Land Use Law 101
Legal Research
How to Find the Law
Orlando DeLogu

- Land use is a heavily regulated industry like securities, but with no single place where you can find the law...
The Police Power

• to provide for and promote the safety, peace, health, morals, and general welfare of the people...
Common Law Nuisance
Spur Industries v. Del E. Webb Development Co.
Constitutions and Statutes
Regulations
Case Law
Other Research Tools

• The internet, of course
  – Google, www.planning.org

• Casebooks, treatises, and hornbooks
The Role of the Plan
Daniel Mandelker and Peter Salsich


• Standard City Planning Act
• City Plan Commission
• Local legislative body
Comprehensive Planning Process
(“Rational” Planning)

• Traditional concern – “rational” planning
• Goals, objectives and policies
Plan Format

Pennsylvania Municipalities Planning Code

Lancaster County Comprehensive Plan

“ReVisions” Policy Element
Growth Management Element
Functional Elements

Cultural Heritage
Green Infrastructure
Housing
Tourism
Transportation
Water Resources
## Citizen Participation

<table>
<thead>
<tr>
<th>PUBLICITY</th>
<th>PUBLIC EDUCATION</th>
<th>PUBLIC INPUT</th>
<th>PUBLIC INTERACTION</th>
<th>PUBLIC PARTNERSHIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building public support</td>
<td>Disseminating information</td>
<td>Collecting information</td>
<td>Two-way communication</td>
<td>Securing advice and consent</td>
</tr>
</tbody>
</table>

<--------------- PASSIVE --------------->

   ACTIVE<------------->
Alternatives to Traditional Rational Planning

• Participatory planning
• Equity planning (the “Just” City)
Current Approach

• Planning is a part of the political process. “Political decision maker [is] responsible for the adoption of planning policy. Planners assist by presenting and clarifying policy alternatives,” Mandelker, § 304.
Four Prototypes

• Traditional Land Use Design Plan
  – designated land uses and a circulation system

• Land Use Classification Plan
  – “growth policy areas” map

• Policy Plan
  – verbal discussion of projected future development; less reliance on maps

• Development management plan
  – policy proposals for public investment
Mandatory Planning
DEFINITION OF “CONSISTENCY”

A Planner’s Dictionary (PAS Report Number 521/522, April 2004) provides three definitions of “consistency.”

- All regulations that are used to implement the local comprehensive plans must be consistent with the recommendations and policies of the plan, and state and local funding decisions must be consistent with the local plan. [Rhode Island Statutes]

- Free from variation or contradiction. Programs in the general plan are to be consistent, not contradictory or preferential. State law requires consistency between a general plan and implementation measures such as the zoning ordinance. [California Planning Roundtable]

- Compatibility and agreement with the general plan of the [municipality]. Consistency exists when the standards and criteria of the city general plan are met or exceeded. [Moorpark, California]
Implementing the Plan through Regulation

Dwight Merriam

• Basic processes
  – Subdivisions
  – Zoning
  – Variances
  – Enforcement
• State law and federal law claims
  – The “Police Power”
  – Enabling statutes and charters
  – This guy’s rule

  – State overrides
  – Federal zoning? Yes, but under other names
    • RLUIPA
    • NFIP
    • FHAA
    • CWA
- **Private controls**

### Table 1. Spread of Common Interest Developments

<table>
<thead>
<tr>
<th>Year</th>
<th>CIDs</th>
<th>Housing units</th>
<th>Residents</th>
<th>% of population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964</td>
<td>&lt;500</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
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<tr>
<td>1970</td>
<td>10,000</td>
<td>701,000</td>
<td>2.1 million</td>
<td>1.0</td>
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<tr>
<td>1980</td>
<td>36,000</td>
<td>3.6 million</td>
<td>9.6 million</td>
<td>4.2</td>
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<tr>
<td>1990</td>
<td>130,000</td>
<td>11.6 million</td>
<td>29.6 million</td>
<td>11.9</td>
</tr>
<tr>
<td>2000</td>
<td>222,500</td>
<td>17.8 million</td>
<td>45.2 million</td>
<td>16.1</td>
</tr>
<tr>
<td>2009</td>
<td>305,400</td>
<td>24.4 million</td>
<td>60.1 million</td>
<td>19.7</td>
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</tbody>
</table>

*Sources:* Community Associations Institute (2010) and U.S. Census.

CIDs = common interest developments

n.a. = not available
• Covenants and easements
• Common interest communities
• “The right to dry” issue
• Dog amortization
Other Powerful Controls

• The market
• Infrastructure
• Taxes
• Government spending
Traditional Regulation
Daniel Mandelker and Nancy Stroud

- Zoning
  - Uses
    - permitted uses
    - conditional uses/
      special exceptions
    - mixed uses
    - accessory uses
    - specially protected uses
  - bulk and lot restrictions
  - density restrictions
  - planned development
• **Zoning ordinance administration**
  – **Review bodies**
    • staff level review and approval
    • planning and zoning board
    • legislative body
  – **Review/approval processes**
    • quasi-judicial review and approval v. legislative
    • variances
    • rezoning
  – **Site plan review**
  – **Enforcement**
• Subdivision controls
  – Standards
  – Administration
• Property Rights Issues
  – Vested rights
  – Nonconforming uses
  – Estoppel
Cutting Edge Regulation
Peter Salsich and Tom Ragonetti

• Clustering
• TDR
• Overlays/floating zones
• TOD
• New Urbanism
• Growth management
• Sustainability
Clustering

FIG. 143. PLANNED UNIT DEVELOPMENT

28 out of 38 acres preserved as open space
Transfer of Development Rights (TDR)

• Landmarks and undeveloped land
• Often with restrictions
Overlays/floating zones

Village Review Overlay Zone,
Westbrook, Maine
Growth Management

Urban Growth Boundary

Source: Metro

PAM MARTIN/THE OREGONIAN
Transit-Oriented Development (TOD)
New Urbanism

The Transect
Principles

1. Walkability
2. Connectivity
3. Mixed-Use & Diversity
4. Mixed Housing
5. Quality Architecture & Urban Design
6. Traditional Neighborhood Structure
7. Increased Density
8. Smart Transportation
9. Sustainability
10. Quality of Life
Sustainable Development
Constitutional Issues
Nancy Stroud, Orland DeLogu and Stuart Meck

• Due process (substantive and procedural)
• Takings
• Equal protection
• Estoppel
• First Amendment
  – freedom of speech
  – signs
  – adult uses
  – flag displays
A Bouillabaisse of Land Use Law

Tom Ragonetti, Stuart Meck and Dwight Merriam

- Wetlands
- Floodplain regulation
- Historic preservation
- Airport regulations
- Fair Housing Act
- Manufactured housing
• Aesthetics
• Green building
• Telecommunications
• RLUIPA
• Agricultural lands
/open space
Q&A/Open Discussion

The Faculty