AICP Exam Prep Webinar
Planning and Land Use Law (Rich Ducker)
March 9, 2012, 9-11am
Questions Posted by Participants; answers by Rich Ducker

(1) Can Rich expand on the sign amortization comment? Do the Feds not allow for the amortization of ANY sign or just signs along US HWYS?

The federal highway beautification program applies just to highways on the National Highway System. That system includes Interstate highways, U.S.-numbered highways, and a small number of state-numbered highways. The feds require that requirement that “just compensation” be paid to sign owners if a local government (or state government) causes their commercial off-premises signs to be removed from sites along these highways. This requirement effectively prohibits the amortization of billboards along NHS highways.

Nonetheless the federal requirement does not apply to signs that are located along streets and roads that are not on the NHS. The federal requirement also does not apply to commercial on-premises signs, wherever they might be located.

(2) Can you describe what amortization means in a planning context?

The term “amortization” applies to zoning regulations dealing with zoning nonconformities (features of a property that were legal when established, but which do not meet current standards). Instead of allowing a property with a nonconforming feature to continue as is, an amortization provision in a zoning ordinance requires the property owner to come into full compliance with the current terms of the ordinance within a stated period of time (typically somewhere between six months and ten years). The theory is that the property owner is given a suitable period of time to “amortize” or recover whatever investment the owner made in the property as it has existed in the past. In order for an amortization period to be reasonable it must take into account the cost that the property owner must incur in bringing the property up to the current standard, as well as the nature of the interest that the public has in having the property brought into compliance with current zoning regulations as soon as possible.
Can you provide a specific example of Dillon’s rule that would be an eligible test question?

The thing to remember is that if you are in a planner in a Dillon’s Rule state, the authority of a local government to undertake new or innovative regulatory or tax programs will need to be included in express terms in state enabling legislation. Or the authority will have to necessarily implied from the language of an existing state law. For example, in a Dillon’s Rule state, local governments could probably not impose impact fees to fund public school construction unless state law specifically said they could. Or, in such a state, a local government probably could not establish a mandatory program in which developers were expected to provide or set aside a certain portion of the housing for low-and moderate-income persons unless the enabling legislation for doing so was fairly specific.

In a home-rule state the state constitution or legislation adopted by the state legislative body gives broad grants of power to local government to manage their local affairs. Courts in these states an impact fee program or a mandatory affordable housing set-aside program would more be likely to find that the necessary authority was implied from general planning, zoning, and land subdivision authorizing legislation.

What’s an example of a violation of substantive due process?

Generally speaking, “substantive due process” can be thought of as an “ends-means” test. The question is (1) whether a governmental action is intended to achieve a permissible public objective or purpose (or is arbitrary) and (2) whether the means used to achieve this end is reasonable. The regulation of campaign signs to enhance community appearance and protect public (traffic) safety may be legitimate. But a requirement that a residential property owner may display not more than one campaign sign on the property might be a violation of substantive due process. (Limiting the total area of such signs might be a more reasonable approach.)

Courts are more likely to find substantive due process violations in cases where a local government has arbitrarily withheld a building/zoning permit to which an applicant was entitled or has denied a land use approval for personal, partisan or other reasons not legitimately related to zoning.

One more well-known case is Moore v. City of East Cleveland (that I mentioned in class) in which the definition of “family” in the town’s code allowed only one set of grandchildren to live with their grandparents, and then only if their parents resided in the same dwelling. The U.S. Supreme Court determined that the family definition impaired freedom of personal choice in family life, a liberty interest protected in the due process clause. The family definition had legitimate goals such as minimizing traffic and parking congestion, but the definitions served these goals only marginally.
(5) Do vested rights apply to when the development was first approved, or when actually first commenced?

We say that a property owner/applicant has a vested right when the owner/applicant has made sufficient progress with the project that the owner is legally protected from changes in the rules or laws that apply to the project. In many states, obtaining necessary building permits for a project is sufficient to protect the owner from rule changes. But in other states it takes something more. It takes substantial expenditures in good-faith reliance on the building/zoning permit. That means the permit holder has actually had to enter into land-clearing or construction contracts or find tenants or try to secure permits that might come after the building permit or even initiate construction before the law will protect the permit holder.

One other thing: It is also possible for someone who has a vested right to lose it by not continuing to make progress on a project. Sometimes regulations or permit conditions provide that a building permit or a zoning permit or other kinds of permits will expire if the permit holder does not meet certain deadlines.


See the answer to question (4).

(7) If I remember right, the specific property in the Berman case was not itself blighted. Is that right?

You are correct. The U.S. Supreme Court said in that case that since the redevelopment authority had demonstrated that the redevelopment area taken as a whole was blighted, getting rid of the blight amounted to a “public use” of the land. As a result, the redevelopment authority was able to use eminent domain to acquire any and all of the parcels within the designated area, even though some of the properties (including the one owned by Berman) were not blighted and were in relatively good shape.

(8) Where exactly are Prof. Ducker's materials referenced in the second slide in red located?

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Scroll down the page to the items listed under “Planning Law.”
(9) Transfer of development rights (TDR) was a concept developed by McHarg, will the exam ask you questions related to both the concept (TDR) as it relates to law and the person (McHarg)?

The people who make up the exam do like to ask questions to see whether you can link a particular person to his or her particular concepts, programs, accomplishments, etc.

But the concept of transferring development rights is actually associated with a variety of people. So I’m not sure that this particular identification is likely to show up on the exam.

(10) What was the name of the case mentioned under Equal Protection?

In Village of Arlington Heights v. Metropolitan Housing Development Corp., the U.S. Supreme Court held refusal of the village to rezone land for multi-family residential development to accommodate a low- and moderate-income housing project did not violate the Equal Protection Clause of the U.S. Constitution, despite evidence that the action had an adverse and disproportionate impact on blacks. Court held that proof of a racially discriminatory intent was necessary to show that the suspect classification of race was involved.