

Constitutional Principles Affecting a Locality's Land Use Powers

The numerous constitutional principles that may be affected by local land use regulations may have inspired a United States Supreme Court justice to ask in a dissenting opinion:

“[I]f a policeman must know the Constitution, then why not a planner?” *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621, 661, 101 S. Ct. 1287, 1309, 579 fn. 26 (1981) (Brennan, J.).

At bottom, in the land use context these constitutional principles seek to ensure: (1) fairness in the procedures; (2) fairness in the regulations; (3) fairness in the implementation of the regulations; (4) protection of certain individual activities; and (5) freedom from certain governmental activities.

The due process clause

The Fifth Amendment to the United States Constitution provides in part that “No person shall . . . be deprived of life, liberty, or property, without due process of law . . .” The Fourteenth Amendment to the United States Constitution provides in part “. . . nor shall any State deprive any person of life, liberty, or property without due process of law. . .” Article I, Section 11 of the Virginia Constitution provides in part “[t]hat no person shall be deprived of his life, liberty, or property without due process of law . . .”

In the context of a zoning ordinance, the due process clause ensures fairness in the way in which a zoning regulation is adopted or a zoning decision is made (procedural due process), and fairness in the scope and implementation of the zoning regulation (substantive due process).