

**LAND USE PLANNING
AND THE ENVIRONMENT:
A CASEBOOK**

by

Charles M. Haar

Harvard Law School

and

Michael Allan Wolf

University of Florida Levin College of Law

ENVIRONMENTAL LAW INSTITUTE

Washington, D.C.

Copyright © 2010 Environmental Law Institute
2000 L Street NW, Washington DC 20036

Published January 2010.

Printed in the United States of America
ISBN 978-158576-128-9

About the Authors

Charles M. Haar joined the Harvard Law School faculty in 1952, serving as the Louis D. Brandeis Professor of Law. In addition to his landmark work in the fields of land use planning and property law, Professor Haar has taught and written in the areas of corporate mergers, housing policy, poverty, international law, and third world development. He served as assistant secretary in the U.S. Department of Housing and Urban Development, where he played a key role in formulating Great Society programs, and has chaired presidential task forces on urban and suburban issues. Among Professor Haar's recent publications is *Mastering Boston Harbor: Courts, Dolphins, and Imperiled Waters* (Harvard University Press 2005). Professor Haar received his LL.B. degree from Harvard Law School, an M.A. degree from the University of Wisconsin, and an A.B. degree from New York University. Professor Haar can be reached by e-mail at: haar@law.harvard.edu.

Michael Allan Wolf is the Richard E. Nelson Chair in Local Government Law at the University of Florida Levin College of Law. His teaching and scholarly areas of interest include land use planning, environmental law, property law, local government, urban revitalization, constitutional law, and legal and constitutional history. Professor Wolf is the General Editor of *Powell on Real Property* (the leading treatise in the field) and *Powell on Real Property: Michael Allan Wolf Desk Edition* (Matthew Bender LexisNexis 2009), and the author of *The Zoning of America: Euclid v. Ambler* (University Press of Kansas 2008). Professor Wolf received his Ph.D. (History of American Civilization) and A.M. degrees from Harvard University, a J.D. degree from Georgetown University Law Center, and a B.A. degree from Emory University. Professor Wolf can be reached by e-mail at: wolfm@law.ufl.edu.

To our children:

Jeremy and Susan

and

Daniel and Rachel

“Fortunate is the man who has his quiver full of them.”

—Psalm 127:5

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>Respublica 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

Table of Cases

2922 Sherman Ave. Tenants' Ass'n v. District of Columbia	496
550 Halstead Corp. v. Zoning Bd. of Appeals.....	252
A&F Props., Ltd. Liab. Co. v. Madison County Bd. of Supervisors	303
Acker v. Baldwin	151
Adams v. Snouffer	71
Adkins v. Children's Hosp.	117, 141
<i>Agins v. City of Tiburon</i>	333
Albuquerque Commons Partnership v. City Council of City of Albuquerque.....	279
Aldom v. Borough of Roseland.....	294
Alexander v. City of Minneapolis	509
Ambler Realty Co. v. Village of Euclid.....	139, 454
American Smelting & Refining Co. v. Godfrey	70
<i>Ames v. Town of Painter</i>	324
AMG Realty Co. v. Warren Twp.	473
<i>Amphitheaters, Inc. v. Portland Meadows</i>	49
Anderson v. Zoning Commission of Norwalk.....	294
Andrus v. Allard	220
Appolo Fuels, Inc. v. United States.....	354
Arcara v. Cloud Books, Inc.	101
Armstrong v. United States	221, 592
<i>Arverne Bay Construction Co. v. Thatcher</i>	147
Asian Americans for Equality v. Koch (1985).....	473
Asian Americans for Equality v. Koch (1987).....	473
Associated Home Builders v. City of Livermore.....	463
Attorney General v. Williams.....	263
Aztec Minerals Corp. v. Romer	385
Beall v. Montgomery County Council	278
Beery v. Houghton	142
Bellemeade Co. v. Priddle.....	168
Berenson v. Town of New Castle.....	462
Berman v. Parker	206
Biddix v. Henredon Furniture Indus., Inc.....	110
Biggers v. City of Bainbridge Island	575
Board of County Comm'rs v. Crow	40

