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**RESEARCHING LAND USE LEGAL ISSUES ON
THE INTERNET**

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December 2005

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ZONING AND PLANNING LAW REPORT



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Introduction

The Internet has become a virtual library for land use law practitioners, offering access to resources beyond what the traditional legal on-line databases have to offer. For example, while the proprietary law related sites offer comprehensive access to federal and state statutes, regulations and caselaw, there is sparse access to information about municipal laws and ordinances pertaining to planning and zoning. In addition, proprietary sites provide on-line access to law review articles, but they do not capture non-commercial publications that contain legal analysis of various planning and zoning related issues. Today, many nonprofit and advocacy organizations post position papers, scholarly articles, and reports, and other law related information (such as amicus curiae briefs) to their web sites.

Local governments are increasingly offering a web-based presence to post otherwise difficult to access public information including zoning ordinances and land use laws. The availability of these ordinances on-line can assist attorneys in a number of ways. First, from a drafting perspective, they can serve as models (although attorneys should always draw their own

conclusions as to appropriate enabling authority and constitutionality). Second, they can provide quick access to local ordinances that are not otherwise published in a compilation and available commercially or in a law library. In addition, the posting of minutes of meetings on-line by municipalities can prove to be important information for attorneys challenging decisions of planning and zoning boards and local legislative bodies. In the past, this information was only available via formal request to the municipal clerk's office and often required a formal Freedom of Information Law request.

An important caveat, however: just because the information is electronically published and posted to the Internet does not ensure its veracity, the accuracy of the legal analysis (if any), and it does not guarantee—for example, in the case of a local zoning ordinance—that it is the most up-do-date version of the law. Moreover, not all studies, reports, and articles posted on websites bear dates; this increases the risk that one might be viewing documents that actually have been superseded by new statutes, regulations, or caselaw. Attorneys must use due diligence to make certain that

any information gleaned from the Internet is accurate and based on current legal information. Whether or not the data sought are individual documents, it is a good idea to ascertain when the website was last updated. However, even where websites are regularly updated, the reader must keep in mind that while this may mean that new information has been added, it does not mean that outdated information has necessarily been removed from the site. Many on-line studies, reports, and articles—easily posted on websites—lack peer review and do not undergo the same rigorous cite-checking exercise as a law review article, i.e., would. This contributes to the burden on the reader.

With all of the above disclaimers, the Internet remains a valuable legal research tool for land use practitioners. This article is designed to offer readers a review of some of the author's favorite land use law related websites. After reading through the article, you may wish to load the web addresses into the "favorites" area on your Internet browser, and periodically check them for new and helpful information. One last note of caution—putting a list of web sites into print is a perilous exercise—the ink on this article can be barely dry when a site goes down for technical difficulties or upgrades, is removed, or simply slips into obscurity because the host or webmaster for the site loses interest or moves on to other endeavors. The sites listed below, however, are well established sites that are currently operational and routinely updated by the hosts. The sites reviewed are organized into major categories: (1) Comprehensive sites—or sites that focus on land use law with links to other major land use law resources on-line; (2) government sponsored sites—these are websites hosted by government agencies that contain a significant amount of land use law information; (3) sites where a significant number of land use codes can be accessed; (4) sites sponsored by non-profit organizations involved in various aspects of land use law; (5) sites sponsored by academic institutions; and (6) miscellaneous sites of interest.

Comprehensive Sites

The three sites listed in this section offer the most comprehensive on-line presence focused on land use law issues of interest across the country. Websites that primarily focus on comprehensive information from one state only were not considered for inclusion in this section.

The **University of Texas School of Law Jamail Center for Legal Research at the Tarlton Law Library** offers an e-guide to internet-based sources for land use law. Last updated in September 2005, the site offers links to mega-sites such as the Cornell Legal Information Institute. It also offers a link to Hieros

Gamos with a hyperlink to a special section of that site on international land use law information. Links to some federal land use statutes and regulations are included on the site (mostly public lands and oil and gas laws, as would be relevant to Texas practitioners), as well as links to federal case law. The site also contains numerous links to Texas-specific land use information including statutes, pending bills, case law, and administrative materials. Lastly, the site links to a number of related land use websites from various non-profit organizations and Texas state agencies, as well as information on how to access a variety of land use list-serves. <http://tarlton.law.utexas.edu/vlibrary/subject/landuse/>

