

Modern Real Estate Practice in Illinois, 6th Edition
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Chapter 20: Land-Use Controls and Property Development

Learning Objectives

After reading this chapter, students should be able to:

- Identify the various types of public and private land-use controls.
- Describe how a comprehensive plan influences local real estate development.
- Explain the various issues involved in subdivision.
- Distinguish the function and characteristics of building codes and zoning ordinances.
- Define the following key terms: buffer zones; building codes; clustering; comprehensive plan; conditional-use permit; deed restriction; density zoning; developer; enabling acts; gridiron; Illinois Human Rights Act; Illinois Land Sales Registration Act; Interstate Land Sales Full Disclosure Act; master plan; nonconforming use; plat; restrictive covenants; sub divider; subdivision; taking; variance; and zoning ordinances.

Why Learn About Land-Use Controls And Property Management?

A client comes to your office, wanting to buy a property for a specific commercial or residential development use. If you are familiar with land-use and property development issues, you will be able to show the client appropriate properties that can be lawfully developed according to the client's plans. If you aren't familiar with these concepts, it will be easy to erroneously assume that any development is legal anywhere, or that because neighboring properties have been developed in a certain way, a vacant property can be developed in the same way. Agents have been successfully sued by buyers who discovered after a sale was closed that their intended use for their new property was prohibited by local law or private restriction.

Suggested Items to Bring to Class

1. Photographs or color slides of local examples of zoning compliance, zoning violations, nonconforming uses, and variances.
2. Newspaper articles and periodical articles addressing disputes over zoning ordinances and deed restrictions.
3. Copies of federal or state maps showing how much land is directly owned by government agencies.
4. Sample subdivision maps for your area.

Lecture Outline

I. Land-Use Controls

Land use is controlled and regulated through public and private restrictions and through the public ownership of land by federal, state, and local governments.

- The states' police power is the inherent authority to create regulations needed to protect the public health, safety, and welfare. The states delegate to counties and local municipalities the authority to enact ordinances in keeping with general laws.

IN ILLINOIS...*Article VII of the Illinois Constitution allows for home rule units of government. Any municipality with a population in excess of 25,000 and any county that has a chief executive officer elected by the people are automatically home rule units. However, a home rule unit may elect by referendum not to be one. On the other hand, a municipality of fewer than 25,000 people may elect by referendum to become a home rule unit of government. Townships are not allowed to be home rule units.*

Constitutionally, a home rule unit of government may exercise any power and perform any function pertaining to its government, including the exercise of police power by way of laws that control the use of land. They also have greater freedom to enforce their laws, including the power to jail offenders for up to six months. (A violation of a land-use control would not ordinarily warrant imprisonment, but home rule units are able to establish an appropriate schedule of fines and injunctive relief.)

Non-home rule units do not have such unlimited powers. Instead, they derive their authority to pass land-use controls from the state government through enabling statutes.

Occasionally, the laws of one unit of government conflict with another's. If any ordinance of a home rule county conflicts with any ordinance of a home rule municipality, the municipal ordinance prevails. If a municipality has passed a zoning ordinance, it will supersede any county or township zoning ordinance, home rule notwithstanding. Township zoning ordinances must give way to county zoning ordinances, and townships are not empowered to pass subdivision controls or building codes.

II. The Comprehensive Plan

The comprehensive plan or master plan, establishes development goals on the local level and usually includes the following basic elements:

- Land use
- Housing needs of present and anticipated residents

- Movement of people and goods
- Community facilities and utilities
- Energy conservation

III. Zoning

No nationwide or statewide zoning ordinances exist. Rather, zoning powers are conferred on municipal governments by state enabling acts.

A. Zoning Objectives

1. **Zoning ordinances** traditionally divide land use into residential, commercial, industrial, and agricultural classifications. Types of zoning that focus on special land-use objectives include:
 - *bulk zoning* (or *density zoning*) to control density and avoid overcrowding by imposing restrictions such as setbacks, building heights and percentage of open area or by restricting new construction projects.
 - *aesthetic zoning* to specify certain types of architecture for new buildings.
 - *incentive zoning* to ensure that certain uses are incorporated into developments.
2. **Taking**

Concept comes from the takings clause of the Fifth Amendment to the U.S. Constitution: when land is taken for public use through the government's power of eminent domain or condemnation, the owner must be compensated. If government downzones your property, a concept called inverse condemnation, you must also be compensated.

B. Zoning Permits

Zoning laws are generally enforced through the use of permits.

1. **Zoning hearing board**

Zoning hearing boards (or zoning boards of appeal) hear complaints about the effects a zoning ordinance may have on specific parcels of property.
2. **Nonconforming use**

A lot or improvement may not conform to the zoning use because it existed before the enactment or amendment of the zoning ordinance. Such a nonconforming use may be allowed to continue legally.
3. **Variances and conditional-use permits**

- A *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.
- A *variance*, on the other hand, permits a landowner to use his or her property in a manner that is strictly prohibited by the existing zoning.

IV. BUILDING CODES

Local regulations that set the minimum requirements for kinds of materials and standards of workmanship, sanitary equipment, electrical wiring, fire prevention, etc.