Board of County Comm’rs v. Lowery	242
<i>Board of County Comm’rs v. Snyder</i>	286
Board of Supervisors v. Snell Constr. Corp.....	279
Board of Zoning Appeals v. Leisz	259
Bonnie Briar Syndicate Inc. v. Town of Mamaroneck	304
<i>Boomer v. Atlantic Cement Co.</i>	76
Borough of Glassboro v. Vallorosi.....	203
Bove v. Donner-Hanna Coke Corp.....	71
Boyajian v. Gatzunis	527
Brett v. Building Commissioner of Brookline	268
Brevard County v. Stack	592
Brown v. Board of Education (<i>I and II</i>)	464
Bucholz v. Board of Adjustment of Bremer County.....	315
Buckeye Community Hope Found. v. City of Cuyahoga Falls	497, 502
Building Comm’r for Ashburnham v. Puccio (2002).....	268
Building Comm’r for Ashburnham v. Puccio (2003).....	269
Burch v. NedPower Mount Storm, Ltd. Liab. Co.	90
C&A Carbone, Inc. v. Clarkstown.....	585
Cachia v. Islamorada.....	584
California Coastal Commission v. Granite Rock Co.	41, 362
Calvert Cliffs’ Coordinating Comm. v. Atomic Energy Comm’n	331
Canady v. Prescott Canyon Estates Homeowners Ass’n	497
Cardon Inv. v. Town of New Market.....	278
Carson v. Board of Appeals of Lexington	245
Charles v. Diamond.....	548
Christy v. City of Ann Arbor	509
City of Boca Raton v. Arvida Corp.	556
City of Boca Raton v. Boca Villas Corp.	556
City of Boerne v. Flores	535
City of Chicago Heights v. Living Word Outreach Full Gospel Church & Ministries, Inc.	319
<i>City of Cleburne v. Cleburne Living Center</i>	316, 536
<i>City of Cuyahoga Falls v. Buckeye Community Hope Foundation</i>	497
City of Eastlake v. Forest City Enterprises.....	526
City of Edmunds v. Oxford House.....	205
City of Erie v. Pap’s A.M.	513
City of Harrisonville v. W.S. Dickey Clay Manufacturing Co.	79

City of La Mesa v. Tweed & Gambrell Planing Mill	250
<i>City of Ladue v. Gilileo</i>	514
City of Los Angeles v. Alameda Books	513
<i>City of Los Angeles v. Gage</i>	246
City of Marion v. Rapp.....	252
City of Miami Beach v. Schauer.....	294
City of Minot v. Boger.....	189
<i>City of Monterey v. Del Monte Dunes</i>	330, 332, 400
City of New York v. Baretta U.S.A. Corp.....	102
City of Newport v. Fact Concerts, Inc.	502
City of Norwood v. Horney	242
City of Renton v. Playtime Theatres.....	508
City of White Plains v. Ferrailoli.....	202
Cizek v. Concerned Citizens of Eagle River Valley, Inc.	251
<i>Clemons v. City of Los Angeles</i>	170
Coastal Dev. of N. Fla. v. City of Jacksonville Beach.....	291
Colon v. Lisk.....	96
Commercial Builders of N. Cal. v. Sacramento	371
Community Resources for Justice v. City of Manchester	194
<i>Construction Industry Association v. City of Petaluma</i>	551
<i>Corey v. Department of Land Conservation & Development</i>	593
Corrigan v. City of Scottsdale	344
County of Kauai v. Pacific Standard Life Ins. Co.....	269
County of Wayne v. Hathcock	241
Cutter v. Wilkinson	536
D.R. Horton, Inc. v. Peyton.....	550
Department of Health v. The Mill	385
Doe v. Miller,	510
<i>Dolan v. City of Tigard</i>	2, 157, 220, 330, 332, 388, 398, 443, 476, 556, 561
Dollaghan v. County of Boulder.....	130
Double D Manor, Inc. v. Evergreen Meadows Homeowners' Ass'n	203
Douglas v. Wages.....	76
Eden v. Zoning Comm'n of Bloomfield.....	272
Edwards v. Steele	315
Ehlers-Renzi v. Connelly School of the Holy Child, Inc.	527
Emmi v. Zoning Board of Appeals	315