Cyburbia is a portal for all kinds of land use planning and regulation information. A special section of the site offers a variety of information on planning and zoning law. See http://www.cyburbia.org/directory/index.php?t=sub_pages&cat=1. Information available includes links about architectural design, development guides, subdivision, land use law, property rights, signs and billboards, wireless facility siting, and zoning and land use regulations. In addition to indexed resource information, this site offers forums to facilitate the exchange of ideas and its "top rated" links to sites that include planning information from, among other things, leading municipalities <http://www.cyburbia.org/>

About Planning is an Internet clearinghouse containing information about websites, publications, essays, and news about land use planning in general, and includes, among other topics, information relating to growth management, comprehensive planning, smart growth, and new urbanism. The site also boasts "the single largest, comprehensive, exhaustive and current listing of urban planning websites on the Internet." There are roughly 300 sites listed by category, and the editors have rated each site as a favorite, least favorite, or indifferent. The site also contains useful information about GIS, law and legislation, terms and definitions, and tools and techniques. <http://www.aboutplanning.org/>

Government Sponsored Sites

The websites included in this section are federal government sites of interest. Land use attorneys should, however, review the websites of state agencies in the jurisdictions where they practice to obtain very helpful information. For example, community development agencies and environmental agencies in each state typically make available on-line relevant statutes and regulations, opinion letters, guidebooks and publications, and other forms of technical assis-

tance. While many federal government agencies may have information relevant to land use law issues, the three sites selected below offer the most comprehensive information. All of the federal agency websites may be accessed by visiting the U.S. Government's Official Web Portal at <http://www.firstgov.gov/>. In addition to accessing all federal agencies off of the site, links are provided for each of the official state and territorial government websites.

U.S. Department of Energy's **Smart Communities Network** provides a wealth of information to communities for implementing sustainable development initiatives. Specific to land-use planning, the site provides a long list of local ordinances and state bills from across the country implementing sound, sustainable development initiatives. The site ranges from basic introductory information to complex case studies from across the country. This site also contains numerous links to public policy articles and government studies. Finally, the site provides sample city ordinances and land use codes implementing smart, sustainable growth strategies, greenways, solar access protection, urban forestry, agricultural land protection, brownfield development, and open space preservation. <http://www.smartcommunities.ncat.org/landuse/luintro.shtml>

U.S. Department of Housing and Urban Development offers the **Regulatory Barriers Clearinghouse** to support state and local organizations seeking information about laws, regulations, and policies affecting the development, maintenance, availability and cost of affordable housing. This site, as called for in the "American Housing and Economic Opportunity Act of 2000," contains a large database searchable by keyword, author, topic, geographic location and/or publication type. The site also offers a bi-weekly newsletter and an extensive bibliography of sources. Additionally, if a person registers as a "HUD user," he or she can receive research assistance at no charge from the Customer Service System (<http://www.huduser.org/rbc/>). In addition, HUD's client information and policy system, HUD CLIPS (http://www.hudclips.org/sub_nonhud/cgi/hudclips.cgi), offers searchable databases linking to, among other things, the Federal Register, Codes, Congressional Record, Guidebooks, Handbooks and Notices, Inspector General, Letters, Office of General Counsel Documents, and Legal Opinions. <http://www.hud.gov/>

The **U.S. Environmental Protection Agency** offers a variety of land use law related information throughout its substantial web presence. Smart growth information can be accessed at <http://www.epa.gov/livability/> and contains a number of fact sheets, re-

ports and articles on smart growth. The environmental justice homepage is located at <http://www.epa.gov/compliance/environmentaljustice/index.html> and offers, among other things, links to environmental justice laws and statutes, cases and settlements, policy and guidance, data and reports. Links to the homepages of the Federal Interagency Work Group on EJ as well as the National Environmental Justice Advisory Council are also available. Environmental laws and regulations are available at <http://www.epa.gov/epahome/lawregs.htm> and includes existing laws, legislation pending before Congress, regulations and proposed rules, and EPA Dockets. In addition, land use practitioners can access legal, policy, and program information about all of the programs under EPA's jurisdiction. <http://www.epa.gov/>

