



Social and Economic Education for Development

Frequently Asked Questions About Land Use Planning and Zoning

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Does the government have the right to tell me what I can do with my land?

In our society, property rights may be thought of as a bundle of sticks, each representing a different type of right to land. For example, one stick is the right to sell, others the right to lease, to grant a mortgage, to subdivide, to grant an easement, or to pass on to an heir. Still other sticks may represent the land owner's interest in the air, water, mineral, or development rights. Each stick can be used separate from all the others as when you grant a utility an easement on your land or when land owners sold the rights to the coal on their land many decades ago.

However, there are four rights to property that have always been reserved to the public (government), these are: the right to tax land, the right to take land for public use with just compensation, the right to regulate or control the use of land, and the right of escheat (to take land in the event of the owner's death without any heirs).

An unbroken string of Supreme Court decisions have upheld these public rights in private property. Over the last century, government has more frequently exercised these public rights. Why? Because in many cases, the value of private land increases when the public acts to regulate land use or to take land for public use. For example, when we grant an easement to a water district so water lines can be laid, the value of our land rises, because now we have access to public water.

Thus while private property rights have been and remain the cornerstone of our democratic society, they have never been absolute. From the beginning, there has been a recognition that the public has an important interest in how private land is used.

What is land use planning?

Land use planning is one way of describing the vision for a community's future. A land use plan is the community's guide for its future development; a guide that directs all phases of tomorrow's growth into a logical, efficient pattern for everybody's benefit.

Land use planning does this by describing where and how different types of land uses should occur within a community. Planning seeks to balance four sets of factors:

- The characteristics of the land (e.g., the slope of the land, soil composition, location within a watershed),
- The types of land uses nearby,
- The current and future needs of public and private land owners, and
- The potential costs and benefits to the public and private land owners from different types of land uses.

Land use planning requires making choices on all the decisions that influence how land in the community will be used. Decisions such as: Where should residential, commercial or industrial growth occur and where should it not occur? Where should new roads or water lines or schools be built? Should we have community parks and where should they be located? Are there areas where farming would be most suited? Are there places where urban land uses should not occur because the land is not suited for this purpose or the cost of delivering public services is too high? In answering these questions, the land use plan helps to make real the community's vision for its future.

What is zoning?

Zoning is the tool which enables a community to move its land use plan into reality. A zoning ordinance enables a community to regulate the use of land to promote and protect public health, safety, and general welfare. Zoning ordinances take the vision of how land should be used and translates the plan into a set of regulations that facilitate the orderly development of an area. By regulating the density of development and the intensity of land use, zoning ordinances help to:

- Protect agricultural land,
- Provide desirable residential, commercial, and industrial areas safe from fire, flood and other hazards,
- Improve the flow of traffic,

- Promote health and sanitation, and
- Sustain the visual and historical character of an area.

There are two general areas in which zoning ordinances operate. First, to guide land use by establishing districts where similar types of land uses should occur, such as single family residences, multi-family residences, neighborhood commercial, general business, highway commercial, industrial, or agricultural. By separating land uses, property owners have some security that their property values will not decline because of incompatible uses nearby.

Second, zoning ordinances guide lot sizes, building size, shape, and placement. Managing these aspects of development, reduces the likelihood of health, sanitation, or fire hazards due to overcrowding. Managing these aspects of development also allows a community to have sufficient land available for utilities and public facilities such as schools, roads, or parks.

Zoning ordinances then, help a people shape the physical appearance and the efficient functioning of their community.

Can you have a land use plan without zoning ordinances?

It is possible for a community to have a land use plan and not adopt zoning ordinances. However some would argue that would be like buying a car that does not have an engine. But since a land use plan is a general guide toward a vision of the future, there are other tools that can be used to help the community reach this goal. Tools such as a capital improvements plan, special assessments, development exactions, impact fees, or guiding development through land acquisitions by the community itself.

Does zoning mean that I won't be able to sell my son a part of the farm for his new home?

Not necessarily. In many communities with zoning, an "in-family conveyance" allows farm families to sell land to an immediate family member for their own home. While there may be a few restrictions related to access to a road, in-family conveyances allow farm families to accommodate family needs.

Are building codes and zoning ordinances the same things?

Zoning should not be confused with building codes. Both reflect the public's interest in promoting and protecting the public health, safety, and general welfare. But zoning focuses on uses of land. A building code sets minimum standards for building materials, plumbing, and electrical work. A community may have zoning without a building code, a building code without zoning, or both, or neither.

Will I be able to build a new barn or any other structure on my farm under zoning?

Yes. You may be required to obtain a building permit and to build a certain number of feet back from the road if the community also has building codes, but in most communities, zoning ordinances do not restrict construction activities on farms so long as the construction is for farm use.

Will zoning help clean up junkyards and eye-sores?

No. Zoning cannot change pre-existing land uses. It can only manage or direct new construction or new uses of land.

Would citizens still be able to buy and live in manufactured housing or mobile homes under zoning?

Nearly one in four new homes sold in the U.S. today are manufactured housing. Communities can, with building codes, set some standards for this type of housing, and smart communities try to fit this type of housing into the overall mix of housing.

What if someone thinks a zoning decision is wrong or needs some type of consideration to build on their own land?

Under a zoning system, a landowner can appeal a decision and request a "variance" when it is a physical impossibility to build on a lot and still observe zoning regulations or, when the ordinance allows the proposed use under specified conditions.

Doesn't planning and zoning mean it will cost more to build and live in this community?

Not necessarily. In the short term, there will be some fees associated with adopting planning and zoning. However, studies in hundreds of other communities clearly show that unmanaged growth ultimately costs more as local governments struggle to pay the costs of delivering public services (especially school transportation, water, police and fire protection) to widely scattered residents.

Do all communities, even rural places need planning and zoning?

Not necessarily. But rural communities that are near to rapidly growing urban places or new highways or those that are experiencing rapid population growth should seriously consider land use planning. It is always better and less expensive to manage the land use changes that come with growth before these changes produce problems (e.g., homes built too near roads, subdivisions with poor drainage).