

Table of Contents

Table of Cases	xxii
Acknowledgments	xxiii
Preface	xxv
Chapter One: Planning and Law: Shaping the Legal Environment of Land Development and Preservation	
1	
I. Figures and Lies: Appreciating the Demographic Landscape of Our Increasingly Urbanized Society	1
II. Meanings and Means of Planning.....	4
A. The Plan: An “Impermanent Constitution”	4
B. The Structure of Local Government Planning.....	14
C. The Structure of Active Statewide Planning.....	14
III. The Evolution of Planning Theory, Tools, and Techniques.....	16
A. Urban Design	16
B. Planning for People.....	19
C. New Urbanism: Restoration and Sustainability	23
D. Updating the Planning Toolbox.....	25
IV. Putting Theory and Practice Together: The Legal Effect of the Plan	26
<i>State ex rel. Chiavola v. Village of Oakwood</i>	27
<i>Pinecrest Lakes, Inc. v. Shidel</i>	31
V. Environmental Regulation and Land Use Planning: Common Ground and Important Distinctions.....	40
VI. The Role of the Land Use Attorney.....	43
Chapter Two: The Limitations of “Sic Utere Tuo . . .”: Planning by Private Law Devices	
45	
I. Identifying Problems With Judicial Reconciliation of Discordant Uses of Land.....	46
II. Private Nuisance: Protecting the Use and Enjoyment of Private Land.....	47
A. Distant Origins.....	48

B. The Puzzle of Reasonableness.....	49
<i>Amphitheaters, Inc. v. Portland Meadows</i>	49
C. A Delicate Social and Economic Balance.....	56
D. But Is It Substantial?.....	62
<i>Rodrigue v. Copeland</i>	63
E. Right Use, Wrong Place.....	67
<i>Powell v. Taylor</i>	67
F. Covenants That Outlaw Nuisances: Mere Surplusage?.....	73
<i>Turner v. Caplan</i>	73
G. Remediating the Wrong: From Chancellors to Coase (and Beyond)	76
H. New Technologies at the Boundaries of the Common Law	84
<i>Prah v. Maretti</i>	84
III. Public Nuisance: Invoking the Police Power to Protect the Community From Harm.....	93
<i>Rex v. White & Ward</i>	93
IV. Complement or Confusion?: The Relationship Between Traditional Common-Law Causes of Action and Modern Land Use and Environmental Regulation.....	102
<i>Gill v. LDI</i>	102
V. Constitutional Protections Against Police Power Regulations That Go “Too Far”	111
<i>Pennsylvania Coal Co. v. Mahon</i>	112
 Chapter Three: The “Euclidean” Strategy: Authorizing and Implementing the Legislative Districting of Permissible Land Uses.....	 119
I. A National Movement	119
II. From Where Does the Power to Zone Derive?	121
<i>Republica v. Philip Urbin Duquet</i>	122
<i>Kline v. City of Harrisburg</i>	124
III. Judicial Acceptance by a Conservative High Court	132
<i>Village of Euclid v. Ambler Realty Co.</i>	132
<i>Nectow v. City of Cambridge</i>	143
IV. Zoning in the State Judicial Laboratory.....	147
<i>Arverne Bay Construction Co. v. Thatcher</i>	147
<i>Vernon Park Realty, Inc. v. City of Mount Vernon</i>	152
<i>Rockhill v. Chesterfield Township</i>	157
<i>Eves v. Zoning Board of Adjustment of Lower Gwyedd Township</i>	164
V. The Euclidean Zoning Trio of Height, Bulk, and Use: Seeking Judicial Checks on Arbitrary Application of Zoning Tools.....	169
A. Is Zoning About Use, Ownership, or Both?.....	169

