Table of Contents

Volume 1

CHAPTER 1. AN OVERVIEW OF ZONING REGULATION

I. THE EVOLUTION OF THE ZONING CONCEPT

§ 1:1 Land use regulation before zoning
§ 1:2 The dawn of zoning
§ 1:3 Nature and operation of zoning ordinances—Implementation and administration
§ 1:4 —Euclidean zoning by fixed rules
§ 1:5 —Operation of zoning
§ 1:6 —Administrative and judicial review of zoning

II. NATURE OF POLICE POWER IN RELATION TO ZONING

§ 1:7 Police power of municipalities
§ 1:8 Police power in the land use context
§ 1:9 Zoning authority must be delegated
§ 1:10 When zoning procedures must be followed
§ 1:11 Zoning limited by objectives expressed in Enabling Act—Distinction between scope of police power and zoning authority
§ 1:12 —Authorized objectives and purposes of zoning

III. ZONING TODAY

§ 1:13 New zoning concepts
§ 1:14 Greater flexibility and discretion

IV. ZONING STRATEGIES, TECHNIQUES, AND TERMINOLOGY

§ 1:15 Zoning strategies
§ 1:16 —Short zoning
§ 1:17 —Exclusionary zoning
§ 1:18 —Fiscal zoning
§ 1:19 Zoning techniques
§ 1:20 —Buffer zones
§ 1:21 —Conditional zoning
§ 1:22 —Zoning with conditions
§ 1:23 —Contract zoning
§ 1:24 —Cumulative zoning
§ 1:25 —Floating zones
§ 1:26 —Holding zones
§ 1:27 —Impact zoning
§ 1:28 —Incentive zoning
§ 1:29 —Inclusionary zoning
§ 1:30 —Interim zoning
§ 1:31 —Overlay zones
§ 1:32 —Performance zoning
§ 1:33 —Transitional zones
§ 1:34 Zoning terminology
§ 1:35 —Comprehensive plan
§ 1:36 —Piecemeal rezoning
§ 1:37 —Downzoning
§ 1:38 —Upzoning
§ 1:39 —Spot zoning
§ 1:40 —Reverse spot zoning

V. RELATIONSHIP BETWEEN PLANNING AND ZONING
§ 1:41 The function of planning
§ 1:42 Zoning invalid if based on bad planning
§ 1:43 United States courts have jurisdiction to hear zoning cases

CHAPTER 2. CONSTITUTIONAL AND LEGISLATIVE LIMITATIONS ON ZONING
§ 2:1 An overview
§ 2:2 Constitutional limitations—Generally
§ 2:3 —Due process
§ 2:4 —Equal protection
§ 2:5 —Taking claims
§ 2:6 —First Amendment issues
§ 2:7 —Right to privacy
§ 2:8 —Commerce Clause

I. LEGISLATIVE LIMITATIONS
§ 2:9 Generally: Ultra vires issues

xx
CHAPTER 3. ZONING AND DUE PROCESS

I. AN OVERVIEW

§ 3:1 Substantive due process
§ 3:2 Arbitrary and unreasonable regulation
§ 3:3 Federal court decisions: "shocks the conscience" and other variations of the substantive due process standard
§ 3:4 The Supreme Court’s Lingle v. Chevron decision and substantive due process litigation

II. ZONING AS REASONABLE EXERCISE OF POLICE POWER

§ 3:5 The Village of Euclid decision
§ 3:6 Zoning by districts
§ 3:7 Zoning district exclusions
§ 3:8 Lot, setback, frontage, and height requirements
§ 3:9 Restrictions on household composition
§ 3:10 Architectural restrictions and design review
§ 3:11 Distancing requirements
§ 3:12 Miscellaneous restrictions: Fences, trailers, clotheslines, pets, and mobile homes
§ 3:13 Legitimate public purposes for regulation
III. THE REASONABLE RELATIONSHIP TEST AND ITS ZONING VARIANTS

§ 3:14 An overview
§ 3:15 Presumption of validity and judicial deference
§ 3:16 Highest and best use not required
§ 3:17 Minimum rationality and shocks the conscience standards
§ 3:18 Real and substantial relationship
§ 3:19 Unduly restrictive or excessive
§ 3:20 Balancing of interests
§ 3:21 Piecemeal rezoning
§ 3:22 Exclusionary zoning
§ 3:23 Importance of planning and supporting data

IV. ZONING UNREASONABLE AS APPLIED

§ 3:24 The Nectow decision
§ 3:25 Factors considered
§ 3:26 Ordinances held unreasonable
§ 3:27 Ordinances held reasonable

CHAPTER 4. ZONING, DISCRIMINATION, AND EQUAL PROTECTION

§ 4:1 An overview
§ 4:2 The Supreme Court’s City of Cleburne decision
§ 4:3 The Supreme Court’s Olech decision
§ 4:4 Recent post-Olech equal protection litigation
§ 4:5 Treating similar lands differently
§ 4:6 Treating similar uses differently
§ 4:7 Classifications based on identity of user
§ 4:8 Lack of statutorily required “uniformity”
§ 4:9 Permitting continuance of nonconforming uses

I. DISCRIMINATION FROM EXEMPTIONS IN ORDINANCE

§ 4:10 Exemption of similar lands or uses
§ 4:11 Exemption by filing or specified date
§ 4:12 Grant or denial of permits
§ 4:13 Selective enforcement

CHAPTER 5. PRESUMPTIONS AFFECTING AND CONSTRUCTION OF ZONING ORDINANCES

§ 5:1 An overview
I. PRESUMPTIONS AFFECTING ZONING ORDINANCES

§ 5:2 Presumption of validity doctrine—Generally explained
§ 5:3 —When not applicable
§ 5:4 Effect of presumption—Validity of zoning ordinance
§ 5:5 —Proof of invalidity
§ 5:6 Shift to municipality of burden of proof on reasonableness of zoning
§ 5:7 Zoning amendments
§ 5:8 “Fairly debatable” concept—Reasonableness of legislative judgment
§ 5:9 —Conflict in testimony

II. CONSTRUCTION OF ZONING ORDINANCES

§ 5:10 Ordinance definitions control
§ 5:11 Ordinary meaning applied
§ 5:12 Contemporaneous declarations of intent
§ 5:13 Strict construction doctrine—Construction in favor of the free use of land
§ 5:14 —Limitations on the doctrine
§ 5:15 —Restrictions not extended by implication
§ 5:16 —Jurisdictions that emphasize legislative intent
§ 5:17 —Strict construction in criminal proceedings
§ 5:18 To achieve legislative purpose—Generally
§ 5:19 —Structure of ordinance as guide
§ 5:20 —Problems not anticipated
§ 5:21 —Effect of amending ordinance
§ 5:22 Void for vagueness

CHAPTER 6. CONSTITUTIONAL TAKING CLAIMS IN LAND USE REGULATION

§ 6:1 Introduction
§ 6:2 Constitutional taking provisions

I. OVERVIEW OF TAKING CLAIMS

§ 6:3 The jurisprudential framework
§ 6:4 When regulation goes too far
§ 6:5 Arbitration/harm prevention analysis
§ 6:6 General welfare regulation and reciprocal advantage—Historical development
§ 6:7 —Relation to economically viable use
§ 6:8 —Relation to benefit-extraction analysis
§ 6:9 Tests for taking and owner’s burden in litigation
§ 6:10 Due process rationality distinguished
§ 6:11 Mere diminution in value insufficient
§ 6:12 Taking for private use

II. CONSTITUTIONAL TAKING TESTS
§ 6:13 Overview
§ 6:14 Balancing of interests
§ 6:15 Economically viable use analysis
§ 6:16 Physical occupation analysis
§ 6:17 Benefit-extraction analysis

III. BALANCING OF INTERESTS FRAMEWORK
§ 6:18 Early noxious use cases
§ 6:19 Balancing of interests analysis
§ 6:20 Modern judicial formulations
§ 6:21 Critical analytical factors
§ 6:22 Crystallization of taking analysis

IV. DENIAL OF ECONOMICALLY VIABLE USE
§ 6:23 Basic regulatory taking test
§ 6:24 Nuisance defense—Generally
§ 6:25 —Lucas clarification
§ 6:26 —Post-Lucas nuisance cases
§ 6:27 First English and normal delays—Normal delays and temporary takings
§ 6:28 —Illegal permit denial and temporary takings
§ 6:29 Investment-backed expectations—Generally
§ 6:30 —Emerging notice defense
§ 6:31 Notice as per se defense rejected
§ 6:32 Suitability for allowed uses
§ 6:33 Whole parcel analysis
§ 6:34 Lot and frontage restrictions
§ 6:35 Public or quasi-public uses
§ 6:36 Nondevelopmental uses
§ 6:37 Ecological considerations—Generally
§ 6:38 —Floodplains
§ 6:39 —Wetlands
§ 6:40 —Coastal lands
§ 6:41 —Open space
§ 6:42 —Farmlands
§ 6:43 —Water quality
§ 6:44 Transfer development rights
§ 6:45 Nonconforming uses
§ 6:46 Interim restrictions
§ 6:47 Growth management
§ 6:48 Ripeness and exhaustion of remedies
§ 6:49 Administrative relief provisions
§ 6:50 Physical occupation taking claims

V. PHYSICAL OCCUPATION CLAIMS
§ 6:51 Analysis of physical occupation claims

VI. PARTIAL BENEFIT-EXTRACTION CLAIMS
§ 6:52 Distinguishing mere diminution in value from partial takings
§ 6:53 Supporting rationale of partial taking cases
§ 6:54 Survey of successful partial benefit-extraction taking claims—Generally
§ 6:55 —Direct taking of property by development exactions, fees, or conditions—Generally
§ 6:56 ——Nollan substantial nexus test
§ 6:57 ——Dolan proportionality test
§ 6:58 ——Incentive zoning
§ 6:59 ——Development agreements
§ 6:60 ——Legislative taxes, assessments, uses, services, and impact fees
§ 6:61 ——Shifting of burdens to benefit favored persons or groups
§ 6:62 ——Burden imposed to subsidize distinct government function or enterprise
§ 6:63 ——Burdens directly benefiting neighboring owners: Reverse spot zoning
§ 6:64 ——Substantial diminution in value for social benefit and absence of reciprocal benefit
§ 6:65 ——Interference with vested rights
§ 6:66 Planning
§ 6:67 Precondemnation conduct

CHAPTER 7. FLOODPLAIN AND WETLAND REGULATION
§ 7:1 Scope of chapter

I. FLOODPLAINS AND WETLANDS GENERALLY
§ 7:2 Functions
§ 7:3 Similarity and dissimilarity of treatment
§ 7:4 Historical overview of regulation—Floodplain development controls

© 2019 Thomson Reuters, 10/2019
II. ELEMENTS OF A TYPICAL FLOODPLAIN OR WETLAND ORDINANCE

§ 7:7 Purposes
§ 7:8 Delineation
§ 7:9 Overlay zoning
§ 7:10 Limitations of application—Exemptions
§ 7:11 —Variances
§ 7:12 Special permits or exceptions

III. RELATION TO STATE AUTHORITY

§ 7:13 Interrelationship of legislation
§ 7:14 Enablement of local zoning
§ 7:15 Preemption
§ 7:16 State floodplain regulation
§ 7:17 State wetland regulation—Development of state laws
§ 7:18 —Relation of states to federal clean water act
§ 7:19 —State coastal and inland wetlands laws and cases

IV. RELATION OF ZONING CONTROLS TO OTHER LOCAL REGULATION

§ 7:20 Zoning versus nonzoning controls
§ 7:21 Health controls
§ 7:22 Subdivision controls
§ 7:23 Building codes

V. RELATION TO FEDERAL LAWS

A. FLOODPLAIN REGULATION

§ 7:24 National Flood Insurance Program—History of NFIP
§ 7:25 —Relation to local zoning controls
§ 7:26 —Structure of NFIP
§ 7:27 —Key NFIP regulations
§ 7:28 —Enforcement
§ 7:29 —Legal decisions under NFIP
§ 7:30 —Implications for local controls
§ 7:31 —Developments during the 1990s

B. WETLAND REGULATION

§ 7:32 The Section 404 program—Development of the law

xxvi
TABLE OF CONTENTS

§ 7:33 The Section 404 program—The B-1 guidelines and the EPA veto power
§ 7:34 —Limitations on the Section 404 program
§ 7:35 —Nationwide permits
§ 7:36 —Exemptions
§ 7:37 —Delegation
§ 7:38 —Mitigation of impacts
§ 7:39 —Linkage of Section 404 to other environmental laws
§ 7:40 —Citizen suits under Section 404
§ 7:41 —The “taking” issue and the navigational servitude
§ 7:42 Coastal Zone Management Act and Coastal Barrier Resources Act

