
TABLE OF CONTENTS

PREFACE.....	III
TABLE OF CASES.....	XVII
Chapter One. Introduction	1
I. Why Regulate Land Use?	1
A. Efficiency Concerns.....	1
Notes and Questions	1
B. Aesthetic Concerns.....	2
Notes and Questions	3
C. Community Concerns.....	3
Notes and Questions	4
II. Regulating the Regulators.....	6
A. Who Are the Regulators?	6
B. Planners and Planning	7
1. Some History and Theory	7
2. Planning on the Ground: The Role of Plans and Planners in the Regulatory Process	7
Notes and Questions	9
C. The Political Economy of Land Use Regulation.....	10
III. The Doctrinal Starting Point: Village of Euclid.....	12
Village of Euclid v. Ambler Realty Co.	12
Notes and Questions	19
Chapter Two. Zoning Basics.....	23
I. The Zoning Enabling Act.....	23
II. The Zoning Ordinance	23
A. Zoning Districts	24
1. Use Restrictions.....	24
Oregon Legislature Votes To Essentially Ban Single- Family Zoning.....	25
2. Lot Restrictions	27
3. Structure Restrictions.....	27
Problems	28
B. The Zoning Map	31
C. Administrative Provisions	32
III. Tools for Increasing the Flexibility of Zoning Ordinances	32
A. Rezoning	33
B. Variances	34
Sasso v. Osgood	35
Notes and Questions	41
C. Special Exceptions or Conditional Uses	45
Petition of Skeen	45
Notes and Questions	49
917 Lusk, LLC v. City of Boise.....	50
Notes and Questions	54
D. Contract Zoning.....	56
Chrismon v. Guilford County	57

	Notes and Questions	62
E.	Incentive Zoning.....	65
	Notes and Questions	67
F.	Transferable Development Rights	68
	1. TDRs as a Regulatory Tool	68
	2. TDRs in the New Jersey Pinelands.....	69
	3. Zoning Lot Merger in New York City	70
	Selling the Sky: Katz’s Delicatessen and the Sale of Air Rights	70
	4. TDRs as a Landmarks Preservation Tool in New York City	71
	St. Patrick’s Edged out by Elite Men’s Club in Deal That Kills \$2 Million in Public Upgrades	72
	Notes and Questions	73
G.	Impact Fees & Exactions	74
	1. Impact Fees	74
	City of Ocean Springs v. Homebuilders Association of Mississippi	74
	Notes and Questions	79
	Note on Special Assessments	80
	2. Exactions.....	81
	520 Victor Street Condominium Ass’n v. Plaza.....	82
	Notes and Questions	87
IV.	Accessory Uses	88
	Matter of New York Botanical Garden v. Board of Standards and Appeals	88
	Notes and Questions.....	94
V.	Non-Conforming Uses.....	96
	Cleveland MHC, LLC v. City of Richland	96
	Notes and Questions.....	98
	Trip Associates, Inc. v. Mayor and City Council of Baltimore	100
	Notes and Questions.....	107
	Morgan County v. May	108
	Notes and Questions.....	112
	Modjeska Sign Studios, Inc. v. Berle	112
	Notes and Questions.....	116
VI.	Review Problems.....	117
Chapter Three. Site Issues.....		119
I.	Special Zoning for Large Developments.....	120
	A. Terminology.....	120
	B. Authority to Regulate	122
	Campion v. Board of Aldermen of the City of New Haven	124
	Notes	130
	C. Decision-Making.....	132
	Nexum Development Corp. v. Planning Board of Framingham	133
	Notes and Questions	135

II.	Subdivision Controls.....	136
A.	Process	138
B.	Decision-Making.....	139
	Andrews v. Planning and Zoning Commission of the Town of Wallingford	139
	Notes and Questions	142
C.	Streets.....	144
1.	Street Design	144
	Notes and Questions	148
2.	Street Layout.....	148
3.	Street Names	151
D.	Other Infrastructure	152
III.	Site Plan Review	153
	Derry Senior Development, LLC v. Town of Derry	153
	Notes and Questions	158
IV.	Transit-Oriented Development.....	159
Chapter Four. Historic Preservation & Aesthetics		163
I.	Historic Preservation.....	163
A.	Designation.....	164
	Billy Graham Evangelistic Association v. City of Minneapolis	164
	Notes and Questions	174
B.	Regulation.....	177
	Norton v. City of Danville.....	177
	Notes and Questions	181
II.	Aesthetics	184
A.	Architectural Review	184
	Anderson v. City of Issaquah	185
	Notes and Questions	191
B.	Zoning for Aesthetics	193
1.	Authority to Regulate.....	193
	R.H. Gump Revocable Trust v. City of Wichita.....	193
	Notes and Questions	200
2.	Form-Based Code Provisions.....	202
	Note on New Urbanism.....	208
Chapter Five. Developer Challenges: State Law		211
I.	Locality Has Exceeded Its Powers	211
A.	Exercising a Power Not Delegated by the State	212
	Board of Supervisors of Augusta County. v. Countryside Investment Company, L.C.....	212
	Notes and Questions	217
B.	Exercising a Power Preempted by State Law	218
	City of Springfield v. Goff.....	218
	Wallach v. Town of Dryden	221
	Notes and Questions	228
II.	Uniformity	230
	Jachimek v. Superior Court	231