Land Use Codes

As mentioned in the introduction, the availability of land use codes on-line provides attorneys and planners with a good starting place for the drafting of new zoning ordinances and land use laws for client municipalities. There are very few commercial services and/or non-profit or government sponsored websites that provide comprehensive lists of links to individual municipal land use codes. The two commercial sites reviewed in this section offer searchable access only to those codes adopted by municipalities who happen to be clients of the code publishing company. This

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leaves out thousands of small jurisdictions across the country. There are several ways to attempt to find an on-line version of a particular code or code provision of interest. The easiest way is to find state-based web sites that may exist with links to these codes for all municipalities within the state, such as the California Land Use Planning Information Network reviewed below. Where these lists do not exist, use the search engine to see whether the particular municipality has an on-line presence, and if so, whether they post their law and regulations. If you are looking for model language for particular land use laws or code provisions, enter key words, such as “adult business use” or “non-conforming use” into the search engine, and dozens of zoning ordinances from across the country will be ready for you to “click” and review.

E-Codes, or municipal codes on-line, is offered by **General Code Publishers**. Organized alphabetically by state, the site provides municipal codes from hundreds of municipalities in twenty-one states and Canada. Once the user follows the links to a municipal code of interest, the code can be searched by key words. One benefit for code drafters is that sample language being used is readily available and drafters can quickly compare and contrast various approaches. Because obtaining local codes can be a challenge as they are often not easily accessible, this site provides the beginning of a clearinghouse type function for this purpose. <http://www.generalcode.com/webcode2.html>

California Land Use Planning Information Network is a link off of the official State of California website. It offers, among other things, links to all city and county zoning ordinances in California. It also provides links to land use maps, spatial data, photos and satellite imagery, information about the California Environmental Quality Act, wetlands, economic and demographic information. This site is a model for other states to follow. <http://www.ceres.ca.gov/planning/zoning/city.html>

Municipal Code is a commercial publisher of municipal codes including zoning ordinances and other land use laws. The company offers free on-line access to more than 1,500 municipal codes from across the country. The site also has pamphlets detailing how state laws affect local codes in Georgia, Minnesota, Florida, Texas, Michigan, and Virginia. Member attorneys can also register for the attorney list service which may include sending an ordinance of the month, fielding requests for sample ordinances, or serving as a platform for debate among municipal attorneys on topics of current interest. http://www.municode.com/resources/online_codes.asp

The **International Code Council (ICC)** publishes the International Zoning Code, which establishes minimum

regulations for zoning ordinances and provides a forum for code officials and other interested parties to discuss prescriptive code requirements and proposed revisions. The model code also encourages international consistency in the application of provisions. The model code is available for adoption and use by jurisdictions domestically as well as internationally. For more information, see generally <http://www.iccsafe.org>. This information is fully searchable at the Westlaw database **IZONCODE**.

Non-Profit Organizations

There are literally dozens of websites offered by non-profit educational and advocacy organizations that relate to one or more aspects of planning and zoning law, and policy. The sites selected below are representative of the breadth of land use law websites in cyberspace, and a conscious effort was made to discuss websites with varying points of view, e.g., those that tend to support government regulation of land use and those that tend to challenge the constitutionality of these actions. When using search engines to find information on controversial topics, it is important that users conduct research about the host or sponsoring organization. So, for example, when researching the topic of eminent domain, a search using the key words of “eminent domain” will take the researcher to articles, reports, and publications of organizations whose mission it is to challenge the constitutionality of these government actions, as well as to government and non-governmental organization sites that support the appropriate use of this power. The legal analysis offered on the various sites must be considered and weighed based upon political and philosophical leanings of the host organization.

