

University of Connecticut
Department of Geography
Urban and Regional Planning

Lecture 3. Government, The Law, and Land Use

Adjunct Lecturer:
Donald J. Poland, MS, AICP
E-mail: don@donaldpoland.com
Web: www.donaldpoland.com

Government and Law

Fundamentals of the Legal Foundation of Planning
Organization of U.S. Government

- Three Branches
 - Executive
 - Legislative
 - Judicial

- Three Levels of Government
 - Federal
 - State
 - Local



Fundamentals of the Legal Foundation of Planning
Organization of U.S. Government

- Executive Branch
 - Federal
 - State
 - Local

- Legislative Branch
 - Federal
 - State
 - Local



Fundamentals of the Legal Foundation of Planning Organization of U.S. Government

- Judicial
 - Federal
 - District
 - Appeals
 - Supreme
 - State
 - Superior
 - Appeals
 - Supreme
 - Local
 - Municipal, Probate



www.donaldpoland.com

5

Fundamentals of the Legal Foundation of Planning Separation of Powers

- Legislative body writes the laws
- Executive enforces the laws
- Judicial (courts) arbitrate the making and enforcement of laws.
 - Stare decisis – “adhere to precedents”
 - Lower courts must follow higher courts
 - Higher courts tend to follow lower courts
 - Can overturn prior decisions, but must explain extenuating circumstances



www.donaldpoland.com

6

Fundamentals of the Legal Foundation of Planning Functions of the Courts

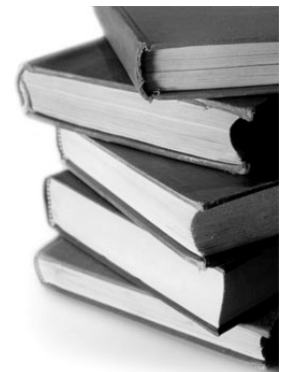
- Trial Courts make rulings on facts (jury) and law (judge) based on precedents
- Appellate Courts do not “re-weigh” the facts. Rule strictly on law.
- Supreme Court – must petition for review. Held to a higher standard.

www.donaldpoland.com

7

Fundamentals of the Legal Foundation of Planning Function of the Courts

- Presumption of Validity
- “Fairly Debatable”
- Judicial Restraint



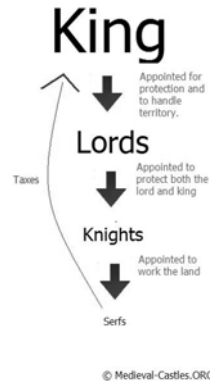
www.donaldpoland.com

8

Fundamentals of the Legal Foundation of Planning

The Hierarchy of Power

- Based on the English System
- Sovereign has ultimate control of all lands
- Could grant certain rights to subject to use this land in exchange for service ("fee" or "fief") to the crown



Fundamentals of the Legal Foundation of Planning

The Hierarchy of Power

- In U.S., the "sovereign" is the state government
- State sovereignty must give way to federal law if delegated in the Constitution
- Powers not delegated are retained by the State (10th Amendment)
- States delegate ("enable") powers to local governments
- Home Rule vs. Dillon Rule States



Fundamentals of the Legal Foundation of Planning

Organization of Connecticut's Local Government

- Executive
 - First Selectmen and Board of Selectmen
 - Mayor
- Legislative
 - Town Meeting (Representative Town Meeting)
 - City Councils



Fundamentals of the Legal Foundation of Planning

Local Land Use Commissions

- Planning Commission
- Zoning Commission
- Zoning Board of Appeals (Adjustments)
- Inland Wetlands and Waterways Commission
- Conservation Commission
- Historic District Commission
- Economic Development Commission
- Redevelopment Agency

Fundamentals of the Legal Foundation of Planning Functions of Local Land Use Commissions

- Planning Commission
 - Prepare, amend and adopt a plan of conservation and development
 - Review and recommend municipal improvements
 - Subdivision regulation and review
- Zoning Commission
 - Establish, change, or repeal zoning regulations and districts
 - To properly administer and enforce zoning regulations

Fundamentals of the Legal Foundation of Planning Functions of Local Land Use Commissions

- Zoning Board of Appeals (Adjustments)
 - To hear, consider and decide appeals of decisions of the ZEO
 - To determine and vary the application of the zoning regulations in harmony with their purpose and intent
- Inland Wetlands and Waterways Commission
 - To establish Inland Wetland Regulations
 - To hear, consider and decide applications for activities involving inland wetlands and watercourses
 - To enforce the Inland Wetland Regulations and conditions of permits