VI. LEGAL RESPONSE TO FLOODPLAIN AND WETLAND REGULATION

§ 7:43 Taking issue—Development of legal theory
§ 7:44 —Key tests—Was a permit sought?
§ 7:45 ——Is a reasonable economic use allowed?
§ 7:46 ——What were the owner’s investment-backed expectations?
§ 7:47 ——How reasonable is the regulation?
§ 7:48 ——Do the “nuisance” or “title” exceptions to the Lucas rule apply?
§ 7:49 —Summary
§ 7:50 Public trust doctrine
§ 7:51 Due process
§ 7:52 Equal protection

CHAPTER 8. MUNICIPAL REGULATION OF HAZARDOUS SUBSTANCES, AND PROTECTION OF GROUNDWATER

§ 8:1 Scope of chapter

I. MAGNITUDE OF HAZARDOUS WASTE PROBLEM

§ 8:2 Definition and sources of hazardous waste
§ 8:3 Risks to local communities
§ 8:4 —Groundwater and soil contamination
§ 8:5 —Health risks
§ 8:6 —Resource use loss
§ 8:7 Waste reduction strategies and incentives
§ 8:8 Environmental justice
II. COMMON LAW REMEDIES

A. THEORIES OF RELIEF; NUISANCE
§ 8:9 Municipal suits against private entities—Common law public nuisance
§ 8:10 —Statutory public nuisance
§ 8:11 Municipal liability—Public nuisance
§ 8:12 —Private nuisance
§ 8:13 Strict liability
§ 8:14 Trespass, negligence, and other theories of relief

B. DEFENSES TO LIABILITY
§ 8:15 Legislative authorization—Compliance with federal or state regulatory legislation
§ 8:16 —Compliance with local zoning laws
§ 8:17 Sovereign immunity
§ 8:18 Preclusion of remedies

C. REMEDIES
§ 8:19 Injunctive relief—Prerequisites
§ 8:20 —Forms of injunctive relief
§ 8:21 Damages

III. FEDERAL REGULATION OF HAZARDOUS SUBSTANCES AND LOCAL ROLE

§ 8:22 Resource Conservation and Recovery Act—Purpose of regulation
§ 8:23 —Structure of regulation
§ 8:24 —State and local preemption
§ 8:25 —Citizen suits—Local government defendants
§ 8:26 — —Local government plaintiffs
§ 8:27 —Imminent hazards—Local government defendants
§ 8:28 — —Local government plaintiffs
§ 8:29 Comprehensive Environmental Response, Compensation, and Liability Act (“Superfund”— Purpose and preemptive effect of CERCLA
§ 8:30 —Functions of the Hazardous Substance Superfund

A. MUNICIPAL LIABILITY
§ 8:31 Section 107 cost recovery actions—CERCLA’s standard of liability
§ 8:32 —Municipal liability for site ownership or operation
§ 8:33 —Municipal liability for arrangement for disposal or transportation of hazardous substances
TABLE OF CONTENTS

§ 8:34 —Suits by private persons
§ 8:35 Section 106 abatement actions
§ 8:36 Defenses to liability

B. MUNICIPAL CLEANUP AND RECOVERY RIGHTS

§ 8:37 Participation in NCP cleanups
§ 8:38 Claims against the fund
§ 8:39 Section 107 cost recovery actions
§ 8:40 Cleanup standards

C. OTHER FEDERAL LAWS AND PROGRAMS

§ 8:41 Safe Drinking Water Act—National drinking water regulations
§ 8:42 —Underground injection control
§ 8:43 —Sole source aquifer protection
§ 8:44 —Wellhead protection areas
§ 8:45 —Source water quality assessment
§ 8:46 —Citizen suits
§ 8:47 Toxic Substances Control Act
§ 8:48 Clean Water Act
§ 8:49 EPA groundwater protection strategy
§ 8:50 Clean Air Act
§ 8:51 Nuclear waste disposal legislation
§ 8:52 Information disclosure: emergency planning and community right-to-know
§ 8:53 Municipal regulation of hazardous waste facilities
§ 8:54 —Classification of TSD facilities
§ 8:55 —Performance zoning
§ 8:56 ——Aquifer protection zoning
§ 8:57 ——Legal challenges to aquifer protection ordinances
§ 8:58 ——Vested rights
§ 8:59 —Exclusion of TSD facilities from a community
§ 8:60 —Municipal protection of land surrounding TSD facilities

IV. STATE SITING LEGISLATION

§ 8:61 Background: the NIMBY problem
§ 8:62 Power to preempt
§ 8:63 Exercise of the power to preempt
§ 8:64 Preemption with incorporation of local land use policies
§ 8:65 Preemption with planning
§ 8:66 Preemption with compensation

CHAPTER 9. STATE ENVIRONMENTAL IMPACT REVIEW

I. INTRODUCTION
§ 9:1 Overview
§ 9:2 Purposes and policies

II. FEDERAL LAW CONSIDERATIONS
§ 9:3 National Environmental Policy Act (NEPA)—Applicability to State Environmental Policy Acts (SEPAs)
§ 9:4 National Environmental Policy Act (NEPA)—Submission of federal Environmental Impact Statement (EIS) in lieu of state EIS
§ 9:5 Constitutional dimensions

III. SEPA PROCESS
§ 9:6 In general; Determining significance
§ 9:7 Review, notice, circulation, comment
§ 9:8 Precommitment
§ 9:9 Supplementing the EIS

IV. SEPA REQUIREMENTS
§ 9:10 Non-EIS
§ 9:11 EIS—In general
§ 9:12 —Parties who must comply
§ 9:13 —Who prepares and pays for the statement

V. THE EIS: SCOPE AND SUFFICIENCY
§ 9:14 Adequacy
§ 9:15 Adequate EIS: Elements to include

VI. WHEN AN EIS MUST BE PREPARED
§ 9:16 In general
§ 9:17 Exceptions and exemptions; EIS not required—Grandfathering
§ 9:18 —Project modification
§ 9:19 —Segmentation
§ 9:20 —Negative declarations and little FONSIs
§ 9:21 —Exemptions

xxx
TABLE OF CONTENTS

§ 9:22 Projects requiring EIS—Major developments or actions
§ 9:23 —Discretionary actions
§ 9:24 —Actions with significant environmental impact
§ 9:25 —Projects affecting socioeconomic values
§ 9:26 Prior to appropriations or fund allocations
§ 9:27 Integrated or separate actions
§ 9:28 Burden of proof
§ 9:29 Procedural obligations: Agency consideration of impacts; formal findings

VII. SUBSTANTIVE IMPACTS ON POWERS AND LAWS

§ 9:30 Agency decision making authority
§ 9:31 Effect on local land use regulation
§ 9:32 Effect on other laws
§ 9:33 Mitigation powers: A special issue

VIII. JUDICIAL REVIEW

§ 9:34 Standing and threshold issues
§ 9:35 Statutes of limitations and timing
§ 9:36 Standard of review
§ 9:37 Relief
§ 9:38 Litigating SEPA claims
§ 9:39 Evaluating SEPA claims

CHAPTER 10. ZONING DISTRICTS

I. THEORY OF DISTRICTING

§ 10:1 Separation of incompatible uses
§ 10:2 Euclidean zoning
§ 10:3 Special zoning, overlay, and planned development districts
§ 10:4 Requirement of zoning districts
§ 10:5 Relationship between districts and the comprehensive plan
§ 10:6 Distinctions in zoning district boundaries
§ 10:7 Determining zoning district boundaries

II. BUFFER ZONES AND TRANSITIONAL ZONING

§ 10:8 Buffer zones
§ 10:9 Transitional zoning
§ 10:10 Buffer strips

© 2019 Thomson Reuters, 10/2019
III. DESIGNATING DISTRICT BOUNDARIES

§ 10:11 Generally
§ 10:12 Zoning districts and legislative discretion
§ 10:13 Advantages and use of zoning map
§ 10:14 Zoning map typically controls
§ 10:15 When zoning applied despite map
§ 10:16 Aids to construction of map
§ 10:17 Authority for construction of zoning map
§ 10:18 Necessity of clarity

IV. SELECTING THE LOCATION OF BOUNDARY LINES

§ 10:19 Generally
§ 10:20 Streets and highways
§ 10:21 Railroads
§ 10:22 Rivers, streams, and shorelines

V. CONSEQUENCES OF ESTABLISHMENT OF DISTRICTS

§ 10:23 Neighbor’s greener pasture lawsuits
§ 10:24 Property in one ownership—Two districts—Generally
§ 10:25 —Two lots in two districts—Restrictions on use of adjacent lot
§ 10:26 ——Unreasonable as applied: Owner’s greener pasture
§ 10:27 —One lot in two districts: The split lot
§ 10:28 —One lot in two municipalities
§ 10:29 Relief in split-lot situation—Special exception
§ 10:30 —Necessity of hardship
§ 10:31 —Necessity of standards

CHAPTER 11. SPECIAL ZONING DISTRICTS AND DISCRETIONARY DEVELOPMENT REVIEW

§ 11:1 An overview

I. BEYOND TRADITIONAL ZONING DISTRICTS

§ 11:2 Evolution of Euclidean zoning
§ 11:3 Number and type of district classifications
§ 11:4 Zoning and discretionary review—Adequate standards for decision
§ 11:5 —Zoning districts and discretionary review
II. PROLIFERATION OF ZONING CLASSIFICATIONS AND SPECIAL DISTRICTS

§ 11:7 New encyclopedia of classifications
§ 11:8 Special zoning districts—Utilization of special districts
§ 11:9 —Special area protection districts
§ 11:10 —Special purpose development districts
§ 11:11 —Special development review districts
§ 11:12 —Special mixed-use districts
§ 11:13 Special state created districts

III. VALIDITY OF SPECIAL DISTRICTS AND CLASSIFICATIONS

§ 11:14 Authority to establish
§ 11:15 Delegation of powers
§ 11:16 Uniformity requirement
§ 11:17 Legitimate public purpose
§ 11:18 Unreasonable as applied
§ 11:19 Invalid spot zoning
§ 11:20 Reverse spot zoning
§ 11:21 Taking claims

CHAPTER 12. ENACTMENT OF ZONING ORDINANCES: STATUTORY REFERRAL, NOTICE, HEARING MEETING, AND PUBLICATION REQUIREMENTS

§ 12:1 Compliance with statutory zoning procedures

I. REFERRAL REQUIREMENTS

§ 12:2 Zoning commission
§ 12:3 Planning commission
§ 12:4 Regional authority

II. NOTICE OF PROPOSED ORDINANCE

§ 12:5 Generally
§ 12:6 Time to get ready
§ 12:7 Adequacy of notice—Generally
§ 12:8 —Notice in English only
§ 12:9 —Notice held inadequate
III. NOTICE AND LATER CHANGES IN PROPOSED ORDINANCE

§ 12:12 Notice of nature of proposed zoning
§ 12:13 New notice if substantial change from proposed zoning
§ 12:14 Changes from proposed zoning upheld
§ 12:15 Changes from proposed zoning held invalid

IV. NOTICE AND LATER CHANGES IN PROPOSED COMPREHENSIVE REVISION

§ 12:16 New notice may not be required
§ 12:17 Prior notice held sufficient
§ 12:18 Who may complain of later changes

V. TIME AND MANNER OF NOTICE

§ 12:19 Time for notice
§ 12:20 Publication of notice
§ 12:21 Informal or alternative compliance
§ 12:22 Posted signs on land
§ 12:23 Personal notice
§ 12:24 Adjourned meetings and hearings

VI. NOTICE OF PROPERTY AND BOUNDARIES

§ 12:25 Generally
§ 12:26 Description of property
§ 12:27 Identification of boundaries
§ 12:28 Notice to adjoining municipalities and public agencies
§ 12:29 Lapse of time between hearing and enactment
§ 12:30 Waiver of notice defects by appearance at hearing

VII. WHAT CONSTITUTES FAIR PUBLIC HEARING

§ 12:31 Generally
§ 12:32 Hostile opposition
§ 12:33 Inadequate hearing room
§ 12:34 Manner in which hearing conducted—Consideration on merits
§ 12:35 —Testimony and evidence
§ 12:36 —Cross-examination
§ 12:37 —Separation of functions
TABLE OF CONTENTS

§ 12:38 Compliance with open meeting laws

VIII. PROCEDURES ESSENTIAL TO VALIDITY AFTER ENACTMENT

§ 12:39 Generally
§ 12:40 Filing, publication, and posting
§ 12:41 Filing and publication of maps
§ 12:42 Sufficiency of filing, publication, and posting

