Chapter 6 Summary
Control of Land Use: Control of Land Use

When someone owns a parcel of real estate, he or she also has a set of legal rights that are attached to the ownership of that parcel. These rights, which have value and can be sold, are known as the bundle of rights. Implied in that bundle of rights is the principle of “as of right zoning” or as of right use. This term refers to those uses that are automatically allowed by the zoning code. They are allowed “as a matter of right.”

The government is charged with the responsibility of making sure that owners do not use their property in a way that will harm the public. Over time, the control of land use has come to focus on certain core purposes. These are:

- Perseveration of property values
- Promotion of the highest and best use of property
- Balance between individual property rights and the public good
- Control of growth to remain within infrastructure capabilities

Individual deed restrictions place limits on how the property may be used. Restrictions are also known as "covenants, conditions and restrictions" or CCRs. A covenant may be included in a deed to benefit a property that is sold or to benefit a property that is kept when an adjoining property is sold. These restrictions are covenants that "run with the land," that is, they move with the title in any subsequent transfer.

Restrictive covenants are limitations placed on the use of land by the developer of a residential subdivision. The purpose of these covenants is to preserve and protect the quality of land in subdivisions and to maximize land values by requiring the homogeneous use of the land by purchasers. The covenants are promises by those who purchase property in the subdivision to limit the use of their property to comply with the requirements of the restrictive covenants; therefore, they are negative easements.

As we mentioned above, the property owners can enforce the covenants by taking a court action known as an injunction. An injunction prevents the owner or owners from using a property in a way that is contrary to the recorded restrictions. It can also order the removal of a use that has already been implemented.

Restrictive covenants may be terminated in any of these ways:

- The time period of the covenant expires.
- The property owners vote to end the restrictions.
- The character of the subdivision changes making it more suitable for other use.
- The property owners choose not to follow the original plan by violation their own restrictions.

Public land use controls are much broader, encompassing much larger areas of land. These controls include:

- Police power over zoning ordinances, building codes, subdivision regulations, eminent domain, environmental restrictions.
- Taxation
- Escheat

Public ownership is defined as government ownership of lands, streets, public buildings, utilities, and other business enterprises. Theory holds that all land and its resources belong ultimately to the people and therefore to the government. From this theory comes the doctrine of eminent domain, asserting that the state has ultimate control over lands and buildings within its borders.
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Eminent domain allows a government entity to purchase a fee, leasehold, or easement interest in privately owned real property for the public good and for public use, regardless of the owner's desire to sell or otherwise transfer any interest. In exchange for the interest, the government must pay the owner "just compensation."

A "taking" refers to the "taking clause" of the Fifth Amendment which says, in part, that private property cannot be taken for public use without just compensation. If a property owner's right to develop his or her land is restricted by government controls to the point where the land becomes basically useless, the courts could find that the taking was illegal and order compensation be paid to the property owner.

Building codes allow the county and municipality to protect the public against the hazards of unregulated construction. Building codes establish standards for virtually every aspect of a construction project, including offsite improvements such as streets, curbs, gutters, drainage systems, and onsite improvements such as the building itself.

Owners, contractors, or developers must obtain a building permit, which gives permission for the construction or renovation of a building or improvement. Building permits are required for both residential and commercial properties.

After completion, building inspectors inspect a new development or improvement for code compliance. If the work complies, the municipality or county issues a certificate of occupancy (CO) which officially clears the property for occupation and use.

The vehicle for zoning a city or county is the zoning ordinance, a regulation enacted by the local government.

The intent of zoning ordinances is to specify land usage for every parcel within the jurisdiction. Ordinances typically address:

- The nature of land use
- Size and configuration of a building site
- Site development procedures
- Construction and design methods and materials
- Signage

One of the primary applications of zoning power is the separation of residential properties from commercial and industrial uses. Common types of zone classifications are:

- Residential
- Commercial
- Industrial
- Vacant
- Agricultural
- Public open space
- Parklands
- Recreational
- Institutional
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Incentive zoning can help to advance a community's physical, cultural and social goals by allowing land developers to provide specific amenities and benefits in exchange for zoning incentives.

Cluster zoning is a type of zoning in which density is determined for an entire area, rather than on a lot-by-lot basis. Within the cluster zone, the developer has greater flexibility in designing and placing structures so long as the overall density requirement is met.

Sunshine laws, also known as open meeting law, mandate that meetings of governmental agencies and departments be open to the public. The Freedom of Information Act requires agencies to share information they have obtained with the public. Sunshine laws apply to regular meetings of zoning and planning boards and special sessions held by local zoning authorities.

