

A Companion to
Bordering on Madness

A Companion to
Bordering on Madness:

An American Land Use Tale

Second Edition

Cases, Scholarship, and Case Studies

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For Howard, Sydney and Jordan; Sheila and Stu—P.E.S.

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Important Note Regarding the Scholarly Articles and Cases in This Text

To facilitate the learning task, we edited (sometimes substantially) and excerpted from the text of the cases and articles in this book. We dropped any reference to almost all concurring and dissenting opinions and, for the same reason, omitted the vast majority of references and footnotes. We recommend strongly to all readers of this Companion that they refer to the full and original text of all works reproduced both to get the complete version of both the cases and the work of the various scholars and to access the important references and commentary included in the footnotes. Citations for all cases and materials follow.

Table of Authorities

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Asimow, <i>The Failure of Due Process in Local Land Use Proceedings</i> , in <i>Due Process in Local Land Use Decision Making</i> , 29 ZONING & PLAN. L. REP. 1 (2006)	188
Asimow & Sullivan, <i>Due Process in Local Land Use Decision Making: Is the Imperfect Way of Doing Business Good Enough or Should We Radically Reform It?</i> , 29 ZONING & PLAN. L. REP. 1 (2006)	188
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Barrett, EVERYDAY ETHICS FOR PRACTICING PLANNERS (2002)	155
Barringer, <i>Battle of Neighbors' Wills in an Eco-Friendly Age</i> , INT'L HERALD TRIBUNE, Apr. 8, 2008, at 2	42
Barringer, <i>Trees Block Solar Panels, and a Feud Ends in Court</i> , N.Y. TIMES, Apr. 7, 2008, at A14	42
Bisbee, Symposium, <i>NEPA Review of Offshore Wind Farms: Ensuring Emission Reduction Benefits Outweigh Visual Impacts</i> , 31 B.C. ENVTL. AFF. L. REV. 349 (2004)	85

- Blaesser, *Eminent Domain for Private Gain? The Kelo v. City of New London Decision and Aftermath*, 57 *PLAN. & ENVTL. L.* 9 (2005) 119
- Boasberg, *Why We Landmarked the Third Church*, 6 *NORTHWEST CURRENT* 11, Feb. 6, 2008, at 11 33
- Bosselman, *Is Big LULU Back in Town? The Revitalization of Nuclear Power*, 57 *PLAN. & ENVTL. L.* 10 (2005) 72
- Brownstein, *Illicit Legislative Motive in the Municipal Land Use Regulation Process*, 57 *U. CIN. L. REV.* 1 (1988) 287
- Burke, *UNDERSTANDING THE LAW OF ZONING AND LAND USE CONTROLS* (Lexis 2002) 3
- Callies, Roberts & Freilich, *CASES AND MATERIALS ON LAND USE* (AMERICAN CASEBOOK SERIES) (Thomson-West 2007) 3
- Canan, *The SLAPP from a Sociological Perspective*, 7 *PACE ENVTL. L. REV.* 23 (1989) 173
- Canan & Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 *L. & SOC'Y REV.* 385 (1988) 173
- Cason, *Advocates Seek Approval Over Quarries*, *BIRMINGHAM NEWS* (Ala.), Feb. 4, 2008, 1A. 182
- Cherrick, *Symposium on the Regulation of Free Expression in the Public Forum: Do Communities Have the Right to Protect Homeowners from Sign Pollution? The Supreme Court Says No in Ladue v. Gilleo*, 14 *ST. LOUIS U. PUB. L. REV.* 399 (1995) 44
- Chicago O'Hare: The Political Quagmire to Expand*, 8 *WORLD AIRPORT WEEK* 27 (2001) 182
- Croghan, *Nabes vs. Developers, Woodlawn Weapon: Downzoning*, *DAILY NEWS* (N.Y.), Feb. 27, 2006, at B29 179
- Daley, *Cape Wind Proposal Clears Big Obstacle*, *BOSTON GLOBE*, Jan. 15, 2008, at A1 85
- Donsky, *Huge Project Rattles Residents; Hundreds of DeKalb Suburbanites Fear Big-City Incursion*, *ATLANTA JOURNAL-CONSTITUTION*, Aug. 24, 2007, Metro Sec. p1 (D) 182
- Doremus, *Takings and Transitions*, 19 *J. LAND USE & ENVTL. L.* 1 (2003) 299
- Eagle, *Wireless Telecommunications, Infrastructure Security, and the NIMBY Problem*, 54 *CATH. U.L. REV.* 445 (2005) 277
- Eckhoff & Merriam, *Public Use Goes Peripatetic: First, Michigan Reverses Poletown and Now the Supreme Court Grants Review in an Eminent Domain Case*, 57 *PLAN. & ENVTL. L.* 3 (2005) 208
- Ellickson & Been, *LAND USE CONTROLS: CASES AND MATERIALS* (Aspen 2005) 3
- Estes, *Top City Officials Aid Family in Zoning Bind*, *BOSTON GLOBE*, Apr. 28, 2005, at A1 13
- Fee, *The Takings Clause as a Comparative Right*, 76 *S. CAL. L. REV.* 1003 (2003) 88
- Fischel, *1999 Voting, Risk Aversion, and the NIMBY Syndrome: A Comment on Robert Nelson's "Privatizing the Neighborhood"*, 7 *GEO. MASON L. REV.* 881 (1999) 14
- Floyd, *Evolving Voices in Land Use Law: A Festschrift in Honor of Daniel R. Mandelker: Part III: Zoning Aesthetics: Chapter 5: The Takings Clause and Signs: The Takings Issue in Billboard Control*, 3 *WASH. U. J.L. & POL'Y* 357 (2000) 45
- Freyfogle, *Commentary, Private Property - Correcting the Half-Truths*, 59 *PLAN. & ENVTL. L.* 10 (2007) 6
- Freyfogle, *What is Land? A Broad Look at Private Rights and Public Power*, 58 *PLAN. & ENVTL. L.* 6 (2006) 138
- Goldfien, *Thou Shalt Love Thy Neighbor: RLUIPA and the Mediation of Religious Land Use Disputes*, 2006 *J. DISP. RESOL.* 435 (2006) 287

