

Chapter 1. Introduction to Land Use Planning and Control

- Land use planning and control law is relatively new area of law in our legal system
- Emerged as separate and distinct area of law in the 1920's with early zoning ordinances and judicial decisions

Issues for 21st Century

- What will become of traditional Euclidean zoning?
- Will mediation of land use disputes increase and will it alter the practice of land use law?
- Will impact analysis become the universal antidote to land use complaints and will land use regulatory fees based on that analysis rescue local governments from their infrastructure funding crisis?
- Will the coordination of planning and land use regulation and the requirement that land use regulations be consistent with comprehensive plans become the norm in all jurisdictions?
- Will the trend of vesting land use control power in state government (rather than local) continue?
- Will government liability and takings limitations seriously restrict the future exercise of the land use control power?

Issues for 21st Century (continue)

- Will federal control of land use continue?
- Will environmental regulation and land use regulation merge or continue to overlap and conflict?
- Environmental justice: What is it? Is there a solution?
- Will "Smart Growth" redirect land use planning and land use control law?
- Is there a solution to sprawl?
- Will sustainable development become integrated into the substance of environmental and land use law thereby emphasizing a "land ethic" basis for land use and environmental law? Could such a development counter the private property rights protection movement?

Characteristics Land Use Planning and Control Law

- There are relatively small number of very important court cases that are constantly cited and discussed
- There are handful of leading and influential states (New York, New Jersey and newer states such as California, Florida, and Oregon)
- Land use law is interdisciplinary—few major land use regulation programs are handled exclusively by lawyers or planners and may include engineers and economists
- There is a standard list of issues for land use planning and control, regardless of details.

Recurrent Issues in Major Land Use Controversies

- Does the action or proposed action of the governmental entity constitute an exercise of the police power?
- Has the power been exercised reasonably?
- Has the government entity—if other than the state—been delegated the power to do what it has done or proposes to do?
- Has there been an unlawful delegation of legislative authority by the government entity?
- Has there been a denial of equal protection?
- Have notice and hearing requirements been respected?
- Is the action of the governmental unit legislative or quasi-judicial? Will the fairly debatable standard (govt. had reason to do what it did) or some stricter standard of review be applied?
- Has there been a taking?

Chapter 2. Comprehensive Plans and the Planning Process

- The practice of planning
 - Supreme Court and lower courts review administration of land use regulatory programs with heightened scrutiny
 - Since 1987, thrust of Supreme Court is that actions of government and its planners are less likely to be given benefit of the doubt—planners must prove reasonableness of regulations affecting private property

Antecedents of Local Government Planning

- Colonial planning—focused on subdivision design—often grids (Washington DC notable exception)
- Sanitary reform movement—public health threats forced cities to install sewerage and public water supplies (mid-1800s)
- City beautiful movement—precursor to modern urban planning concerned with physical appearance of towns and cities (origin traced to Chicago World's Fair of 1893)
- Advent of Planning Commissions grew out of city beautiful movement—initial commissions were advisory only
- Concept of city plan influenced by Olmstead who conceived of plan as a rational policy document that should guide development related decisions

Planning and Zoning

- Confusion between comprehensive plan and comprehensive zoning ordinances—most governments opted for zoning ordinances
- First zoning ordinance adopted by New York in 1916.
- Standard State Zoning Enabling Act (1924) provided a ready-made model for state legislatures to delegate police power to municipalities to prepare, adopt, and administer zoning codes
- By 1926, 564 cities adopted zoning ordinances
- Village of Euclid v. Amber Realty Co. (1926)—Supreme Court upholds police power to zone
- Early zoning facilitated land speculation and validated the existing pattern of land uses

Zoning Overshadows Planning

- Comprehensive zoning overshadows planning
- Standard City Planning Enabling Act of 1928—enabled local governments to prepare plans for principal urban concerns (streets, public grounds, public buildings, utilities and zoning) via municipally appointed planning commission
- More comprehensive approach to regulating land use and providing services for growth than zoning could do
- Act contributed to confusion over differences between city plans and zoning ordinances
- Under the Act, planning was not mandatory
- Federal government provides incentives (e.g., housing grants) for cities to prepare comprehensive plan