V. SUBDIVISION

A. Regulation of Land Development

Laws governing subdividing and land planning are controlled by the state and local governing bodies where the land is located.

1. Land development plan

A subdivider's land development plan must comply with the municipality's comprehensive plan.

2. Plats

A plat is a detailed map that illustrates the geographic boundaries of individual lots, blocks, sections, streets, public easements, and monuments in the prospective subdivision and may also include engineering data and restrictive covenants.

- The plats must be approved by the municipality before they can be recorded.

B. Subdivision Plans

The maximum or minimum size of a lot is generally regulated by local ordinances and must be considered carefully.

- Most subdivisions are laid out by use of lots and blocks. An area of land is designated as a block, and the area making up this block is divided into lots.

C. Subdivision Density

Zoning ordinances control land use, including minimum lot sizes and population density requirements for subdivisions and land developments. A subdivider will be consistent with the ordinance as long as the average number of units in the development remains at or below the maximum density (gross density).

1. Street patterns

By varying street patterns and clustering housing units, a subdivider can dramatically increase the amount of open or recreational space.

- *Gridiron pattern*: large lots, wide streets, and limited-use service alleys
- *Curvilinear system*: integrates major arteries of travel with smaller secondary and cul-de-sac streets carrying minor traffic.

VI. Private Land-Use Controls

A. Restrictive Covenants

Restrictive covenants set standards for all the parcels within a defined subdivision.

- The deed conveying a particular lot in the subdivision will refer to the plat or declaration of restrictions, limiting the title conveyed and binding all grantees. This is known as a *deed restriction*.
- Restrictive covenants cannot be for illegal purposes (i.e., exclusion of members of certain races, nationalities, or religions).
- May be more restrictive than public controls
- Enforced by injunction

IN ILLINOIS...*any restrictive covenant that forbids or restricts conveyance, encumbrance, occupancy, or lease on the basis of race, color, religion, or national origin is void. Exceptions to the Illinois Human Rights Act are allowed for religious and charitable organizations.*

VII. Regulation of Land Sales

A. Interstate Land Sales Full Disclosure Act

Federal law regulating the interstate sale of unimproved lots; designed to prevent fraudulent marketing schemes.

- Administered by the Secretary of Housing and Urban Development (HUD)
- Requires developers to file statements of record containing numerous disclosures before they can offer unimproved lots in interstate commerce by telephone or through the mail

1. Disclosure report

Developers must provide a prospective purchaser or lessee with a printed report disclosing:

- the type of title being transferred.
- the number of homes currently occupied on the site.
- the availability of recreation facilities.
- the distance to nearby communities.
- utility services and charges.
- soil conditions and foundation or construction problems.

2. Revocation right

Purchasers and lessees have the right to revoke any contract to purchase or lease a regulated lot until midnight on the seventh day after the contract is signed.

- If the purchaser or lessee does not receive a copy of the property report, he or she may bring an action to void the contract within two years of signing.

3. Exemptions

- Subdivisions consisting of fewer than 25 lots or those in which the lots are of 20 acres or more
- Lots offered for sale solely to developers
- Lots on which buildings exist
- Lots on which a seller is obligated to construct a building within two years

4. Penalties

Misrepresentation or failure to comply with the act's requirements subject a seller to criminal penalties (fines and imprisonment) and civil damages.

B. State Subdivided-Land Sales Laws

IN ILLINOIS . . . *the sale or promotion within Illinois of subdivided land is regulated by the Illinois Land Sales Registration Act of 1999. The act regulates the offering, sale, lease or assignment of any improved or unimproved land divided into 25 or more lots and offered as a part of a common promotional plan.*

Under the act, subdividers must register with the state, and file a full disclosure report containing information on the land, location, tax status, financial arrangements and liens associated with the offering. Similar information must be included in a public property report that must be given to all prospective purchasers. A purchaser who does not receive a copy of this report at least 48 hours before signing a binding contract of sale has the option of voiding the contract within 48 hours after signing. Every subdivision submitted for registration must be held open for on-site inspection at the expense of the

applicant or searches of records held by other state or federal agencies.

State and Local Considerations

How are zoning ordinances in your area enacted? What is the public procedure that must be followed?

Discussion Questions

1. What kind of city or county planning for land use is going on in your area?
2. Does your city or county have special zoning law?
3. What nonconforming uses or variances are you aware of in your area?
4. Give the justification for a governmental entity being empowered to limit the use of private property

Classroom Exercises

1. Bring copies of various deed restrictions to your class. Let your students debate whether they think the restrictions are too severe; whether the restrictions will actually assist in maintaining property values in that area; whether the restrictions will eventually become unenforceable because of the inaction of the property owners in the area.
2. Arrange to have someone who is active in land-use planning in your area speak with your class about the philosophy by which such decisions are made. A land planner for the city, a planning commission member, or a city council representative would be ideal.
3. Using one of the subdivision maps you have brought to the classroom, point out to your students some of the features of a subdivision, such as the provisions for streets, utility easements, common areas, common facilities, etc.
4. Take the class on a field trip to a new subdivision. Be sure they inspect the plat for the subdivision as well as view the land. Point out "real life" features that are reflected on the plat.