
LEGAL CONCEPTS IN PLANNING AND ZONING

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Orientation Training for
Local Planning/Zoning Officials and Employees

Part II: Understanding Key Concepts in Planning and Zoning

Tuesday, August 23, 2005

9:00 a.m. – 12:30 p.m.

S. C. ETV Public Services Network

Sponsored by the South Carolina Association of Counties

	SCAC Planning/Zoning Orientation Training
	<p style="text-align: center;">Legal Concepts in Planning and Zoning</p> <p style="text-align: center;">Mark W. Tollison, Esq. Greenville County</p>

	Legal Cornerstones
	<ul style="list-style-type: none"> ➤ General Police Power ➤ Home Rule Act ➤ 1994 Planning Act ➤ Judicial Rulings

	Cornerstones
	<p>General Police Power</p> <ul style="list-style-type: none"> ➤ Legislative authority residing in State passed to County and City Governments ➤ Power of government to establish laws (ordinances and regulations) to regulate private property to promote public health, safety, morals, and general welfare

	Cornerstones
	<ul style="list-style-type: none"> ➤ Home Rule Act – ➤ S.C. Code Section 4-9-25 (County) ➤ S.C. Code Section 5-7-30 (City) <ul style="list-style-type: none"> ➤ Sets out the Police Power to regulate ➤ Health, Safety, and General Welfare ➤ Consistent with the General Laws of the State

	Cornerstones
	<ul style="list-style-type: none"> ➤ 1994 Planning Act <ul style="list-style-type: none"> ➤ Enabling legislation for: Comprehensive Planning, Zoning, and Land Development Regulations ➤ Sets forth requirements for adoption and updates to covered activities ➤ Establish Scope/Manner of Enforcement

	Cornerstones
	<ul style="list-style-type: none"> ➤ Judicial Rulings -- Decisions and orders by Courts have the capacity to expand, solidify, or restrict local planning authority <ul style="list-style-type: none"> ➤ State/Federal Court Tracks ➤ Standing Issues

	Preemption
	<ul style="list-style-type: none"> ➤ Hierarchy Federal to State to Local in lawmaking superiority ➤ Local ordinances and rules must be consistent with State law

	Local Roles in Planning
	<ul style="list-style-type: none"> ➤ County/City Council ➤ Planning Commission ➤ Board of Zoning Appeals

	Roles
	<ul style="list-style-type: none"> ➤ Separation of Powers <ul style="list-style-type: none"> ➤ Legislative ➤ Administrative ➤ Quasi-Judicial

	County/City Council
	<ul style="list-style-type: none"> ➤ Legislative Branch ➤ Appointive and Budgetary Authority

	Planning Commission
	<ul style="list-style-type: none"> ➤ Duties <ul style="list-style-type: none"> ➤ Comprehensive Plan ➤ Zoning Ordinance ➤ Land Development Regulations ➤ Capital Improvement Plans and Other Tasks ➤ Public Facilities Review (location/character/extent) ➤ Both Advisory and Quasi-Judicial

	Board of Zoning Appeals
	<ul style="list-style-type: none"> ➤ As a hearing review board for enforcement disputes—the BZA serves as “judicial branch” of the zoning system <ul style="list-style-type: none"> ➤ Variances ➤ Special Exceptions ➤ Administrative Appeals to the Board

	Planning Format
	<ul style="list-style-type: none"> ➤ Comprehensive Plan ➤ Zoning Ordinances ➤ Land Development Regulations

	Comprehensive Plans
	<ul style="list-style-type: none"> ➤ Plans now adopted by ordinance ➤ Mandated by the 1994 Act if engaged in zoning or subdivision regulations ➤ Zoning maps are not a replication of every Comprehensive Plan detail -- but should not be inconsistent on a large-scale ➤ Comp Plan has no zoning power

	Zoning
	<p>Zoning is the most common tool utilized by a local government to implement a County/City's land use plan.</p> <p>A zoning ordinance divides the land within a County/City's jurisdiction into districts. Within each district, the zoning ordinance designates the use that may be made of the property, and the location/size of structures on the property.</p>

	Land Development Regulations
	<ul style="list-style-type: none"> ➤ Often referred to as "Subdivision Regulations" ➤ Land development regulations govern the conversion of raw land into subdivided lots for the construction of buildings/structures ➤ Control site design, street layout, provisions for water and sewer service, and other matters relating to the conversion of land for development.

