Leveraging the Power of AI: A Municipal and Land Use Attorney's Guide to Enhanced Efficiency and Effectiveness
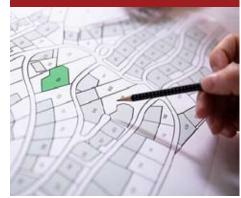
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In the ever-evolving landscape of legal practice, artificial intelligence ("AI") has emerged as a powerful tool that will transform how attorneys approach their work. This includes land use and municipal attorneys, who are tasked with either presenting development projects to municipal boards or representing governmental agencies and boards in considering such applications and in the even broader range of municipal governance issues. AI technologies offer capabilities that can streamline processes, supplement research resources, and provide valuable insights into complex land use and municipal issues. By harnessing the potential of AI, land use and municipal attorneys can enhance their efficiency, accuracy, and overall effectiveness in representing their clients and navigating the intricacies of land use law, including environmental and real estate development issues. However, given the local nature of municipal and land use law and unknown reliability of AI materials, attorneys must use AI with caution to supplement traditional legal expertise.

Accelerating Research and Analysis

It is now well known that AI can significantly reduce the time and effort required for legal research. Westlaw Edge and LexisNexis, both longstanding research platforms in the legal community, have been providing AI assisted legal research to attorneys for decades.[1]

However, recent advances in AI capabilities and natural language processing (NLP) allow AI platforms to perform more than legal research. Tools such as GPT-3 and others on the horizon can quickly sift through vast volumes of legal documents and reports. In the context of land use and municipal law, these platforms can analyze and summarize lengthy documents, such as a municipality's comprehensive plan or zoning code, traffic analyses, or economic impact analyses generated for a specific land use project.

AI can enable land use and municipal attorneys to pinpoint relevant information and draw valuable insights promptly and concisely. Using AI, land use and municipal attorneys can ascertain whether a proposed project complies with the local zoning code. Further, AI can gather and process information about specific properties, including the history of the property, its ownership, and potential restrictions on the use of land.[2] AI can also recommend new land use regulations. Saving time in the due diligence period of a development project is also important to the client and overall outcome of the case.

Predictive Analytics for Informed Decision-Making

One of the most compelling benefits of AI in land use and municipal law is its ability to employ predictive analytics.[3] By analyzing historical data and patterns, AI algorithms can predict the potential consequences of various land use scenarios. This empowers attorneys to assess the viability of different uses of land, evaluate risks, and advise their clients on the best course of action based on the application's likelihood of success. By using the predictive analytics of AI, land use and municipal attorneys may effectively assess different land use options, empowering the attorney to make informed decisions on how projects are presented or assessed.

However, attorneys should keep in mind that AI platforms can only produce a predictive analysis based on the data it has access to.[4] One drawback to the AI database specific to land use and municipal attorneys is that many municipal boards typically file their decision in the office of the municipal clerk. Most municipalities do not electronically publish their decisions or the record that a decision is based off, unlike court decisions. AI platforms would not have access to these prior decisions to analyze them in the context of a new application unless the decisions were manually obtained and uploaded to the AI platform. An additional concern with the accuracy of predictive analytics of land use determinations is that different elected and/or appointed officials may have different policy perspectives and goals which may veer from prior decisions. Changing tides in policies may throw a wrench into AI's predictive analysis function.

Document Automation

In addition to research, AI-powered tools can automate the drafting of legal documents, which should be used with caution when filing those documents with a court or administrative agency. On the development side, AI tools can assist in preparing and filing land use applications, such as applications for site plan approval, variances, or for a parcel of land to be re-zoned. On the municipal side, AI tools can automate the review of land use applications to expeditiously ensure that all application requirements have been met before an application can be heard.[5]

By using AI document automation, land use and municipal attorneys may save substantial time and effort on preparing legal arguments to support or disapprove land use applications and in drafting of decisions and orders for municipal boards. AI-driven solutions also can assist in ensuring that documents comply with relevant regulations and requirements, enhancing the efficiency of the legal practice and enabling attorneys to focus on the nuances of each case.