- Guide for Counsel in Cases to be Argued Before the Supreme Court of the United States, October 2007 Term http://www.supremecourtus.gov/oral_arguments/guideforcounsel.pdf 99
- Hall, *The Turbulent Eighth Decade: Challenges to American City Planning*, 55 J. AM. PLAN. ASS'N 275 (1989) 279
- Holman, Comment, *Zoning Amendments - The Product of Judicial or Quasi-Judicial Action*, 33 OHIO ST. L. J. 130 (1972) 201
- Hubbard, Palazzolo, Lucas, and Penn Central: *The Need for Pragmatism, Symbolism, and Ad Hoc Balancing*, 80 NEB. L. REV. 465 (2001) 88
- Hughes, *When NIMBYs Attack: The Heights to Which Communities Will Climb to Prevent the Siting of Wireless Towers*, 23 IOWA J. CORP. L. 469 (1998) 18
- Jantz, Commentary, *Nuclear Power: Locally Unwanted for Good Reason*, 57 PLAN. & ENVTL. L. 12 (2005) 77
- Johnson, *A Better SLAPP Trap: Washington State's Enhanced Statutory Protection for Targets of "Strategic Lawsuits Against Public Participation"*, 38 GONZAGA L. REV. 263 (2003) 172
- Kahneman, *The Endowment Effect, Loss Aversion, and Status Quo Bias*, J. ECON. PERSP. 193 (1991) 299
- Kent, *Construing the Canon: An Exegesis of Regulatory Takings Jurisprudence After Lingle v. Chevron*, 16 N.Y.U. ENVTL. L.J. 63 (2008) 91
- Kostelni, *City Says It Can Learn Zoning from Chicago*, PHILA. BUS. J., May 4, 2007, available at <http://www.bizjournals.com/philadelphia/stories/2007/05/07/story2.html> (last visited June 17, 2008) 300
- Kushner, *COMPARATIVE URBAN PLANNING LAW* (Carolina Academic Press 2003) 3
- Kusy & Stephenson, *Arizona Has the Distinction of Being the Only State to Pass a Regulatory Takings Ballot Initiative in November 2006*, 59 PLAN. & ENVTL. L. 1 (2007) 149
- Laitos & Schoenwald, *Airspace near Airport Runways: Private Property Rights Versus Rights of the Traveling Public*, 59 PLAN. & ENVTL. L. 9 (2007). 243
- Law of the Land: A Blog on Land Use Law and Zoning, <http://lawoftheland.albanylaw.edu> (last visited June 17, 2008) 94
- Letter to the Editor, *Feeding Program Belongs Near Businesses, Not Homes*, WASH. TIMES, Mar. 21, 1994, at C2. 369
- Lopata, *Monumental Changes: Stalling Tactics and Moratoria on Cellular Tower Citing*, 77 WASH. U. L.Q. 193 (1999) 18
- Loshin, *Property in the Horizon: The Theory and Practice of Sign and Billboard Regulation*, 30 ENVIRONS ENVTL. L. & POL'Y J. 101 (2006) 45
- Mandelker, Payne, Salsich & Stroud, *PLANNING AND CONTROL OF LAND DEVELOPMENT: CASES AND MATERIALS, SEVENTH EDITION*, (Lexis Publishing/Matthew Bender 2008). 3
- Marrazzo, *Arlington Heights Trustees Back Contentious Condo Plan*, CHICAGO TRIBUNE, Aug. 18, 2004, Northwest Final Edition, Metro p. 182
- Meck & Retzlaff, Commentary, *The Zoning Hearing Examiner: Origins, Evolution, and Status in Statutes and Case Law*, 59 PLAN. & ENVTL. L. 7 (2007) 204
- Melillo, *American U. Law School Is Vandalized; Incidents and Threat Bring Tighter Security*, WASH. POST, Jan. 16, 1996, at B1 178
- Meltz, Symposium, *Litigating Takings Law Today: A Primer for the Perplexed*, 34 ECOLOGY L.Q. 307 (2007) 91

