

WR2020

Planning and Development Academy

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Gerald E. Dahl

I. REGULATION UNDER THE "POLICE POWER"

- A. Historical antecedents of modern zoning regulation: public and private nuisance law.
- B. Delegated by the state to counties and municipalities by statute and Article XX of the Colorado Constitution.
- C. The state itself is not generally in the land use control business. Exceptions: state agencies with specific land use tasks: Air and Water Quality Control Commissions, State Engineer's Office, Water Courts, Mined Land Reclamation Board, Oil and Gas Conservation Commission; manufactured housing, vested property rights, "takings" legislation; impact fees.

II. STANDARD LAND USE REGULATORY TOOLS

A. Planning

- 1. Local officials are delegated authority to plan by statute, local charter and ordinance. In municipalities, planning commission develops and recommends the plan; council adopts. In counties, the planning commission adopts.
- 2. The comprehensive plan is not regulatory: Theobald v. Summit County (1982).
- 3. Unless adopted as a regulation BOCC v. Conder, 927 P.2d 1339 (Colo. 1997); CRS 31-23-206(1); 30-28-106(3)(a); 29-20-____.
- 4. Three mile plan (§ 31-12-105(1)(e), CRS: a precondition to annexation; often made a part of the comprehensive plan.

B. Zoning

- 1. Traditional zoning by district: uses by right, conditional review, and prohibited uses.
- 2. Adopted by ordinance; also by citizen-initiated ordinance.
- 3. Memorialized in a zoning map.

4. Standard tests for eligibility of a property for rezoning: (1) error in the original zoning ordinance; (2) to bring the property into conformance with the comprehensive plan, or (3) "changed conditions."

C. Conditional and Special Uses:

1. Allows uses which may be compatible, but require case-by-case review.
2. Criteria for review:
 - * proposed use is in conformance with the comprehensive plan
 - * proposed use complies with applicable requirements of the code
 - * **proposed use is compatible with adjacent uses [conditions of approval may be imposed to achieve this]**
 - * suitability of location
 - * history of compliance by applicant
 - * ability to meet conditions imposed
 - * other relevant factors

D. Subdivision Controls and Site Planning

1. Allows the local government a role in designing the project.
2. Water; sewer; streets.
3. Landscaping; lighting.
4. Lot size; setbacks.
5. Dedication requirements; security for public improvements.
6. Reynolds v. Longmont (1984): subdivision plat must be approved if in compliance with zoning and subdivision regulations.

E. Planned Unit Development

1. More flexible: allows a combination of residential and commercial uses.
2. Combines aspects of district zoning and subdivision review.
3. Design your own zone district.

4. Eliminates need for variances.
- F. Architectural and Site Design Standards
1. Can address "vertical" construction
 2. Requirements for types and colors of materials; breaking up long walls with architectural features
 3. Pedestrian features

III. PERENNIAL ISSUES

- A. Vested property rights
1. When the right to build the project "vests" such that the government may not prevent its completion.
 2. By statute: § 24-68-101, et seq., C.R.S.: 3 years from approval of "site specific development plan".
 3. By local ordinance or resolution.
 4. By common law (at building permit and reliance).
- B. Regulatory Takings: the outside limit of permitted regulation
1. No right to "highest and best use; only a reasonable use."
 2. Denver v. Chuck Ruwart Chevrolet, (Colo.App.1973); Nopro v. Cherry Hills Village, (Colo.1972); Art Neon v. Denver, (10th Cir. 1973) [sign code].
 3. The regulatory takings line of cases is not new, but the point at which a land use regulation will be declared a taking continues to be refined, as does the measure of damages.

IV. MUNICIPAL HOME RULE

- A. Article XX of the Colorado Constitution
1. Municipal residents may vote to adopt a home rule charter.
 2. Home rule charters, and any ordinance adopted by a home rule municipality on matters which are "local and municipal in nature," supercede conflicting state statutes on that subject.
 3. Example: state statutes provide for a board of trustees and six members in statutory towns. Home rule municipalities may provide for a governing body of any number and may rename that body.