IX. PRESUMPTION OF COMPLIANCE AND ESTOPPEL AFTER LAPSE OF TIME

§ 12:43 Generally
§ 12:44 Estoppel applied
§ 12:45 Estoppel denied

CHAPTER 13. INTERIM ZONING AND BUILDING MORATORIA

I. INTRODUCTION AND EXPLANATION OF TERMS

§ 13:1 An overview
§ 13:2 Interim zoning
§ 13:3 Building moratoria
§ 13:4 Related zoning strategies—Holding zones
§ 13:5 —Land banking or short zoning
§ 13:6 —Temporary or conditional zoning

II. BASIS FOR INTERIM CONTROLS

§ 13:7 Need for comprehensive planning
§ 13:8 Maintenance of status quo pending decision
§ 13:9 Problems related to public services

III. AUTHORITY FOR ENACTMENT

§ 13:10 In absence of specific statutory authority
§ 13:11 Express statutory authority
§ 13:12 Procedural defects
§ 13:13 Reasonableness of interim restrictions
§ 13:14 Reasonable time period
§ 13:15 Building permits and vested rights
§ 13:16 Mootness

IV. REGULATORY TAKING CLAIMS

§ 13:17 Temporary takings

© 2019 Thomson Reuters, 10/2019
§ 13:18 Nuisance justification
§ 13:19 Exemption and other relief provisions

CHAPTER 14. COMPREHENSIVE PLANS AND THE CONSISTENCY DOCTRINE
§ 14:1 Overview

I. BACKGROUND
§ 14:2 Historical background
§ 14:3 Model land development code

II. PURPOSE OF REQUIREMENT
§ 14:4 Generally
§ 14:5 Constitutional dimensions: due process and equal protection
§ 14:6 Procedural dimensions: representation, notice, and hearing

III. WHAT IS A COMPREHENSIVE PLAN?
§ 14:7 The meaning of “comprehensive”
§ 14:8 Separate document
§ 14:9 Initiatives and referenda
§ 14:10 Adequacy of plan as a separate issue
§ 14:11 —Is there evidence of a plan and its mandated elements
§ 14:12 —Is there evidence that the elements meet legislatively created standards
§ 14:13 —Is there evidence of internal consistency
§ 14:14 Interim zoning
§ 14:15 Timing of application of consistency requirement

IV. PLANNING AND DECISION-MAKING
§ 14:16 Three statutory approaches
§ 14:17 “Consistency” requirements
§ 14:18 Binding nature of plans in “in accordance with” jurisdictions
§ 14:19 Binding nature of plans in “consistency” jurisdictions
§ 14:20 Remedies for failure to follow plan
§ 14:21 Comprehensive plan designations as takings

V. STATEWIDE AND REGIONAL CONSIDERATIONS
§ 14:22 Mandated consistency with statewide or regional plans—and variations
VI. LITIGATION REQUIREMENTS

§ 14:25 Variation in judicial review standards
§ 14:26 Requirement of findings
§ 14:27 Standing
§ 14:28 Decisions other than zoning classifications
§ 14:29 —Special or conditional use permits
§ 14:30 —Specific plans, private development plans, other
   plans within the planning law hierarchy
§ 14:31 —Floating zones
§ 14:32 —Public works projects
§ 14:33 Spot planning

Volume 2

CHAPTER 15. GROWTH MANAGEMENT

I. INTRODUCTION

§ 15:1 Definition and context
§ 15:2 Overview of techniques and strategies

II. BASIS FOR GROWTH MANAGEMENT POWERS

§ 15:3 History of growth management
§ 15:4 Capital improvement programming
§ 15:5 Federal programs

III. STATE PROGRAMS

§ 15:6 Enabling legislation and initiatives
§ 15:7 Oregon
§ 15:8 Washington
§ 15:9 Hawaii
§ 15:10 Vermont

IV. LOCAL PROGRAMS

§ 15:11 Montgomery County, Maryland

V. CORRIDOR PRESERVATION AND COMPREHENSIVE PLANNING

§ 15:12 Official map act

© 2019 Thomson Reuters, 10/2019
§ 15:13 Consistency with the comprehensive plan

VI. SMART GROWTH, ANTI-SPRAWL AND GREEN BUILDING

§ 15:14 Anti-sprawl and smart growth

VII. LEGAL CHALLENGES

§ 15:15 Legal challenges—Overview

VIII. MITIGATING IMPACTS OF GROWTH MANAGEMENT

§ 15:16 Affordability

CHAPTER 16. AESTHETICS AND LAND USE REGULATION

§ 16:1 An overview

I. AESTHETICS AND LAND USE CONTROLS

§ 16:2 Development of aesthetic doctrine in land use regulation
§ 16:3 Early-period doctrine: aesthetics not permitted
§ 16:4 Middle-period doctrine: aesthetics linked with other public purposes
§ 16:5 Modern-period doctrine: aesthetics alone
§ 16:6 Limitations on aesthetic regulation—Limiting the scope of regulation to preserving a specific visual context
§ 16:7 —Aesthetics and derivative human values: The modern harm-prevention or associational dissonance rationale
§ 16:8 —A proposed reformulation of standards for judicial review
§ 16:9 Regulation that seeks to promote visual beauty apart from any existing visual context—Problematic issues of reasonableness
§ 16:10 —Design review and visual preference surveys
§ 16:11 —Landscape requirements and vegetation
§ 16:12 —Public art impact fees

II. UNREASONABLE AS APPLIED

§ 16:13 Generally
§ 16:14 Unreasonable as a taking
III. SPECIFIC SUBJECTS OF AESTHETIC REGULATION

§ 16:17 Architectural design and appearance
§ 16:18 Junkyards
§ 16:19 Cars, recreational vehicles, and trailers
§ 16:20 Fences

CHAPTER 17. REGULATION OF SIGNS AND BILLBOARDS

§ 17:1 An overview
§ 17:2 Aesthetic considerations
§ 17:3 Definition of “sign”
§ 17:4 Synopsis of legal and drafting guidelines
§ 17:5 Summary of Supreme Court decisions
§ 17:6 Deference to legislative judgment

I. CONTENT-NEUTRALITY REQUIREMENT

§ 17:7 Generally required
§ 17:8 Viewpoint-neutral ordinances

II. FIRST AMENDMENT VALIDITY

§ 17:9 Commercial signs—Generally
§ 17:10 —Guiding principles
§ 17:11 —Total bans
§ 17:12 —Size, type, and manner restrictions
§ 17:13 Noncommercial signs—Generally
§ 17:14 —Guiding principles
§ 17:15 —Total bans
§ 17:16 —Size, type, and manner restrictions
§ 17:17 Distinctions in signs regulated—Generally
§ 17:18 —Commercial vs. noncommercial
§ 17:19 —Off-site vs. on-site signs
§ 17:20 —Portable vs. permanent signs
§ 17:21 Time restrictions
§ 17:22 Inspection and removal fees
§ 17:23 Removal, amortization, and taking claims
§ 17:24 Advertising of alcoholic beverages and tobacco products: The protection of children
CHAPTER 18. NEWS-RELATED USES AND THE FIRST AMENDMENT

§ 18:1 Overview

I. REGULATION OF NEWSRACKS

§ 18:2 Generally
§ 18:3 Public purposes
§ 18:4 Standards for validity—Generally
§ 18:5 —Public forum
§ 18:6 —Nonpublic forum
§ 18:7 —Privately owned areas
§ 18:8 —Content-neutral regulation
§ 18:9 —Content-based regulation of commercial
§ 18:10 —Content-based regulation of sexually explicit materials
§ 18:11 Challenges—Generally
§ 18:12 —Discretion
§ 18:13 —Disparate treatment of newsracks
§ 18:14 —Total bans
§ 18:15 License fees and insurance

II. REGULATION OF NEWSSTANDS

§ 18:16 Regulation of newsstands

CHAPTER 19. HISTORIC PRESERVATION LAW

I. OVERVIEW

§ 19:1 Introduction
§ 19:2 History of preservation and preservation law
§ 19:3 Rationales for preservation and preservation law

II. DESIGNATION

§ 19:4 Generally
§ 19:5 Types of designation-eligible properties
§ 19:6 Process—Generally
§ 19:7 —Owner acquiescence
§ 19:8 Standards for designation
§ 19:9 State designation
§ 19:10 Local designation
§ 19:11 Protection of individual landmarks
### Table of Contents

§ 19:12 Standards for de-listing

### III. LOCAL REGULATION

§ 19:13 Overview
§ 19:14 Evolution with zoning regulation
§ 19:15 State enabling legislation
§ 19:16 Regulatory bodies
§ 19:17 Compatibility and appropriateness
§ 19:18 Regulation of demolition, alteration, and new construction
§ 19:19 Affirmative maintenance
§ 19:20 Regulating nonhistoric buildings
§ 19:21 Regulating accessory buildings and landscapes
§ 19:22 Regulating publicly owned property
§ 19:23 Regulating interiors

### IV. CONSTITUTIONAL CONSTRAINTS ON LOCAL REGULATION

§ 19:24 Generally
§ 19:25 Due Process
§ 19:26 Takings—Generally
§ 19:27 —Eminent domain
§ 19:28 —The *Penn Central* framework
§ 19:29 —The aftermath of *Penn Central*
§ 19:30 —Local government strategies
§ 19:31 First Amendment—Religious rights
§ 19:32 —Free speech

### V. FEDERAL PRESERVATION LAWS

§ 19:33 Generally
§ 19:34 Antiquities Act and Archeological Resources Protection Act
§ 19:35 Historic Sites Act
§ 19:36 National Historic Preservation Act
§ 19:37 —Section 106 Process
§ 19:38 —Section 106—Applicability
§ 19:39 — —Undertakings
§ 19:40 — —Alternative compliance
§ 19:41 —Section 110
§ 19:42 National Environmental Policy Act
§ 19:43 Section 4(f) of the Department of Transportation Act
§ 19:44 Native American Graves Protection and Repatriation Act

© 2019 Thomson Reuters, 10/2019
§ 19:45 Abandoned Shipwreck Act

VI. STATE PRESERVATION LAWS
§ 19:46 Generally
§ 19:47 State environmental policy acts
§ 19:48 State constitutions and environmental policy
§ 19:49 State comprehensive planning laws

VII. TAX INCENTIVES
§ 19:50 Federal tax incentives
§ 19:51 State financial incentives

CHAPTER 20. TREE AND VEGETATION PROTECTION

I. OVERVIEW
§ 20:1 Generally

II. GENERAL VALIDITY OF LOCAL TREE AND VEGETATION CONSERVATION ORDINANCES
§ 20:2 Generally

A. PUBLIC PURPOSE
§ 20:3 Generally
§ 20:4 Visual and aesthetic values—Beauty and appearance
§ 20:5 —Scale/livability
§ 20:6 —Creating special places/distinct identity
§ 20:7 Environmental values
§ 20:8 —Soil erosion control and control of soil and water pollution
§ 20:9 —Air pollution
§ 20:10 —Climate moderation/energy conservation
§ 20:11 —Noise buffers
§ 20:12 —Water conservation
§ 20:13 —Wildlife habitats and ecosystem protection
§ 20:14 Health benefits
§ 20:15 Economic values
§ 20:16 —Real estate values
§ 20:17 —Community-wide economic impact

B. ENABLING AUTHORITY
§ 20:18 Specific enabling legislation
III. TYPES OF PROPERTY AND ACTIVITIES SUBJECT TO CONTROL

§ 20:22 Generally

A. TYPES OF PROPERTY SUBJECT TO CONTROL

§ 20:23 Specimen and special trees
§ 20:24 Size
§ 20:25 Species
§ 20:26 Historical associations
§ 20:27 Woodland protection/tree cover
§ 20:28 Distance/buffer requirements
§ 20:29 Special area protection

B. PRIVATE ACTIVITIES SUBJECT TO CONTROL

§ 20:30 Development activity
§ 20:31 Pruning
§ 20:32 Afforestation
§ 20:33 Construction protection measures
§ 20:34 —Impact injuries/accidental cutting
§ 20:35 —Excavation
§ 20:36 —Grade changes
§ 20:37 —Other construction hazards
§ 20:38 —Construction monitoring
§ 20:39 Maintenance after development

C. PUBLIC AGENCIES

§ 20:40 Generally
§ 20:41 Local agencies
§ 20:42 State agencies
§ 20:43 Federal agencies
§ 20:44 —National Environmental Policy Act
§ 20:45 —Department of Transportation Act
§ 20:46 —Section 102 of the Intermodal Surface Transportation Act
§ 20:47 —Section 404 of the Clean Water Act
§ 20:48 —Endangered Species Act
D. PUBLIC UTILITIES
§ 20:49 Generally