Sources of Land Use Law

Fundamentals of the Legal Foundation of Planning Sources of Land Use Law

- Common Law
- Federal Constitution
- Federal Statutes
- State Constitution/Statutes

Fundamentals of the Legal Foundation of Planning

Sources of Land Use Law

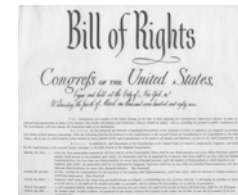
- Common Law
 - Derived from English legal principles
 - "Law" derived from judicial precedents
 - Require citizen to act reasonably with respect to one another
 - No person shall act to harm another
 - Use of land should be reasonable and not harm the community



Fundamentals of the Legal Foundation of Planning

Sources of Land Use Law

- Federal Constitution
 - Three key amendments: 1st, 5th, and 14th
 - First Amendment protects speech and religion
 - Fifth Amendment protects against unreasonable seizure of property (taking) clause
 - Fourteenth Amendment:
 - Due Process: Substantive ("arbitrary and capricious") and Procedural
 - Equal Protection



Fundamentals of the Legal Foundation of Planning

Sources of Land Use Law

- State Constitution and Statutes
 - Police Power
 - Authority to act to protect the public health safety and welfare
 - Actions pursuant to the police power must be reasonably related to public welfare
 - Planning and zoning laws
 - Environmental Laws

good behavior; but may be removed by impeachment; and the Governor shall also remove or suspend the address of two thirds of the members of each house of the General Assembly; all other Judges and Justices of the Peace shall be appointed annually. No Judge or Justice of the Peace shall be capable of holding his office, after he shall arrive at the age of seventy years.

Article Sixth.

OF THE QUALIFICATIONS OF ELECTORS.

§ 1. All persons who have been, or shall hereafter, previous to the ratification of this Constitution, be admitted freemen, according to the existing laws of this State, shall be electors.

§ 2. Every white male citizen of the United States, who shall have gained a settlement in this State, attained the age of twenty-one years; and resided in the town in which he may offer himself to be admitted to the privilege of an elector, at least six months preceding; and have a freehold estate of the yearly value of seven dollars in this State; or having been enrolled in the militia, shall have performed military duty therein by the term of one year next preceding the time he shall offer himself for admission, or being liable thereto, shall have been, by authority of law exercised thereon; or shall have paid a state tax within the year next preceding the time he shall present himself for such admission; and shall still in a good moral character; shall, on his taking such oath as may be prescribed by law, be an elector.

Land Use and Case Law

Fundamentals of the Legal Foundation of Planning
Land Use Case Law – Early Land Use Law

- Nuisance
- *Sic utere tuo ut alienum non laedas*
 - Use your own land so that it does not harm others
- 1867 San Francisco ordinance prohibiting slaughterhouses, hog storage and hide curing in parts of the city



Fundamentals of the Legal Foundation of Planning
Land Use Case Law – Important Legal Cases

- Police Power
- Zoning
- Due Process
- Equal Protection
- Free Speech
- Takings
- Eminent Domain

Fundamentals of the Legal Foundation of Planning
Land Use Case Law – Police Power

- Power of the state to adopt laws to protect public health, safety, and welfare
- State must act reasonably
- Mugler v. Kansas 1887
- Hadacheck v. Sebastian 1915



Fundamentals of the Legal Foundation of Planning
Land Use Case Law – Mugler v. Kansas (1887)

- Kansas enacts law that prohibits the manufacturing and sale of "intoxicating liquors"
- Mugler owns a brewery made worthless from the act
- Court finds that Mugler still retains premises and could use for legal purpose
- Harm/benefit test:
 - If government acts to prevent a harm to public health, safety, and welfare, then legitimate exercise of police power

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Hadacheck v. Sabastian (1917)

- Hadacheck operated brickworks in rural area out of LA
- Residential development moves toward the area, city annexes, and restricts use
- Hadacheck claims a taking
- Court rules he does not have a “vested interest” or right to the use
 - “...to so hold would preclude development and fix a city forever in its primitive condition.”