The **American Planning Association** offers a comprehensive and searchable website with information, analysis and links on planning, environmental, and land use law. In addition to containing a large and comprehensive, searchable archive, the site also has an entire section dedicated to legislative and policy initiatives. This portion of the site provides a daily update on legislative activity at both the state and federal level and provides a bi-weekly electronic newsletter. The site contains *amicus curiae* briefs filed by the APA since 1997. Attorneys can also use the site to find articles and publications of interest on particular topics. <http://www.planning.org>

National Association of Home Builders (NAHB) offers a searchable site that provides access to Association reports on a wide variety of land use and development issues. The site provides links to current state and federal legislative initiatives, economic forecasts and current housing data, federal and state regu-

latory programs, business management tools and links to NAHB positions on virtually every aspect of housing policy. Additionally, this site links to state and local chapters across the country and provides information on upcoming educational events and opportunities. The site also links to the NAHB library and serves as a clearinghouse for NAHB publications. The clearinghouse is searchable by keyword, topic, intended audience, and publication year. Users can also register for NAHB's weekly newsletter reporting on economic, industry, and legislative developments. <http://www.nahb.org>

The **Smart Growth Network** offers Smart Growth OnLine which provides access to publications and guidebooks on incorporating smart growth principles into state and local planning and zoning codes. The site offers a large variety of studies, reports and links organized topically around community quality of life, design, economics, environment, health, housing, and transportation. <http://www.smartgrowth.org/default.asp>

Smart Growth America offers a variety of on-line publications regarding smart growth policies and initiatives from across the country. While primarily policy oriented, land use and legal themes run throughout the various studies supported by SGA in conjunction with numerous federal agencies, not-for-profits, and state and local governments. SGA also offers a bi-weekly e-mail newsletter which can be requested from the website. <http://www.smartgrowthamerica.com/>

The **Community Rights Counsel** is a non-profit public interest law firm which provides legal assistance to local communities. The site tracks pending and recent Supreme Court decisions and certiorari petitions and the site provides amicus curiae briefs submitted by the Counsel dating back to 1999. All monthly newsletters issued by the Counsel are archived to November 2004. <http://www.communityrights.org/>

The **Pacific Legal Foundation** is a non-profit organization dedicated to the protection of private property rights. Their website offers a listing with information and status of the lawsuits in which PLF is involved. Their quarterly newsletter is on-line and the site offers links to the websites of other similar-minded organizations. <http://www.pacificlegal.org/>

The **Lincoln Institute of Land Policy** provides access to a wealth of policy and legal research topics on domestic and international land use and tax policy. While policy and legal research articles are intermingled, the site is searchable by keyword and topic. This site offers a database of research papers funded by the Institute through fellowships with graduate students, faculty, and professional fellows. The site also offers updates on ongoing research initiatives and provides

information about upcoming educational seminars. Additionally, the site provides access to the Institute's online database of publications. <http://www.lincolninst.edu/education/index.asp>

The **Urban Land Institute** provides a forum for land use professionals and policy makers to come together. The site offers access to recently issued reports from the Institute on an array of topics including housing, infill development, urban revitalization, smart growth, and finance. The site also has a topical and keyword searchable archive containing the Urban Land Institute magazine, electronic newsletters, and annual forecasts. <http://www.uli.org>

Urban Cities offers a searchable online library of over two thousand articles containing "all aspects of urban management and development" from around the world. The site also contains archived E-Bulletins issued by Urban Cities dating back to 2002. As the name implies, the site focuses primarily on urban smart growth and development policies. <http://www.urbanicity.org>

The **National Association of Realtors** offers links to a number of studies and smart growth initiatives of interest to realtors. In addition to providing policy research, the site offers a quarterly update on federal and state legislation on growth and development. There are also links to selected state resources and legislative initiatives as well as the invaluable National Association of Realtor's "Growth Management Fact Book." In addition, the site offers a Field Guide to Zoning at <http://www.realtor.org/libweb.nsf/pages/fg803>, articles about zoning basics, the impact of zoning, zoning boards and legal information, and zoning reform. A field guide to inclusionary zoning is also available. <http://www.realtor.org/>

Academic Sponsored Sites

Many research centers based at law schools and planning schools offer good websites with publications by faculty, staff, and students on various land use and zoning topics. In addition, these sites typically offer links to other state specific sites as well as to national sites of interest. These sites may also contain links to cases, offer interesting briefs and model ordinance language. Below are some of the leading academic sites that have law-related planning information.

