



## CHAPTER 5

# ADDITIONAL CONCERNS WITH VALUE

This chapter focuses on zoning, encumbrances, liens, deed restrictions, easements and comprehensive planning. Special emphasis is placed on subdivision regulations and environmental laws. Building codes and their purpose are also discussed in detail.

### CHAPTER LEARNING OBJECTIVES

Upon completion of this chapter, the learner will be able to:

- Discuss zoning and how regulatory issues involving environmental problems or land use restrictions might affect the marketing or value of property.

# ADDITIONAL CONCERNS WITH VALUE

## Zoning

The primary purpose of zoning laws are to segregate land uses that are thought to be incompatible with other land uses and to prevent new development from harming existing businesses or residents. Zoning is commonly regulated through local government such as counties or municipalities.

Zoning could include restrictions on one or more of the following:

- Use (residential, commercial, industrial, agricultural, open space use)
- Density (example of a high-density use would be a multi story high-rise)
- Height of buildings and the amount of space that the structure may occupy
- The location of the building on the lot (setbacks from the street or other boundaries)
- How much landscaped space and how much paved space (parking)

Zoning can have a profound impact on the value of land because it dictates its use. You, as a licensee, should refer your clients to the city or municipal planning commission for further information on zoning.

## How Regulatory Issues Involving Environmental Issues or Land Use Restrictions Might Affect the Marketing or Value of Property

### Encumbrances

An encumbrance is an interest or right that a person has on another person's property. This interest is non-possessory. Examples would include liens and deed restrictions.

### Liens

Liens are the most common type of encumbrance. Liens are monetary claims against a property to collect a debt from the property owner. Examples of liens could be a mechanics lien, a material-person's lien, property tax lien, special assessment tax lien, general tax lien or mortgage lien. Court action can also create a lien.

Liens also can be financial encumbrances like a general lien attached to all of the debtors property. A specific lien attaches to a specific parcel of property only.

Examples of general liens would include judgment liens and IRS tax liens.

Liens affect the title to real property and places a "cloud on the title". It must be satisfied so that an owner can provide clear title when transferring property. If a lien is not paid off in a certain period of time the creditor could foreclose on the debtor's property.

## **Deed Restrictions**

Deed restrictions place a limit on the use of a property. They are also known as covenants or conditions. Deed restrictions are most common when new construction subdivisions are built. Builders and developers place restrictions on the deed with the purpose of maintaining standards for the use of the property within a development. There can be many types of deed restrictions.

Here are some examples:

- No recreational vehicle parking in the development
- No fences higher than six feet in the development
- No commercial vehicle parking in the development
- No non-domestic animals allowed in the development
- No out buildings greater than a certain size/height

## **Encroachments**

Encroachments are physical and arise when a structure is built totally or in part on a neighbor's property. They usually involve confusion or a dispute regarding boundary lines. They could be caused by an incorrect survey or a mistake by the builder or a mistake from the person erecting the building.

Encroachments could be corrected by removing the structure that is encroaching on a property. Other ways to correct an encroachment would include selling a portion of the land to the encroaching party, granting a lease to the encroaching party for a period of time or granting an easement to the encroachment.

## **Easements**

An easement is a right of one party to use the real property that is owned by another party. The owner usually gives up a well defined portion of the property to be used for a specific use. In actuality, almost every property has easements. The easements are said to "run with the land" and pass to future owners.

### **Appurtenant Easement**

As easement appurtenant burdens one parcel of property for the benefit of another property.

### **Easement in Gross**

An easement in gross benefits a person rather than a parcel of land.

*EXAMPLE: John has an easement to use Mary's lake for fishing and swimming. John is the dominant tenement and Mary is the servient tenement. John has an easement in gross over Mary's land and the easement serves John and not a parcel of land.*

### **Dominant Property**

The parcel of land that is benefited from the easement is the dominant property. This is also referred to as the dominant tenement.

## **Servient Property**

The parcel of land that is burdened by the easement is the servient property, and also known as the servient tenement.

## **How Easements are Created**

- **Express Grant and Written Agreement of the Parties**
- **Necessity or Implied** – such as the need to access a parcel of land also known as an easement for ingress and egress
- **Prescription**- created through the long term use of land
- **Condemnation** – the government exercises their power of eminent domain for the public good
- **Dedication** – a private landowner grants an easement to the government. Examples might be an easement for a park, library or sidewalk.

