

## Land Use and Zoning

Kaplan Kirsch & Rockwell represents clients throughout the country in complex land use and zoning matters, including land use litigation. Our clients in these matters include real estate development firms, local governments, airports, community organizations, and corporate landowners affected by local and state zoning and land use decisions. The issues that arise in the Firm's land use and zoning practice cover a wide spectrum, including:

- Advising on comprehensive land use, transportation, and other master planning documents for local governments.
- Drafting and revising legislation, findings, staff reports, and related documents.
- Preparing and negotiating intergovernmental agreements.
- Drafting subdivision agreements, vesting agreements, and other agreements for local governments, developers, and neighborhood organizations related to land development and entitlements.
- Defending project approvals against legal challenges and resolving disputes through settlement agreements and other means.
- Providing expert witness services related to land use disputes.

### Comprehensive Planning

In most jurisdictions, the guiding framework for local land use regulations is the comprehensive or master plan. Local governments look to their comprehensive plans to guide them in addressing local land use issues, including linking land use and transportation planning, incorporating design review, implementing affordable housing requirements, and other issues. As a result, many local governments have been taking obsolete, vague, and out-of-date comprehensive plans and turning them into more detailed and current policy-oriented documents.

We have worked with many local governments and planning consultants throughout the country on these types of comprehensive planning revisions. Our attorneys have extensive experience with the current tools that are implemented through comprehensive plans, including transferable development rights, design review processes, affordable housing, ways to connect land use and transportation planning, growth management, and related issues. We also understand the importance of meaningful public participation in developing these plans and have worked with clients and other consultants in developing and implementing comprehensive public participation processes.

### Land Use Entitlements

Processing entitlements for a major land development can involve extensive negotiations among governmental entities, private developers, and interested neighborhood, environmental, and other organizations. Lawyers skilled in the process need to understand and be comfortable with the legal requirements related to the entitlement process and well as the political arena in which entitlements are processed and approved. In addition, strategic planning is essential to successfully concluding the entitlement process.

We maintain an active regional and national practice in land use and entitlements law to help clients meet the legal and political challenges facing large- and small-scale entitlement projects. As legal counsel to both landowners and governmental entities, we help clients navigate the entitlement maze, anticipate potential problems, understand the interconnection among different entitlement processes, and obtain approvals through local governmental entities, such as planning commissions and City Councils.



## Counseling and Strategic Planning

We assist clients in developing a comprehensive strategy for projects where there is an interplay of zoning and other land use, eminent domain, and development issues. Clients frequently call on us to develop strategic plans for addressing the whole range of legal issues that arise in connection with a land use undertaking—plans that are then implemented in cooperation with in-house counsel or counsel with specialized local expertise.

The zoning and land use cases we handle often defy simple categorization. In the zoning area, we not only have drafted ordinances for many municipal clients but have successfully tackled legal issues as diverse as historic preservation law, constitutional authority of municipalities, and federal environmental protection requirements both to defend and to attack zoning ordinances. Our eminent domain counseling and litigation, for example, has involved issues such as federal preemption, state constitutional powers of cities, complex environmental remediation issues, and problems of national security.

## Project Agreements

Successful development projects often require private agreements involving governmental entities, private developers, regulatory agencies, neighborhood groups, and other interest groups. While these agreements are similar to private contracts, they take on a different character in the land use arena because they are often negotiated in public and must sometimes be approved by local governmental entities. When entering into these agreements, local governments must be careful to meet their legal requirements related to issues such as improper delegation of authority and contracting away police powers.

We have extensive experience negotiating and drafting many different types of these agreements. For example:

- Comprehensive intergovernmental agreements between two or more governmental entities.
- Master development agreements between public entities and private developers related to large scale redevelopment projects.
- Development agreements insuring the availability of vested development rights.
- Agreements between developers and local governments related to affordable housing and other issues.
- Agreements between developers and neighborhood organizations.

## Representative Experience

- Represented commercial developer regarding land use and other entitlements related to downtown Denver development project.
- Represented a suburban municipality in zoning and eminent domain matters arising from the proposed construction of a federally funded road through environmentally sensitive property, much of which is owned by another municipality. In addition to developing a comprehensive strategy for securing necessary governmental approvals for the road project, we assisted the client in protracted (and ultimately successful) eminent domain litigation, in litigation challenging the validity of its zoning ordinances, and in planning for a related high-technology redevelopment project.
- Represented major Denver property owner in rezoning, including negotiating associated private agreements with neighborhood organizations.
- Represented wind developer in due diligence investigations regarding land use entitlements for southern Colorado wind farm.
- Represented developer of solar energy project on due diligence investigations regarding land use entitlements for California solar project.



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- Represented developer and property owner in negotiations with neighborhood organizations related to rezoning, including drafting and negotiating development agreement.
- Drafted and negotiated vested rights agreement, including provisions for affordable housing for a large mixed-use redevelopment project.
- Developed strategy on behalf of several Texas cities which combined elements of their eminent domain and zoning authorities to forestall another municipality's efforts to exert control over large portions of their jurisdiction.
- Represented an Ohio municipality to draft adult business, billboard, and sign regulations as part of a broader economic development strategy that required careful attention to First Amendment limitations.
- Represented both mineral and surface developers in land use proceedings involving the Colorado Surface Development Notification Act and associated negotiation of surface use agreements.