

Unit 20: Land-Use Controls and Property Development

LECTURE OUTLINE

I. Land Use Controls

- A. Land use controlled by public and private limitations and public ownership of land.
- B. Government ownership
 - 1. The police power of the states is the inherent authority to create the regulations necessary to protect the public health, safety, and welfare.
 - 2. The states, in turn, use enabling acts to allow local municipalities to make regulations that are consistent with the general laws.

II. The Comprehensive Plan is also called a master plan

- A. Provides the municipality with the goals and objectives for its future development that take into account:
 - 1. Land use—how much land is proposed for residential, industrial, business, agricultural, traffic and transit uses, utilities, and common facilities, including recreation.
 - 2. Housing needs of present and anticipated future residents, including rehabilitation of declining neighborhoods as well as new residential development.
 - 3. Movement of people and goods, including highways, public transit, parking, pedestrian, and bikeway systems.
 - 4. Community facilities and utilities such as schools, libraries, hospitals, recreational facilities, fire and police, water resources, sewerage and waste treatment, and storm drainage and flood management.
 - 5. Energy conservation to reduce energy consumption and promote the use of renewable energy sources.

III. Zoning

- A. Zoning ordinances are the local laws that regulate how land is used for the protection of public health, safety, and welfare, and affects items such as
 - 1. Permitted uses of each parcel of land
 - 2. Lot sizes
 - 3. Types of structures
 - 4. Building heights
 - 5. Setbacks

6. Style and appearance of structures
 7. Density (ratio of land area to structure area)
 8. Protection of natural resources
- B. Zoning ordinances remain flexible to meet the changing needs of society.
- C. Zoning classifications generally divide land uses into zones
1. Residential
 2. Commercial
 3. Agricultural
 4. Land may also be set aside for mixed use, such as planned unit developments.
- D. Zoning ordinances
1. Buffer zones, such as parks and playgrounds, may be used to separate residential areas from nonresidential areas.
 2. Certain land use objectives can be achieved with
 - a. Bulk zoning to control density and avoid overcrowding.
 - b. Aesthetic zoning to specify certain types of architecture.
 - c. Incentive zoning to ensure that certain types of use are incorporated into developments.
 3. Constitutional issues and zoning ordinances
 - a. 14th Amendment to the US Constitution prevents states from depriving “any person of life, liberty, or *property*, without due process of law.”
 - b. The tests commonly applied in determining the validity of zoning ordinances require that:
 - i. Power be exercised in a reasonable manner.
 - ii. Provisions be clear and specific.
 - iii. Ordinances be free from discrimination.
 - iv. Ordinances promote public health, safety, and general welfare.
 - v. Ordinances apply to all property in a similar manner.
 4. Zoning permits are used to enforce zoning laws
 - a. Zoning hearing boards hear complaints about the effects zoning may have on specific parcels of property.
 - b. Nonconforming use applies to properties that conformed with the zoning before it was subsequently changed.

- c. Variance is a permanent exception to the zoning ordinance.
- d. Conditional-use permit is granted to a property owner to allow a special use of property that is defined as an allowable conditional use within that zone.

III. Building Codes and Certificates of Occupancy

- A. Specify minimum construction standards.
- B. Require building permit before construction begins and periodic construction inspections.
- C. Require the issuance of certificate of occupancy.

IV. Subdivision

- A. Subdivision and land development ordinances are part of comprehensive plan.
 - 1. Subdivider buys undeveloped acreage and divides the acreage into smaller lots for sale.
 - 2. Developer constructs improvements on subdivided parcels and sells them.
- B. Land development plan
 - 1. Controlled by state and local government.
 - 2. State sets minimum requirements; local government may have higher standards.
 - 3. Land development plan must comply with municipality's comprehensive plan.
 - 4. Plat map:
 - a. Is detailed map showing geographic boundaries of individual lots.
 - b. Includes engineering data and restrictive covenants.
 - c. Must be approved by local authority before it can be recorded.
 - 5. Density zoning ordinances restrict average maximum number of houses per acre. Many areas are allowing accessory dwelling units (ADUs) in response to housing shortages.

V. Private Land-Use Controls are used to maintain the desirable quality and character of a property or subdivision

- A. Restrictive covenants are limitations on the use of property imposed by a past owner on the current owner and are binding on future grantees.
- B. Legal issues regarding private restrictions:

1. Restrictions that prohibit the free alienation (transfer) of property ownership are usually against public policy and, thus, void and unenforceable.
2. Restrictions that limit land use are usually valid.
3. Overly broad and repugnant restrictions are usually overturned by the courts.
4. If restrictions conflict with zoning ordinances, the more restrictive of the two will take precedence.
5. Enforcement of private restrictions usually requires an injunction.
6. Delaying such enforcement can result in loss of the right by laches.

VI. Real Estate Investment—real estate is an important part of an investment portfolio

A. Advantages of Real Estate Investment

1. Rate of return over time is above average
2. Control over the investment is greater than that over other investments
3. Appreciation can result from holding property
4. Equity buildup is possible as a loan is paid down
5. Leverage is the use of borrowed money to finance an investment with a small initial outlay
6. Tax benefits can be used to enhance ongoing income from an investment
 - a. Depreciation allows the investor to recover the cost of a structure
 - b. Capital gain may be deferred with a properly structured property exchange

B. Disadvantages of Real Estate Investment

1. Lack of liquidity means that an investment may take a long time to sell
2. Active management is required so that an investment property is maintained in compliance with all applicable laws and attracts and is responsive to reliable tenants
3. Risk may be high, meaning the investor must consider a possible loss in value or income from a real estate investment

VII. Regulation of Land Sales

A. Interstate Land Sales Full Disclosure Act

1. Regulates interstate sales of unimproved lots.
2. Designed to prevent fraudulent marketing schemes when land is sold without being seen by the purchaser.
3. Required to register details with HUD.
4. Must provide purchasers with property report in any development with 25 lots or more, or lots less than 20 acres in size.

B. State subdivided land sales laws

1. Some affect only sale of land located outside the state to state residents.
2. Some states regulate sales of land located both within and outside of state.
3. State laws tend to be stricter and more detailed than federal law.