Employment Div. v. Smith	535
Erznoznik v. City of Jacksonville	101
<i>Eves v. Zoning Board of Adjustment of Lower Gwynedd Township</i>	164
Ex parte Lamar Adver. Co.	253
Executive Arts Studio, Inc. v. City of Grand Rapids	509
<i>Fasano v. Board of Commissioners of Washington County</i>	168, 281, 287, 290, 294
Fernley v. Board of Supervisors of Schuylkill Twp.	464
<i>First English Evangelical Lutheran Church of Glendale v. County of Los Angeles</i> (1987).....	330, 332, 356
First English Evangelical Lutheran Church of Glendale v. County of Los Angeles (1989).....	360
Fleming v. Tacoma.....	295
Florida Dep't of Agric. & Consumer Servs. v. Mid-Florida Growers, Inc.	449
Florida Dep't of Agric. & Consumer Servs. v. Polk	449
Flynn v. City of Cambridge.....	180
Fondren North Renaissance v. Mayor of Jackson	279
Framingham Clinic, Inc. v. Board of Selectmen	523
Frederick v. Jackson County	151
Fulton County v. Galberaith.....	521
Gabriel v. Cazier.....	76
Gangemi v. Zoning Bd. of Appeals.....	176
Garden Lakes Community Ass'n v. Madigan	89
Gautreaux v. Chicago Hous. Auth	492
Giles v. Walker	72
<i>Gill v. LDI</i>	102
Golden v. City of Overland Park.....	286
<i>Golden v. Planning Board of Town of Ramapo</i>	542
Golf Club of Plantation, Inc. v. City of Plantation	303
Gorieb v. Fox	117, 143
<i>Gove v. Zoning Board of Appeals</i>	443
Graham Court Associates v. Town Council of Chapel Hill.....	262
Grasso v. Zoning Bd. of Appeals	245
Grendel's Den v. Larkin.....	526
<i>Griswold v. City of Homer</i>	577
Grubel v. MacLaughlin	162
Haire v. Florida Dep't of Agric. & Consumer Servs.	450
Hardin County v. Jost	160
Harlow v. Fitzgerald	502

Hawthorne v. Village of Olympia Fields.....	190
Heady v. Zoning Board of Appeals for Milford.....	306
Henneford v. Silas Mason Co.....	220
Hernandez v. City of Hanford.....	586
<i>Hildenbrand v. City of Adair Village</i>	563
<i>Hills Development Co. v. Township of Bernards</i>	478
Hills v. Zoning Comm'n of Newington.....	272
Hodel v. Irving.....	220
Holland v. City Council of Decorah.....	327
Home Builders Ass'n of Me. v. Town of Eliot.....	575
Home Builders Ass'n v. City of Napa.....	476
Home Builders League of S. Jersey v. Berlin Twp.....	2
Huff v. Board of Zoning Appeals.....	167
Hunter v. City of Pittsburgh.....	122
Huntington Branch, NAACP v. Town of Huntington.....	496
In re Adoption of N.J.A.C. 5:94 & 5:95 by New Jersey COAH.....	482
In re Aircrash in Bali.....	343
In re Appeal of Elocin, Inc.....	464
In re Appeal of M.A. Kravitz Co.....	463
In re Junqua.....	97
In re Realen Valley Forge Greenes Assocs.....	303
Ingram v. City of Gridley.....	62
<i>Island Silver & Spice, Inc. v. Islamorada</i>	582
Jackson v. Williams.....	203
Jacobson v. Tahoe Reg'l Planning Agency.....	439
Jost v. Dairyland Power Corp.....	79
Kaiser Aetna v. United States.....	220
Kansas City v. Liebi.....	263
Keith v. Saco River Corridor Com.....	262
<i>Kelo v. City of New London</i>	229, 264, 599
Kentucky-Ohio Gas Co. v. Bowling.....	66
<i>Keystone Bituminous Coal Ass'n v. DeBenedictis</i>	333, 345, 362
Kimball Laundry Co. v. United States.....	361
King v. Incorporated Village of Ocean Beach.....	156
Kirk v. Township of Tyrone.....	286
Kisil v. City of Sandusky.....	306