The Comprehensive Plan

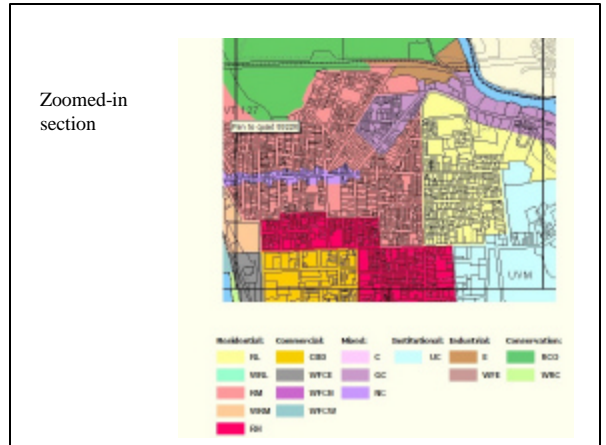
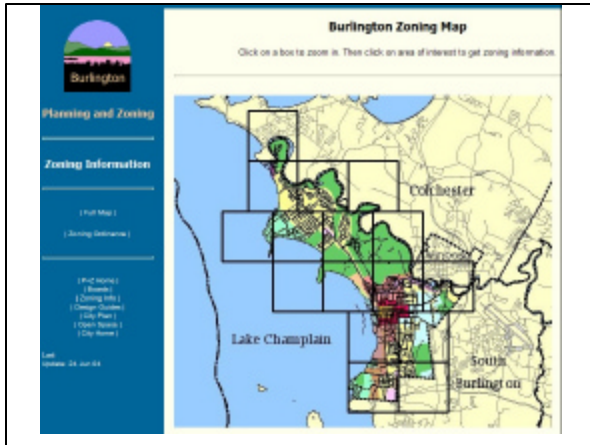
- Comprehensive plan provides goals, objectives and policies to guide local legislative body in decision making—invoked as rational basis for local government to exercise the police power to zone
- Provides general text and maps describing how local community should be developed in the future
- Length of time covered by plan is set by state legislative body
- Rational-comprehensive approach is intended to be used in developing comprehensive plan and involves data gathering and analysis, setting of policies, plan implementation, and plan re-evaluation

Legal Status of Comprehensive Plans

- Majority of states do not require local governments prepare plans and comprehensive plans in these states are policy documents (not legally binding)
- Task of defining relationship between local zoning statutes and local comprehensive plans fell to the courts
- *Kozesnik v. Montgomery Township (N.J.)*—court held that zoning ordinance, in absence of plan, was de facto a comprehensive plan; perpetuated *doctrine of the optional nature of comprehensive plan*

The Consistency Requirement

- The relationship between planning and land use regulations—consistency mandate in SZEAs has been slow and controversial
- Judicial tendency to interpret “in accordance with” as nothing more than land use regulation be comprehensive or uniform in scope and coverage
- Legal challenges using involve claims about inconsistency between a plan and its implementation
- Almost every zoning challenge alleges that the contested action is inconsistent with some aspect of the comprehensive plan
- *Fassano v. Board of County Commissioners (Oregon-1973)*—early ruling that state’s planning act required that zoning ordinances and decisions be consistent with the adopted comprehensive plan
- Only a relatively small number of states have legally enforceable consistency requirements
- Courts have begun to examine whether land use decisions are legislative or quasi-judicial. If the former, courts afford greater latitude under fairly debatable standard of review. If latter, courts exert more scrutiny.
- *Martin County v. Yusem*, Florida Supreme Court held that amendments to comprehensive land use plan are legislative decisions subject to fairly debatable standard of review.
- Smart growth and new urbanism require comprehensive and legally enforceable plans to exist



PART 1: ZONING DISTRICTS

Sec. 3.1.1 **Intent.** The intent of this article is to:

- Divide all land within the city into zoning districts;
- Provide uniform provisions for each class of uses or structures within each district; and
- Require that every parcel of land and every structure in the city, except as otherwise provided by law or by this ordinance, be subject to the regulations, restrictions, and requirements specified for the district in which it is located.

