



INFORMATION MEMO

Land Use: The Neighbor Factor

Learn how to educate city residents about the land use process and encourage public participation to foster civility and responsible decision-making.

RELEVANT LINKS:

[U.S. Const. Amend. V.](#)

I. Resident point of view

Residents are often at their most demanding when it comes to issues of land use—especially projects that are close to their homes.

Imagine this: You want to build a garage at your house. What would you think if you had to get permission from all of your neighbors? What if the neighbors voted on what your garage should look like? What if the neighborhood merely had veto power over your choice of garage? This, of course, is highly unlikely. Yet if you attend land use hearings at city councils or planning commissions, it may sound familiar. Perhaps some of these sentiments have come up in your city:

- “We don’t need another fast food restaurant here.”
- “We already have too many apartment buildings in this town.”
- “We need more daycare options. You should build a daycare on this lot.”

While almost no one expects to be subject to the whims of their neighbors, some neighbors are quite willing to make demands on the land uses of other property owners. When is this allowed? Obviously some neighborhood input is acceptable. Land use laws require all kinds of public notice, public input, and public hearings. Those must be required for a reason, right? What would that reason be if not to get input from neighbors?

II. Brief history of land use regulation

It is useful to start with a little legal theory and history. The general assumption about land ownership is that property owners have a right to any legal use of their land. The ability to use private property is a fundamental tenet of American democracy. It is so important, in fact, that it is addressed in the Bill of Rights, which says no one can “be deprived of life, liberty, or property, without due process of law.” Land use regulations do deprive owners of their property rights, by limiting what they can do with their property. You may want to build a very profitable factory on your land, but local zoning regulations can limit you to building a modest house. That’s a significant deprivation. Therefore, government can only regulate land use through “due process of law.”

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Stat. §§ 462.351 - .365.](#)

Learn about conditional use permits and variances in: LMC information memo, [Land Use Variances](#) and LMC information memo, [Land Use Conditional Use Permits](#).

See LMC information memo, [Taking the Mystery out of Findings of Fact](#).

With land use issues, due process of law means having clear authority and following that authority. Cities have no inherent land use authority. This may seem like a limitation, except that cities have broad legislative authority to create their own land use regulations, by adopting ordinances. Cities literally get to write their own rules. This creates a fundamental tension. On one hand, cities have broad power to create and administer land use regulations. On the other hand, property owners have broad rights to use their property.

In attempting to resolve this tension, courts tend to interpret land use regulations narrowly and in favor of property owners. This makes sense for a few reasons. First, land use regulations are limits on the traditional right to use land. In addition, cities have the ability to write the regulations themselves. Since cities get the advantage of writing the rules, courts tend to be somewhat merciless when applying them. It is hard to explain that a city should be able to avoid the requirements of an ordinance that the city itself established.

Because property rights cannot be restricted without due process of law, and because those laws are interpreted narrowly, property owners rightfully develop some expectations. Property owners expect to be able to read city ordinances and understand what they are allowed to do with their land. Ordinances must give some reasonable clarity about what uses are allowed and under what conditions.

It is difficult or impossible to anticipate and regulate every possible use of land, so ordinances usually have some built-in flexibility. Most ordinances have a conditional use permit process, which may allow a proposed use if it meets certain conditions. Most ordinances also have variance provisions, which allow property owners to vary from the strict terms of the ordinance. This flexibility gives cities the discretion to make case-by-case determinations on specific land uses. This flexibility, however, is limited. When cities apply the regulations they have written, they act quasi-judicially. Like judges, they must apply the written laws to the facts of a specific case. The city's job in making discretionary land use decisions is to determine the facts of a specific application and apply those facts under the applicable law.

This is the setting for most land use controversies: a proposed use requires some kind of discretionary decision like a conditional use permit or a variance. Such a discretionary decision is made through a public process. What role can the neighbors play in this process?

RELEVANT LINKS:

See LMC information memo,
[Public Hearings](#).