	Notes and Questions	235
III.	Vested Rights	235
	A. Establishing Vested Rights	236
	Metro. Dev. Comm'n of Marion County v. Pinnacle Media, LLC.....	236
	Geisler v. City Council of Cedar Falls	242
	Notes and Questions	245
	B. Determining the Scope of Vested Rights	247
	New Castle Investments v. City of LaCenter.....	248
	Notes and Questions	253
	C. Terminating Vested Rights	253
	Fountain Village Development Co. v. Multnomah County	254
	Notes and Questions	258
IV.	Zoning Estoppel	258
	West End Citizens Association v. District of Columbia Bd. of Zoning Adjustment.....	259
	Town of West Hartford v. Rechel	263
	Notes and Questions	267
V.	Public Policy	270
	Gangemi v. Zoning Board of Appeals of the Town of Fairfield	270
	Questions.....	274
VI.	Vagueness.....	274
	Kosalka v. Town of Georgetown.....	275
	SP Star Enterprises, Inc. v. City of Los Angeles	277
	Notes and Questions	279
	Chapter Six. Developer Challenges: Federal Law	281
I.	Takings	281
	A. Historical Background	281
	Mugler v. Kansas	281
	Pennsylvania Coal Co. v. Mahon	285
	Notes and Questions	289
	B. Theoretical Perspectives.....	290
	Notes and Questions	291
	C. <i>Penn Central</i> Balancing.....	293
	Penn Central Transportation Co. v. New York City.....	293
	Notes and Questions	304
	D. Per Se Rules	307
	Lucas v. South Carolina Coastal Council	308
	Notes and Questions	317
	Note on Judicial Takings	319
	E. Notice (and the Denominator Problem, Revisited)	320
	Palazzolo v. Rhode Island.....	320
	Notes and Questions	329
	Murr v. Wisconsin	330
	Notes and Questions	341
	F. Moratoria	343
	Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency.....	343

	Notes and Questions	354
G.	Unconstitutional Conditions: Limiting Municipal Power to Exact Benefits from Landowners	356
	Nollan v. California Coastal Commission.....	356
	Dolan v. City of Tigard.....	362
	Notes and Questions	371
	Koontz v. St. Johns River Water Management District	374
	Notes and Questions	380
H.	Remedies.....	382
	First English Evangelical Lutheran Church of Glendale v. County of Los Angeles.....	383
	Notes and Questions	390
	Problems	392
I.	Ripeness and Limitations on Access to Federal Court	393
	Knick v. Township of Scott	395
	Notes and Questions	401
J.	Property Rights Legislation	403
	Notes and Questions	405
	Question.....	407
II.	The Due Process Clause	408
	United Artists Theatre Circuit, Inc. v. Township of Warrington	409
	Notes and Questions	413
	Town of Rhine v. Bizzell	415
	Notes and Questions	421
III.	Discrimination Claims: Equal Protection and the Fair Housing Act	423
A.	Discriminatory Line-Drawing	424
	Hernandez v. City of Hanford	424
	Notes and Questions	430
	Questions	431
B.	“Class of One” Claims	431
	Village of Willowbrook v. Olech.....	432
	Loesel v. City of Frankenmuth.....	434
	Notes and Questions	442
C.	Discrimination Against Racial and Ethnic Minorities	445
	Urban Neighborhood Regeneration and the Phases of Community Evolution After World War II in the United States	445
	Village of Arlington Heights v. Metropolitan Housing Development Corp.....	447
	Notes and Questions	453
	Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.	455
	Notes and Questions	463
	Problem	467
D.	Discrimination Based on Disability	467
	Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City	469
	Notes and Questions	473

	Problems	474
	Problems	475
E.	Discrimination Based on Family Composition.....	478
	Moore v. City of East Cleveland.....	479
	Notes and Questions	483
	Problem.....	485
IV.	Free Speech Claims	485
A.	Sign Regulation.....	485
	1. The Metromedia Case	486
	2. City of Ladue v. Gilleo	487
	Reed v. Town of Gilbert	488
	Notes and Questions—Billboard Regulation.....	496
	Notes and Questions	498
B.	Adult Use Regulation.....	499
	City of Renton v. Playtime Theaters, Inc.	499
	City of Los Angeles v. Alameda Books, Inc.	502
	Notes and Questions	508
V.	Religious Freedom Claims.....	513
	Westchester Day School v. Village of Mamaroneck.....	515
	Notes and Questions	524
	Elijah Group, Inc. v. City of Leon Valley.....	528
	Notes and Questions	530
	Problem.....	533