Sec. 3.1.2 **Authority.** These regulations are enacted under the provisions of 24 V.S.A. (see 308).

Sec. 3.1.3 **Recreation and Conservation Districts Established.** The following recreation and conservation districts are established: Recreation, conservation and open space (RCO) and wildlife/recreation-conservation (WRCC).

- The RCO district is intended to protect the city's natural environment, provide for a balance between developed and undeveloped land, protect air quality, provide adequate open areas for recreation and conservation and to preserve areas for appropriate future development and
- The WRCC district is intended to preserve the public's rights to access the waters of Lake Champlain and to promote and enhance the public use of the lake for fishing, navigation, boating and recreation.

Sec. 3.1.4 **Residential Districts Established.** The following residential districts are established:

Residential low density (RL), suburban residential low density (SRL), residential medium density (RM), suburban residential medium density (SRM) and residential high density (RH). Each of these districts is intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, conduct their responsible and lawful activities that properly belong in residential districts. Certain nonresidential uses, including public and semi-public uses and neighborhood-oriented commercial and service uses, are permitted in certain residential districts upon conditional use approval.

PART 2: OVERLAY DISTRICTS

Sec. 3.2.1 **Overlay Districts Established.** The following districts are established as overlay districts, meaning that these districts are overlaid upon other districts and the land so encompassed may be used in a manner permitted in the underlying district only if and to the extent such use is permitted in the applicable overlay district: front yard (FY), front setback (FS), design review (DR), historic buildings (HB), public use (PU) and historic entrepreneurial (EA).

Sec. 3.2.2 **Food Districts.** The FV and FV1 districts are intended to protect the viability, free injury or damage caused by seasonal or periodic flooding and to promote the public's health, safety and general welfare by providing for the orderly development and use of land in the National Flood Insurance Act (NFIA) area. The FV district is further intended to establish floodplain management criteria in flood-prone areas. The FV1 district is further intended to regulate land use in portions of zoning districts, which are subject to flooding. The FV and FV1 overlay districts are depicted as Zone H2 on the Flood Insurance Rate Map for the City of Burlington as revised January 18, 2007 as amended. FV and FV1 districts are further described in Article 21.

Sec. 3.2.3 **Design Review Districts.** The DR district is intended to preserve, protect and enhance those areas within the city combining structures of historical, architectural or cultural merit. Because of the concentration of community interest in them, the areas listed below are designated as design review districts subject to the procedures specified in Article 5.

- Historic uses: Regional Care and Beer City, as delineated in the TTTT **Municipal Development Plan** for the City of Burlington;
- Historic Buildings;
- Major street corridors: all nonresidential uses, and residential uses with home occupations or other conditional uses, having frontage on the following major streets:
 - Shelburne Street, from its point of beginning southerly to its intersection with Home Avenue;
 - South Union Street, from its intersection with Howard Street northerly to its terminus at Shelburne Street;
 - St. Paul Street, from its intersection with Howard Street southerly to its terminus at Shelburne Street;
 - Colchester Avenue, from its intersection with East Avenue northerly to its intersection with Depot Street; and
 - North Avenue, from its intersection with Concord Square northerly to its intersection with Plattburgh Square.
- REC, WPL, WPC-A, C, OC, and E zoning districts.

Sec. 3.2.4 **Historic Buildings Design District.** The HB district is intended to identify those buildings, structures and areas that are of particular historic significance and to ensure that the review process incorporates adequate criteria designed to protect this legacy for future generations. The HB district is delineated in Article 3.

CITY OF BURLINGTON, VERMONT
2006 Municipal Development Plan

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