E. EXEMPTIONS
§ 20:50 Generally
§ 20:51 Residential
§ 20:52 Agricultural/commercial forestry/nursery operations
§ 20:53 Parcel size
§ 20:54 Special features & developed parcels
§ 20:55 Diseased/dangerous trees and other emergencies

IV. STANDARDS FOR PERMIT REVIEWS
§ 20:56 In general
§ 20:57 Validity
§ 20:58 Local examples
§ 20:59 —Permit/plan review standards
§ 20:60 —Replacement/mitigation standards
§ 20:61 Economic considerations
§ 20:62 Standards and the flexibility issue

V. THE TAKING ISSUE
§ 20:63 In general
§ 20:64 Regulatory takings
§ 20:65 —Early regulatory takings cases
§ 20:66 —Modern regulatory takings cases
§ 20:67 Exactions

VI. ENFORCEMENT
§ 20:68 Generally
§ 20:69 Who enforces
§ 20:70 Fines and penalties
§ 20:71 Securities & certificates of occupancy
§ 20:72 Other administrative measures

VII. COMPLEMENTS TO REGULATION
§ 20:73 Generally
§ 20:74 Incentives
§ 20:75 —Landscaping requirements
§ 20:76 —Land use regulatory incentives
§ 20:77 “Compensation” mechanisms
§ 20:78 —Differential assessment
CHAPTER 21. WILDLIFE PROTECTION

I. OVERVIEW

§ 21:1 Structure of this chapter
§ 21:2 Growing interest in wildlife protection
§ 21:3 Defining wildlife protection
§ 21:4 The various threats to wildlife
§ 21:5 Shift toward increased reliance on local initiatives
§ 21:6 Changing role of the federal government
§ 21:7 More expansive exercise of local land use control
§ 21:8 Shift toward comprehensive, ecosystem-wide approach

II. GENERAL VALIDITY OF WILDLIFE PROTECTION LAWS

§ 21:9 Overview

A. PUBLIC PURPOSE

§ 21:10 Generally
§ 21:11 Environmental purposes
§ 21:12 Economic importance
§ 21:13 Aesthetic resources
§ 21:14 General welfare

B. ENABLING AUTHORITY

§ 21:15 Federal enabling authority
§ 21:16 —Treaty power
§ 21:17 —Property power
§ 21:18 —Commerce power
§ 21:19 —Power to tax and spend
§ 21:20 State enabling authority
§ 21:21 Local enabling authority
§ 21:22 —Specific statutory authorizations
§ 21:23 —Statutory planning, zoning, and subdivision authority
§ 21:24 —Statutory authority for intergovernmental agreements
§ 21:25 —Home rule/charter authority
III. CONSTITUTIONAL LIMITATIONS ON WILDLIFE PROTECTION LAWS

§ 21:26 Generally
§ 21:27 Due process
§ 21:28 Taking of private property
§ 21:29 —Regulatory takings
§ 21:30 —Exactions
§ 21:31 Equal protection

IV. FEDERAL ROLE IN PRESERVATION WILDLIFE HABITAT

§ 21:32 Generally
§ 21:33 Wildlife protection laws
§ 21:34 —Endangered Species Act—Overview: Sections 9 and 7
§ 21:35 — —Habitat conservation plans: Section 10
§ 21:36 —Lacey Act
§ 21:37 —Other major federal wildlife laws
§ 21:38 Acquisition and designation programs for wildlife habitat
§ 21:39 Pollution prevention laws that protect wildlife—Clean Water Act & Clean Air Act
§ 21:40 —National estuary program
§ 21:41 National Environmental Policy Act
§ 21:42 Miscellaneous federal agency programs and policies—U.S. Fish & Wildlife Service
§ 21:43 —U.S. Forest Service
§ 21:44 —Bureau of Land Management
§ 21:45 —National Park Service

V. STATE ROLE IN PRESERVING WILDLIFE HABITAT

§ 21:46 Generally
§ 21:47 Endangered species protection programs
§ 21:48 Habitat acquisition programs
§ 21:49 Land use planning/growth management legislation
§ 21:50 State environmental policy acts
§ 21:51 State programs to support private conservation efforts
§ 21:52 Limitations on wildlife protection: State takings legislation

xlvi
VI. LOCAL ROLE IN PRESERVING WILDLIFE HABITAT

A. REGULATORY TOOLS

§ 21:53 Generally
§ 21:54 Zoning
§ 21:55 —Use restrictions
§ 21:56 —Density restrictions
§ 21:57 —Tree protection and vegetation management
§ 21:58 —River corridor and watershed protection standards
§ 21:59 —Requirements for vegetative barriers or buffer areas
§ 21:60 —Controls on fencing
§ 21:61 —Controls on public or vehicular access
§ 21:62 —Other development standards
§ 21:63 —Phasing of development
§ 21:64 —Controls on construction activity
§ 21:65 Integrated approaches
§ 21:66 —Agricultural and open space zoning
§ 21:67 —Performance zoning
§ 21:68 —Overlay districts
§ 21:69 —Sensitive lands
§ 21:70 —Wildlife corridors
§ 21:71 Subdivision regulation
§ 21:72 Growth management techniques
§ 21:73 —Urban growth boundaries
§ 21:74 —Targeted growth strategies

B. INCENTIVES AND OTHER NONREGULATORY TOOLS

§ 21:75 Capital improvements programming
§ 21:76 Incentives
§ 21:77 —Density bonuses
§ 21:78 —Clustering
§ 21:79 —Transferable development rights
§ 21:80 Grants and loans
§ 21:81 Acquisition programs
§ 21:82 —Fee simple purchase
§ 21:83 —Integration into park and open space purchase programs
§ 21:84 —Sellbacks and leasebacks
§ 21:85 —Easements and purchases of development rights
§ 21:86 Land dedications and impact fees
§ 21:87 Taxing and assessment districts
CHAPTER 22. EXCLUSIONARY ZONING

I. FACTORS DETERMINING VALIDITY OF EXCLUSIONARY ZONING PRACTICES

§ 22:2 Type of use excluded—Commercial uses
§ 22:3 —Residential uses
§ 22:4 Rationale for exclusion and a 21st century critique
§ 22:5 Rationale behind zoning ordinance—Presumption of validity
§ 22:6 Exclusionary techniques

II. CONSTITUTIONALLY PROTECTED USES

§ 22:7 In general
§ 22:8 Specific uses—Signs and billboards
§ 22:9 —Adult businesses
§ 22:10 —Churches

III. STATE REGULATED USES

§ 22:11 In general
§ 22:12 Specific uses—Group homes
§ 22:13 —Abortion clinics
§ 22:14 —Waste disposal sites
§ 22:15 —Schools

IV. “FAIR SHARE” DOCTRINE

§ 22:16 In general

A. LEADING STATE APPROACHES

§ 22:17 New Jersey—Mount Laurel doctrine
§ 22:18 Pennsylvania
§ 22:19 New York
§ 22:20 California
§ 22:21 Connecticut
§ 22:22 Rhode Island
§ 22:23 Massachusetts
§ 22:24 Michigan

V. REMEDIES FOR EXCLUSIONARY ZONING

§ 22:25 Site-specific relief

xlviii
CHAPTER 23. RESIDENTIAL USES: SINGLE-FAMILY ZONING, GROUP HOMES, AGE RESTRICTIONS

I. INTRODUCTION TO SINGLE-FAMILY ZONING

§ 23:1 Overview
§ 23:2 Traditional rationale for single-family zoning

II. SHARING IN SINGLE-FAMILY ZONES

§ 23:3 Overview
§ 23:4 Rationale for sharing in single-family zones
§ 23:5 Types of sharing
§ 23:6 Regulation of shared residential uses
§ 23:7 Due process and equal protection claims

III. THE DEFINITION OF “FAMILY”

§ 23:8 Historical background
§ 23:9 Judicially supplied definitions—Generally
§ 23:10 —Particular groups as “family”—Group rentals
§ 23:11 ——Boarders
§ 23:12 ——Fraternities and sororities
§ 23:13 ——Time sharing
§ 23:14 Family defined as “housekeeping unit”—Generally
§ 23:15 —Characteristics of housekeeping unit—Functional family limitation
§ 23:16 — Addition of second kitchen
§ 23:17 Modern functional family definitions

IV. VALIDITY OF “FAMILY” DEFINITIONS

§ 23:18 Generally
§ 23:19 Constitutional issues
§ 23:20 Strict definition of “family”—Upheld
§ 23:21 —Rejected
§ 23:22 Ordinances may not exclude “extended family”
§ 23:23 Right to privacy: Two-member household permitted

V. GROUP HOMES

§ 23:24 Nature and function
§ 23:25 Ordinances may not unreasonably discriminate against group homes
§ 23:26 Allowing group homes in single-family districts—Generally
§ 23:27 —By judicial decision—Expanded definition of “family”
§ 23:28 —Governmental immunity or overriding state policy
§ 23:29 —Preempting state statutes

VI. AGE-RESTRICTIVE ZONING
§ 23:30 Generally
§ 23:31 Objections to age-restrictive zoning—Ultra vires objections
§ 23:32 —Constitutional objections
§ 23:33 Age-restrictive covenants and rental policies

CHAPTER 24. SEX BUSINESSES, BARS, AND CABARETS
§ 24:1 An overview

I. SEX BUSINESSES
§ 24:2 Land use characteristics
§ 24:3 First Amendment protection—Generally
§ 24:4 —Uses protected
§ 24:5 —Obscenity—Standards
§ 24:6 —Injunctions against
§ 24:7 —Doctrine against prior restraint
§ 24:8 —Captive audience
§ 24:9 —Protection of children
§ 24:10 —Lewd conduct and nudity

A. LOCATION RESTRICTIONS
§ 24:11 Generally—Standards and restrictions
§ 24:12 —Young v. American Mini Theatres
§ 24:13 —Schad v. Borough of Mount Ephraim
§ 24:14 —City of Renton v. Theatres
§ 24:15 Substantial public purpose—Generally
§ 24:16 —Off-premises consumption
§ 24:17 Reasonable alternative locations
§ 24:18 Intent to suppress
§ 24:19 Choice of dispersal or concentration
§ 24:20 Vagueness and overbreadth
II. BARS AND CABARETS

§ 24:43 Generally
§ 24:44 State preemption
§ 24:45 Local regulation—Hours of operation
§ 24:46 —Retail use

A. LOCATION
§ 24:47 Distancing requirements—From disfavored uses
§ 24:48 —From civic and residential uses
§ 24:49 Consent provisions
§ 24:50 Control by other methods
§ 24:51 Nude dancing

CHAPTER 25. FAIR HOUSING LEGISLATION

§ 25:1 Overview

I. FEDERAL FAIR HOUSING LEGISLATION

§ 25:2 Federal Fair Housing Act—Generally

© 2019 Thomson Reuters, 10/2019
§ 25:3 — Exemptions
§ 25:4 — Remedies and enforcement
§ 25:5 Fair Housing Act—Relation to exclusionary zoning practices
§ 25:6 Federal Fair Housing Act—Municipal action and racial discrimination
§ 25:7 Fair Housing Amendments Act of 1988—Generally
§ 25:8 — Discriminatory treatment of the handicapped—Generally
§ 25:9 — — Definition of handicapped status
§ 25:10 — — Duty to reasonably accommodate
§ 25:11 — Zoning treatment of handicapped group homes—Generally
§ 25:12 — — Notice and hearing permitting procedures
§ 25:13 — — Special permits and variances
§ 25:14 — — Distancing requirements
§ 25:15 — — Waiver of conditions or restrictions
§ 25:16 — — Occupancy by unrelated residents
§ 25:17 — — Discriminatory treatment of children—Generally
§ 25:18 — — Exemption for housing for older persons
§ 25:19 Civil Rights Act of 1866
§ 25:20 — Americans with Disabilities Act

II. FEDERAL LITIGATION ISSUES

§ 25:21 Proving violations of the Fair Housing Act—Discriminatory intent standard
§ 25:22 — Discriminatory impact standard
§ 25:23 — Duty to reasonably accommodate
§ 25:24 Defense justification for action taken
§ 25:25 Standing to sue
§ 25:26 Whether municipal conduct is actionable
§ 25:27 State affordable housing legislation

CHAPTER 26. AMUSEMENTS, ARCADES, HEADSHOPS, FESTIVALS, CYBERCAFES, FORTUNETELLING, ETC.