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Zoning

- Village of Euclid v. Ambler Realty Company (1926)
- Zoning hugely popular after introduction of Standard State Zoning Enabling Act
- Euclid a suburb of Cleveland, OH
- Adopted zoning that had:
 - 6 use districts
 - 3 height districts
 - 4 area districts
- Amber owned 68-acres of property that was divided into 3 separate use districts
- Ambler sued claiming that Euclid had reduced their property value by limiting its use, amounting to a deprivation of property without due process of law
- Not a valid use police power

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Zoning

- **Euclid v. Ambler Ruling**
 1. Euclid is a separate municipality...ability to decide where industrial uses could occur
 2. Zoning was a legitimate use of police power and not arbitrary, but based on rational process
 3. Ambler did not demonstrate real effect on property value, but only a speculative one. That is not enough to claim a taking.
 4. Ambler did not demonstrate that a due process violation occurred, since the court found zoning a type of “nuisance” control

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Due Process

- *Substantive* – regulations must reasonable advance legitimate government interest – can’t be arbitrary or capricious
- *Procedural* – involves the right to be hear, not of hearings, and generally the fairness of the procedures leading to a decision
- *Herrington v. County of Sonoma (1988)*
 - U.S. 9th Circuit Court of Appeals found due process violation in the county’s denial of a 32-lot subdivision, because the county held meetings without informing the developer and used improper information to sustain denial

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Equal Protection

- Law may not improperly discriminate against one group of people in favor of another
- Courts will generally uphold a land use regulation against an equal protection challenge if it is “rationally related” to a legitimate state interest
- *Village of Arlington Height v. Metropolitan Housing Development Corp. (1977)*
 - Religious order sought rezoning for low-to-moderate income housing
 - Rejected by town
 - U.S. Supreme Court rejected challenge because although minorities were harmed by decision, the record did not show intent by the village.

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Free Speech

- Often related to signs and adult use regulations
- Commercial speech may be restricted as long as regulation is “content neutral”
- *Metromedia v. City of San Diego (1981)*
 - San Diego adopted regulations banning billboards
 - U.S. Supreme Court ruled that a total ban on commercial and noncommercial signs violated free speech
 - However, could regulate commercial billboards to promote aesthetics

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Takings

- Physical Takings
- Regulatory Takings (“inverse condemnation”)
- *Pennsylvania Coal Company v. Mahon (1922)*
 - Pennsylvania passes Kohler Act forbidding underground mining such that it causes subsidence of human habitation
 - U.S. Supreme Court held law to be a taking
 - Introduced a “balancing” test between the private owner’s loss and the public interest intended to be addressed by the regulation

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Takings

- *Lucas v. South Carolina Coastal Council (1992)*
- South Carolina Coastal Zone Management Act and Beachfront Management Act restricted uses near “critical areas”
- Lucas owned 2 beachfront lots. Acts effectively deprived him of ability to construct homes
- Lucas claims the restrictions are essentially a taking
- U.S. Supreme Court rules that a regulation that deprives a property owner of all use of property is a taking which requires compensation
 - Regulation would not be a taking if it is simply an acknowledgement of an existing nuisance

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Eminent Domain

- Authority of government to take private property for public use upon the payment of “just compensation”
- *Berman v. Parker (1954)*
 - Public purchase of slum area for redevelopment by a private entity constitutes a “public use”
 - Public use requirement is coterminous with the police powers
 - Could apply to aesthetic matters as well as health, safety, and welfare.

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Eminent Domain

- *Kelo v. City of New London (2006)*
 - New London undergoing hard times economically
 - Pfizer begins construction of new facility near Fort Trumbull neighborhood
 - New London wishes to redevelop the area. Redevelopment agency to acquire the land and sell to a private developer for redevelopment.
 - New London offered to purchase the 115 residential and commercial lots in the Fort Trumbull neighborhood
 - 15 Properties did not wish to sell, including Susette Kelo
 - New London exercises eminent domain
- **Question:** Can government use its eminent domain power to condemn private property for a private sector development?

Fundamentals of the Legal Foundation of Planning

Land Use Case Law – Eminent Domain

- *Kelo v. City of New London Ruling*
 - A 5 to 4 ruling
 - Yes, the City of New London can!
 - Economic development is a legitimate reason for the public use requirement of the 5th Amendment
 - New Headline: Nothing changed. Simply a *status quo* decision
 - Still requires a public purpose and a rational plan set in place before economic development is instituted



Application of Law and Land Use

Fundamentals of the Legal Foundation of Planning

How does government get us to do what it wants us to do?

