Land Use Law 101

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The Planning Process
Define Goals and Objectives

Define Problem, System (Constraints, Inputs, Outputs, Functions, Values, Evaluation Criteria)

Generate Solutions

Analyze Solutions

Evaluate Alternatives

Select Alternative

Implement
Before Local Planning

- Colonial times
- Sanitary reform movement
- City Beautiful
- Planning commission
Legal Status of the Plan

• Mandatory planning doctrine
• Consistency doctrine
Zoning
A Brief History

- Before zoning
- *Euclid v. Ambler*
The Power to Zone

The police power...

- To preserve, promote, protect...the public health, safety and general welfare...
The Power to Zone

- Standard Zoning Enabling Act
- Inherent and implied powers
- Charter
- Home rule
  - Initiative and referendum
  - Extraterritorial zoning
  - Annexation and prezoning
Purposes of Zoning

• Preserve property value
• Preserve character
• Traffic safety
• Regulation of competition
• Fiscal zoning
• Growth management
  – Rate and sequence
Private Regulation

- Covenants and easements
- Common interest communities
- “The right to dry” issue
- Dog amortization
Other Powerful Controls

- The market
- Infrastructure
- Taxes
- Government spending
Zoning

- Use
- Bulk, density, dimension
- Cumulative v. exclusive use
Common Issues in Zoning

- Accessory uses
- Home occupations
- Definition of family
- Group homes
- Agricultural uses
And Not-So-Common Issues in Zoning

• Medical and recreational cannabis
• Hookah lounges
• Nudist camps
• Gun clubs
• Doggy day care
Height, Bulk, Setback Controls

- Setbacks, sideyards
- Frontage
- Height
- Lot coverage
- Floor area ratios
- Open space ratios
Toolbox of Techniques

- The basics
  - Legislative
  - Administrative
  - Quasi-judicial

- Increasing due process
Increasing Flexibility

- As-of-right
- Site plan
- Conditional use
- Overlay zone
- Floating zone
- Planned Unit Development
- Special Development District
...and more...

- Incentive zoning
- Performance zoning
- Interim and holding zones
...and more...

- Affordability
- New urbanism
- Traditional neighborhood design
- Transit oriented development
- Form-based codes
Constitutional Issues

- Procedural due process
- Substantive due Process
- Equal protection
- First Amendment
  - Signs, religion
- Fifth Amendment
  - Takings
  - 2017 *Murr* decision
Subdivision

• To make orderly land sales and descriptions
• Assure adequate infrastructure
Federal Overlay

- Fair Housing Act
- Religious Land Use and Institutionalized Persons Act
- Clean Water Act
- Americans with Disabilities Act
We think this is the best, most interesting, and always challenging part of being a local government lawyer.
Your constituents include generations not yet born...