§ 26:1 An overview

I. AMUSEMENTS AND ARCADES

§ 26:2 Planning and regulation—Methods and techniques
§ 26:3 — Standards and validity—Supporting public purposes
§ 26:4 — — Protection of minors
TABLE OF CONTENTS

§ 26:5 — Loitering and idleness
§ 26:6 — Suppression of gambling
§ 26:7 — Juvenile delinquency
§ 26:8 — Arbitrary action against
§ 26:9 Definitions
§ 26:10 Regulatory approaches—Total ban
§ 26:11 — Location restrictions
§ 26:12 — Operating restrictions
§ 26:13 — Age restrictions
§ 26:14 — Parental consent
§ 26:15 — Accessory or principal use
§ 26:16 — Licenses and fees
§ 26:17 First amendment issues—Protected speech
§ 26:18 — Freedom of association
§ 26:19 Equal protection claims
§ 26:20 State preemption
§ 26:21 Vested rights and nonconforming uses
§ 26:22 Specially permitted or conditional uses
§ 26:23 Cybercafes
§ 26:24 Clairvoyancy, fortunetelling, and astrology
§ 26:25 Festivals and outdoor music
§ 26:26 Bungee jumping

II. HEADSHOPS

§ 26:27 Generally
§ 26:28 Prohibitory ordinances

CHAPTER 27. PRIVATE CLUB USES

§ 27:1 Regulation of private club uses—Generally
§ 27:2 — As use allowed by right
§ 27:3 — As use by special permit
§ 27:4 — Related accessory uses
§ 27:5 Term “club” defined and applied
§ 27:6 Element of profit in club activities—Generally
§ 27:7 — Noncommercial nature
§ 27:8 — Nonprofit status not implied
§ 27:9 — Public participation
§ 27:10 Service organizations as clubs
§ 27:11 Clubs as community associations
§ 27:12 Miscellaneous organizations—Lodges and fraternal associations
§ 27:13 — Fraternities and sororities
§ 27:14 — Public interest groups
§ 27:15 — Motorcycle clubs

© 2019 Thomson Reuters, 10/2019
§ 27:16 — Nudist clubs
§ 27:17 — Massage clubs and adult establishments
§ 27:18 — Shooting clubs
§ 27:19 Miscellaneous activities—Administrative offices
§ 27:20 — Sleeping facilities
§ 27:21 — Dining and bar facilities
§ 27:22 — Recreational facilities
§ 27:23 — Outdoor concerts
§ 27:24 Residency limitations on clubs
§ 27:25 Variances
§ 27:26 Nonconforming uses

CHAPTER 28. LOCAL CONTROL OF MOBILE HOMES AND MANUFACTURED HOUSING
§ 28:1 Overview
§ 28:2 Types of mobile homes and manufactured housing
§ 28:3 Trend toward accommodation by regulation

I. PUBLIC PURPOSES SUPPORTING LOCAL REGULATION
§ 28:4 Generally
§ 28:5 Traditional purposes for regulation—Impact on property values
§ 28:6 — Aesthetic considerations
§ 28:7 — Transient nature of use
§ 28:8 — Health and safety considerations
§ 28:9 — Traffic congestion
§ 28:10 — Impact on school facilities and fiscal concerns
§ 28:11 Contemporary compatibility with conventional housing—Court decisions reflecting
§ 28:12 — Court decisions ignoring

II. TYPES OF LOCAL ZONING REGULATION
§ 28:13 Generally
§ 28:14 Definition of allowed uses
§ 28:15 Exclusion from community
§ 28:16 Restricted to designated areas or parks
§ 28:17 Prohibition in single-family districts
§ 28:18 Special permit requirements
§ 28:19 Size and dimensional restrictions
§ 28:20 Occupancy restrictions
§ 28:21 As accessory use
TABLE OF CONTENTS

§ 28:22 Miscellaneous restrictions

III. OTHER TYPES OF LOCAL REGULATION

§ 28:23 Time limitations
§ 28:24 Adults only—Equal protection claims
§ 28:25 —Fair housing legislation
§ 28:26 Rent control, eviction, and sale
§ 28:27 Exactions, conditions, and impact fees

IV. REGULATION BY LOCAL BUILDING CODES

§ 28:28 Generally
§ 28:29 State preemption
§ 28:30 Federal preemption
§ 28:31 State preemption by manufactured housing legislation
§ 28:32 Regulation by private covenants

CHAPTER 29. LOCAL CONTROL OF RELIGIOUS STRUCTURES, USES, AND DISPLAYS

§ 29:1 An overview

I. FIRST AMENDMENT LIMITATIONS

§ 29:2 Generally
§ 29:3 The establishment clause—Standards for validity
§ 29:4 —Local distancing requirements
§ 29:5 —Sunday closure laws
§ 29:6 —Zoning restrictions and decisions
§ 29:7 —Religious symbols and displays—Government sponsored or endorsed displays
§ 29:8 — —Private displays in public forum
§ 29:9 — —Quasi-religious and ideological symbols
§ 29:10 — —Acknowledgment of religious heritage
§ 29:11 The free exercise clause—Standards for validity
§ 29:12 —Zoning restrictions and decisions—Exclusion from specific districts
§ 29:13 — —Home religious services
§ 29:14 — —Discrimination against religious sects
§ 29:15 — —Zoning restrictions and conditions
§ 29:16 —Historic preservation laws
§ 29:17 —Health, safety, and nuisance prevention

© 2019 Thomson Reuters, 10/2019
II. THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

§ 29:18 An overview
§ 29:19 Constitutionality
§ 29:20 Exclusions and limits
§ 29:21 Regulation on less than equal terms
§ 29:22 Discrimination against religious denomination
§ 29:23 Substantial burden on religious exercise

III. SPECIAL PROTECTION UNDER STATE COURT DECISIONS

§ 29:24 Exclusion from residential districts—Generally
§ 29:25 —Granted special protection
§ 29:26 —Not granted special protection
§ 29:27 Zoning restrictions and conditions
§ 29:28 Specially permitted or conditional uses
§ 29:29 Accessory uses
§ 29:30 Schools and related facilities—Generally
§ 29:31 —Location in particular zoning districts
§ 29:32 —Related constitutional uses

CHAPTER 30. LOCAL CONTROL OF SCHOOLS, EDUCATIONAL FACILITIES, DAY CARE, CAMPS, AND ACCESSORY USES

§ 30:1 An overview

I. ZONING FOR SCHOOLS AND RELATED FACILITIES

§ 30:2 Generally—Location in residential areas
§ 30:3 —Similarity to religious uses
§ 30:4 By type of educational use—Public schools
§ 30:5 —Parochial schools
§ 30:6 —Nonsectarian private schools
§ 30:7 —Colleges and universities
§ 30:8 —Professional schools
§ 30:9 —Kindergartens and nursery schools
§ 30:10 —Day camps and wilderness schools
§ 30:11 —Day care centers
§ 30:12 —Schools for students with special needs
§ 30:13 Educational facilities and accessory uses
CHAPTER 31. TECHNIQUES IN LAND USE DISPUTE RESOLUTION

§ 31:1 The framework for land use decision making
§ 31:2 Traditional system is effective for non-controversial land use decisions
§ 31:3 Traditional system is inadequate in resolving “specialized” land use disputes
§ 31:4 Alternative dispute resolution processes offer solutions
§ 31:5 Use of alternative dispute resolution as a supplemental solution to land use conflicts is growing
§ 31:6 Success rates and benefits of a collaborative process
§ 31:7 Not all dispute resolution programs have achieved successful results
§ 31:8 Obstacles to widespread use of collaborative resolution
§ 31:9 Overcoming the obstacles
§ 31:10 Screening cases helps to achieve success
§ 31:11 Screening process identifies cases suitable for collaborative dispute process
§ 31:12 Stages when collaborative negotiation can be used
§ 31:13 Guiding principles of the mutual gains dispute resolution approach
§ 31:14 Four steps for implementing a mutual gains approach
§ 31:15 Mutual gains implementation step one—Assessment—Overview and context
§ 31:16 ——Seven steps for conducting an assessment
§ 31:17 Mutual gains implementation step two—Design
§ 31:18 Mutual gains implementation step three—Deliberation
§ 31:19 Mutual gains implementation step four—Implementation

CHAPTER 32. RESPONSIBILITIES OF ZONING REGULATORS

I. VOTING REQUIREMENTS AND ENACTMENT

§ 32:1 Generally
§ 32:2 Requirement of quorum
§ 32:3 Number of votes and official action
§ 32:4 Member’s absence at hearing
§ 32:5 Reconsideration of measure
§ 32:6 Inconsistency between statute and ordinance
§ 32:7 Participating members and jurisdiction
§ 32:8 Executive veto
§ 32:9 Participation by de facto officers

II. EX PARTE CONTACTS

§ 32:10 Generally
§ 32:11 Permissibility of lobbying: Legislative action
§ 32:12 Open meetings and public hearing requirements
§ 32:13 Denial of fair hearing: Administrative action

III. BIAS AND CONFLICTS OF INTEREST

§ 32:14 Generally
§ 32:15 Legislative or adjudicative action
§ 32:16 Statutory and ordinance prohibitions
§ 32:17 Appearance of fairness doctrines
§ 32:18 Disqualifying prejudgment bias
§ 32:19 Prejudice or partiality—Generally
§ 32:20 —Family relationships
§ 32:21 —Employment relationships
§ 32:22 —Associational ties
§ 32:23 —Appearance by public officers
§ 32:24 Personal financial interest—Sufficient for disqualification
§ 32:25 —Ownership of land in community
§ 32:26 —Interest in particular land affected
§ 32:27 —Campaign contributions
§ 32:28 Remedies and sanctions

CHAPTER 33. ACCESSORY USES & STRUCTURES

§ 33:1 Overview

I. ACCESSORY USES GENERALLY

§ 33:2 Allowed or prohibited by law
§ 33:3 Allowed by judicial decision
§ 33:4 Different in character or integral part of principal use
§ 33:5 Nonconforming use problems
§ 33:6 Location on same lot as principal use
§ 33:7 Unreasonableness of prohibiting specific accessory uses

II. SPECIFIC ACCESSORY USES

§ 33:8 Generally
§ 33:9 Airplanes and helicopters
§ 33:10 Apartment buildings, uses accessory to
§ 33:11 Auto rental
§ 33:12 Banquet rooms
§ 33:13 Barber shop
§ 33:14 Beauty shop
§ 33:15 Boarders, roomers, and short-term rentals
§ 33:16 Boats and marinas
§ 33:17 Car wash
§ 33:18 Cocktail lounge and coffee shop
§ 33:19 Commercial vehicles, parking or storage of
§ 33:20 Convenience store, uses accessory to
§ 33:21 Crematorium
§ 33:22 Dance studio
§ 33:23 Day care centers
§ 33:24 Dental office
§ 33:25 Dress shop
§ 33:26 Employment agency
§ 33:27 Engineer
§ 33:28 Farming, uses accessory to
§ 33:29 Gasoline station, as accessory use
§ 33:30 Gasoline stations, uses accessory to
§ 33:31 Gun repair shop and firearm sales
§ 33:32 Home occupations—Must be incidental to primary use
§ 33:33 —Physical character and use of premises
§ 33:34 —Use by same person
§ 33:35 —Restrictions on employees
§ 33:36 —Miscellaneous restrictions
§ 33:37 —Professional uses expressly or implicitly allowed
§ 33:38 —Restrictions on professional uses
§ 33:39 —Defining professional use
§ 33:40 Insurance brokers
§ 33:41 Karate school
§ 33:42 Life insurance agent
§ 33:43 Mining, uses accessory to
§ 33:44 Morticians and funeral homes
§ 33:45 Music festivals
§ 33:46 Outdoor storage
§ 33:47 Parking of vehicles
§ 33:48 Pets and animals
§ 33:49 Pharmacy
§ 33:50 Power plant
§ 33:51 Psychotherapist or counselor
§ 33:52 Public accountant or financial advisor

© 2019 Thomson Reuters, 10/2019
§ 33:53 Real estate business
§ 33:54 Residential care facility
§ 33:55 Restaurant
§ 33:56 Retail store, uses accessory to
§ 33:57 Riding horses, stables
§ 33:58 Shooting range
§ 33:59 Skateboard facilities
§ 33:60 Skydiving
§ 33:61 Storage, uses accessory to
§ 33:62 Trailers, parking or storage
§ 33:63 Trailers, rental or sale of
§ 33:64 Travel agency
§ 33:65 Used car lots
§ 33:66 Vending machines
§ 33:67 Veterinarian
§ 33:68 Video games
§ 33:69 Sawmills

III. ACCESSORY STRUCTURES GENERALLY
§ 33:70 Allowed or prohibited by law
§ 33:71 Incidental to principal building

IV. SPECIFIC ACCESSORY STRUCTURES
§ 33:72 Generally
§ 33:73 Accessory living quarters—Generally
§ 33:74 —Compliance with minimum area restrictions
§ 33:75 —Noncompliance with area restrictions
§ 33:76 —Nonconforming use situation
§ 33:77 Advertising signs
§ 33:78 Mobile homes and trailers
§ 33:79 Radio and television antennae and towers
§ 33:80 Renewable energy structures
§ 33:81 Satellite dishes
§ 33:82 Swimming pools
§ 33:83 Tennis courts and other facilities