Environmental Impact Assessment and Compliance

Environmental considerations are integral to land use determinations. AI can be invaluable in assessing potential environmental impacts of proposed developments. Pursuant to the New York State Environmental Quality Review Act ("SEQRA"), municipalities are required to assess all potential environmental impacts of a project under a strict regulatory framework.[6] AI can flag numerous environmental concerns that are attached to a specific land use or other project that must be studied and potentially mitigated by an applicant. AI can also assist in identifying mitigation measures to incorporate in a negative SEQRA findings statement.

Additionally, AI can assist in analyzing and summarizing vast amounts of data, such as data collected from traffic studies, air quality studies, noise studies, and others. This can assist in forming arguments to present to a municipal board, as well as help municipal attorneys and boards interpret data submitted by an applicant in accordance with SEQRA.

GIS Visualization

AI-driven Geographic Information Systems ("GIS") allow land use and municipal attorneys to visualize land parcels, zoning districts, and proposed developments in a spatial context.[7] This can aid in understanding the implications of proposed land use changes, facilitating more effective communication with clients and local municipalities about their vision for the use of a parcel of land. Drone imaging can also be used to assess changes in land use cover and intensity and depict such changes visually.[8] By presenting data in visual formats, AI-powered GIS makes complex information more accessible, allowing land use attorneys to present persuasive arguments with clarity and confidence, and allowing municipal boards to envision what their locality will look like if an application is approved or denied.

Understanding Concerns Associated with AI

The use of AI raises concerns with data verification and citing to AI sources. Just last month a New York attorney made national headlines for submitting litigation papers citing to caselaw that AI Platform ChatGPT made up.[9] From an ethical perspective, attorneys should disclose to any decision-making authority when AI software is employed to generate their arguments or other documents, and that the information was individually verified. Further, attorneys should be cautious of ethical confidentiality requirements when deciding what information to share with the AI software.[10]

The future use of AI in all these scenarios may hinge on a question that the courts have yet to face: whether AI generated reports, analysis, or recommendations can serve as a "rational basis" to uphold the decision of a municipal administrative agency, official, or board, such as a Zoning Board of Appeals or Planning Board, or whether a decision based on AI generated material will be annulled as arbitrary and capricious, or lacking substantial evidence in the record. In Article 78 proceedings commenced against a body or officer seeking to challenge an action or decision rendered, the court is limited in its analysis to whether the decision making authority had a rational basis for the exercise of its discretion or whether the decision was based on substantial evidence in the record.[11] Under those standards, courts will not disturb a decision unless the record shows that the action taken was arbitrary or capricious or not based on substantial evidence in the record.[12]

No doubt, courts will have to decide lawsuits regarding whether AI resources can support administrative decision making. A party aggrieved by an administrative decision that relies on AI generated information as "evidence in the record" as a rational basis for the decision may well seek to overturn the decision, arguing that AI is not competent "evidence" to support an administrative decision. Until then, land use and municipal attorneys must be careful to disclose and double-check materials gathered through AI platforms, and independently verify and validate the materials.

Conclusion

Incorporating AI into the land use and municipal legal practices offers a myriad of benefits, from accelerating research and analysis to facilitating more informed decision-making and enhancing communication with clients and municipalities. As the legal profession continues to embrace technological advancements, AI stands out as a potent tool for land use and municipal attorneys seeking to improve efficiency, effectiveness, and client representation.

With that said, it's crucial for land use and municipal attorneys to recognize that AI should complement, and not replace, their legal expertise. The human analysis, research, and professional judgment are indispensable in navigating the complexities of land use and municipal law and providing tailored solutions to clients' unique challenges. For instance, this article was prepared with the help of AI platform ChatGPT, and then independently researched and verified by attorneys.

By embracing AI as a supportive tool, land use and municipal attorneys can position themselves at the forefront of legal practice, delivering exceptional value to their clients while adapting to the demands of the AI age.✎

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