Klein v. Copeland.....	65
<i>Kline v. City of Harrisburg</i>	124
<i>Kuehne v. Town Council of East Hartford</i>	270
Kutcher v. Town Planning Comm'n of Manchester.....	272
Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency.....	439
<i>Larkin v. Grendel's Den, Inc.</i>	523
Laughter v. Board of County Comm'rs.....	161
Lawton v. Steele.....	95
League of Oregon Cities v. State.....	598
Leo v. General Elec. Co.	99
Lingle v. Chevron U.S.A., Inc.	336, 398, 413
Lochner v. New York.....	116, 120, 585
Loretto v. Teleprompter Manhattan CATV Corp.	220, 386
<i>Lucas v. South Carolina Coastal Council (U.S.)</i>	330, 332, 373, 384, 413, 443, 450
Lucas v. South Carolina Coastal Council (S.C.).....	384
Lujan v. Defenders of Wildlife.....	487
Lum Yip Kee, Ltd. v. Honolulu.....	279
<i>MacDonald v. Board of Commissioners</i>	274
MacDonald, Sommer & Frates v. Yolo County.....	330, 344
Macpherson v. Department of Admin. Servs.....	598
Mansfield and Swett, Inc. v. Town of West Orange.....	540
Marbury v. Madison.....	124, 132
<i>Marchand v. Town of Hudson</i>	183
Mark v. State Dep't of Fish & Wildlife.....	55
Martin County v. Yusem.....	290
Matter of Kensington-Davis Corp. v. Schwab.....	160
Mayor & Council of Rockville v. Rylyns Enters.....	168
McCarthy v. City of Manhattan Beach.....	155
McCaw v. Harrison.....	69
McCombe v. Read.....	72
McMinn v. Town of Oyster Bay.....	204
Members of the City Council of Los Angeles v. Taxpayers for Vincent.....	519
<i>Mendota Golf, LLP v. City of Mendota Heights</i>	295
Metromedia, Inc. v. San Diego.....	519
Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights.....	491
Miller v. Schoene.....	449

Milwaukee v. Illinois	110
Mitchell Land Co. v. Planning & Zoning Bd. of Appeals	245
Mitchell v. Bearden.....	68
Monahan-Fortin Props. v. Town of Hudson.....	576
Monell v. Department of Social Servs.....	501
Moore v. City of East Cleveland	203
Morris v. City of Los Angeles.....	174
Naegele Outdoor Adver. Co. v. Minnetonka.....	263
National Ass'n of Home Builders v. Babbitt.....	410
Naylor v. Township of Hellam.....	128
Nectow v. City of Cambridge (1927)	145
<i>Nectow v. City of Cambridge</i> (1928).....	117, 132, 143, 147
Nettleton v. Zoning Bd. of Adjustment.....	252
Nevadans for the Protection of Property Rights, Inc. v. Heller.....	599
Nika Corp. v. Kansas City.....	344
<i>Nollan v. California Coastal Commission</i>	157, 220, 330, 332, 363, 398, 443, 450, 476, 556
North Carolina Human Relations Council v. Weaver Realty Co.....	497
Northend Cinema v. City of Seattle	509
Northwestern Univ. v. City of Evanston	222
Norway Plains Co. v. Boston & Maine R.R.	84
<i>Norwood Heights Improvement Ass'n v. Mayor and City Council of Baltimore</i>	178
O'Connor v. City of Moscow.....	255
Oakwood at Madison, Inc. v. Township of Madison	462
Ogden Fire Co. No. 1 v. Upper Chichester Twp.	187
Omnipoint Communication Enters., Ltd. Partnership v. Zoning Hearing Bd. of Easttown Twp.....	187
<i>Palazzolo v. Rhode Island</i>	331, 333, 414
Palermo Land Co. v. Planning Comm'n of Calcasieu Parish.....	279
<i>Palm Beach Polo, Inc. v. Village of Wellington</i>	587
Palsgraf v. Long Island R.R.	132
<i>Parkview Associates v. City of New York</i>	265
Parratt v. Taylor.....	501
Patchen v. Florida Dep't of Agric. & Consumer Servs.....	450
<i>Penn Central Transportation Co. v. New York City</i>	207, 330, 332, 354, 413, 421, 442, 592
Penn-Dixie Cement Corp. v. Kingsport	97
<i>Pennsylvania Coal Co. v. Mahon</i>	112, 156, 191, 221, 330, 344, 355
<i>Pennsylvania Northwestern Distributors, Inc. v. Zoning Hearing Board of Township of Moon</i>	255