- Regulations
 - Zoning
 - Subdivision
 - Wetland
- Rewards
 - Tax Incentives
- Advising
 - Public Service Announcements

Fundamentals of the Legal Foundation of Planning

Planning as Land Use Regulations

- Planning as a Police Power
 - Public Interest
 - Public Health, Safety, and Welfare
 - Public Participation

(These give government authority over us and the authority to create laws)

- Legal Precedent



Fundamentals of the Legal Foundation of Planning

The Creation of Law

- Enabling Legislation
 - Statutory Laws
- Vs.
- Case Law
- Enabling Legislation
 - Basis
 - Terms Defined
 - Powers Established
 - Responsibilities Defined
 - Links to other Statutes
 - Administration

Fundamentals of the Legal Foundation of Planning

The Advancement of Government Power

- How did government power advance during the 20th Century?
 - Power to Control Land Use (late 1800's)
 - Power to Plan (1920's)
 - Economic Development & Housing (1930's)
 - Civil Rights Powers (1950's/1960's)
 - Environmental Preservation (1960's/1970's)
 - Land Rights (1990's)
- Evolutionary track of regulations
 - Milestones
 - First city plan (Cleveland 1903)
 - First state 'enabling legislation' (WI 1909)
 - First city-wide zoning 'code' (LA 1909)
 - Standard State Zoning Enabling Act (1922)
 - Cincy adopts 1st comprehensive plan (1925)
 - Euclid vs. Ambler Realty (1926)
 - Standard City Planning Enable Act (1928)

Fundamentals of the Legal Foundation of Planning

Why is land such an issue?

- Control/direct development
 - How, when public only owns about 10% of the land?
- Preserve/improve community character
 - How do you preserve/improve what you don't own?
- Protect/conserve the environment
 - How, when most of the property is privately owned?
- Benefit the health & welfare of residents
 - How does your community generate revenues?
 - How does your community generate additional revenues?

Fundamentals of the Legal Foundation of Planning

Land as Property – Land as Rights?

- Land Rights and the Cone of Ownership
 - Surface Rights
 - Subsurface Rights
 - Supersurface Rights
 - Right of Access
 - Boundary Establishment
 - Adverse Occupance
 - Transient Resources

Fundamentals of the Legal Foundation of Planning

What impacts land values?

- Location
- Quality of the land
- Quality of associated resources (unlimited use, reasonable use, use rights)
- What is on the land
- For what is the land useful
- How the land is used
- Regulations affecting the land
- Predictability and Stability = Confidence

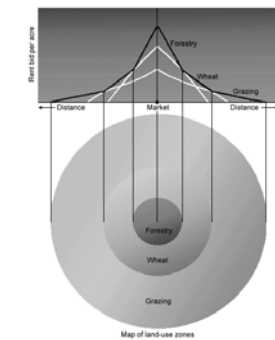


FIGURE 6-4: Hypothetical Rent Gradients and Land-Use Zones

Fundamentals of the Legal Foundation of Planning

What Empowers and Limits Government Power

- Enabling Legislation (Statutory Laws)
- Case Law (Both empower and limit) vs.
- The Constitution (limits)
 - Amendment 1
 - Amendment 5
 - Amendment 14



Fundamentals of the Legal Foundation of Planning

Why Single Out the 5th Amendment?

- Planning today deals extensively with property (mostly land) issues.
 - The ownership of property
 - The use of property
 - The value of property
- The 5th Amendment - Trial and Punishment, Compensation for Takings
 - ...nor shall any person...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fundamentals of the Legal Foundation of Planning

Land, Law, and 'Takings'

- 5th Amendment and Property Seizure
- Eminent Domain and Condemnation
- The Concept of a Taking (by regulation)
- The Concept of Rational Nexus



Fundamentals of the Legal Foundation of Planning

Planning and the 1st Amendment

- Free speech and sex
 - When is a sign protected?
 - When isn't a sign protected?
 - Does regulating a place of worship conflict with it?
 - Does regulating adult entertainment conflict with it?
- Amendment 1 - Freedom of Religion, Press, Expression.
 - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fundamentals of the Legal Foundation of Planning

Government, the Law, and Ethics – The 14th Amendment

- Why do ethics matter in a discussion of government powers?
- The 14th Amendment and Town Plans
 - A town plan presents the community's goals. It indicates what is in the 'best interest' of the community.
 - Planning is meant to make those goals a reality.
 - How can you use the tools of planning without having a plan to justify them?
- Amendment 14 - Citizenship Rights.
 -No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.