

**PLANNING AND CONTROL OF
LAND DEVELOPMENT:
CASES AND MATERIALS**

PLANNING AND CONTROL OF LAND DEVELOPMENT: CASES AND MATERIALS

Ninth Edition

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DEDICATION

For Ed Sullivan — D.R.M.

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

For Kathy and Lindsay — S.M.

For Anastasia — D.H.M.

For Barbara — P.W.S.

For my family — N.E.S.

For my family — J.A.T.

PREFACE

This Ninth Edition is evolutionary and revolutionary.

It 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 wayfinders who have traversed the Eighth Edition. This one, as is to be expected with any new edition, updates references extensively throughout and replaces some principal cases with newer and more relevant recent decisions. We are the same co-authors who wrote the prior edition and have enjoyed continuing to work together. 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 nearly four decades of scholarship. That is evolution.

This edition revolutionizes, in one small way and in one large way, the land use law casebook. You will not see any other like this one. First, the emergence of sustainability as a central theme in land use planning and regulation deserves our close attention. Sustainability cuts across virtually all aspects of land use planning and regulation and therefore rather than publish a new casebook on sustainability or try to address all of it a separate chapter, we have chosen to embed recent developments in sustainability throughout our casebook and to denote where we have done that with a symbol in the margin. This is the best way to present the material and to make the approach to it truly comprehensive, as it is in the law and the practice.



The second change is something so far as we know no one else has ever done with a casebook. It will connect you from the printed page to the vast resources of the worldwide web. We have added or updated over 800 Uniform Resource Locators (URL) with Quick Response Codes (QRC) that look like this <http://www.lexisnexis.com/en-us/home.page>. First, we took overly-long URLs and converted them to short ones so that they could be typed in easily. Then we created individual QRCs for all those URLs of special interest to teachers and students.



Application software for QRC code readers is free on line for smartphones and scanners. To access these supplemental materials, you can either type in the short URL or scan the QRC and you will be taken directly to the website. With the QRCs you do not have to be online at a computer; you could be sitting outside enjoying the afternoon, reading our casebook, thinking about the issues, and have a desire to learn more. You merely need to pick up your smartphone, open the app, point, click, and be taken directly to the source.

It was a lot of work, but we believe you will appreciate it.

We are excited about facilitating access to these hundreds of portals to the worldwide web for teachers and students to pursue their study further. We welcome your comments on our use of QRCS in this way.

Also, 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. For professors, as before, a Teacher's Manual is available.

The Editors wish to acknowledge assistance in preparing this edition provided by Samantha Caluori, J.D. Candidate, Saint Louis University (2016) and Steven Payne, J.D., Saint Louis University (2014).

Our editor at LexisNexis, Cristina Gegenschatz, has been extraordinarily helpful in keeping us moving along with as much alacrity as can be had with seven busy co-authors.

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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.

Only selected footnotes from the cases are reproduced, but the original footnote numbering as it appeared in the source is retained. Ellipses are used within the cases only to indicate deleted text material. Internal citations to cases reproduced have sometimes been edited. Quoted statutes are not dated; all were current as of the date of publication of this edition of the casebook.

NOTES ON A BIBLIOGRAPHY

Treatises

In addition to Professor Mandelker's one-volume treatise on Land Use Law (5th ed. 2003, with supplements), other one-volume books are J. Juergensmeyer and T. Roberts, *Land Use Planning and Development Regulation Law* (3d ed. 2013); 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. Two of our co-authors host land use law related blogs: <http://municipalminute.ancelglink.com/> and <http://www.rluipa-defense.com/>.