Bordering on Madness
Bordering on Madness

An American Land Use Tale

Second Edition

Andrew F. Popper
Professor of Law
American University, Washington College of Law

Carolina Academic Press
Durham, North Carolina
This is a work of fiction. Any resemblance between the events and characters in this novel and any real event or real person, living or dead, is purely coincidental. All names, characters, and incidents are entirely imaginary.
Contents

Map viii
Preface ix
Acknowledgments xi

Part 1 Disaster and Gratitude 1
Part 2 Victor Gabriel and the Gift 19
Part 3 The Neighbors and the New Building 31
Part 4 The Meetings Begin 55
Part 5 Strategy 87
Part 6 Property, a Deadly Business 127
Part 7 Enter the Regulators and Detectives 153
Part 8 Can Design Win the Day? 187
Part 9 Can This Project Be Saved? 199
Part 10 Groundbreaking 221
Part 11 Compromise 241

A Discussion Guide 253
Preface

We are a species that takes property seriously. We have always been. In every community, regardless of size, disputes explode when developers face off against citizens’ groups. In these not particularly civil struggles involving the use of land, the legitimacy or design of a proposed project is secondary. The first inquiry is simple: 'Why here?' For some, it is not just the first question, it is the only question.

The emotions that drive those involved in land use disputes are primitive, rooted in the core of that ancient being for whom protection of property meant survival. Humans, and probably most other species, seek companionship with those who appear similar, and passionately resist change. The mere announcement of plans to alter any aspect of our landscape evokes powerful anxiety. When these changes touch our lives, our backyards, the forces are magnified and experienced as a direct threat to the fortress domestic.

Land use fights become confrontational with amazing speed. Before there is time for meaningful compromise, homeowners and their counterparts on development teams become combatants. Positions harden, making settlement impossible. The opposition becomes the enemy, depersonalized and reprehensible.

The rage and fear land use disputes generate are almost never released by the conclusion of the legal proceedings they activate. The parties rarely experience catharsis. Nevertheless, in these sinewy exercises in democracy, there are unexpected and regular displays of intelligence and conscience.
Acknowledgments

Great thanks are due my family who listened, edited, and lived with this project for far too long. Similar praise is due my friends who supported and assisted me during the preparation of this book. Likewise, thanks to Dean Claudio Grossman, my faculty colleagues, and the professional staff and students at American University, Washington College of Law who provided assistance and suggestions during the drafting of this book. Finally, a special thanks to Maureen Dwyer, Donald R. Levy, Anton Van de Plas, and Robert Conrow for their confidence in this project.

Andrew F. Popper
Washington, D.C.
April, 2008