Pensack v. City and County of Denver.....	514
Peoria v. Heim.....	193
PFZ Props. v. Rodriguez.....	386
<i>Pinecrest Lakes, Inc. v. Shidel</i>	32
Planned Parenthood v. City of Manchester.....	522
Poletown Neighborhood Council v. City of Detroit	241
Powell v. Alabama.....	141
<i>Powell v. Taylor</i>	67
<i>Prah v. Maretti</i>	84, 182
Pumpelly v. Green Bay Co.	386, 413
Queenside Hills Realty Co. v. Saxl	267
Raising a Covert to the Nuisance	48
Rapanos v. United States	423
Rassier v. Houim	91
Raynes v. City of Leavenworth	295
Rector, Wardens, & Members of Vestry of St. Bartholomew's Church v. City of New York.....	222
<i>Respublica v. Philip Urbin Duquet</i>	122
<i>Rex v. White and Ward</i>	93
<i>Richard Roeser Professional Builder, Inc. v. Anne Arundel County</i>	306
Richards's Appeal	80
Rith Energy v. United States	354
Robinson v. Indianola Mun. Separate Sch. Dist.	109
<i>Rockhill v. Chesterfield Township</i>	157
Rodgers v. Tarrytown.....	168
<i>Rodrigue v. Copeland</i>	63
Roe v. Wade	523
<i>Ronda Realty Corp. v. Lawton</i>	191
Rose v. Chaikin	90
<i>Rose v. Socony-Vacuum Corp. (1934)</i>	56
Rose v. Socony-Vacuum Corp. (1936)	61
Royal World Metro., Inc. v. City of Miami Beach	592
Ruckelshaus v. Monsanto Co.	220
Sabo v. Monroe Township	286
San Diego Gas & Elec. Co. v. Superior Court	55
<i>San Diego Gas & Electric Co. v. City of San Diego</i>	338
San Remo Hotel, Lt. Partnership v. City & County of San Francisco.....	503

Save a Valuable Environment v. City of Bothell	465
Schad v. Borough of Mt. Ephraim.....	511
Sher v. Leiderman.....	89
Sheridan v. Planning Bd. of Stamford	168
Shively v. Bowlby	422
Sisemore v. Master Financial, Inc.	497
Slater v. Pacific American Oil Co.	62
Smith v. Skagit Cy.....	295
Smith v. Staso Milling Co.	79
Smith v. Wade	502
Snyder v. City of Lakewood	286
Solid Waste Agency of N. Cook County (SWANCC) v. U.S. Army Corps of Eng'rs	423
<i>Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel I)</i>	201, 455, 484, 541
<i>Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II)</i>	466
Spur Feeding Co. v. Superior Court of Maricopa County	83
Spur Indus., Inc., v. Del E. Webb Dev. Co.....	82
<i>St. Johns County v. Northeast Florida Builders Ass'n</i>	557
State ex rel. Beery v. Houghton.....	142, 263
<i>State ex rel. Chiavola v. Village of Oakwood</i>	27
State ex rel. Morehouse v. Hunt	254
State ex rel. Randall v. Snohomish County.....	129
State ex rel. Sheffield v. City of Minneapolis.....	263
State ex rel. Twin City Bldg. & Inv. Co. v. Houghton	263
State Plant Bd. v. Roberts	449
State v. Baker	202
State v. City of Rochester.....	286
Stevens v. Rockport Granite Co.....	70
Suffolk Housing Servs. v. Town of Brookhaven	473
Suitum v. Tahoe Reg'l Planning Agency.....	439
Sullivan v. Jones & Laughlin Steel Co. (1904)	80
Sullivan v. Jones & Laughlin Steel Co. (1908)	81
Surrick v. Zoning Hearing Bd. of Upper Providence Twp.....	463
Sustainable Growth Initiative Comm. v. Jumpers, Ltd. Liab. Co.	556
<i>Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency</i>	130, 331, 333, 426, 442, 556, 570
Taliaferro v. Darby Twp. Zoning Bd.....	486
Tenn v. 889 Assocs.	88