CHAPTER 34. ZONING FOR VEHICLE FUELING & CHARGING STATIONS
§ 34:1 Overview

I. FORMS OF ZONING REGULATION
§ 34:2 Generally
CHAPTER 35. LOCAL ZONING AND EXTRATERRITORIAL LAND USE CONTROLS, INCORPORATION AND ANNEXATION ISSUES, AND COORDINATE REGIONAL GOALS

§ 35:1 An overview

I. TERRITORIAL LIMITATIONS ON LOCAL ZONING POWER

§ 35:2 Generally
§ 35:3 Local provincialism and regional interests
§ 35:4 The limits of judicial review and regional conflicts
§ 35:5 Zoning, land under water, and riparian rights

II. EXTRATERRITORIAL ZONING JURISDICTION

§ 35:6 Generally
§ 35:7 Validity of extraterritorial controls
§ 35:8 Intergovernmental agreements

III. INCORPORATION AND ANNEXATION ZONING ISSUES

§ 35:9 Problematic zoning issues and conflicts—What zoning controls
§ 35:10 —Interim or stop-gap ordinances
§ 35:11 —Rights of owners of annexed lands
§ 35:12 —Property rights of affected others
§ 35:13 —Private-public annexation agreements
§ 35:14 Standards for incorporation and annexation
§ 35:15 Standards and scope of judicial review
§ 35:16 Challenges to annexation

IV. COORDINATE REGIONAL INTERESTS AND GOALS

§ 35:17 Generally
§ 35:18 The siting of unwanted land uses

CHAPTER 36. STATEWIDE AND REGIONAL LAND USE CONTROLS

§ 36:1 Introduction
§ 36:2 The ascendancy of local zoning
§ 36:3 Limitations of Euclidean zoning—Changing patterns of land development
§ 36:4 —Governmental fragmentation and home rule
§ 36:5 ——Local inability to deal with major projects
§ 36:6 ——Local inability to protect critical resources
§ 36:7 ——Inability to meet regional and statewide environmental goals
§ 36:8 —Planning in the context of Euclidean zoning
§ 36:9 —Exclusionary effects of local zoning
§ 36:10 —Local use of growth management regulations
§ 36:11 Statewide and regional regulation of land use

I. STATEWIDE AND REGIONAL LAND USE CLASSIFICATION

§ 36:12 Hawai‘i
§ 36:13 New York (Adirondacks region)
§ 36:14 Maine (unorganized townships)
§ 36:15 California-Nevada compact (Lake Tahoe region)
§ 36:16 State and regional regulation of major development projects
§ 36:17 —Separate state/regional and local permit decisions (Vermont, other states)
§ 36:18 —State and regional review of local permit decisions (Florida)
§ 36:19 —Appeals processes
§ 36:20 State and regional regulation of critical resources
## II. PLANNING CONSISTENCY: STATEWIDE AND REGIONAL OVERSIGHT OF LOCAL PLANS AND REGULATIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 36:21</td>
<td>Overview</td>
</tr>
<tr>
<td>§ 36:22</td>
<td>Defining state and regional goals and policies</td>
</tr>
<tr>
<td>§ 36:23</td>
<td>Consistency of local plans and regulations with statewide and regional goals</td>
</tr>
<tr>
<td>§ 36:24</td>
<td>—Defining consistency for local plans and regulations</td>
</tr>
<tr>
<td>§ 36:25</td>
<td>—Enforcing the planning requirements</td>
</tr>
<tr>
<td>§ 36:26</td>
<td>Procedural requirements for local planning</td>
</tr>
<tr>
<td>§ 36:27</td>
<td>Substantive requirements for local plans and regulations</td>
</tr>
<tr>
<td>§ 36:28</td>
<td>—Concurrency requirements</td>
</tr>
<tr>
<td>§ 36:29</td>
<td>—Growth boundaries</td>
</tr>
<tr>
<td>§ 36:30</td>
<td>—Consistency of actions by state agencies</td>
</tr>
<tr>
<td>§ 36:31</td>
<td>Oversight of exclusionary local policies and regulations</td>
</tr>
<tr>
<td>§ 36:32</td>
<td>Dispute resolution</td>
</tr>
<tr>
<td>§ 36:33</td>
<td>Need for regional growth management</td>
</tr>
</tbody>
</table>

## CHAPTER 37. REZONINGS: EFFECT ON PENDING LITIGATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 37:1</td>
<td>An overview</td>
</tr>
</tbody>
</table>

## I. LITIGATION AND REZONINGS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 37:2</td>
<td>Generally</td>
</tr>
<tr>
<td>§ 37:3</td>
<td>Majority view—Time of court decision rule</td>
</tr>
<tr>
<td>§ 37:4</td>
<td>—Application of the rule</td>
</tr>
<tr>
<td>§ 37:5</td>
<td>—Exceptions to the rule—Bad faith or special facts</td>
</tr>
<tr>
<td>§ 37:6</td>
<td>—Res judicata effect</td>
</tr>
<tr>
<td>§ 37:7</td>
<td>Minority view—Time of permit application rule</td>
</tr>
<tr>
<td>§ 37:8</td>
<td>—Exceptions to the rule—Pending ordinance doctrine</td>
</tr>
<tr>
<td>§ 37:9</td>
<td>—Compelling public interest</td>
</tr>
<tr>
<td>§ 37:10</td>
<td>—Procedural and referendum requirements</td>
</tr>
<tr>
<td>§ 37:11</td>
<td>Pennsylvania’s curative amendment procedure</td>
</tr>
<tr>
<td>§ 37:12</td>
<td>Related statutory provisions</td>
</tr>
</tbody>
</table>

## CHAPTER 38. REZONING: TERMINOLOGY, THEORY, PRACTICE, PERSPECTIVES, AND IMPLICATIONS FOR JUDICIAL REVIEW

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 38:1</td>
<td>An overview</td>
</tr>
</tbody>
</table>

© 2019 Thomson Reuters, 10/2019
I. REZONINGS: TERMINOLOGY, DISTINCTIONS, AND LEGAL CLAIMS

§ 38:2 Types of rezonings—Zoning map changes:
   Reclassifications
§ 38:3 —Zoning text changes: Change in restrictions
§ 38:4 —Miscellaneous zoning changes
§ 38:5 —Floating zones
§ 38:6 —Planned development
§ 38:7 —Special zoning districts—Generally
§ 38:8 — —Separate mapped districts
§ 38:9 — —Overlay zoning districts
§ 38:10 — —Legal claims
§ 38:11 — —Flexible special permitting schemes
§ 38:12 Upzoning and downzoning—Upzoning amendments
§ 38:13 —Downzoning amendments
§ 38:14 Comprehensive and piecemeal rezonings—Comprehensive rezonings
§ 38:15 —Piecemeal rezonings
§ 38:16 Forms of spot zoning—Illegal spot zoning
§ 38:17 —Reverse spot zoning
§ 38:18 Rezonings and conditions
§ 38:19 Rezonings and the comprehensive plan
§ 38:20 Distinguished from variances

II. REZONINGS: THEORY AND PRACTICE

§ 38:21 Generally
§ 38:22 Theoretical euclidean zoning model—Regulation by fixed self-administering legislative rules
§ 38:23 — —Traditional forms of discretion
§ 38:24 Modern flexible zoning and discretionary review—Discrepancy between theory and reality
§ 38:25 — —Discretionary review of development applications
§ 38:26 Implications for judicial review

III. REZONINGS: STABILITY VERSUS FLEXIBILITY

§ 38:27 Generally
§ 38:28 Rights of property owners to existing zoning—Generally
§ 38:29 —Zoning of property of others
§ 38:30 —Zoning of one’s own property
CHAPTER 39. REZONING PROCEDURES

I. AN OVERVIEW
§ 39:1 Generally
§ 39:2 Reclassification and other zoning amendments

II. REZONING AUTHORITY AND PROCEDURE
§ 39:3 Generally
§ 39:4 Power to enact includes power to amend
§ 39:5 Requirement that proper procedures be followed
§ 39:6 Sources of procedural requirements
§ 39:7 Statute versus ordinance procedures
§ 39:8 Void ordinance—Valid amendment situation

III. REQUIRED REZONING PROCEDURES
§ 39:9 Generally
§ 39:10 Petition to amend—Who can file
§ 39:11 —Form of petition
§ 39:12 —When petition can be filed
§ 39:13 —Prohibition against repetitive petitions
§ 39:14 Government action on petition—Outline of process
§ 39:15 —Public hearing requirements
§ 39:16 —Notice of public hearing
§ 39:17 —Breach of notice and hearing requirements
§ 39:18 —Action by advisory body
§ 39:19 —Action by legislative body
§ 39:20 —Protest or consent provisions
§ 39:21 —Environmental impact review
§ 39:22 —Filing, publication, and posting
§ 39:23 Grant of petition—Effective date; reconsideration
§ 39:24 —Authority to limit or condition rezoning—Rezoning with site-specific conditions
§ 39:25 ——Conditioning on future events
§ 39:26 ——Reverter provisions
§ 39:27 ——Protection from subsequent rezoning

CHAPTER 40. REZONINGS: SUBSTANTIVE VALIDITY AND STANDARDS FOR JUDICIAL REVIEW
§ 40:1 An overview
I. REZONINGS: AVAILABILITY AND FORMS OF JUDICIAL REVIEW

§ 40:2 Generally
§ 40:3 Review of Failure to Act on petition
§ 40:4 Review of denial of rezoning
§ 40:5 Review of grant of rezoning

II. REZONINGS AS LEGISLATIVE ACTS: STANDARDS OF JUDICIAL REVIEW

§ 40:6 Generally
§ 40:7 Judicial deference to legislative acts: arbitrary and capricious standard—Generally: theory and reality
§ 40:8 —Presumption of validity
§ 40:9 —Fairly debatable rule
§ 40:10 —Compared with administrative review
§ 40:11 Distinction between grant or denial of rezoning
§ 40:12 Rezonings treated as presumptively valid
§ 40:13 Judicial doctrines for stricter scrutiny— 
   Considerations related to original zoning
§ 40:14 —Rezoning in accordance with a comprehensive plan
§ 40:15 —Judicial doctrine against illegal spot zoning
§ 40:16 —Judicially formulated “change or mistake” rule
§ 40:17 —Balancing of interests standards

III. REZONINGS AS QUASI-JUDICIAL ACTS: STANDARDS OF JUDICIAL REVIEW

§ 40:18 Generally
§ 40:19 The doctrine in various jurisdictions—States rejecting doctrine
§ 40:20 —States embracing doctrine
§ 40:21 Factors leading to characterization as quasi-judicial
§ 40:22 Consequences of quasi-judicial characterization— 
   Generally
§ 40:23 —Enhanced procedural rights
§ 40:24 —Availability of direct appeal
§ 40:25 —Stricter judicial scrutiny

CHAPTER 41. REZONINGS: SPOT ZONING CLAIMS

§ 41:1 An overview

I. NATURE OF SPOT ZONING CLAIMS

§ 41:2 Illegal spot zoning claims
Table of Contents

§ 41:3 Reverse spot zoning claims
§ 41:4 Compliance with comprehensive plan
§ 41:5 Promoting the general welfare

II. CHARACTERISTICS OF PARCEL AND SURROUNDING AREA

§ 41:6 Size and number of rezoned parcels—Parcel size
§ 41:7 —Number of parcels
§ 41:8 Compatibility with surrounding uses
§ 41:9 Detriment to immediate neighborhood
§ 41:10 Benefit to owner of parcel
§ 41:11 Contract zoning and site-specific conditions
§ 41:12 Floating zones and planned development
§ 41:13 Utilization of special zoning districts
§ 41:14 Utilization of transferable development rights

CHAPTER 42. REZONINGS: “CHANGE OR MISTAKE” RULES

§ 42:1 An overview

I. THE CHANGE OR MISTAKE REZONING DOCTRINE

§ 42:2 Effect of the doctrine on rezonings
§ 42:3 States accepting and rejecting the doctrine

II. APPLICATION OF CHANGE OR MISTAKE DOCTRINE

§ 42:4 Previous ordinance presumed valid—Overcoming the presumption of validity
§ 42:5 —Exceptions to the rule
§ 42:6 Degree of change required to justify rezoning—Definition of “neighborhood”
§ 42:7 —Relevant time period
§ 42:8 —Factors indicating change in conditions
§ 42:9 Type of mistake required to justify rezoning—Nature of mistake
§ 42:10 —Proof of mistake