- Mogk, Opinion and Dissent: Take a Closer Look at Recent Changes in Eminent Domain Law, 87 Mich. Bar J. 1 (2008) 208
- Negley, *Straban Planners Reject Housing Project Plan*, EVENING SUN (Hanover, Pa.), June 26, 2003, at 1 181
- Neufeld, *Georgetown Residents Denounce Power Plant*, WASH. TIMES, Sept. 17, 1991, at Metro. 360
- Nolon & Salkin, LAND USE IN A NUTSHELL (Thomson-West 2007). 3
- Nolon, Salkin & Gitelman, LAND USE AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS (Thomson-West 2007) 3
- O'Hare, "Not on My Block You Don't" - Facility Siting and the Strategic Importance of Compensation, 25 PUB. POL'Y 407 (1977) 279
- O'Neill, Note, *Wireless Facilities Are a Towering Problem: How Can Local Zoning Boards Make the Call Without Violating Section 704 of the Telecommunications Act of 1996?*, 40 WM. & MARY L.REV. 975 (1999) 18
- Office of Housing & Construction Standards, *Housing Policy and Programs: Advances and Activities Since the Provincial Commission on Housing Options: What Has Happened Since the Provincial Commission on Housing Options?*, available at <http://www.housing.gov.bc.ca/housing/PCUPDATE/> (last visited June 17, 2008) 300
- Palermo, *Progress Before Pleasure: Balancing the Competing Interests of Telecommunications Companies and Landowners in Cell Site Construction*, 16 TEMP. ENVTL. L. & TECH. J. 245 (1998). 18
- Peltier, *Speaking of Power: Nuclear Plants, Something Old Something New*, 151 POWER 9, at 4 (Sept. 2007) 71
- Phelan, *The Current Status of Historical Preservation Law in Regulatory Takings Jurisprudence: Has the Lucas "Missile" Dismantled Preservation Programs?*, 6 FORDHAM ENVTL. L. REV. 785 (1995) 294
- Popper, BORDERING ON MADNESS: AN AMERICAN LAND USE TALE (Carolina Academic Press 2008) 3, 4, 12, 66, 155, 225, 239, 258, 280, 283
- President's Commission on the Accident at Three Mile Island, *The Need for Change: The Legacy of TMI* (1979) (The Kemeny Commission Report) 71
- Pring, *SLAPPs: Strategy Lawsuits Against Public Participation*, 7 PACE ENVTL. L. REV. 3 (1989). 172
- Provincial Commission on Housing Options, *Advances and Activities Since the Provincial Commission on Housing Options: What Has Happened Since the Provincial Commission on Housing Options? April 1999*, available at <http://www.housing.gov.bc.ca/housing/PCUPDATE/> (last visited June 17, 2008) 300
- Rathkopf, THE LAW OF ZONING AND PLANNING (2d ed. 1977) 87
- Rechtschaffen & Gauna, ENVIRONMENTAL JUSTICE LAW, POLICY & REGULATION (Carolina Academic Press 2002) 3
- Richman, *Mandating Negotiations to Solve the NIMBY Problem: A Creative Regulatory Response*, 20 UCLA J. ENVTL. L. & POL'Y 223 (2001/2002) 14
- Ritzdorf, *Zoning Barriers to Housing Innovation*, 4 J. PLAN. EDUC. & RES.177 (1985) 300
- Salkin, Commentary, *Conflicts of Interest and Other Legal Ethical Consideration for Planners and Lawyers*, 57 PLAN. & ENVTL. L. 8 (2005) 159
- Salkin, *Community Benefits Agreements: Opportunities and Traps for Developers, Municipalities, and Community Organizations*, 59 PLAN. & ENVTL. L. 11 (2007). 259

