

Contents

About the Authors	xi
Preface	xiii
Acknowledgments	xv
CHAPTER 1	
Municipal Power to Regulate Land Use	1
Forms of Land Use Regulation	1
The Police Power	3
Delegation by the State	6
Challenges to Local Land Use Decisions	8
Presumption of Legislative Validity	9
Proper Governmental Interest	10
Reasonable Means	10
Impact on Individuals	12
The Land Use Triangle	14
Practitioner Perspectives	15
Notes	17
CHAPTER 2	
Land Use Planning	29
Planning as an Essential Prerequisite to Exercise of the Police Power	29
Planning-Enabling Legislation	31
State-Mandated Local Planning	33
Planning as a Process	40
Extraterritorial Planning	41
Planning Commissions and Boards	41

Professional Planning Department	43
Advisory versus Policy-Making Functions	44
Creation of the Comprehensive Plan	44
Adoption of the Comprehensive Plan	45
Administration of the Comprehensive Plan	47
Legal Effect of the Comprehensive Plan	48
Comprehensive Zoning Ordinance as Comprehensive Plan	49
The Official Map	50
Distinguishing the Planning Map, the Zoning Map, and the Official Map	50
State and Regional Planning: Growth Management	51
Neighborhood Collaborative Planning	53
Atlanta	54
Connecticut	55
Los Angeles	55
Minnesota	57
Neighborhood Improvement Districts	57
Implementing Agreements	58
Practitioner Perspectives	59
Notes	61

CHAPTER 3

Constitutional Restrictions on Land Use Regulation	79
The Fifth Amendment	79
Public Purpose	79
Compensatory Takings	81
Permanent Physical Occupation as a Per Se Taking	82
Deprivation of All Reasonable Use as a Per Se Taking	87
Multifactor Analysis of Regulatory Effects	91
What Is Property for “Taking” Purposes?	93
Rights in the Parcel as a Whole: The Aggregate Theory	93
Specific Strands of the Bundle (Segment Theory)	96
Character of the Government Action	99
Economic Impact: Impairment of Use	102
Interference with Investment-Backed Expectations	106
Development Moratoria	108
Exactions	108
The Due Process Clause	110
Substantive Due Process	111

Procedural Due Process	114
The Equal Protection Clause	115
Ripeness	116
Remedies for Unconstitutional Land Use Regulation	121
The First English Case	122
Temporary Takings	123
42 U.S.C. Section 1983	124
The First Amendment	126
Adult Entertainment	127
Political and Commercial Speech	130
Shopping Centers and Free Speech	131
Free Exercise of Religion Clause	132
Establishment of Religion Clause	135
Other Constitutional Issues	135
The Fourth Amendment	135
The Seventh Amendment	136
One Person–One Vote Requirement	136
The Commerce Clause	136
Takings Clauses in State Constitutions	136
Due Process Clauses in State Constitutions	138
Practitioner Perspectives	139
Notes	144

CHAPTER 4

Zoning	185
Definition of Zoning	185
Vested Rights	188
Zoning as a Political Process	190
The Power to Zone	191
State Enabling Legislation	193
State Statutory Restrictions on Local Zoning Powers; Exemptions	194
Comprehensive Zoning Ordinances	195
Cumulative Zoning	196
Noncumulative Zoning	197
Relationship of the Zoning Ordinance to the Comprehensive Plan	198
Review by the Planning Agency	200
Public Notice and Hearing Requirements	201
Voting Requirements for Enactment	204
Use of the Initiative to Enact a Comprehensive Zoning Ordinance	204

Use of the Referendum to Challenge Zoning Ordinances	206
Nonconforming Uses	207
Amortization of Nonconforming Uses	210
Height Regulations	212
Density Controls	213
The Zoning Envelope	215
Innovative Land Use Controls	215
Planned Unit Development/Cluster Zoning	217
Floating Zones	218
Flexible Zoning	219
Incentive Zoning	219
Performance Zoning	219
Development Impact Analysis	221
New Urbanism and Form-Based Zoning Codes	221
Overlay Zones	222
Historic Districts and Landmarks Preservation	223
Design Control and Aesthetics	224
Architectural Board of Review	225
Urban Design Performance Standards	225
Zoning with Compensation	226
Transferable Development Rights	226
Conditional Zoning	227
Development Agreements and Contract Zoning	228
Development Moratoria and Absolute Exclusions	230
Growth Management	230
Practitioner Perspectives	233
Notes	235

CHAPTER 5

The Local Approval Process	259
Dynamics of Land Use Regulation	259
Enforcement of Zoning Ordinances	259
The Zoning Amendment	261
Standards for Amending the Zoning Ordinance	262
The Preapplication Conference	265
The Application for Zoning Amendment	265
Review by the Planning Commission	267
The Public Hearing Before the Planning Commission	268
Planning Commission Report to the Legislative Body	269