Transfer of development rights (TDR) refers to a method for protecting land by transferring the "rights to develop" from one area and giving them to another. The concept of TDRs allows for financial compensation to property owners while society imposes land-use regulations to control growth and development.

Municipal, county, and regional authorities develop comprehensive land use plans for a particular community with the input of property owners. A planning board manages the master plan and enforces it by exercising its power to establish zones, control building permits, and create building codes.

At times, the planning board may recommend that the local authorities consider such zoning actions as moratoriums, variances, special use permits and rezoning. A moratorium is a temporary suspension of the development of a property.

Spot zoning occurs when a small area of land or section in an existing neighborhood is singled out and placed in a different zone from that of neighboring property.

In addition to local regulation, subdivisions must meet FHA (Federal Housing Authority) requirements to qualify for FHA financing insurance. The FHA sets standards similar to local ordinances to ensure an adequate level of construction quality, aesthetics, and infrastructure services.

A developer must also submit a plat of subdivision containing surveyed plat maps and comprehensive building specifications to achieve plat approval. The plat, as a minimum, shows that the plan complies with local zoning and building ordinances. The project can commence only after the relevant authority has approved the plat.

A planned unit development (PUD) is a housing concept that produces a high density of residential housing units, a maximum use of open spaces and greater development flexibility, which results in lower-priced homes and minimum maintenance costs. The PUD concept enables a developer to get a higher density than is allowed with the underlying zoning.

The local planning boards often have the right to review site plans. This review gives the board the opportunity to assess the impact the plan will have on the community. The plan must have enough information for the board and other government agencies involved in the review to determine if the plan complies with zoning ordinance requirements.
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A county or local board, usually called the zoning board of adjustment or zoning appeals board, administers zoning ordinances. The board rules on interpretations of zoning ordinances as they apply to specific land use cases presented by property owners in the jurisdiction. They handle issues and appeals including:

- Nonconforming use
- Variance
- Special exception or conditional use permit
- Zoning amendment

A nonconforming use is one that clearly differs from current zoning. Usually, nonconforming uses result when a zoning change leaves existing properties in violation of the new ordinance.

A special use permit or exception grant authorizes a use that is not consistent with the zoning ordinance in a literal sense, yet is clearly beneficial or essential to the public welfare and does not materially impair other uses in the zone.

Rezoning occurs when a current or potential property owner may petition the zoning board for an outright change in the zoning of a particular property.

A zoning variance allows a use that differs from the applicable ordinance for a variety of justifiable reasons. If a landowner wants to apply for a variance, he or she must apply to the local zoning board of appeals. There are two types of variances:

- **Use variance** which gives permission to use the land for a purpose not allowed by the current zoning because: the owner is deprived of all economic use or benefit; the hardship is unique and not universal to the area; the use will not change the essential character of the area; the hardship is not self-created.
- **Area variance** which permits an applicant to vary one or more of the dimensional or physical requirements of the applicable zoning law, code or ordinance in connection with some proposed construction. The board reviews the following when considering an application: any undesirable change or harm to the nearby properties that would result if the variance was granted; if the benefit the applicant is seeking can be achieved in another feasible way; if the requested variance is substantial; if granting the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood; if the difficulty was self-created.

Land use regulations are enforced by the following local entities:

- Building departments
- Civil and environmental engineers
- Surveyors
- Land use planners
- The Board of Health
- Local courts

The Interstate Land Sales Full Disclosure Act (Title XIV of the Housing and Urban Development Act of 1968) authorizes a nationwide program of registration of subdivisions marketed in interstate commerce. The program is intended to protect consumers by making relevant information available to them when they are considering purchasing land. The purpose of this act is to prevent fraud in marketing land that can be sold sight unseen.
In recent years, federal and state legislatures have enacted laws to conserve and protect the environment against the hazards of growth and development, particularly in terms of **air, water, and soil quality**.

- **Air Quality**: creating airtight, energy-efficient structures, attention to sources of indoor air pollution is more important than ever. Significant threats include: asbestos, carbon monoxide, formaldehyde, lead, mold and radon.

- **Soil and water**: Soil, groundwater, and drinking water supplies are vulnerable to pollution from leaking landfills; improper waste disposal; agricultural runoff; industrial dumping in waterways; highway and rail spills; industrial emissions; internal combustion emissions; and underground tanks leaking fuels and chemicals, to mention but a few sources. Additional problems include: dioxins, lead and mercury, MTBE, PCB, underground storage tanks, wetlands, electromagnetic fields, noise, and earthquake and flood hazards.