- Salkin, *E.D. Missouri Finds Federal Takings Claim Precluded by State Claim*, <http://lawofftheland.wordpress.com/2008/02/08/ed-missouri-finds-federal-takings-claim-precluded-by-state-claim/> (Feb. 8, 2008). 94
- Salkin, *Examining Land Use Planning and Zoning Ethics from a Planner's Perspective: Lessons for All Stakeholders in the Real Estate Game*, 34 REAL EST. L. J. 508 (2006) 155
- Salkin, *Intersection Between Environmental Justice and Land Use Planning*, 58 PLAN. & ENVTL. L. 5 (2006) 251
- Salkin, *Municipal Regulation of Formula Businesses: Creating and Protecting Communities*, CASE WESTERN RESERVE L. REV. (forthcoming 2008) 218
- Salkin, *Supersizing Small Town America: Using Regionalism to Right-Size Big Box Retail*, 6 VT. J. ENVTL. L. 48 (2004/2005) 216
- Salkin & Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J. AFFORDABLE HOUSING L. 113 (Fall 2007/Winter 2008) 262
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- Schwartzman, *Church Awarded Landmark Status Despite Congregation's Objections of Congregants*, WASH. POST, Dec. 6, 2007 32
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- Seigle, *Foggy Bottom Feeding Frenzy Brouhaha Brews Over Church's Breakfast Program for Homeless*, WASH. TIMES, Mar. 4, 1994, at C4 361
- Seigle, *Loaves and Fishes, But None Can Eat; Church Told It Can't Feed the Homeless*, WASH. TIMES, Mar. 3, 1994, at C3. 364
- Sitkowski, *Form and Substance: What Land Use Lawyers Need to Know About Form-Based Land Development Regulations*, 30 ZONING & PLAN. L. REP. 3 (2007) 312
- Steele, *Participation and Rules - The Functions of Zoning*, 11 AM. B. FOUND. RES. J. 709 (1986) 299
- Sullivan, *Oregon's Measure 37: Crisis and Opportunity for Planning*, 57 PLAN. & ENVTL. L. 3 (2005) 146
- Sullivan, *Whatever! - Due Process in Land Use Cases: A Reply to Professor Asimow, in Due Process in Local Land Use Decision Making*, 29 ZONING & PLAN. L. REP. 1 (2006) 196
- Sullivan & Cropp, *Legislative vs. Quasi-Judicial - Deference or Defence?*, 27 ZONING & PLAN. L. REP. 9 (2004) 201
- The Limits of Eminent Domain: Kelo v. City of New London, Excerpts from the Transcript of Oral Arguments before the U.S. Supreme Court*, 57 PLAN. & ENVTL. L. 4 (2005) 100
- Van Leer, *Residents to City: Say No to Drugstore; Opponents Fear That Rezoning Would Bring More Traffic to the Winter Park Corner*, ORLANDO SENTINEL (Fla.), Aug. 24, 2000, at I1 177
- Walker, *THREE MILE ISLAND: A NUCLEAR CRISIS IN HISTORICAL PERSPECTIVE* (2004) 71
- Washtenaw County Comprehensive Plan, *Regional Public Comments on Issues & Opportunities in Washtenaw County*, http://www.ewashtenaw.org/government/departments/planning_environment/comp_plan/public_participation/SWcomments.pdf (2003). 300
- Weinstein, *Eminent Domain: Judicial and Legislative Responses to Kelo*, 58 PLAN. & ENVTL. L. 11 (2006) 115

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Western PCS BTA Corp. v. Town of Steilacoom, No. C98-5664RJB, 1999 U.S. Dist. LEXIS 9068 (W.D. Wash. Apr. 20, 1999).	15
Western Presbyterian Church v. Board of Zoning Adjustment of District of Columbia, 849 F. Supp. 77 (D.C. 1994).	331
Western Presbyterian Church v. Board of Zoning Adjustment of District of Columbia, 862 F. Supp. 538 (D.D.C. 1994).	333, 369
Westfield Partners, Ltd. v. Hogan, 740 F. Supp. 523 (N.D. Ill. 1990).	172
White Advertising Metro, Inc. v. Zoning Hearing Board of Susquehanna Township, 453 A.2d 29 (Pa. Commw. Ct. 1982).	55
Wilcox v. Superior Court, 33 Cal. Rptr. 2d 446 (Cal. Ct. App. 1994).	174
Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985).	94
Willowbrook v. Olech, 528 U.S. 562 (2000).	108

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As to the text, to streamline presentation of cases and articles, we have omitted the vast majority of the footnotes. In some instances where a note, reference or explanation was deleted, we used an ellipses (. . .) or [c] to indicate the omission. Citations for the cases and articles referred to in this COMPANION are provided in the text or in the Table of Authorities.

We wish you the very best in the study of this material.

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