B. Matters of Statewide Concern

1. Matters which are considered of "statewide" importance are still governed and controlled by state statute.
2. Example: the legal age for driving or for the consumption of alcohol is set by state statute as a matter of statewide concern.
3. Because of a need for statewide uniformity in these areas, even a home rule municipality may not supercede state legislation.
4. Home rule municipalities are still bound by the requirements of state statute unless and until they act by charter or ordinance, to establish a different rule.

C. Role of the Courts

1. Telluride case (condemnation for open space upheld against conflicting state statute)
2. Commerce City photo red light holding that state statute superceded local ordinance

V. **LEGAL ASPECTS OF URBAN RENEWAL**

A. Formation of an Urban Renewal Authority

1. Petition expressing need for authority signed by 25 registered electors [§ 31-25- 104(1)(a), C.R.S.]
2. City Council Hearing [§ 31-25-104(1)(b), C.R.S.]
 - a. Council must find:
 - (a) One or more slum or blighted areas in the municipality
 - (b) Acquisition, clearance, rehab, conservation, development or redevelopment is necessary
 - (c) In public interest to create URA
 - b. Council may sit as URA commissioners [§ 31-26-115(1). C.R.S.]
 - c. Wheat Ridge has chosen to have a separate board of commissioners to govern its urban renewal authority
 - d. Boundaries of Authority are coterminous with municipality

B. Powers [§ 31-25-105, C.R.S.]; Superdeveloper

1. Enter into contracts with public and private entities
2. Work with city to plan, zone and rezone
3. Acquire property or interest in property through voluntary sale or condemnation
4. Own, clear or prepare property for redevelopment
5. Mortgage or encumber property
6. Issue bonds, borrow money, obligate future revenues
7. Use the sales and property tax increments to fund projects
8. Make and submit plans for development to city
9. Provide relocation assistance

C. Urban Renewal Project

1. Urban Renewal Plan – City Council must approve plan by resolution [§ 31-25-107(1), C.R.S.]
2. Plan must designate an urban renewal area where conditions of slum or blight exist
3. Blighted area [§ 31-25-103(2), C.R.S.]
 - a. Existence of four of the following conditions:
 - (a) Predominance of slum, deteriorated or deteriorating structures
 - (b) Predominance of defective or inadequate street layout
 - (c) Faulty lot layout
 - (d) Unsanitary or unsafe conditions
 - (e) Deterioration of site improvement
 - (f) Unusual topography
 - (g) Defective or unmarketable title
 - (h) Conditions which endanger life or property by fire
 - (i) Unsafe buildings

- b. Which:
 - (a) impairs sound growth
 - (b) retards housing
 - (c) constitutes an economic or social liability
 - (d) is a menace to health, safety, morals and welfare
4. Disposal of Property [§ 31-25-106, C.R.S.]
 - a. May sell, lease or transfer subject to covenants, conditions or restrictions
 - b. Purchasers or recipients must use property consistent with urban renewal plan
 - c. Competitive bidding
 - d. Must advertise disposal of property prior to entering into contract
 - e. May consider legal and financial capability of applicants
 - f. May accept proposal that is in the public interest and best furthers the purposes of the urban renewal plan
 - g. Must be sold for "fair value" taking into account covenants and restrictions on the property and the purposes of the urban renewal plan
 - h. Fact that property is being acquired for resale to a private party does not negate public purpose of the taking, but additional requirements apply:
 - Five (5) blight factors required
 - Must invite redevelopment proposals from owners as well as potential developers
 - Must receive approval from City Council to condemn any specific property
 - Relocation assistance required

Thornton Urban Development Authority v. Upah, 640 F. Supp. 1071 (D. Colo. 1986).

5. Bonds [§ 31-25-109, C.R.S.]
 - a. Authority may issues bonds in its own name

- b. Bonds of an authority are not obligation of the city
- c. Bonds of an authority are tax exempt