

Land Use Zoning and Conservation Easements: Two Tools for Rangeland Conservation  
REM 251, Rangeland Principles, 11/2/11

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Readings

The Land Trust Alliance website - <http://www.lta.org>

American Planning Association Website - <http://www.planning.org>

References

American Farmland Trust - <http://www.farmland.org>

The Conservation Fund - <http://www.conservationfund.org>

Trust for Public Land - <http://www.tpl.org>

Palouse Land Trust - <http://palouselandtrust.org>

Smart Growth Network - <http://www.smartgrowth.org>

Terms

Land Trust

Conservation easement

Conservation purposes

Baseline document

Zoning

Police power

Euclid v. Ambler

The Equitable Building



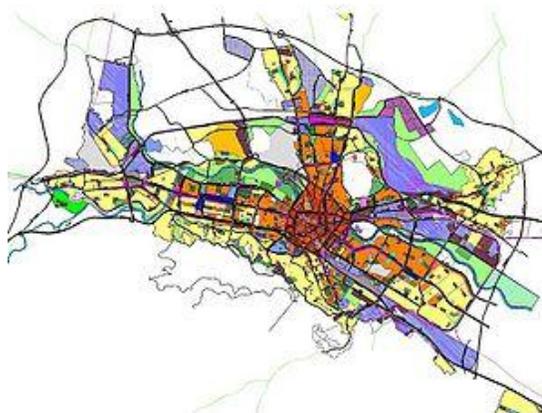
Notes

1) Zoning

- a) What is zoning?
- b) Where does the constitutional authority for zoning come from?
- c) What are typical types of zones?
- d) What is the future of zoning?

2) Conservation Easements

- a) What is a conservation easement? Historical preservation easement? Agricultural easement? Scenic easement? Conservation easement?
- b) Why grant a conservation easement?
- c) What kind of property can be protected by an easement?
- d) Who can grant an easement? To whom can they grant it?
- e) How restrictive is an easement?
- f) How long does an easement last?
- g) What are the grantee's responsibilities?
- h) Must an easement allow public access?
- i) How can donating an easement reduce a property owner's income tax?
- j) How can donating an easement reduce a property owner's estate tax?
- k) How can donating an easement reduce a property owner's property tax?



Typical zoning scheme

## What is Zoning?

Zoning is a device of land use planning used by local governments in most developed countries. The word is derived from the practice of designating permitted uses of land based on mapped zones which separate one set of land uses from another. Zoning may be use-based (regulating the uses to which land may be put), or it may regulate building height, lot coverage, and similar characteristics, or some combination of these. Similar urban planning methods have dictated the use of various areas for particular purposes in many cities from ancient times.

## Where does the constitutional authority for zoning come from?

In United States constitutional law, police power is the capacity of the federal government and the states to regulate behavior and enforce order within their territory for the betterment of the general welfare, morals, health, and safety of their inhabitants. Under the 10th Amendment to the United States Constitution, the powers prohibited from or not delegated to the Federal Government are reserved to the states respectively, or to the people. This implies that the states do not possess all possible powers, since some of these are reserved to the people.

The exercise of police power can be in the form of making laws, compelling obedience to those laws through legal sanctions, physical means, or other forms of coercion and inducements. Controversies over the exercise of police power, particularly the use of physical means, arise when its exercise by the federal government conflicts with the rights of the states or when its exercise by federal or state authorities conflicts with individual rights and freedoms.

Police powers are, from the point of view of state courts, also restricted by state constitutions. The concept of police power is used by federal courts which do not have jurisdiction to interpret state constitutions: from the point of view of federal constitutional law, states have general police powers except where restricted by the federal Constitution.

## Where did zoning come from?

### The Equitable Building

Completed in 1915, the Equitable Building is a 38-story<sup>[3]</sup> office building in New York City, located at 120 Broadway in the Financial District of Lower Manhattan. The controversy surrounding its construction contributed to the adoption of the first modern building and zoning restrictions on vertical structures in Manhattan. The building rises 538 ft (164 m) with a total floor area of 1,849,394 square feet (176,000 m<sup>2</sup>). It was the largest building was the largest (in total floor area) in the world.

Opponents of the buildings were outraged at the unprecedented volume of the building, which cast a 7 acre (28,000 m<sup>2</sup>) shadow on the surrounding streets. Many New Yorkers feared that further construction of buildings like it would turn Manhattan into an unpleasant and dark maze of streets. In response, the city adopted the 1916 Zoning Resolution which limited the height and required setbacks for new buildings to allow the penetration of sunlight to street level. Specifically, new buildings were afterwards required to withdraw progressively at a defined angle from the street as they rose, in order to preserve sunlight and the open atmosphere in their surroundings. As a consequence of the new restrictions, the building remained the largest office building by volume in the world until the construction of the Empire State Building in 1931.

The effort to place restrictions on land use in New York City led to the Standard State Zoning Enabling Act, a key piece of legislation in the history of zoning. The act became the blueprint for zoning in the rest of the country, and was accepted almost without change by most states.

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926), more commonly Euclid v. Ambler, was a United States Supreme Court case argued in 1926. It was the first significant and landmark case regarding the relatively new practice of zoning, and served to substantially bolster zoning ordinances in towns nationwide in the United States and in other countries of the world including Canada.

Ambler Realty owned 68 acres (0.28 km<sup>2</sup>) of land in the village of Euclid, a suburb of Cleveland. The village, in an attempt to prevent industrial Cleveland from growing into and subsuming Euclid and prevent the growth of industry which might change the character of the village, developed a zoning ordinance based upon 6 classes of use, 3 classes of height and 4 classes of area. The property in question was divided into three use classes, as well as various height and area classes, thereby hindering Ambler Realty from developing the land for industry. Ambler Realty sued the village, arguing that the zoning ordinance had substantially reduced the value of the land by limiting its use, amounting to a deprivation of Ambler's liberty and property without due process (i.e., an unconstitutional "taking").

The Supreme Court agreed with the lower court's denial of the dismissal motion, but overturned the outcome of the case and sided with the Village of Euclid. The Court held that the zoning ordinance was not an unreasonable extension of the village's police power and did not have the character of arbitrary fiat, and thus it was not unconstitutional.

Further, the Court found that Ambler Realty had offered no evidence that the ordinance had in fact had any effect on the value of the property in question, but based their assertions of depreciation on speculation only. The court ruled that speculation was not a valid basis for a claim of takings.

What are typical types of zones?

Open Space, Residential, Agricultural, Industrial

What are Criticisms of Zoning Laws?

Much criticism of zoning laws comes from those who see the restrictions as a violation of property rights. It has been argued that zoning boards and city councils too easily can strip property owners of their right to unencumbered use of their land.

It has also been argued that zoning laws work against economic efficiency and therefore hinder development in a free economy. A poor zoning restriction could hinder the optimal efficient usage of a given area. Even without any zoning restrictions, a landfill, for example, would likely gravitate to cheaper land rather than being placed in a residential area. Also, strict zoning laws can get in the way of creative developments like mixed-use buildings and can even stop harmless activities like yard sales.[9]

While admitting that many zoning restrictions are attempts to prevent conflicts that could be resolved through nuisance and real covenant claims, zoning proponents defend restrictions as promoting greater economic efficiency by protecting the property values of a given area, as well as limiting subsequent nuisance claims when landowners have already made large investments in their land.

What is the Future of Zoning?

Mixed use  
New Urbanism