	Planning and Zoning Issues
	<ul style="list-style-type: none"> ➤ Land Use Law Primer ➤ Specific Uses ➤ Three Extra Actions of Note ➤ Three Overriding Rules

	Constitutional and Statutory Benchmarks
	<ul style="list-style-type: none"> ➤ Statutory Obligations ➤ Takings ➤ Due Process ➤ Equal Protection ➤ First Amendment ➤ Vested Rights/Estoppel ➤ Exactions ➤ Appeals

	Statutory Obligations
	<ul style="list-style-type: none"> ➤ 1994 Planning Act ➤ General Home Rule Principles and Other Laws

	Takings
	<p>5th Amendment protects property rights</p> <p>“Private property shall not be taken without just compensation.”</p>

	Takings “Speak”
	<ul style="list-style-type: none"> ➤ Eminent Domain – Power to condemn private property for public use with just compensation ➤ Just Compensation -- The standard for property pay under 5th Amendment is fair market value ➤ Regulatory Taking – indirect acquisition of property rights through regulation ➤ Inverse Condemnation -- Regulation takes property but no compensation or condemnation

	Evaluating a Takings Claim
	<ul style="list-style-type: none"> ➤ Has the action denied all economically beneficial use of property? ➤ Does the action substantially advance a legitimate government interests? ➤ Does the action burden one individual with regulatory costs that should be borne by whole community? ➤ Has the action interfered with reasonable investment backed expectations?

	Due Process
	<p>5th Amendment -- No person shall be deprived of life liberty, or property without due process of law</p>

	Substantive & Procedural
	<ul style="list-style-type: none"> ➤ Substantive – property rights focus <ul style="list-style-type: none"> ➤ Regulations must reasonably further legitimate interest ➤ Cannot be arbitrary and capricious ➤ Procedural -- individual rights focus <ul style="list-style-type: none"> ➤ Timely and Adequate notice ➤ Opportunity to be heard ➤ Fairness/Bias/Conflict

	Equal Protection
	<ul style="list-style-type: none"> ➤ 14th Amendment -- No state shall . . . deny to any person within its jurisdiction the equal protection of laws ➤ Treating similarly situated persons and property in a similar way under similar circumstances ➤ A reasonable classification rationally related to govt. interest may be upheld

	First Amendment Safeguards
	<ul style="list-style-type: none"> ➤ Freedoms of Speech and Religion ➤ Speech -- "prior restraint" claims can result from control over content <ul style="list-style-type: none"> ➤ "Vague" and "Overbreadth" -- Caution ➤ But proper time, place, and manner -- Upheld ➤ Religion-- proper locations and shielding <ul style="list-style-type: none"> ➤ RLUIPA (land use rule may not impose "substantial burden" on religious exercise)

	Vested Rights
	<ul style="list-style-type: none"> ➤ Vested Rights – when rights have accrued to the property or applicant to pursue development or use ➤ New State law effective 2005 (§6-29-1510)

	Estoppel
	<ul style="list-style-type: none"> ➤ Estoppel – legitimate reliance on local official's interpretation

	Exactions & Impact Fees
	<ul style="list-style-type: none"> ➤ Exactions are development approvals conditioned on provision/contribution of public facilities <ul style="list-style-type: none"> ➤ Constitutional requires "essential nexus" between local objectives and exaction ➤ Impact Fees must comply with State law (SC Code §6-1-910) and are tied to Capital Improvement Plans

	Appeals
	<ul style="list-style-type: none"> ➤ Planning and Zoning Decisions can be the subject of appeals and legal challenges <ul style="list-style-type: none"> ➤ Need to exhaust administrative remedies ➤ Courts typically apply a standard of review that gives strong presumptions to legislative decisions and local fact finding

	Specific Use Regulations
	<ul style="list-style-type: none"> ➤ Adult Entertainment (SOBs) ➤ Manufactured Homes ➤ Signs/Billboards ➤ Telecommunication Towers ➤ Church/Religious Activities ➤ Spot Zoning