Thompson v. Kimball.....	99
Thurston County v. Western Wash. Growth Mgmt. Hearings Bd.....	568
Toll Bros., Inc. v. Township of West Windsor.....	481
Town of Hull v. Massachusetts Port Auth.....	110
Trail v. Terrapin Run, Ltd. Liab. Co.	321
Trickett v. Ochs.....	108
Tulare Lake Basin v. United States	413
<i>Turner v. Caplan</i>	73
United Artists Theater Circuit v. City of Philadelphia.....	221
United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.	585
United Nuclear Corp. v. United States	354
United States v. City of Black Jack.....	496
United States v. City of Parma (1980)	494
United States v. City of Parma (1981)	494
United States v. General Motors Corp.....	220, 361
United States v. Petty Motor Co.	361
United States v. Riverside Bayview Homes	423
Upland Hills Country Club Condo. Ass'n v. Upland Dev. Ltd. Liab. Co.....	303
<i>Vernon Park Realty, Inc. v. City of Mount Vernon</i>	152
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i>	487, 505
<i>Village of Belle Terre v. Boraas</i>	198
<i>Village of Euclid v. Ambler Realty Co.</i>	117, 121, 132, 142, 145, 146, 147, 194, 221, 243, 539, 540
Village of Willowbrook v. Olech	194
Volusia County v. Aberdeen at Ormond Beach.....	560
Voyeur Dorm, L.C. v. City of Tampa.....	509
Wal-Mart Stores, Inc. v. City of Turlock (Cal. 2006)	581
Wal-Mart Stores, Inc. v. City of Turlock (E.D. Cal. 2006)	582
Wal-Mart Stores, Inc. v. City of Turlock (E.D. Cal. 2007)	582
Walters v. McElroy	80
Ward v. Rock Against Racism.....	100
<i>Warth v. Seldin</i>	484
Watts v. Parma Manufacturing Co.....	79
Weinhold v. Wolff.....	107
Welch v. Swasey.....	120
Wells v. Pierpont	279
Weltshe v. Graf.....	109

Westchester Assocs. v. Boston Edison Co.	56
<i>Westchester Day School v. Village of Mamaroneck</i>	528
Whitney Benefits, Inc. v. United States	353
<i>Wild Rice River Estates, Inc. v. City of Fargo</i>	570
Willdel Realty, Inc. v. New Castle County	279
Williamson County Reg'l Planning Comm'n v. Hamilton Bank	440, 503
Wilson v. Amoco Corp.....	69
Windsor Hills Improvement Ass'n v. Mayor & City Council of Baltimore.....	180
Wyatt v. United States.....	354
Yee v. City of Escondido	386
Yick Wo v. Hopkins	123
<i>Young v. American Mini Theatres, Inc.</i>	506
Yuba Nat. Resources, Inc. v. United States	354
Zahn v. Board of Public Works	117, 142

