

# CHAPTER 5 – THE LEGAL BASICS OF PLANNING

Dr. AbdulAziz Bubshait,  
Professor, Construction Engineering and Management  
Department.

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## THE CONSTITUTIONAL FRAMEWORK

- The Constitution mentions there would be either Federal government or state government planning.
- But the words like city, town etc. were not mentioned in the American Constitution.
- As a result of this, powers got distributed to federal and state units.
- State units disintegrated further into substate units.

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## POWERS AND LIMITATIONS

- The plan of Chicago took place without any specific planning framework.
- Powers and limitations rests with the federal government and state government.
- When there is a disagreement over issues of individual rights or properties, the ultimate arbitrator is the court.

## POWERS AND LIMITATIONS conti..

- The power of 'Eminent Domain' which means the right to take private property for public purposes needs emphasis.
- It usually happens while the roads are constructed in a city, where the government acquires private property.
- A compensation for acquiring those lands is given to the owner of the property and if the owner isn't happy with the compensation he can go to the court.

## PUBLIC CONTROL OVER PRIVATE PROPERTY

- Public control over private property is different from public taking the private property.
- Public control is kind of a restriction over the construction imposed on to the owner.
- For an instance, if an owner wants a building with 12 stories the municipality takes control by restricting it to 6 stories.

## PUBLIC CONTROL OVER PRIVATE PROPERTY conti...

- The land use control technique that has evolved over the years, zoning, is adopted by the planners.
- The legitimacy of zoning results on the legal concept of 'police power'.
- The owners are prohibited from intense construction which keeps the streets under shadow all the time and undue traffic congestion in nearby streets.

## PUBLIC CONTROL OVER PRIVATE PROPERTY conti...

- The process by which municipalities acquired some control over the use of private land began in the late nineteenth century.
- It started in Kansas in 1887 when the government closed a brewery without compensation.
- In 1904 the Massachusetts legislature passed a legislation where the building height was restricted to 125 feet in the business district.

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## PUBLIC CONTROL OVER PRIVATE PROPERTY conti...

- The city that enacted the first modern zoning ordinance was New York.
- The steel construction and elevators helped the buildings reach 40 to 60 stories in the early twentieth century.
- In 1916, a comprehensive zoning ordinance was passed which divided the region into three districts on the basis of land use.

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## PUBLIC CONTROL OVER PRIVATE PROPERTY conti...

- By 1926, the public control over private property was fully established.
- After it's establishment the zoning became universal for urban and suburban areas.
- In 1978, a litigation over New York City's landmark preservation reached the court.
- It was the '*Penn Central Transportation Company*' vs. *New York City*' litigation.

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## PUBLIC CONTROL OVER PRIVATE PROPERTY conti...

- '*Property Rights*' movement also gained momentum by the end of the twentieth century because many property cases started reaching Supreme Court.
- The Government decided to convert Land use restrictions into '*takings*' which meant that they had more expenditures ranging upto \$ 4.5 billion annually.

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## PUBLIC CONTROL OVER PRIVATE PROPERTY conti...

- Similarly the American Planning Association ( APA) was also opposed and needed a serious lobbying effort.
- Fears of incurring huge bills for compensation makes agencies really cautious about the regulations.

## THE SUPREME COURT AND THE “TAKING” ISSUE

- In 1987 the U.S. Supreme Court had five cases on the issue of ‘Taking’.
- Nollan vs. California Coastal Council (1987) case showed that the local government cannot impose loss on a property owner by asking the owner to dedicate some land for public use.

## THE SUPREME COURT AND THE “TAKING” ISSUE conti...

- Similar cases happened in Lucas v. South Carolina Coastal council, Dolan v. City of Tigard where the state government was on the wrong side of the line and had to pay the compensation.
- But in Palazzolo v. Rhode Island case, the planning unit was right and the development by the owner was stopped.
- The case opened again in 2001 when Supreme Court ordered the state government to reinvestigate and the state government once again had to pay the compensation.

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## THE FIGHT OVER EMINENT DOMAIN

- The Urban Renewal Program angered many people.
- The program was using the land for site development and transferring to another party which only meant they were shifting land from one private party to another.
- Many state governments banned this party to party transfer citing ‘Economic Development’ as the reason.

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## THE FIGHT OVER EMINENT DOMAIN conti...

- A number of referenda passed in 2006 banning the 'Eminent Domain'.
- By such bans, planners feel that state and local governments have lost an important tool for economic development.
- Urban renewal would have been a smaller program had such transfers been stopped.

## STATE-ENABLING LEGISLATION

- Legislation varies greatly from state to state.
- In most cases legislation permits states to work on certain planning activities while in some it forces them to work on certain planning acts.
- Planning-Enabling acts and zoning-enabling acts are useful as municipalities can plan in a better way under these acts.



## THE LEGAL LINK TO STATE PLANNING

- The local governments are desired to work with state governments and not intervene them.
- For example if state level planners decide to save wetlands, local governments cannot go against them.
- It is the responsibility of the state government to keep local governments under their control.

## THE FEDERAL ROLE

- 1930's saw the beginning of federal presence in local planning.
- One way or the other federal government had their presence felt in every planning.
- In 1960 federal aid to state and local governments was about \$7 billion.

## THE FEDERAL ROLE conti...

- The federal funds can make a state or local planner to make changes in their planning procedures because if they do not follow federal governments, then the funds would be stopped.
- Therefore the federal role in local planning is pretty much existent and federal funds are the only source for local planners.

## Mandated Responsibilities

- The federal government influences the state and local governments by introducing mandates.
- For example the '*Clean Air Act*' amendments of 1970 required the EPA ( Environmental Protection Agency) to establish certain air quality standards.
- If the state government fails to make inadequate review, then it opens itself to legal enquiries put on by environment protection parties.

## Mandated Responsibilities conti...

- The regulated party is told what to be achieved with wide discretion.
- As a matter of fact this style of working is acceptable in a political system like the United States.
- Thus by covering the pre-mentioned topics, an overview of the Legal basics of planning is pretty much achieved.

Thank You