Class 10 Agenda

1. Mechanics: Initial Conditions reports, group memos
2. News
3. Land use tools selection and group scheduling
   (2 on 14th/21st, 3 on 26th, 2 on 28th)
5. Constitutional basics for planning
Constitutional Basics for Planners w/r/t Land Use

• Why do we care?
  – Constitution protects individuals from exercise of governmental power.
    • Article VI, Supremacy Clause: states must observe constitutional requirements
    • Fifth Amendment, takings clause: nor shall private property be taken for public use without just compensation
    • Fourteenth Amendment, due process: prohibits government action that deprives any person of liberty or property without due process of the law (procedural and substantive)
    • Civil Rights Act: property owners right to damages upon proof of deprivation of rights, beyond takings
    • Freedom of speech and religion…let’s just say they’re outside the scope of land use (sometimes)
Two Groups to Consider in the US Context

• In any legal economic transaction, there exist three actors: a buyer, a seller, and the state to protect the transaction

• In a land use controversy, four actors may be present: owner, government, neighbors, interest groups
Some Definitions

- Police power: power of the state to establish and enforce laws to preserve public health, safety, welfare
  - Enabling legislation delegates to municipalities
- Property interest: right to have the benefits of the type of interest one holds in a property.
  - Legal title would convey posses, convey, trespass, H20, mineral, air.
- Vested right: right which has accrued to an individual by virtue of circumstances that cannot be rescinded.
- Nuisance: use of property that interferes with another’s use of their property or is injurious to public
- Downzoning: change in zoning to less intensive use
- Applied challenge: the application of an ordinance was unconstitutional. Vs. facial challenge, in which the ordinance itself is challenged as unconstitutional
Some Legal Terminology

- Procedural due process: constitutional protections to ensure laws not unreasonable, arbitrary, or capricious.
- Substantive due process: regulation must relate to legitimate governmental purpose.
  - If not, then arbitrary and capricious, the regulation is not related to health, safety, morals, general welfare.
- Equal protection: all persons under like circumstances enjoy equal protection in life, liberty, and property with no unequal burden.
  - Legitimate purposes for land classifications and restrictions, and similar properties treated similarly unless rational justification.
- Taking: government appropriation of property
  - Eminent domain: power of government to condemn/take for public use
  - Regulatory: property use taken by regulation
  - Development exaction: contribution which government imposes on new development as condition for development approval
Due Process Scope

- Legislative decision making not subject to procedural due process

- Administrative and quasi-judicial process: actions to carry out legislatively defined policies.
  - No discretion to deny if conditions are met. Based on findings of fact, and subject to due process.

- Landowner must have entitlement to property interest (vested or permitted), not just expectancy

- Substantive due process requires legitimate governmental purpose
  - Presumption of constitutionality: Claimant carries the burden of proof of non-legitimacy (and SC historically supports government purposes implemented by land use regulations)
    Ex: *Village of Euclid, Ohio v. Ambler Realty Co* 1926
Takings (what about Givings?)

- Eminent domain requires *benefit* of the public
- Regulatory takings are constantly being refined
  - Think of parcel as a whole
  - Economic impact of regulation is a trigger
- What is a taking?
  - No legitimate state interest
  - No advancement of that interest
  - Disproportionate burden to advance that interest
  - Permanent (or temporary?) physical occupation
  - Economic effect—deprives all use of property
Judicial tests and some cases (woo!)

- Going “too far” (*Penn coal v. Mahon* 1922)
- Three factor balancing test: character of the regulation; the economic impact on the landowner; and the extent of interference with investment-backed expectations (*Penn Central v. NYC* 1978)
- Legal nexus: means and end to be achieved need to be linked (*Nollan v. California Coastal Comm.* 1987)
- Temporary taking=taking (*First English Lutheran v. County of Los Angeles* 1987)
- If regulation prevents all economic use, it’s a taking (*Lucas v. South Carolina Coastal Council* 1992)
More cases!

- Rough proportionality of impact to dedication as condition of development (*Dolan v. Tigard* 1994)
- Rough proportionality inapplicable in denial of development permit (*City of Monterey v. Del Monte Dunes* 1999)
- Acquisition of title after the effective date of a regulation does not automatically bar a regulatory taking claim (*Palazzolo v. Rhode Island* 2001) (However, Lucas logic applied, case remanded for Penn Central three factor balancing test)
- No per se rule regarding the issue of whether a temporary land use restriction (even if a complete denial of all use is imposed for a finite and reasonable period), such as a moratorium, can constitute a taking. (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning* 2002)
- **GREAT REFERENCE:**
  [http://www.mrsc.org/Subjects/Legal/takings.aspx](http://www.mrsc.org/Subjects/Legal/takings.aspx)