

**WASHINGTON LAND USE LAW:
CONCEPTS AND CASES**

A Guide for the Land Use Practitioner



Sound Law Center

2013 Edition

Introduction

This Guide to Washington Land Use Law provides an overview of the concepts and case law involved in land use development proposals in Washington State. The focus is on concepts and cases useful to a land use law practitioner, such as a planner or an attorney, who is handling a land use application or appeal at the city or county level. The Guide does not address matters outside the scope of authority of a local land use decision maker; cases regarding unconstitutional "takings," for example, are not included in this Guide.

The Guide contains a limited number of cases. It is our intent to include only the most relevant and commonly cited published cases. Many cases with similar or identical holdings have been omitted, as have all unpublished cases. Considerable effort has been taken to ensure that all cases included in this digest are "good law," that the court holding is accurately characterized, and that any clarifications affecting the authority of the cases as precedent are noted. Relevant appellate cases are cited in reverse chronological order, and state supreme court cases are listed along with court of appeals cases. We occasionally cite a case that is no longer 'good law,' but that is helpful to the reader's understanding of the underlying land use concept. When such cases are cited, we note how they may have been overruled by subsequent cases or by legislative action. The Guide helps a land use practitioner decide whether a court of appeals case or a supreme court case is a better authority to cite. Some concepts articulated by the courts become reliable doctrines over the years, and we alert the user of this Guide to those doctrines. We did not 'hot link' the cases to any existing database of case law because it is quite easy to copy the citation and place it in a search engine to go directly to the case. One may also use one of many case law databases such as those found at www.mrsc.org or www.wsba.org.

The Guide is organized to help the practitioner manage a land use application or appeal. Section I outlines the concepts and case law of the Growth Management Act (GMA). This state statute governs nearly all comprehensive planning and zoning in Washington State. The land use practitioner needs to have an understanding of the concepts and case law developed under the GMA. These GMA legal doctrines will govern how a comprehensive plan is prepared and how development regulations must implement that plan.

Section II provides an overview of Procedural Due Process. The courts will not usually become involved with the substantive local land use decision, but will intervene to protect the process that is used to make a land use decision. The land use practitioner should have a clear understanding of the concepts involved in Procedural Due Process: from the appearance of fairness, to giving proper notice, to the requirements of the record to support a decision. If procedures are flawed, a decision may be vacated and damages may result. Woe to those who are not aware of the pitfalls of land use hearings!

Section III reviews the authority of local jurisdictions, state boards, and the courts to make land use decisions. Most applications are heard by a hearing examiner at the local level, but some permits, such as the adoption of comprehensive plan amendments, a shoreline permit, or a forest practices permit, remain the purview of state boards, who issue quasi-judicial decisions on

certain matters before them. The section also introduces the land use practitioner to the Land Use Petition Act, the legislative enactment that governs all appeals of land use decisions to the courts.

Section IV examines the typical application and references relevant case law that may govern the review of the most common applications. Although local ordinances may vary in specific identification of review criteria, all applications share some common characteristics that the land use practitioner should be aware of before going to a hearing. The user of this Guide should feel comfortable filing and processing a land use application after reading this section.

Section V reviews the standards that apply to land use decision making. The section covers the authority given to local land use decision makers, and describes the varying standards applied by the courts when reviewing land use decisions. We review the deference given to administrative decisions and how this concept is applied to land use decisions.

Section VI reviews special situations in land use law that every practitioner should be aware of to prevent costly and embarrassing errors involved with a land use application or appeal. The most common ‘special situations’ that come up in a land use permit hearing involve issues of non-conforming use, vested rights, and the authority to condition a permit. This section introduces the land use practitioner to these concepts and provides some case law guidance to allow the practitioner to effectively engage in a dialogue on each of these issues.

Land use issues are never-ending, and land use law is always evolving. As a result, this Guide will be updated with the most recent land use cases as they are decided. The Guide will help the land use practitioner save time in uncovering relevant concepts and decisions. The Guide does this by explaining each concept and identifying citations to support that concept. Even if we succeed only once in lifting the burden of engagement from a council member, planner, attorney, or another involved in a land use decision, we will have done our job successfully.