CHAPTER 43. REZONINGS: PROTEST AND CONSENT PROVISIONS

§ 43:1 An overview

I. PROTEST PROVISIONS

§ 43:2 Description and validity
§ 43:3     Procedural issues—Generally
§ 43:4     —Sufficiency of protests—Form of petition
§ 43:5     ——Timeliness—Generally
§ 43:6     —— —Revocation of signatures
§ 43:7     —— —Place of filing
§ 43:8     —— —Who may sign—Generally
§ 43:9     — — —Co-tenants
§ 43:10    — — —Contract purchasers
§ 43:11    — — —Condominium owners
§ 43:12    ——Rezoning of separate parcels—Separate or contiguous parcels
§ 43:13    — —Floating zones
§ 43:14    Protest by neighboring municipality

II. CONSENT PROVISIONS
§ 43:15    Description and validity
§ 43:16    As applied to dangerous or offensive uses—Generally
§ 43:17    — —First amendment protected expression
§ 43:18    Consent options granted to civic or residential uses
§ 43:19    Consent options granted to churches

III. DETERMINATION OF RELEVANT NEIGHBORING AREA
§ 43:20    Generally
§ 43:21    Meaning of “immediately adjacent”
§ 43:22    By frontage
§ 43:23    By linear measure

CHAPTER 44. REZONING WITH CONDITIONS OR BY AGREEMENT
§ 44:1     Generally

I. REZONING WITH SITE-SPECIFIC CONDITIONS
§ 44:2     Generally
§ 44:3     Held ultra vires and criticized
§ 44:4     Authority upheld as flexible zoning device
§ 44:5     Conditioning on future event
§ 44:6     Reverter provisions
§ 44:7     Judicial review—Generally
§ 44:8     — —Validity of conditions imposed
§ 44:9     — —Illegal when spot zoning

II. REZONING BY AGREEMENT
§ 44:10    Developer-locality agreements—Generally
CHAPTER 45. FLOATING ZONES

I. GENERALLY
§ 45:1 Defined and explained
§ 45:2 Establishment and implementation
§ 45:3 Nature of rezoning approval
§ 45:4 Specially permitted uses distinguished

II. AUTHORITY TO ENACT
§ 45:5 Upheld as flexible zoning device
§ 45:6 Disapproved and criticized

III. JUDICIAL REVIEW
§ 45:7 Generally
§ 45:8 Ripeness and standing
§ 45:9 Plan consistency and spot zoning
§ 45:10 Adequate standards for rezoning
§ 45:11 Improper delegation of legislative authority
§ 45:12 Due process and equal protection
§ 45:13 Exclusionary zoning

CHAPTER 46. ZONING AND PLANNING BY INITIATIVE OR REFERENDUM
§ 46:1 An overview

© 2019 Thomson Reuters, 10/2019
§ 46:2 —Authority and purpose
§ 46:3 —Legal issues and judicial review
§ 46:4 —Public policy and rational planning

I. LAND USE REGULATION BY INITIATIVE OR REFERENDUM

§ 46:5 Statutory prohibition on use of
§ 46:6 Conflict with zoning statutes—Generally
§ 46:7 —Initiative invalid: Referendum distinguished
§ 46:8 —Authority for utilization denied
§ 46:9 —Authority for utilization upheld

II. LIMITATIONS ON USE

§ 46:10 Legislative acts only: Rezonings and quasi-judicial acts
§ 46:11 —Legislative or administrative action
§ 46:12 —Zoning actions
§ 46:13 —Implementation of state policy
§ 46:14 —Implementation of federal policy
§ 46:15 —Rezoning decisions
§ 46:16 Improper delegation of legislative power
§ 46:17 Statutory preemption

III. JUDICIAL REVIEW

§ 46:18 Procedural errors and misinformation
§ 46:19 Constitutional issues and substantive validity
§ 46:20 Exclusionary zoning

CHAPTER 47. POWERS OF PLANNING COMMISSIONS AND PLANNING BOARDS

§ 47:1 Introduction
§ 47:2 Preparation and adoption of master plans
§ 47:3 Referrals to planning commissions
§ 47:4 —Zoning amendments
§ 47:5 —Site plan review and approval
§ 47:6 — —Necessity of standards for consideration of site plans
§ 47:7 — —Conditions imposed upon approval
§ 47:8 — —Review of planning commission decisions
§ 47:9 Conditional use permits
§ 47:10 Statutory referrals to county boards

lxx
CHAPTER 48. STATE & FEDERAL PREEMPTION OF LOCAL REGULATION

§ 48:1 An overview

I. STATE LAW PREEMPTION GENERALLY

§ 48:2 Express preemption
§ 48:3 Implied preemption
§ 48:4 Preemption in home rule municipalities
§ 48:5 Consideration of local interests

II. STATE LAW PREEMPTION FOR SPECIFIC USES

§ 48:6 Utilities
§ 48:7 Schools
§ 48:8 Group homes
§ 48:9 Housing
§ 48:10 Roads
§ 48:11 Aviation
§ 48:12 Signs and billboards
§ 48:13 Landfills, solid waste, and junkyards
§ 48:14 Hazardous waste
§ 48:15 Sewers and septic tanks
§ 48:16 Wharves, wetlands, and waters
§ 48:17 Environmental protection
§ 48:18 Mining and extraction
§ 48:19 Cemeteries
§ 48:20 Liquor establishments
§ 48:21 Child day-care services
§ 48:22 Agricultural uses
§ 48:23 Fireworks
§ 48:24 Firearms
§ 48:25 Timber
§ 48:26 Noise controls
§ 48:27 Marijuana and tobacco
§ 48:28 Banking
§ 48:29 Miscellaneous undesirable land uses

III. FEDERAL PREEMPTION

§ 48:30 Instrumentalities and activities
§ 48:31 Preempting regulation and control
§ 48:32 Commerce clause preemption

CHAPTER 49. SUBSTANDARD LOTS

§ 49:1 Overview

© 2019 Thomson Reuters, 10/2019
I. ZONING FOR MINIMUM AREA AND FRONTAGE

§ 49:2 Generally
§ 49:3 Public purposes for regulation
§ 49:4 The substandard lot problem
§ 49:5 Interpretation of area and frontage requirements
§ 49:6 Case involving corner lots
§ 49:7 Meaning of width and frontage
§ 49:8 Relation to equitable servitudes

II. CONSTITUTIONALITY OF MINIMUM REQUIREMENTS

§ 49:9 Unreasonable as applied—Substantive due process
§ 49:10 —Confiscatory taking—Generally
§ 49:11 ——Noxious use justification
§ 49:12 ——Vested rights and estoppel
§ 49:13 Merger and subdivision requirements

III. MERGER AND THE SEPARATE OWNERSHIP REQUIREMENT

§ 49:14 Generally
§ 49:15 Unreasonable as applied
§ 49:16 Application to undeveloped lots
§ 49:17 Application where contiguous lot is developed
§ 49:18 Checkerboarding for vested rights
§ 49:19 Back-to-back or “L” shaped lots
§ 49:20 Related owners of record
§ 49:21 Lots in different zoning districts
§ 49:22 Lots in different zoning jurisdictions
§ 49:23 Title through tax foreclosure

IV. ORDINANCE EXEMPTIONS GRANTING VESTED RIGHTS

§ 49:24 Generally
§ 49:25 Grandfather provisions
§ 49:26 Allowing reduced area or frontage
§ 49:27 Recorded lots at specified time
§ 49:28 Loss of exemption: Abandonment of lot lines

V. RELIEF THROUGH GRANT OF VARIANCE

§ 49:29 Generally
§ 49:30 Opportunity to sell or purchase additional land
§ 49:31 Character of neighborhood—Generally
CHAPTER 50. OFFICIAL MAP

I. INTRODUCTION
§ 50:1 Nature and purpose of official map
§ 50:2 Effect of official map
§ 50:3 Relation to subdivision
§ 50:4 Relation to master plan and zoning map

II. PERMITS FOR BUILDINGS NOT ON IMPROVED STREETS
§ 50:5 Generally
§ 50:6 Purpose of requirement
§ 50:7 Constitutional validity
§ 50:8 Interpretation of provisions

III. PERMITS FOR BUILDINGS IN LOCATION OF MAPPED PUBLIC IMPROVEMENTS
§ 50:9 Generally
§ 50:10 Purpose of requirement
§ 50:11 Constitutional validity

IV. VARIANCES FROM RESTRICTIONS IMPOSED BY THE OFFICIAL MAP
§ 50:12 Variance provisions

CHAPTER 51. ZONING CONTROL OF DENSITY AND LOT SIZE
§ 51:1 An overview

I. CONTROLS ON POPULATION DENSITY
§ 51:2 Purposes and methods
§ 51:3 Validity—As legitimate police power purpose
§ 51:4 —As proper zoning function
§ 51:5 —Rezoning and downzoning
§ 51:6 —Growth management
§ 51:7 —Density caps
§ 51:8 —Occupancy restrictions
§ 51:9 —Requiring higher densities: Minimum density or maximum lot-size and floor area restrictions
II. CONTROLS ON LOT SIZE AND UNIT DENSITY

§ 51:10 Purposes and methods
§ 51:11 Validity—Generally
§ 51:12 —Upheld as reasonable
§ 51:13 —Held unreasonable—Generally
§ 51:14 ——Substantive due process
§ 51:15 ——Constitutional taking claims
§ 51:16 ——Invalid as exclusionary zoning
§ 51:17 Attributes of zoning lot

CHAPTER 52. ZONING CONTROLS ON HEIGHT OF BUILDINGS AND STRUCTURES

§ 52:1 An overview

I. HEIGHT RESTRICTIONS

§ 52:2 As legitimate public purpose
§ 52:3 As proper zoning purpose
§ 52:4 Upheld as reasonable—Substantive due process
§ 52:5 ——Constitutional taking claims
§ 52:6 Definitions, formulas, application
§ 52:7 Incentive bonuses
§ 52:8 Transfer of air rights
§ 52:9 Minimum height restrictions
§ 52:10 Historic preservation
§ 52:11 Design controls
§ 52:12 View protection
§ 52:13 Underground utilities
§ 52:14 Height variances

CHAPTER 53. RESTRICTIONS ON YARDS, SETBACKS, AND FRONTAGE

§ 53:1 An overview

I. RESTRICTIONS ON YARDS AND SETBACKS

§ 53:2 As legitimate public purpose—Traditional public purposes
§ 53:3 ——Aesthetics and environmental values
§ 53:4 As proper zoning purpose
§ 53:5 Upheld as reasonable—Generally
§ 53:6 ——Prohibition of structures
§ 53:7 —— Restriction of specific uses
§ 53:8 ——Variance requests
§ 53:9 Held unreasonable—Substantive due process
§ 53:10 —Constitutional taking claims—Denial of economically viable use
§ 53:11 ——Partial benefit-extraction claims
§ 53:12 Interpretation and construction—Generally
§ 53:13 —Special intrusions
§ 53:14 —Parking areas or lots
§ 53:15 —L shaped buildings
§ 53:16 —U shaped lots
§ 53:17 —Corner lots
§ 53:18 —Side yards
§ 53:19 —Multiple and split lots
§ 53:20 —Delegation of powers
§ 53:21 —Multiple buildings on lot

II. FRONTAGE REQUIREMENTS

§ 53:22 Generally
§ 53:23 Upheld as reasonable
§ 53:24 Held unreasonable

CHAPTER 54. CONTROL OF BULK, BUILDING AREA, AND FLOOR SIZE

§ 54:1 An overview
§ 54:2 Restrictions on bulk, building area, and floor size—Methods and function
§ 54:3 —Authority for enactment
§ 54:4 —Design review
§ 54:5 —Variances
§ 54:6 —Constitutional taking claims
§ 54:7 Regulation of building area—Generally
§ 54:8 —Held reasonable
§ 54:9 —Held invalid
§ 54:10 Regulation of floor size—Generally
§ 54:11 —Upheld as reasonable—Residential uses
§ 54:12 ——Nonresidential uses
§ 54:13 —Held Invalid—Residential uses
§ 54:14 ——Nonresidential Uses

CHAPTER 55. ACTIONS FOR DECLARATORY JUDGMENT

§ 55:1 Judicial remedies in zoning cases
§ 55:2 —General aspects of declaratory judgment actions
§ 55:3 —Requirements to maintain a declaratory judgment action