	Sexually Oriented Business
	<ul style="list-style-type: none"> ➤ SOBs or Adult Entertainment Businesses protected under 1st Amendment ➤ SOBs are subject to regulation due to negative secondary impacts but not based on content of the "speech" ➤ Courts recognized negative secondary effects studies of sexually oriented businesses ➤ Regulation may be upheld – but should serve substantial governmental interest of preventing harmful secondary effects while allowing alternative avenues of communication

	More SOBs
	<ul style="list-style-type: none"> ➤ "Time, place, and manner" regs ➤ Cannot impose an outright ban ➤ Zoning is a good tool to balance community aims and speech SOB licensing cannot be vague and must allow for prompt judicial review

	Manufactured Homes
	<ul style="list-style-type: none"> ➤ Locational restrictions have been upheld but exclusionary plans may be problematic ➤ Aesthetic conditions for placement have been upheld ➤ Zoning/Subdivision Regulations cannot impose construction or safety standards

	Signs and Billboards
	<ul style="list-style-type: none"> ➤ Watch for Takings, Amortization, and First Amendment ➤ Distinguish between Commercial (business advertising) and Non-commercial (political) signage <ul style="list-style-type: none"> ➤ Regulation of political signs ➤ On-premise vs. off-premise signs

	Telecommunication Towers
	<ul style="list-style-type: none"> ➤ Federal Telecommunications Laws purport to preserve local zoning authority regarding the placement, construction, and modification of personal wireless service facilities . . . with exceptions

Tower Regulation Exceptions

- Must act on any request to construct facilities within a reasonable period, no "unreasonable discrimination" among providers
- Decisions to deny wireless service facilities shall be in writing, supported by substantial evidence
- Citizens' generalized expressions of concern about aesthetics and potential decreases in property values cannot serve as substantial evidence

Church/Religious Activities

- State law outlaws any zoning ordinance that prohibits church-related activities in a single family residence
- Regularly scheduled worship services are not protected in single family districts
- RLUIPA can apply to denial of new church locations and expansions

Spot Zoning

- Hard to define – single parcel benefiting owner to detriment of adjacent properties
- Court review will likely examine:
 - Corrections with little harm to fix prior inappropriate zoning
 - Adherence to Land Use Element of the Comprehensive Plan

Three Extra Actions of Note

- Moratoria
- Pending Ordinance Doctrine
- Initiative and Referenda

Moratoria

- US Supreme Court has upheld
- SC Supreme Court has never ruled directly on issue of zoning or land development moratoria
- Watch out for vested rights (ex: previously issued permits)

Pending Ordinance Doctrine

- Not found in State law but accepted by the SC Supreme Court
- Allows for denial of permit application if conflict to pending and later enacted zoning ordinance
- Key to pending status -- when governing body has resolved to consider certain action and advertised its intention via public hearing notice

	Initiative/Referendum
	<ul style="list-style-type: none"> ➤ SC Supreme Court has ruled State law for ordinance adoption via referendum invalid for making zoning changes ➤ Lawful for use in an advisory manner

	Overriding Rules
	<ul style="list-style-type: none"> ➤ Rules of Procedure ➤ Freedom of Information Act (FOIA) ➤ Ethics

	Rules of Procedure
	<ul style="list-style-type: none"> ➤ The cornerstone of a legally sound decision making process—workable rules that are consistently followed ➤ Rules Issues <ul style="list-style-type: none"> ➤ Formation ➤ Organization and Rules ➤ Record Keeping ➤ Notice ➤ Hearings ➤ Decisions Member and Staff Conduct

	Freedom of Information (“FOIA”)
	<ul style="list-style-type: none"> ➤ Planning Process covered by S.C. Freedom of Information Act <ul style="list-style-type: none"> ➤ Comply with notice requirements <ul style="list-style-type: none"> ■ Including Workshops, Subcommittees ■ Give adequate meeting notice to public ➤ Limited availability of executive sessions ➤ Must make a timely response to requests for information ➤ Post agendas

	Ethics
	<ul style="list-style-type: none"> ➤ Commission and Board members are covered as “public officials” under the provisions of the 1991 Ethics Act (S.C. Code Title 8, Chapter 13) ➤ The State Ethics Commission investigates and prosecutes claims of Act violations

	Conclusion