## **How to Terminate an Easement**

While easements are said to “run with the land” and pass to the new owners of a particular property, they can be terminated under certain circumstances such as:

- Institute a lawsuit called a Quiet Title Action
- Cancel when the purpose for the easement no longer applies or exists
- Merger of the dominant and servient properties
- Stop using the easement
- Destroy the reason for the easement

# **Land Use Controls**

## **Comprehensive Planning**

Comprehensive planning is used by land use planners to carry out the goals of a community and form a public policy for how land may be used. This plan is the vision of what a community is striving to become and the steps and processes needed to accomplish that goal. Contained within this policy may be policies which dictate housing, historic preservation, urban design recreation, transportation, land use, utilities agriculture, forestry, economic development and planned growth.

A comprehensive plan is also design to protect the health and welfare of the citizens.

While comprehensive plans may vary, the following steps might be included in a typical plan:

- Identifying Issues
- Collecting Data
- Stating Goals

- Preparation of the Plan
- Implementing the Plan
- Assessing and Monitoring the Plan and Alternatives

## **Zoning**

Zoning regulations divide a community into sections or zones that specify the use of property.

A parcel could be zoned:

- Residential
- Commercial
- Agricultural
- Industrial
- Multi- Use

Zoning ordinances regulate such things as:

- Building height
- Shape and size of a building
- Set back regulations (how far the building must be set back from the street and back of the property).
- Side yard regulations ( how close one building can be to another side building)
- Requirements for open undeveloped areas called buffers

There can be certain exceptions to the zoning ordinances that include:

- Variances
- Nonconforming uses
- Conditional use
- Rezoning

## **Variances**

A variance is granted by local government to build or maintain a structure which falls outside of the zoning ordinance. A variance is granted when the property owner virtually cannot comply with the zoning or would suffer severe hardship in attempting to comply with the existing zoning. In most circumstances only minor variations to the existing zoning ordinances are allowed.

## **Nonconforming Use**

A nonconforming use permit is usually issued when a property was being used for a particular purpose prior to zoning or prior to a zoning change.

Usually a nonconforming use permit contains certain restrictions for the property owners such as:

- A time limit in which to conform to the new zoning (example would be 12 years from the time of the zoning)
- Prohibition of rebuilding if the property is destroyed
- Prohibition of enlarging the structure
- Prohibition of continuance of the permit if the building is abandoned

## **Subdivision Regulations**

A parcel of land which had been divided into two or more parcels is a subdivision.

### **Physical Regulations**

The physical aspects of a subdivision are usually administered by individual counties or cities within the state. To subdivide a parcel of land, an individual or company must notify the county. This is done via a submission of a plat map or subdivision map. These maps must be approved by the city or county and it may be approved as submitted or require certain amendments. A subdivider may not sell any lots until they have been approved.

The plat map or subdivision map may contain information about the utilities, boundaries for the proposed lots, information on sidewalks etc.

The elements that are contained in a plat map or subdivision map are usually:

- A legal description of the land being subdivided
- Dedications to the city or county for such things as streets, sidewalks and utilities
- The consent of the landowner for the subdivision

## **Environmental Laws**

There are many state and federal environmental laws that impact how a land owner can use their land. Among the most common are:

- Pollution Control Laws
- CERLA
- NEPA

### **Pollution Control Laws**

The federal government sets standards for air and water quality and these standards are left to individual states to implement. A permit is required if there is a discharge into the air or water.

**CERLA** – The Comprehensive Environmental Response, Compensation and Liability Act

CERCLA, commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.

CERCLA:

- established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- provided for liability of persons responsible for releases of hazardous waste at these sites; and
- established a trust fund to provide for cleanup when no responsible party could be identified.

This law authorizes two kinds of response actions:

- Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response.
- Long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants.

## **NEPA – National Environmental Policy Act**

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of governmental proposed actions and reasonable alternatives to those actions.

NEPA is administered by the Environmental Protection Agency (EPA).

To meet NEPA requirements federal agencies prepare a detailed statement known as an Environmental Impact Statement (EIS). EPA reviews and comments on EISs prepared by other federal agencies, maintains a national filing system for all EISs, and assures that its own actions comply.

## **Building Codes**

The purpose of building codes is to protect the public from unsafe, substandard construction. The intention of the codes is to set standards for methods of construction and materials used in construction. The permit system is usually used to enforce these codes. The builder or property owner must obtain a permit before starting any new construction or major remodeling. A structure that was built before the newer, stricter codes may or may not be required to meet the new code. Once the building has been inspected and it has been determined that all building codes were met, the city or county issues a certificate of occupancy.

## **Summary**

In this chapter we discussed zoning, encumbrances, liens, deed restrictions, easements and comprehensive planning. Special emphasis is placed on subdivision regulations and federal environmental laws such as CERCLA and NEPA. Building code regulations and their purpose are also discussed in detail.

## **Check your understanding**

Use this link to open a short quiz:

<https://www.bookwidgets.com/play/ESEFC>