically beneficial use
  - Entire “bundle of rights”
  - Short moratorium not a taking
- Even if some remaining use, consider
  - Economic impact
  - Investment-backed expectations
  - Character of the regulation

Regulatory Taking

- For exactions, must be a connection between condition and burden caused by development
  - Must be roughly proportionate
  - Individualized determination of proportionality
Regulatory Taking

- If regulation takes all economically viable use, it is a taking

Community Planning

Role of the Zoning Ordinance

- Its purpose is to implement the comprehensive plan

- Plan

- Ordinances
The Community Planning Process

- Community planning is a **systematic, ongoing, forward-looking** process of analysis of opportunities and constraints, for the purpose of formulating a plan to accomplish the community’s **goals and objectives**.

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Community participation

- Community involvement is **highly desirable**
- Public approval or disapproval is NOT a substitute for facts, findings, reasonable conclusions
Comprehensive Plan Elements

- Vision
- Inventory and Analysis - Constraints
- Goals and Objectives
- Consideration of Alternatives
- Implementation - Plans and Policies
- Basis for zoning and other tools

Rational Basis

- Inventory and analysis
- Research, statistics, good science
- Basis for plans, regulations, decisions

The Zoning Ordinance
Role of the Zoning Ordinance

- Source of its authority is the state enabling legislation – limited to what is adopted in the ordinance

Standards must be reasonable means to legal ends

Balance - individual rights (Constitution) vs. common good (police power)

Zoning

- The Official Zoning Map
- The Zoning Ordinance
  - Permitted and Accessory Uses
  - Conditional Uses (Permits)
  - Interim Uses (Permits)
  - Variances
  - Rezoning, Amendments
  - PUDs
  - Interim Ordinance (Moratorium)
- Official Street Map
Conditional Use Permit

- **CONDITIONAL USE (CUP) or SPECIAL USE (SUP):** A permitted use to which reasonable conditions may be attached based on factual findings.
- Conditions directly related to addressing problems (nexus)
- *NOT a use which may or not be permitted depending on the whim of the City Council, Town Board, County Board*

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Conditional Uses

- Must be approved if standards are met
- Can only add conditions related to those standards (except County has authority to add conditions “to protect public interest”)
- Variances may be granted to standards
- Remains effective as long as conditions are met

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Interim Use Permit

- **INTERIM USE:** A temporary use of the land to which reasonable conditions may be attached and which will expire on a certain date or after a certain event.

Permitted by State statute, but must have provision in local zoning code.
**Variance Definition**

- VARIANCE: approval to depart from the requirements of the zoning ordinance
- Permission to “break the rules”
- A Conditional Use Permit operates within rules

**Variances**

- Undue hardship unique to property
- Proposed use is reasonable
  - Statute: cannot be put to reasonable use
  - Courts say “reasonableness” & “practical difficulties”

**Variances - Issues**

- Lot Line
- Setback
- Lake
- Steep Slope
- House/Garage
- Mature Trees
Variances

- Not limited to physical conditions of land
- Practical difficulties such as functional and aesthetic concerns can be considered

Variances (cont.)

- Granting variance not required if property is owned with adjacent land
- Lots can be combined, lot line moved

Variances

- Circumstances not caused by landowner
- Not alter essential character of neighborhood
- Economic considerations alone not enough
- Higher burden of proof than CUP
- No use variance allowed
- Precedent: maximum of one year
Definitions

- PLANNED UNIT DEVELOPMENT (PUD): A rezoning or conditional use permit to review a project as a “unit” of several buildings or uses, rather than individual buildings on individual lots, encouraging creativity and innovation, and allowing flexibility in the strict application of zoning standards.

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PUD Planned Unit Development

Original Site - 5 ac.

Standard Plat

Trees gone
10 lots
110’ wide

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Small Lot Plat

Trees, park
10 lots
70’ wide

Trees, more park
10 TH un.
Rezoning, Amendments

- “If it ain’t broke, don’t fix it, but if it is broke, it can be fixed.”
- Can’t change the zoning rules ad hoc
- Must amend the ordinance according to state law and procedure set out in city code for amendments
- May enact interim ordinance establishing a development moratorium to allow for study
- Ordinance, map amendments may follow moratorium

Definitions

- INTERIM ORDINANCE (or MORATORIUM): a suspension or limitation on certain land uses pending study of the issues surrounding them.
  
  Allowed up to one year for study, enactment of new regulations.

Common Zoning Problems

- Overly broad or unclear ordinance language – doesn’t accomplish anything, confusing or unenforceable
- Lack of rational basis for ordinance – can be challenged and thrown out
- Making up rules on the spot (at a City Council or Town Board meeting) that have no basis
- Incomplete application submittals
- Listening to an angry crowd vs. doing what’s right
- Tracking 60-day rule time limits
- Lack of code enforcement
Review

• Origins of Planning & Zoning

• Constitutional Issues

• Community Planning

• The Zoning Ordinance

Questions/Discussion