The Legislative Body Public Hearing	269
Voting Requirements for Enactment	271
The Zoning Amendment Ordinance	271
Special Use Permits	272
Application for Special Use Permit	273
Standards for Grant or Denial of Special Use Permit	273
Scope of Delegation of Decision-Making Authority to Administrative Agency	275
The Special Use Permit Public Hearing	275
Issuance of the Special Use Permit	276
The Zoning Variance	277
Standards for Grant or Denial of a Variance	277
Ethical Issues	279
Practitioner Perspectives	282
Staff	283
The Planning Body	284
The Elected Body	284
The Presentation	285
Notes	287

CHAPTER 6

Review of Land Use Decisions	297
Overview	297
The Board of Adjustment: Jurisdiction	297
Standing to Appeal to the Board of Adjustment	298
Petition for Review by the Board of Adjustment	299
Public Hearing Before the Board of Adjustment	300
Timing and Basis for Board of Adjustment Decisions	301
Basis and Scope of Judicial Review of Zoning Decisions	301
Standing to Seek Judicial Review of Local Zoning Decisions	307
Abstention	308
Exhaustion of Administrative Remedies	310
Burden of Proof	313
Legislative versus Administrative Action	314
De Novo Judicial Review	315
Limitations Periods	316
Remedies	317
Res Judicata	319
Appellate Review	320

Resolution of Zoning Disputes Through Arbitration or Mediation	320
Practitioner Perspectives	322
Notes	325

CHAPTER 7

Regulating Specific Uses	341
Overview	341
Segregation of Single-Family Housing	341
Single-Family “Lifestyle”	342
Mobile Homes and Manufactured Housing	346
Age-Restrictive Zoning	348
Accessory Uses	349
Group Homes	350
Residential Treatment Centers	354
Condominium Conversions	355
Religious Uses	356
Governmental Facilities and Intergovernmental Conflicts; Preemption	362
Billboards and Signs	364
Adult Entertainment	366
Commercial and Industrial Activities	368
Transitional Uses	369
Home Occupations	370
Telecommunications	370
Agricultural Uses	376
Medical Marijuana	377
Payday Loans and Check-Cashing	378
Practitioner Perspectives	379
Notes	381

CHAPTER 8

Subdivision Regulations	405
Subdivision Regulation Distinguished from Zoning	405
Enactment of Subdivision Regulations	407
Administration of Subdivision Regulations	408
The Application Process	410
Subdivision for Land Development	410
Resubdividing Existing Lots (Lot-Splitting)	411
Approval of Subdivision Plats	412

Conditions Attached to Subdivision Approval	414
Exactions	415
Statutory Authorization/Control of Exactions	416
Constitutional Issues Raised by Exactions	418
Vested Rights Arising from Plan Approval	423
Site-Plan Review	425
Development Agreements	428
Extraterritorial Regulation	429
Judicial Review of Subdivision Regulation Decisions	430
Practitioner Perspectives	431
Notes	433

CHAPTER 9

Overcoming Barriers to Affordable Housing	451
The NIMBY Syndrome	451
Exclusionary Zoning	453
Reinvestment Displacement	456
The Fair Housing Act	459
Segregation of Multifamily Housing	463
Mobile Homes and Manufactured Housing	466
Group Homes	467
Density Controls	469
Inclusionary Zoning	472
Set-asides	472
Density Bonuses	473
Zoning Override (Anti-Snob) Legislation	477
Massachusetts	477
Connecticut	478
California	479
Planning for Affordable Housing	480
Practitioner Perspectives	481
Legal Services to Nonprofit Housing Organizations	482
Encouraging Developer Involvement in Affordable Housing Initiatives	483
Reducing Local Opposition to Nontraditional Housing	483
Examples of Pro Bono Representation	484
Sources of Information and Contacts	485
Notes	486

CHAPTER 10

Environmental Land Use Regulation	509
Federal Substantive Prominence	509
State Environmental Regulation	510
The Public Trust Doctrine	511
Relationship of Environmental Regulation and Land Use (Zoning)	
Control; Preemption	512
Administration of Environmental Land Use Controls	514
The Environmental Permit Process	516
Permit Programs for Wetlands and Other Environmentally Sensitive	
Areas	519
Protecting Coastal Areas Through Permit Programs	522
Vested Rights and Supplemental Environmental Reviews	524
Responsibility for Environmental Compliance	525
Environmental Audits	525
Disclosure Requirements	526
Regulation of Contaminated Property	526
Other Environmental Issues Affecting Land Use Determinations	527
Preserving Agricultural Lands	527
Hazardous-Waste Disposal	528
Siting of Hazardous-Waste Disposal Facilities	529
Brownfields	529
Judicial Review	530
Citizen Suits	531
Environmental Justice	532
Use of Negotiation and Mediation to Resolve Environmental Land Use	
Disputes	534
Practitioner Perspectives	536
Notes	537
Table of Cases	553
Index	611