Acknowledgments

We would like to thank Wade Berryhill, Joel Eisen, and Jerold Kayden, who with sage counsel have long served as sounding boards for our ideas. Hundreds of law students at the University of Florida, the University of Miami, and the University of Richmond have used manuscript versions of this casebook over the past few years, and we appreciate their insightful feedback. Andrea Becker, Tara Nelson, and Steve Wernick took the lead among the many students who provided excellent research assistance. We are pleased to single out Tom Potter for his careful attention to essential details—grand and minute. The University of Florida Levin College of Law provided generous research support, for which Michael Allan Wolf is most grateful. Professor Haar would like to thank the Institute for Advanced Study in Princeton, New Jersey, for generously making their facilities available. Suzanne Keller and Betty Morganstern Wolf contributed to this and other efforts in ways too numerous to mention, so a simple, heartfelt “thank you” will have to suffice. Finally, we wish to thank Scott Schang, Vice President, Publications and Associates, at the Environmental Law Institute (ELI), for his help in publishing this casebook; Carolyn Fischer, former ELI Books Editor, for her editorial expertise; and Rachel Jean-Baptiste, Managing Editor, *Environmental Law Reporter*, for seeing clearly the forest and the trees.

Preface

As our subtitle states—simply and directly—this is a casebook. While other authors choose to provide students with ample excerpts from law review articles and treatises, along with generous explanatory passages that are commonly found in hornbooks, we move the cases—and judicial analysis—back to center stage. The basic reason for this choice is that even in an area largely delineated by local ordinances and state statutes, judges remain key makers and interpreters of land use planning law. The central inquiries of this discipline are disputed in legal briefs and oral arguments, and are addressed in judicial opinions: What is the nature of the comprehensive plan? How close a fit is required between zoning decisions and the plan? When does regulation go so far that it amounts to a taking requiring invalidation or compensation? When do constitutional rights such as free speech and the free exercise of religion trump the police power? What kinds of behavior amount to unreasonable interference with one's neighbor's use and enjoyment of real property? How do we know if a zoning or planning decision constitutes unlawful, invidious discrimination? How do we decide which local regulatory decisions are legislative and which are quasi-judicial, and what are the legal and practical implications of that definitional choice? When does local innovation fall beyond the bounds established by state-enabling legislation?

We have spent several decades engaged in land use planning and environmental law not only as teachers and scholars, but as partners to private- and public-sector participants involved in acts and decisionmaking at the cutting edge of these fields—from urban renewal and Model Cities, through enterprise zones and inclusionary zoning, to New Urbanism and green building. The bulk of our writing—separately and as a team—has been intended for instructors, practitioners, and students who are fascinated by the issues at the core of land use planning law: (1) zoning; (2) comprehensive planning; and (3) eminent domain. To us, a casebook is not an extended advocacy piece designed to advance one legal, jurisprudential, or political strategy regarding the regulation of land use and development. We have one overriding obligation—to consider in an evenhanded and thorough manner the chief challenges facing lawyers and planners who, on a regular basis, are tasked with finding the correct balance between the needs and rights of private landowners and the protection and advancement of the public interest, between the urgencies of the present and the anticipated impacts on future generations. Given this orientation, it is not surprising that cases, not commentary, remain the central teaching and learning tool of Land Use Planning and the Environment.

While other casebook authors identify one case to represent each issue in the casebook, we are uncomfortable with this practice. Therefore, throughout the book, we include cases and selections from cases that illustrate competing or complementary approaches. In this way, we have tried to craft a casebook with jurisdictional and analytical depth, making it a better match for the complex world of land use planning law “on the ground.” We provide guidance to our readers (teachers and

students) through informative introductions that ask provocative questions about the materials that follow and, when appropriate, we offer insights from leading commentators in law and planning. However, we envision that these materials will play a supportive role.