The **Center for Environmental and Land Use Law of New York University School of Law** offers good information on environmental justice issues, and contains links to other land use law related information. The site also provides useful links to a wide variety of sources including government resources, academic sites, interest groups, and private firms. This site offers little substantive information but plenty of useful links. <http://www.nyu.edu/pages/elc/>

The **Government Law Center of Albany Law School** provides on-line access to dozens of land use law articles and publications written by faculty, staff, and students on a variety of topics including ethics in land use, eminent domain, housing, planning and zoning for an aging population, and trends in the courts. The site is organized topically and land use law related documents can be found under the land use, ethics, environmental, and municipal law headings. <http://www.governmentlaw.org>

Land Use Law is hosted by Professor Daniel Mandelker at Washington University School of Law. While the site is designed to assist law students, it offers good leads to practitioners who are looking for information on plans and ordinances, as a number of models are posted to the site. Recent cases of national significance are posted to the site, as are articles on a variety of topics of current interest. Photos relating to some of the significant land use cases are also offered on the site. The site offers numerous links to other websites of interest hosted by nonprofit organizations. <http://law.wustl.edu/landuselaw/>

The **Land Use Law Center of Pace University School of Law** offers L.U.C.A.S. which is an on-line database of law-related planning and zoning information, including a tutorial for local officials on New York land use law. Posted to the site are articles and papers written by faculty, staff, and students, organized topically. The site also offers access to a wide range of community development information relating to development law, GIS, affordable housing, inter-municipal cooperation, and local environmental law. The community development area also provides state specific links for grants and other assistance available for municipalities in northeastern states. http://www.law.pace.edu/landuse/landuse_library.html

The **Florida State University College of Law** offers the Journal of Land Use and Environmental Law available on its website. The Journal is archived from 1994 to the present. <http://www.law.fsu.edu/journals/landuse>

The **Georgetown Environmental Law & Policy Institute** offers over 40 analytical articles focusing on eminent domain and regulatory takings jurisprudence under the Fifth Amendment. The articles consist primarily of policy papers, law review articles, and testimony written by John Echeverria, the executive director of the institute. This site also offers links to articles and speeches by other prominent experts in the takings field. <http://www.law.georgetown.edu/gelpi/takings/print.htm>

National Center for Smart Growth Research and Education is a non-partisan center for research and leadership training on Smart Growth and related land use issues nationally and internationally, located at the

University of Maryland. The website boasts that faculty and staff associated with the Center have produced a large body of research focusing on the diverse dimensions of Smart Growth, including its relationships to the environment, to transportation and public health, to issues of housing and community development. Dozens of these papers and reports related to land use, housing and transportation are available on the site. <http://www.smartgrowth.umd.edu/>

Miscellaneous Topics of Interest

In conducting land use law research on the Internet, one effective strategy is to simply enter a search term to see to what sites the search engine directs the user. For example, if your community wants to fight the siting of a big box development, simply search for “big box retail” and hundreds of articles, publications, and organizational websites will appear with valuable information from case studies to speakers to model zoning language. The following sites offer examples of on-line information in the area of sign and billboard regulation, the leading land use and property discussion forum via list serv, zoning and religious land uses, fair housing, and historic preservation. There are hundreds of sites on these and other land use planning and zoning topics.

SignLaw.Com is nationally-known sign attorney Randall Morrison’s site dedicated to the law of signs, outdoor and indoor advertising, and first amendment zoning issues. The site provides links to Mr. Morrison’s newsletter covering current developments in first-amendment and the sign law field. It also provides a brief history of Supreme Court decisions regarding political speech, commercial speech, and residential sign cases. <http://www.signlaw.com>

DIRT essentially is a legal discussion group for real estate professionals. While funded by the ABA and the University of Missouri, Kansas City School of Law, it is independently edited by Professor Patrick Randolph of Yale University. DIRT offers an email list and bulletin board where members of the real estate profession can share concerns and can keep one another informed on legal developments. Additionally, Professor Randolph posts daily updates on recent case law and legal developments. The site offers a searchable archive dating back to 1995, links to articles from private law firms, and numerous articles posted by Professor Randolph. <http://dirt.umkc.edu/>

The Becket Fund for Religious Liberty is a non-partisan, non-profit organization dedicated to preserving religious freedom. One of its main endeavors is the “Sacred Spaces” project dedicated to protecting the rights of religious institutions in land use law through RLUIPA. The site provides narrative history of recent

