

COMPLETE GUIDE TO ZONING

THE BASICS OF LAND USE LAW

If you wish to make money in real estate, it's essential to understand at least the basics of land use law.

This will not only make you communicate with lawyers more effectively, but will help you become a more active participant in your own land use matters.

There are four basic sources of law:

Common Law: This is the law found in judicial decisions – case law. It's important because it can create binding precedents.

Constitutional Law: There are 51 constitutions in the U.S.: one Federal and fifty state. What may be constitutional federally may be unconstitutional in your state. Here are a few basic constitutional principles that are important to know:

Due process – this means you have a right to a fair hearing; you can confront witnesses and evidence. The judges must also be unbiased and objective. Finally, government regulations must be reasonably related to a specific purpose of government.

Equal protection – if different properties are treated differently, there must be a reasonable purpose, such as a requirement that homes in a flood plain be elevated.

Takings – the Fifth Amendment says that the government can't take private property for public use without paying just compensation. If the taking is non-invasive and the loss in value only partial, however, courts usually don't demand compensation.

Freedom of expression and religion – government can regulate the placement of signs and establishments (for aesthetic reasons), but rarely their content (unless there's a compelling reason). Likewise, people can't be prevented from using their homes for religious purposes.

Statutory Law: all state zoning statutes are descended from a model law that the Federal government promulgated over 80 years ago. If you carefully study your state enabling statutes (and their amendments) you may pick up an important clue or two about how these laws can be used to your advantage.

Administrative Law: though often tedious, it's important to know the administrative regulations that enforce statutes, common law, and constitutional law. These can be used as effective weapons in a struggle to support or oppose any development project.

If you don't like a law, get it changed! People do it all the time. It can be a long, expensive, and risky process, but it may also be worth it. Take the time to figure out whether it's the right choice for you.

HOW ZONING CAN PROTECT AND AFFECT REAL ESTATE VALUE

Through zoning regulations, a local government determines what you may and may not do with land – which can ultimately determine the value of that property.

There are three basic zoning categories: residential, commercial, and industrial.

Zoning also regulates how intensively you can use your land. If you're in a one-acre residential zone, for instance, you require at least an acre to build a house.

Before buying property, you need to know exactly what the zoning permits and forbids. You should also make sure that local regulations require written notice about any changes to abutting property owners. This will help prevent your neighbors from springing any unpleasant surprises.

Since an acre of land is 43,650 square feet, planners have rounded it off to an easier to remember number - 40,000 square feet – that they call a “zoning acre.” That's useful to remember because for every 12 “zoning acres” you buy, you end up getting an additional lot free.

The key to making money with zoning is finding ways to work within existing regulations to maximize the development of your land. Small changes in controls or standards can yield large differences in development value. An innovative developer will think of ways to exploit a lot to its maximum potential.

It's important to know the definition of what constitutes a “structure” in your area (for lot coverage purposes). In most states, for instance, a flagpole is considered a structure.

If you can arrange zoning changes, the opportunity to make money is that much greater. Changing the zoning of a one-acre residential zone to three-quarters of an acre, for instance, increases the development potential of that land by one-third.

One way to ensure that property is kept up to a certain standard is through private covenants and restrictions. This is increasingly common in new residential developments, but it's also possible to add them to existing neighborhoods, by mutual agreement between neighbors.

HOW REGULATIONS AFFECT PROPERTY USE

If you're interested in buying land for real estate development, you're going to have to successfully navigate a maze of intersecting local and private regulations.

Here's a short list of some regulations you're likely to encounter:

Subdivision regulations:

- a) These ensure that there's adequate infrastructure and access to parcels of land before they're sold.
- b) They create clear titles to land.
- c) They're guided in part by zoning regulations, which set minimum lot area, frontage, and other dimensional standards.

Floodplain and wetlands approval:

- a) You can't build in a floodway, and you're limited in what you can build in a floodplain. FEMA offers maps to help developers determine these areas.
- b) Maps can sometimes be refined through construction or a petitioning process, so consult a qualified engineer if you have any questions.
- c) If you buy existing property in a floodplain, the National Flood Insurance Program is the best available insurance.
- d) Local regulations may prohibit or discourage development in wetlands.
- e) If any wetlands development is allowed, it's likely that some local review process will be required for approval.

Traffic regulation:

- a) Local governments write traffic regulations to help ensure safe and convenient passage through neighborhoods.
- b) The level of traffic is measured in terms of service, from free-flowing to gridlock. A professional traffic engineer can handle traffic review projects.
- c) Traffic issues rarely derail development projects, as most problems can be solved through road widening, turning lanes, and signalization.

Design review: Many local governments have design review boards that help advise some decision-making body, like a city council, whether to approve a proposed project's design.

Historic District review: In historic districts, the local government regulates the appearance of buildings, usually the portions visible from public view.

Environmental permits

- a) The state and local environmental permitting processes often overlap, although some permits are unique to the state level, involving issues of regional and statewide concern.
- b) Before beginning any project, always contact federal, state, and local officials to inquire whether your project may require a comprehensive environmental review.
- c) If you have coastal property, check for the 100-year flood elevation and look at the resource maps available from state authorities for the location of any protected plant species or organisms on the site.

Federal regulations

- a) The Fair Housing Amendments Act prohibits discrimination against individuals protected by the Americans with Disabilities Act. Thus, group homes for such individuals must be allowed in any single-family residential development.
- b) The Religious Land Use and Institutionalized Persons Act ensures that local governments can't unreasonably restrict the free exercise of religion. Thus, people using their homes for religious activities usually can't be restricted by local ordinances.

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