The separation between traditional land use planning law and environmental regulation, while never exactly a “bright-line” distinction, has become more cloudy over the past few decades. Increasingly state and federal officials find themselves engaged in legislative, regulatory, and bureaucratic activities regarding the use of private land. Moreover, local and state governments have shared environmental regulatory responsibilities with their federal counterparts to a much greater extent in the early 21st century than ever before. For this and many other reasons, it no longer makes sense either to ignore environmental law topics or to segregate them into an “autonomous” chapter. *Land Use Planning and the Environment* offers a pervasive approach by addressing overlapping and, at times, conflicting administrative regimes. Throughout the casebook, we identify and explore intersections between land use planning law and environmental laws such as the National Environmental Policy Act, the Clean Water Act, and the Endangered Species Act. While some of the connections are obvious—for example in the areas of nuisance law and wetlands regulation—we also identify more subtle interconnections, such as the hidden environmental “agenda” behind exclusionary zoning. Moreover, our discrete regulatory takings chapter (Chapter Five) is organized chronologically and by the nature of the environmental regulation of land that is under attack. One of the important lessons taught by environmental law—that is not yet fully heeded by local land use regulators—is that some of the most serious problems cross artificial political boundaries, necessitating regional and metropolitan strategies. The rapidly growing numbers of professors and students with strong backgrounds and exposure to “traditional” environmental law courses will find these intersections a wonderful opportunity to examine familiar topics from a different, though intimately related, perspective. For other classroom users, this casebook will serve as a valuable introduction to the world of federal, state, and local environmental controls.

Traditional height, area, and use regulation—that is, Euclidean zoning—has of late fallen out of favor among a growing number of planners, architects, and lawyers who gravitate toward Smart Growth or form-based paradigms. Moreover, the national debate over the nature and implications of urban and suburban sprawl is attracting page-one media coverage and the attention of national policymakers and candidates for America’s highest political offices. The planning law reflections of these social and political shifts appear not only in our collection of cases and notes on growth management in Chapter Seven, but also throughout most of the previous chapters, often in contrast to the Euclidean tools that still dominate the decisional law.

This casebook, like many of the works that appear in our bibliographies, reflects a deep regard for planning as an art and a science, with theories, vocabulary, and tools worthy of respect by co-professionals. More than 50 years ago, in the preface to his first casebook, Professor Haar expressed the hope “that this volume will be of interest to the planner as well as the lawyer” and the belief that “the case method is a vivid way of introducing the planner to the legal and institutional implications of a conscious fashioning of the physical environment.” Today, we are pleased to highlight the deep historical and contemporary connections between these two complementary disciplines, and we hope to eliminate the unfortunate message that is often conveyed to budding lawyers that attorneys are the key, if not sole, players in the decisionmaking and implementation process.

The organization of the seven chapters that follow is fairly straightforward. The opening chapter introduces the reader to the structure and ideas of American planning and to the central concept of the comprehensive plan. Chapter Two explores the major private law methods for reconciling incompatible land uses, chiefly private and public nuisance. The mechanics of Euclidean and post-Euclidean zoning are addressed in Chapter Three; while Chapter Four contains a collection

of cases regarding departures from and within the zoning ordinance, such as nonconforming uses, zoning amendments, and variances. Chapter Five, with its heavy component of constitutional law, closely examines the brooding omnipresence of land use planning and environmental regulation—regulatory takings. The constitutional law focus continues into Chapter Six, which studies the legal constraints on the exclusion of people and of specially protected uses. The closing chapter reviews various growth management tools and the potential pitfalls their proponents may encounter.

Editorial Notice: Throughout this volume, we have routinely omitted most of the citations, footnotes, and headings from quoted materials, in order not to disturb the flow of the material. In those instances in which we have decided to include the original footnotes, we have maintained the footnote numbers contained in quoted materials. We have numbered our own footnotes, beginning with 1 at the start of each chapter. Whenever our footnotes are appended to quoted material, we have indicated such by beginning the footnote with “Authors’ note.”

Internet Links: Throughout this volume, we have provided links to Internet web pages that contain illustrations, photographs, charts, monographs, and other documents of interest to the reader. Because, unfortunately, it is common practice to move, shift, or replace material on the web, we anticipate that some of the links that we have provided in this printed book will become unusable. Therefore, we have made the following web page available to users of this book, not only to keep web addresses updated, but also to provide our readers with information regarding new developments in the area of land use and the environment: <http://www.landuseplanningcasebook.com/>.