

Planning and Control of Land Development

Planning and Control of Land Development

Cases and Materials

TENTH EDITION

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For my son Daniel—D.R.M.

*For Paul, Reagan, Hannah and my late parents
(Allen S. Brown, Jr. and Valerie J. Brown)—C.N.B.*

For Chrishana—L.M.F.

For my family—D.H.M.

For Barbara—P.W.S.

For my family—N.E.S.

For my wife Patte Sullivan—E.J.S.

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Preface

This Tenth Edition evolves from the First Edition of the casebook in 1979, brought to us by Professor Daniel R. Mandelker, and will be familiar territory to casebook adopters whether you have used the casebook for many years or just joined us in the last edition. This newest edition updates references extensively throughout and replaces some principal cases with newer and more relevant recent decisions. In addition to updating the casebook, we shortened it by combining materials that are sufficiently related to form a unified approach to modern planning and land use regulation and streamlining the notes and questions throughout. The accompanying Teacher's Manual for professors continues to be an additional and important repository of useful information and resources.

We offer our readers a fresh, concise, thorough new casebook that pulls together the best legal and urban practice doctrine, practice and theory. It was a lot of work, for sure. But, most worthwhile endeavors are. We believe that you will find the book useful and if we are correct, then all of our work was worth it.

We are excited to add two new authors to our casebook and we will miss working with authors from the Ninth Edition who were unable to join us on this edition. As always, the casebook is better for our collective, institutional memory and cooperative co-authorship. We like the work and are pleased to build further from the solid foundation of five decades of scholarship. That is evolution.

Finally, please visit our website, <http://landuselaw.wustl.edu> where you will find all manner of materials, especially visual resources, which is so helpful in this area of practice.

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A Note on the Text

Unless otherwise indicated in the text, the emphasis in all quoted materials is as in the original.

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Notes on a Bibliography

Treatises

In addition to Professor Wolf's and Professor Mandelker's one-volume treatise on Land Use Law (6th ed. loose-leaf, updated annually), other one-volume books are J. Juergensmeyer, T. Roberts, P. Salkin, and R. Rowberry, *Land Use Planning and Development Regulation Law* (4th ed. 2018); P. Salsich & T. Tryniecki, *Land Use Regulation* (3d ed. 2015); and B. Blaesser & A. Weinstein, *Federal Land Use Law*, updated annually.

There are a number of multi-volume treatises. These include the late Professor Norman Williams' *American Land Planning Law*; P. Rohan, *Zoning and Land Use Controls*, presently edited by Professor Eric Kelly; Rathkopf's *Law of Zoning and Planning*, now periodically updated by Professor Sara Bronin and Dwight Merriam; and Professor Kmiec's *Zoning and Planning Deskbook*.

Journals and Periodic Publications

The *Urban Lawyer*, which is the official publication of the State and Local Government Law Section of the American Bar Association, and the Florida State University *Journal of Land Use & Environmental Law*, regularly contain articles on land use topics. The American Planning Association publishes *Practicing Planning and Zoning Practice*, which have useful articles on land use regulation topics.

Thomson West publishes a monthly *Zoning and Planning Law Report* that contains a lead article, case digests and reports on new developments. It also publishes an annual *Land Use and Environment Law Review* that reproduces leading articles published during the previous year and an annual *Zoning and Planning Law Handbook* that contains articles on land use topics. And it publishes a biweekly Quinlan newsletter, *Zoning Bulletin*.

The *Journal of the American Planning Association* carries articles on land use planning and controls. *Urban Land*, published by the Urban Land Institute, occasionally has a section on regulatory problems that often covers land use issues. The National Association of Homebuilders has several publications for members, mostly on line.

The *Journal of Planning Literature*, edited at Ohio State University's planning school and published quarterly by Sage Publications, is a quarterly publication with

bibliographies of articles on land use and related topics as well as abstracts of the more important articles. It also contains individual bibliographies and review articles on land use topics that are extremely helpful.

The American Planning Association also publishes a periodic Planning Advisory Service Report. Each issue is a report on a land use or planning topic. The reports often discuss land use control problems and techniques. The Advisory Service also includes periodic Quick Notes, a series of briefing papers with planning fundamentals for public officials and citizens, and the PASMemo online six times a year addressing the newest planning strategies and techniques.

Some environmental law journals occasionally carry articles on land use law. These include the Environmental Law Reporter of the Environmental Law Institute, Ecology Law Quarterly, Environmental Law, the Harvard Environmental Law Review, and the Natural Resources Journal.

Websites

The casebook website, at law.wustl.edu/landuselaw, contains valuable materials that can be used in class, including comprehensive plans, recent cases, statutes, ordinances, law review articles and reports on land use issues. One section contains photos of all the Supreme Court cases included in the book. On the home page there are links to PowerPoint presentations and streaming videos. The annual update letter for the casebook will also be posted on the home page. Another section has links to numerous web sites that deal with land use questions. There is also a section on supplementary materials containing material from previous editions that has since been omitted.

There are two blogs devoted to land use topics. One, <http://lawoftheland.wordpress.com>, is hosted by Dean Salkin at the Touro Law School and features daily postings of recent cases. The other, http://lawprofessors.typepad.com/land_use/, hosted by Professor Paul Boudreaux at Stetson University College of Law, features articles on land use topics. Julie Tappendorf, a former co-author of this casebook and Dwight Merriam, a current co-author each also host land use law related blogs: <http://municipalminute.ancelglink.com/> and <https://www.dwightmerriam.wordpress.com>.