III. Resident involvement

First, it is important to recognize that neighbors have legitimate interests. While property owners may develop expectations about the regulation of their own land, they also develop expectations of neighboring property. If a city's zoning ordinance states a neighborhood will remain residential, homeowners in the area rely on that information. Even though neighbors have legitimate interests, their rights are limited. Neighborhood input often involves residents advocating for regulations of someone else's property. But these residents do not get to make decisions about the use of someone else's property any more than they might have the right to vote on your garage.

Residents do have a right to participate in the process: to present evidence, to ask questions, and to argue about the correct interpretation of regulations. Residents do not have the right to dictate the terms of use for someone else's property. The role of the public (residents and non-residents) is not to offer opinions about the best or preferred uses of property, nor is it to present a wish list of things they would rather see. The role of the public is to present factual evidence to city decision makers.

IV. Managing public input

For city officials, the process of public input can be difficult to manage. While residents theoretically have a limited role, they can be a dominating political force. This can be especially true if the project proposer is an out-of-town developer with an unpopular project, and the opponents are an organized force of politically active local voters. A city council can quickly find itself facing a council chamber packed with angry residents.

Public hearings can seem like barely contained chaos: opponent after opponent will make fiery statements against the proposed project, with the chamber erupting into applause after each one. Signs are waved. Proponents are booed. The process may not seem very judicial. Beyond the controversial setting this creates, rowdy public opposition can cause legal problems, too. The city should act like a judge: to discover the facts of a specific application and to apply the requirements of a specific regulation. The appearance that a city made a decision based on a project's popularity can result in legal challenges. What can be done to avoid such a situation? Below are a few suggestions.

A. Address potential problems early

The best approach to “out-of-control controversy” is to prevent it from ever happening. Cities should make efforts to involve residents early in the planning and zoning process. When cities use their legislative power to create land use regulations, they have very broad authority. The best place to deal with land use concerns is when the regulations are created. If the desired result is a prohibition of big-box retail stores, the zoning ordinance should be written accordingly.

Acting early has a number of benefits. First, cities have the most discretion when acting legislatively (making law in the form of ordinances). Courts will uphold almost any reasonable regulation of land if it is part of a properly adopted zoning ordinance. Second, property owners will develop reasonable expectations about what uses are allowed. This may head off potential conflicts. Addressing potential problems early makes a lot of sense, especially if you anticipate a scenario like this: A big-box store buys land in a commercially zoned area, develops plans, and then applies for a conditional use permit. By this time they have established some expectations and made substantial investments of time and money. Any attempt to restrict the development will meet substantially increased opposition.

B. Educate the public

Cities should actively encourage public input and participation in the planning and zoning process. Get input early—before the developer is at the door with an application in hand. Educate residents about the importance of planning and zoning and how it can impact their neighborhoods. Of course, it certainly seems that no one pays attention to land use until a controversial project comes to town. That doesn’t mean it is too late to educate residents about the process. But it does complicate the situation.

During a controversial hearing process, it becomes even more important to educate residents about how regulations work. Begin hearings with a message clearly describing the process. Start by answering these questions for participants:

RELEVANT LINKS:

- What is the proposed project?
- What approval is being sought? Perhaps hand out or display the specific regulation or question at issue.
- What are the terms of the specific land use regulation?
- How much discretion does the city have? Is it a legislative question? Or is it a quasi-judicial question in which the city is limited by the terms of the regulations?
- What are the rules of the hearing? How will it be conducted? How much time is each speaker allowed? What about applause or sign waving?

The key is to help residents understand what the rules are and how they should be applied. Most people understand the determination of whether or not they get to build a garage is not based on the results of a popularity contest. Residents who understand that the city must adopt and follow rules are less likely to create controversy over city council land use decisions—even when those decisions are unpopular.

V. Further assistance

LMCIT offers land use consultations, training and information to members. Contact the League's Loss Control Land Use Attorney for assistance. You can also learn more about land use issues in the land use section of the League's website.

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