<i>Clemons v. City of Los Angeles</i>	170
<i>Norwood Heights Improvement Ass'n v. Mayor & City Council of Baltimore</i>	178
B. Reading Between the Lines of the Zoning Code: Which Accessory Uses and Home Occupations Are Permissible?.....	183
<i>Marchand v. Town of Hudson</i>	183
C. Do the Equal Protection, Due Process, and Takings Clauses Provide Adequate Protection From the Alleged Government Misuse of Land Use Powers?.....	191
<i>Ronda Realty Corp. v. Lawton</i>	191
<i>Village of Belle Terre v. Boraas</i>	198
<i>Penn Central Transportation Co. v. New York City</i>	207
<i>Kelo v. City of New London</i>	229
Chapter Four: Accommodating Change: Departures From (and Within) the Zoning Ordinance	245
I. Nonconforming Uses: Preexisting Uses That Won't Fade Away	246
<i>City of Los Angeles v. Gage</i>	246
<i>Pennsylvania Northwestern Distributors, Inc. v. Zoning Hearing Board of Township of Moon</i>	255
<i>Parkview Associates v. City of New York</i>	265
II. Amendments: Legislating (Or Is It Adjudicating?) Small-Scale Changes	270
<i>Kuehne v. Town Council of East Hartford</i>	270
<i>MacDonald v. Board of Commissioners</i>	274
<i>Fasano v. Board of Commissioners of Washington County</i>	281
<i>Board of County Commissioners v. Snyder</i>	286
<i>Mendota Golf, LLP v. City of Mendota Heights</i>	295
III. Variances and Special Exceptions: From "Safety Valves" to "Steady Leaks"	305
<i>Richard Roeser Professional Builder, Inc. v. Anne Arundel County</i>	306
<i>City of Cleburne v. Cleburne Living Center</i>	316
<i>Ames v. Town of Painter</i>	324
Chapter Five: The Regulatory Takings Battleground: Environmental Regulation of Land Versus Private-Property Rights	329
I. A New Activism? Judicial Reactions to Regulatory Overreaching (and a Suggested Response)	329
II. Open Space Mandates	333
<i>Agins v. City of Tiburon</i>	333
<i>San Diego Gas & Electric Co. v. City of San Diego</i>	338
III. Mining Controls	345
<i>Keystone Bituminous Coal Ass'n v. DeBenedictis</i>	345

IV. Floodplain Regulation.....	355
<i>First English Evangelical Lutheran Church of Glendale v. County of Los Angeles</i>	356
V. Coastal Zone Management.....	362
<i>Nollan v. California Coastal Commission</i>	363
<i>Lucas v. South Carolina Coastal Council</i>	373
VI. Alternative Transportation Methods.....	387
<i>Dolan v. City of Tigard</i>	388
VII. Endangered Species Protection	400
<i>City of Monterey v. Del Monte Dunes</i>	400
VIII. Wetlands Restrictions.....	413
<i>Palazzolo v. Rhode Island</i>	414
IX. Watershed Protection.....	425
<i>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency</i>	426
X. On and Beyond the Horizon: Global Warming and Rising Seas.....	442
<i>Gove v. Zoning Board of Appeals</i>	443
Chapter Six: The Centrality of Exclusion: Legal Impediments to Keeping “Undesirable” People and Uses Out of the Community	453
I. Excluding People I: The <i>Mount Laurel</i> Experiment.....	454
<i>Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel I)</i>	455
<i>Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II)</i>	466
<i>Hills Development Co. v. Township of Bernards (Mount Laurel III)</i>	478
II. Excluding People II: Running the Federal Gauntlet.....	484
<i>Warth v. Seldin</i>	484
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i>	487
<i>City of Cuyahoga Falls v. Buckeye Community Hope Foundation</i>	497
III. Excluding Profane and Sacred Uses (and Those in Between).....	505
<i>Young v. American Mini Theatres, Inc.</i>	506
<i>City of Ladue v. Gilleo</i>	514
<i>Larkin v. Grendel’s Den, Inc.</i>	523
<i>Westchester Day School v. Village of Mamaroneck</i>	528
Chapter Seven: The Holy Grail: Managing Growth While Maintaining Affordability and Protecting Natural Resources	539
I. Parochialism or Sprawl Control?: The Challenge of Growth Management	539
II. Two Enduring Templates	541
<i>Golden v. Planning Board of Town of Ramapo</i>	542

<i>Construction Industry Ass'n v. City of Petaluma</i>	551
III. Shifting the Costs of Growth: Impact Fees	556
<i>St. Johns County v. Northeast Florida Builders Ass'n</i>	557
IV. Drawing the Line With Urban Growth Boundaries	561
<i>Hildenbrand v. City of Adair Village</i>	563
V. Moratoria	570
<i>Wild Rice River Estates, Inc. v. City of Fargo</i>	570
VI. (Anti-)Big Box Zoning: Problems With Targeting Certain Types of Development	576
<i>Griswold v. City of Homer</i>	577
<i>Island Silver & Spice, Inc. v. Islamorada</i>	582
VII. The Backlash: State Takings Legislation as a Check on Growth Management Abuses (Real and Perceived).....	587
<i>Palm Beach Polo, Inc. v. Village of Wellington</i>	587
<i>Corey v. Department of Land Conservation & Development</i>	593