

Land Use & Zoning Law History

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Constitutional Aspiration

Public officers are the trustees and servants of the people and are at all times amenable to them.

GA Const. Art. I, Sect. 2, Para I

- 1st Amendment: Freedoms of religion, speech, press, and assembly
- 4th Amendment: Protections against unreasonable search and seizure, and self incrimination
- 5th Amendment: Govt cannot 'take' private property without a public purpose and **must first** pay just compensation
- 10th Amendment: Reserves **police power** exclusively to the states
- 14th Amendment: States prohibited from depriving people of due process of law or equal protection under the laws

MOST RELEVANT CONSTITUTIONAL AMENDMENTS TO LAND USE LAW

- Sources of local government land use power
 - 10th Amendment reserves “police power” exclusively to the States
 - State level laws delegating authority (constitution/charter/statutes)
 - Ordinances adopted by City council to exercise power delegated by the State
- Limitations on local government land use power
 - Express federal constitutional restrictions (Expression, condemnation, and equal protection/privileges and immunities)
 - and State constitutional restrictions on local power
 - State level laws governing local power (constitution/charter/statutes)
 - Requirements and restrictions set forth in local codes of ordinances

- Pre-zoning: conflicts between incompatible land uses governed solely by nuisance law
- What is a nuisance?
 - An unreasonable or illegal use of property (policy basis is negligence)
 - That causes material annoyance, inconvenience, discomfort, or injury to another person or the public
 - Policy basis: Landowners have the right to use/enjoy their property if they don't harm others or prevent others from enjoying their land
 - Examples: pollution/flooding/noise/odors/glare/obstruction of light and air
- Complainant(s) cannot act unless there is an actual nuisance

GOVERNMENTS HANDLED NUISANCES BEFORE ZONING

- Private Nuisances
 - Infringe on individual property rights
 - Require actual 'special harm' to an individual or small number of individuals
 - Impacted individual has sole standing to bring a legal action to address it
- Public Nuisances
 - Infringe on the rights of the whole community or a large portion of it
 - Governments have sole standing to bring a legal action on the public's behalf to address it
- Mixed Nuisances
 - Infringe on individual rights **and** community rights
 - Both governments and impacted individuals have standing to address it

NUISANCE CLASSIFICATIONS AND IMPLICATIONS

- Nuisance Law
 - Scope is narrowly tailored to 'regulate' harmful or noxious land uses
 - Character is reactive – objective is to eliminate or mitigate actual harm
 - Involves fact-intensive analysis to establish the land use and the resulting harm
- Zoning Law
 - Comprehensively regulates all uses whether they are harmful or not
 - Character is prospective – proactive community benefits and nuisance avoidance
 - Divides jurisdiction into zones and permitted uses to avoid land use conflicts
- Different due process implications
 - Valid use of police power or illegal use of eminent domain power
 - Government action easier to justify when dealing with an actual nuisance conflict

DIFFERENCE BETWEEN NUISANCE AND ZONING LAW

- Regs adopted per the Comprehensive Development Plan in two parts:
- Zoning Ordinance (no matter the title/description)
 - States police power purposes and intent (blight, fire, traffic)
 - Create various zoning categories (known as classifications)
 - List and classify permissible land uses for each zoning classification
 - Impose development standards (setbacks, parking, maximum building height)
 - Provide constitutional pressure relief valves (variances, nonconforming status, appeals)
- Zoning Maps
 - Graphically depict the locations of various zoning classifications
 - Identify areas/corridors subject to special regs (sign districts, pedestrian corridors)

SUBSTANCE OF ZONING REGULATIONS

- Rapid industrialization/urbanization strained limits of nuisance law
 - Jacob Riis: How the Other Half Lives (1890) & The Children of the Poor (1892)
 - NY Legis. adopted various iterations of Tenement House Act (1866 – 1901)
 - Settlement movement: Jane Addams/Ellen Starr found Hull House (1889)
 - City Beautiful movement: Chicago World's Fair (1893)
 - Garden City movement: Ebenezer Howard: Garden Cities of To-morrow (1898)
- Euclid v. Ambler Realty was the first zoning case to reach SCOTUS

THE RISE OF ZONING AND LAND USE LAW

Questions?