RLUIPA cases, various court decisions from around the country, press releases, and amicus curie briefs submitted by the Fund. <http://www.becketfund.org/>

Information about Fair Housing Act laws is maintained by **Civilrights.org network**, a project of the Leadership Conference on Civil Rights. Links to the Federal Fair Housing Act and other related federal laws are provided, as well as links to state laws. http://www.fairhousinglaw.org/fair_housing_laws/fh_act.html

The **National Trust for Historic Preservation** is a private, nonprofit membership organization dedicated to saving historic places and revitalizing America's communities. The Trust is currently featuring information on five issues of interest: chain drugstores, historic schools, housing, smart growth, and transportation. The Trust's Legal Defense Fund participates in amicus briefs to courts across the country, and publishes a regular newsletter, available on-line, highlighting their litigation efforts and summarizing cases of interest. The legal advocacy section of their website provides links to the U.S. Supreme Court, federal district courts, the code of federal regulations, federal agencies with jurisdiction over some aspect of preservation, and professional organizations. <http://www.nationaltrust.org/index.html>

Search Engines on the Web

There are a number of different search engines on the Internet. These search engines help researchers to navigate through the Internet. More popular search engines are Google at <http://www.google.com>; Yahoo! at <http://www.yahoo.com>; Lycos at <http://www.lycos.com>; MSN at <http://www.msn.com>; Ask Jeeves at <http://www.ask.com>; Alta Vista at <http://altavista.com>; and Excite at <http://www.excite.com>. To make sure your research is thorough and comprehensive, in addition to trying different search terms, it is a good idea to try the search terms in different search engines as often the searches will offer slightly different links to various sites.

Conclusion

Finding land use law information on the Internet is easy. The challenge is sorting through all of the information to ascertain what is actually useful for the issue presented. As you find websites of interest, bookmark the sites in the favorites section of your browser so you can easily revisit the site for updates and new searches in the future. Remember legal research skills on the web demand the same level of attention and detail as more traditional legal research. Verifying accuracy of content from a substance perspective requires review and exercise of independent judgment on the part of the reader. Just because information is published in cyberspace does not make it automatically true. However, one can get "lost in cyberspace" for hours on end uncovering free, interesting, useful, and relevant land use planning and zoning information.

RECENT CASES

California Affordable Housing Provision applies only if housing will be constructed within coastal zone. In California, a section of the Mello Act provides that new housing developments within the coastal zone must provide low or moderate income housing where feasible. The Supreme Court of California held that this provision did not apply to a proposed project that was located partly within the coastal zone "but has no housing impacts within that zone." *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, 34 Cal. 4th 733, 735, 21 Cal. Rptr. 3d 676, 101 P.3d 563, 564 (2004). The proposed project was to include 114 homes, all to be constructed outside the coastal zone, and about 19 acres of open space and infrastructure within the coastal zone.

The court concluded that the statutory section "does not apply to a development like this which contains within the coastal zone no housing or even private amenities reserved for the exclusive use of the homeowners." 34 Cal.4th at 737, 101 P.3d at 565. The court found the statutory language to be ambiguous, but it resolved the case based on the legislative purposes of the Mello Act:

"The project proposed here will neither affect existing affordable housing nor have a new housing impact within the coastal zone. The project includes only some infrastructure and construction of a public view park within the coastal zone. No logical connection exists between the goal of encouraging the preservation or provision of affordable housing in the coastal zone and a development that includes no homes of any price range or any other amenities for the exclusive use of homeowners, within that zone. A development that contains housing impacts solely outside the coastal zone may be subject to requirements pertaining to housing developments outside that zone, but no reason appears to believe the Legislature wanted to subject the same development to the Mello Act's additional coastal zone affordable housing requirements." 34 Cal.4th at 739, 101 P.3d at 566.