Chapter Seven. Neighbor Challenges to Municipal Land Use

	Decisions.....	535
I.	Standing	535
	Matter of Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals	536
	Notes and Questions	539
II.	Neighbor Challenges to Zoning Amendments.....	541
A.	Conformity with a Plan	541
	Griswold v. City of Homer	542
	Notes and Questions	546
B.	Failure to Comply with Statutory Procedures	549
	Wally v. City of Kannapolis.....	549
	Notes and Questions	552
C.	Spot Zoning.....	553
	Little v. Winborn	554
	Notes and Questions	557
D.	Contract Zoning and Development Agreements	559
E.	Standard of Review	560
	1. The Traditional (and Majority) Approach	561
	DiRico v. Town of Kingston	561
	Notes and Questions	565
	2. The Change/Mistake Rule	566
	Clayman v. Prince George’s County.....	566
	Notes and Questions	569

3.	Are Zoning Amendments Legislative or “Quasi-Judicial”?	572
	Fasano v. Board of County Commissioners	572
	Notes and Questions	578
	Residential and Agricultural Advisory Committee, LLC v. Dyersville City Council	580
	Notes and Questions	585
	Problems	587
III.	Neighbor Challenges to Administrative Determinations	588
	Bontrager Auto Service, Inc. v. Iowa City Board of Adjustment	589
	Notes and Questions	598
IV.	Environmental Review	600
	Problem	603
	Chinese Staff and Workers Association v. City of New York	604
	Notes and Questions	608
	Bakersfield Citizens for Local Control v. City of Bakersfield	610
	Notes and Questions	619
	Problems	622
	Chapter Eight. Development Problems	625
	Problem One: Exurban Subdivision	625
	Problem Two: Suburban Multi-Family Housing	648
	Problem Three: Urban Redevelopment I	661
	Problem Four: Urban Redevelopment II	679
	Chapter Nine. Private Restrictions on Land Use	707
I.	Nuisance	707
II.	Covenants	708
III.	Common Interest Communities	709
A.	Creation	711
1.	Declaration	712
2.	Bylaws	713
3.	Plat Map	713
4.	Deed	713
	Notes and Questions	714
B.	Power to Change the Rules	716
	Weldy v. Northbrook Condominium Association, Inc.	717
	Notes and Questions	722
	Woodside Village Condominium Association, Inc. v. Jahren	724
	Notes and Questions	731
C.	Power to Levy Assessments	733
	Parker v. Figure “8” Beach Homeowners’ Association, Inc.	733
	Notes and Questions	736
D.	Power to Regulate Physical Features	740
1.	Promulgating New Rules	740
	Committee for a Better Twin Rivers v. Twin Rivers Homeowners’ Association	741
	Notes and Questions	749

2.	Architectural Review	750
	Valenti v. Hopkins.....	751
	Notes and Questions	755
	Note on Standard of Review More Generally	757
	Notes and Questions	758
E.	Power to Exclude.....	760
1.	Racially Restrictive Covenants	761
	Viking Properties, Inc. v. Holm.....	761
	Notes and Questions	766
2.	Fair Housing Act	767
IV.	Business Improvement Districts.....	769
	Notes and Questions.....	770
Chapter Ten. The Problem of Scale in Land Use Lawmaking		773
I.	Introduction.....	773
II.	Municipal Formation and the Fragmented Metropolis.....	777
	Notes and Questions.....	780
	Village of Barrington Hills v. Village of Hoffman Estates	782
	Notes and Questions.....	785
III.	Approaches to the Problem of Scale.....	787
A.	Getting Local Governments to Think Sublocally.....	787
	Notes and Questions	790
B.	Getting Local Governments to Think Regionally	790
1.	The California Example.....	791
	Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore.....	791
	Notes and Questions	797
2.	New Jersey's <i>Mt. Laurel</i> Doctrine.....	798
	Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mt. Laurel I)	798
	Notes and Questions	805
	Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mt. Laurel II)	806
	Notes and Questions	810
3.	Massachusetts' Anti-Snob Zoning Law.....	811
	Problem	813
	Notes and Questions	814
C.	Creating Regional Governance	815
1.	Regional Governments.....	815
2.	City-County Consolidation	816
3.	Special Use Districts	816
	Wrestling with MUDs to Pin Down the Truth About Special Districts.....	816
	Questions	817
D.	Moving to the State and Federal Levels.....	817
1.	State Land Use Regulation.....	817
	a. Hawaii	817
	b. Oregon.....	818
	Rudd v. Malheur County.....	818

	Notes and Questions	823
2.	Federal Involvement in Land Use Planning	823
	a. Coastal Zone Management Act.....	824
	b. Federal Flood Control and the National Flood Insurance Program.....	824
	c. Transportation Policy.....	825
	d. Clean Water Act	825
	e. Endangered Species Act.....	827
	f. Clean Air Act	827
	Rancho Viejo, LLC v. Norton	828
	Questions	835
E.	Land Use Law and Climate Change.....	836
	Cleveland National Forest Foundation v. San Diego Association of Governments	837
	Notes and Questions	845
	Chapter Eleven. Local Government as Market Participant.....	847
	Kelo v. City of New London.....	848
	Notes and Questions.....	856
	Centene Plaza Redevelopment Corp. v. Mint Properties	860
	Notes and Questions.....	863
	INDEX	867