Maryland court issues rulings regarding final plat approval. The Court of Appeals of Maryland made three significant rulings regarding preliminary and final plat approval under Maryland statutes and the subdivision regulations of Prince George's County in *City of Bowie v. Prince George's County*, 384 Md. 413, 863 A.2d 976 (2004). The case involved a challenge made by the City of Bowie to a final plat approval issued by the county planning board for construction of a shopping center. First, the court held that the planning board had proper jurisdiction to consider and approve the final plat despite the fact that appeals of the underlying preliminary subdivision plat approval were pending. The county board was

“not required to withhold its consideration until such time as all legal challenges to the preliminary plat’s approval were exhausted.” 863 A.2d at 986. The court stated: “[A]n applicant may proceed to seek final plat approval of a subdivision ...during the time that the preliminary plat approval remains under judicial review, but the applicant undertakes such action at his own risk that the underlying preliminary approval may be invalidated at a future time, thus, potentially voiding all subsequent governmental actions dependent on that approval.” 863 A.2d at 978.

Second, the court held that under Maryland statutes, “the time period within which a successful applicant for subdivision must take further action to procure final plat approval is tolled when a petition for judicial review is filed by an opponent.” 863 A.2d at 993. The court explained:

“[W]hen a developer cannot proceed administratively because of litigation or when the administrative entity declines to permit him to proceed while matters are being litigated, the time period within which an applicant for subdivision must take further action after receiving preliminary plat of subdivision approval is to be tolled during the time that litigation is pending in the circuit court. We recognize that such tolling might be perceived as a court-sanctioned extension of preliminary plat approval (or denial), but we are confident that we have not occasioned any mischief because such a provision serves to protect the rights of the developer, while permitting a challenging party to proceed with its petition for judicial review, by avoiding a war of attrition, motive or effect. What we do is to avoid the mischief that could otherwise occur if litigation is used solely to cause administrative deadlines to be missed.” 883 A.2d at 990-1.

Finally, the court held that the county planning board’s decision on the final plat was a “ministerial function,” and that the board therefore did not deny the city due process of law when it failed to provide the city with “specific and individualized notice of the Board’s receipt and scheduling of Green Hotels’ application for final plat approval.” Id. at 993. The court emphasized that final plat consideration by the board was devoid of discretion. “The approval of a final plat is based upon conformance with the preliminary plat. In considering the final plat, the Board’s only options were to approve or to reject based solely upon conformance or the lack thereof. The Board did not have authority to impose further conditions. Thus,

under the circumstances here present, the Board acted in a ministerial fashion.” Id. at 992. “As the Board’s act of approving or rejecting the final plat is a ministerial function, we find no merit in the City’s contention that it was denied due process by the Board’s failure to provide it specific and individualized notice of the Board’s receipt and scheduling of Green Hotels’ application for final plat approval.” Id. at 993.

In Arizona, the procedures leading up to initiative and referendum elections must be challenged before the election is held. Landowners who failed to challenge alleged procedural defects before a referendum election waived their right to object. *Zajac v. City of Casa Grande*, 209 Ariz. 357, 102 P.3d 297 (2004). In this case, landowners sought to challenge a rezoning obtained by Wal-Mart that was subsequently upheld by the electorate in a referendum election. The plaintiffs alleged that the city failed to comply with notice requirements applicable to the hearing and enactment process. The Supreme Court of Arizona held that the plaintiffs’ claim was not timely because the referendum, which the plaintiffs had actual notice of, had already taken place.

Covenants imposed by a planning commission as conditions for approval of a planned unit development were enforceable against a subsequent purchaser of property subject to the PUD. *Story Bed & Breakfast, LLP v. Brown County Area Plan Commission*, 819 N.E.2d 55 (Ind. 2004). “Indiana statutes governing PUDs do not require that conditions attached to the approval of a PUD be recorded in the recorder’s office to be effective against subsequent purchasers as long as the conditions are available as public records. Rather, they are in the nature of zoning ordinances which are effective against the public at large.” 819 N.E.2d at 64. The Supreme Court of Indiana stated: “It is undisputed that B&B [the successor] had actual notice that the Story Property was zoned as a PUD before the property was purchased. Furthermore, it is undisputed that the conditions were properly included as an element of the PUD approval. Property owners are charged with knowledge of ordinances that affect their property. ... B&B, with knowledge that the property was a PUD, and charged with knowledge that ‘conditions’ had been or could have been imposed and might not be of record, failed to examine the publicly available records. B&B’s actual knowledge of the PUD approval put B&B on inquiry notice of the use and development conditions.” Id. at 64-5.

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