© 2019 Thomson Reuters, 10/2019
§ 55:4 —Standing in a declaratory judgment action
§ 55:5 —Purposes for which declaratory judgment actions may be used
§ 55:6 Necessity of exhaustion of local or administrative remedies before attack on ordinance
§ 55:7 —Application for a variance
§ 55:8 ——Invalid in whole
§ 55:9 ——Invalid in part
§ 55:10 ——Limitations on the rule
§ 55:11 ——No present intent to use
§ 55:12 ——Excessive cost
§ 55:13 ——Administrative remedies are inadequate
§ 55:14 ——Challenge is to constitutionality of statute
§ 55:15 —Necessity of applying for zone change prior to suit
§ 55:16 —Necessity of applying for special permit prior to suit
§ 55:17 —Attack on ordinance after prior denial of variance
§ 55:18 ——Declaratory Judgment Act—The new trend
§ 55:19 Summary judgment in declaratory judgment actions

CHAPTER 56. DECLARATORY JUDGMENTS IN ZONING ACTIONS
§ 56:1 Declaring rights of the parties
§ 56:2 Prohibition of judicial rezoning
§ 56:3 Effect of declaration of invalidity

I. AFFORDING OPPORTUNITY FOR REZONING
§ 56:4 Staying effectiveness of judgment
§ 56:5 Legislative evasion of court’s ruling
§ 56:6 Judicial directions as to rezoning plaintiff’s property
§ 56:7 Limitations on decree of partial invalidity

II. EXCLUSIONARY ZONING CASES
§ 56:8 What qualifies as an exclusionary case
§ 56:9 Exclusionary impact tests
§ 56:10 Relief for plaintiffs
§ 56:11 Courts’ affirmative actions
CHAPTER 57. THE BOARD OF APPEALS: ITS PURPOSES, POWERS, AND PROCEDURES

I. THE SEVERAL FUNCTIONS OF BOARDS OF APPEALS, ADJUSTMENT OR REVIEW

§ 57:1 Prevention of confiscatory effect of ordinance by power to vary
§ 57:2 Functions additional to grant of variances
§ 57:3 Compelling appointment of, and action by, boards of appeals
§ 57:4 Court power over boards of appeals
§ 57:5 Effect of protracted delay in decision
§ 57:6 Limitation or modification of statutory powers—Time periods
§ 57:7 —Minimum requirements
§ 57:8 —Boards of appeals review of lower zoning acts
§ 57:9 Appellate and original jurisdiction—Appellate versus original jurisdiction
§ 57:10 —Sufficiency of administrative decision as basis for appeal to board
§ 57:11 —Jurisdiction to determine questions of fact
§ 57:12 —Parties may not confer jurisdiction

II. LIMITATIONS ON POWER OF BOARDS OF APPEALS IN GRANT OF VARIANCES

§ 57:13 Generally: Hardship and practical difficulty
§ 57:14 Statutory and decisional limitations on power to vary use restrictions—Enabling acts and power conferred
§ 57:15 —Boards of appeals act in a quasi-judicial capacity
§ 57:16 Necessity of finding an exceptional or "unique" condition
§ 57:17 Size of tract for which variance is sought as factor
§ 57:18 Variances under New Jersey type of limitations—Current New Jersey statute
§ 57:19 —Showing hardship or special reasons
§ 57:20 Examples of what a board may and may not do—Use variances
§ 57:21 —Punitive powers
§ 57:22 —Board cannot pass on validity of the restriction—Board of appeals review
§ 57:23 —Court review

III. PARTIES BEFORE BOARDS OF APPEALS

§ 57:24 The statutory language: "Persons aggrieved"
§ 57:25 Persons having possessory or other interest in property involved—Owner
§ 57:26 —Non-owner joined by owner
§ 57:27 —Co-owners
§ 57:28 —Tenant
§ 57:29 —Agent
§ 57:30 —Party to rescindable contract
§ 57:31 —Enforceable option
§ 57:32 —Intention to gain possessory interest
§ 57:33 —Corporate dissolution after appeal
§ 57:34 —Subsequent purchaser of property
§ 57:35 Persons without legal interest in property involved in the application (ability to object)
§ 57:36 Municipal board or bodies
§ 57:37 Timing of objection
§ 57:38 Persons held not to be “aggrieved”

IV. PROCEDURE ON APPEALS TO BOARDS OF APPEALS

§ 57:39 Time within which to appeal after decision of officer—Necessity of fixing time by rule of board
§ 57:40 —Period of time adopted
§ 57:41 —Period of time not adopted
§ 57:42 —Time limits for challenges
§ 57:43 —Effect of rule
§ 57:44 What constitutes an appealable decision
§ 57:45 Requirements for application or notice of appeal—Relief granted as applied for
§ 57:46 —Relief granted not applied for
§ 57:47 Appeal as effecting a stay of proceedings below

V. NOTICE OF HEARING BEFORE BOARDS OF APPEALS

§ 57:48 Form of notice
§ 57:49 Defects in notice—Generally
§ 57:50 —Defect in timeliness of notice
§ 57:51 —Defect in content of notice
§ 57:52 —Notice misleading
§ 57:53 Who must be notified—Notice required by enabling acts
§ 57:54 —Notice required by rules of board
§ 57:55 Manner of notice
VI. EVIDENCE BEFORE BOARDS OF APPEALS

§ 57:56 Burden of supporting application by affirmative credible evidence—Generally
§ 57:57 —Distinction between facts and opinions
§ 57:58 —Sufficiency of evidence
§ 57:59 Hearsay and necessity of sworn testimony—Necessity that factual statements be made under oath
§ 57:60 —Necessity of common-law proof in some cases
§ 57:61 Utilization of personal knowledge of members of the board—Facts of personal knowledge must be set forth in the record
§ 57:62 —Opportunity to refute purported personal knowledge
§ 57:63 Reliance on reports of other governmental boards and other records—Generally
§ 57:64 —Information and opinions received from the planning board
§ 57:65 Extent of right to cross-examine persons appearing before boards of appeals

VII. CONDUCT OF HEARING BEFORE BOARDS OF APPEALS

§ 57:66 Necessity that hearing be fair
§ 57:67 Conflicts of interest
§ 57:68 Violations of due process—Ex parte receipt of information or opinions
§ 57:69 —Attitudinal conduct of chairman or members of board
§ 57:70 Rules and regulations as to procedure
§ 57:71 Determinations made at executive sessions of board: “Right to know” or “sunshine” laws

VIII. REOPENING OF BOARD’S DECISION: CONSIDERATION OF NEW APPLICATION FOR RELIEF

§ 57:72 Power to reconsider decision already made
§ 57:73 Power to entertain new application for same relief

CHAPTER 58. VARIANCES

I. CLASSIFICATION OF VARIANCES

§ 58:1 Variance defined
§ 58:2 Politics and other practical considerations

© 2019 Thomson Reuters, 10/2019
§ 58:3 As distinguished from other zoning relief
§ 58:4 Use and nonuse, or area, variances distinguished

II. NECESSITY OF HARDSHIP
§ 58:5 General definition of hardship
§ 58:6 Hardship distinguished from practical difficulty
§ 58:7 Hardship compared to a regulatory taking
§ 58:8 Amount of hardship and public benefit or detriment

III. USE VARIANCES
§ 58:9 Applicability of use variances
§ 58:10 Amount of hardship required
§ 58:11 Uniqueness of hardship
§ 58:12 Hardship must be unnecessary
§ 58:13 Inherently beneficial use

IV. NONUSE OR AREA VARIANCES
§ 58:14 Different approaches to nonuse variances
§ 58:15 Practical difficulty or hardship
§ 58:16 Public benefit or detriment
§ 58:17 Number of units or parking spaces as area variances

V. HARDSHIP MUST DIRECTLY RELATE TO THE OWNER’S LAND
§ 58:18 Unique and unnecessary burden on the land
§ 58:19 Use of contiguous land
§ 58:20 Owner’s personal plight

VI. SELF-CREATED HARDSHIP
§ 58:21 Creation by Owner’s Affirmative Act
§ 58:22 Purchase with knowledge of zoning limitations

VII. EFFECT OF GRANT OF VARIANCE
§ 58:23 Rights acquired
§ 58:24 Loss of rights through delay or failure to use

CHAPTER 59. TRANSFER OF DEVELOPMENT RIGHTS
§ 59:1 An overview

I. TRANSFER OF DEVELOPMENT RIGHTS PROGRAMS
§ 59:2 Method and function
lxxx
TABLE OF CONTENTS

§ 59:3 Authority for enactment—By express statutory provision
§ 59:4 —By Zoning Enabling Act
§ 59:5 Nature and validity of transfer programs—General validity
§ 59:6 —Urban redevelopment
§ 59:7 —Historic preservation
§ 59:8 —Agricultural preservation
§ 59:9 —Open space and view protection
§ 59:10 —Protection of sensitive ecological areas
§ 59:11 —Amenities and low income housing
§ 59:12 Distinguished from density transfers
§ 59:13 Distinguished from density bonuses

II. ISSUES RELATED TO DEVELOPMENT TRANSFER PROGRAMS

§ 59:14 Interpretation and construction
§ 59:15 Securing approval at receiving site
§ 59:16 Relation to constitutional taking claims—Generally
§ 59:17 —As factor on merits of claim
§ 59:18 —As just compensation for taking
§ 59:19 —Nollan nexus test
§ 59:20 —Ripeness of claim
§ 59:21 Due process validity of base restrictions
§ 59:22 Improper rezoning
§ 59:23 Illegal spot zoning
§ 59:24 Development rights as taxable interests
§ 59:25 Development rights as regulated securities
§ 59:26 Development rights and antitrust laws

CHAPTER 60. VALIDITY AND ENFORCEMENT OF SITE-SPECIFIC ZONING CONDITIONS

§ 60:1 Generally

I. NATURE AND SOURCE OF POWER

§ 60:2 An overview
§ 60:3 Rezonings
§ 60:4 Variances
§ 60:5 Special permits
§ 60:6 Site plan review
§ 60:7 Planned development approval
§ 60:8 Conditions must be clearly established

© 2019 Thomson Reuters, 10/2019 lxxxi
II. VALIDITY OF CONDITIONS IMPOSED

§ 60:9 An overview
§ 60:10 Conditions must be reasonable
§ 60:11 Ultra vires zoning conditions
§ 60:12 Unduly burdensome or onerous conditions
§ 60:13 Confiscatory conditions—Physical invasion taking analysis
§ 60:14 —Economically viable use taking analysis
§ 60:15 —Partial benefit-extraction taking analysis
§ 60:16 Conditions triggering incentive zoning, density bonus or waiver requirements
§ 60:17 Invalid waiver of rights

III. VALIDITY OF SPECIFIC TYPES OF CONDITIONS

§ 60:18 Details on manner of operation
§ 60:19 Identity of user or occupant
§ 60:20 Traffic and parking
§ 60:20.10 Signage
§ 60:21 Landscaping, screening, and fencing
§ 60:22 Density and development restrictions
§ 60:23 Maintenance and appearance
§ 60:24 Neighbor’s consent
§ 60:25 Inspections and tests
§ 60:26 Costs, expenses, or bonds
§ 60:27 Grading of land
§ 60:28 Compliance with other laws
§ 60:29 Affordable and low-income housing
§ 60:30 Imposition of aesthetic restrictions
§ 60:31 Drainage problems
§ 60:32 Sewage problems
§ 60:33 Exactions and impact fees
§ 60:34 Conditions inconsistent with private covenants
§ 60:35 Conditions on transferability or form of ownership
§ 60:36 Conditions imposing time limitations on use
§ 60:37 Waiver of right to contest conditions
§ 60:38 Judicial review of conditions imposed
§ 60:39 Enforcement and revocation if conditions violated

CHAPTER 61. SPECIALLY PERMITTED AND CONDITIONAL USES

§ 61:1 Overview
§ 61:2 History of regulatory technique—Generally
§ 61:3 —New York City’s “variations”
§ 61:4 Function and utilization as regulatory technique—Generally
§ 61:5 —Subjects of regulation
§ 61:6 —Special problems
§ 61:7 —Need for flexibility
§ 61:8 —Legislative presumption of compatibility
§ 61:9 Comment on terminology
§ 61:10 Relation to other zoning techniques—Generally
§ 61:11 —Distinguished from variances
§ 61:12 —Distinguished from zoning amendments
§ 61:13 —Distinguished from floating zones
§ 61:14 —Distinguished from review of site plans and planned developments
§ 61:15 —Distinguished from special overlay zones
§ 61:16 Invalid abuse of zoning technique—Haphazard or arbitrary zoning scheme
§ 61:17 —All uses in district permitted
§ 61:18 —Unreasonable “spot” classification
§ 61:19 Surviving equal protection challenge
§ 61:20 Relation to comprehensive plan—Authorization as consistent with plan
§ 61:21 —Incompatibility with plan
§ 61:22 Delegation of authority for issuance
§ 61:23 Necessity of standards for delegation
§ 61:24 Sufficiency and interpretation of standards—General purpose or intent standards
§ 61:25 —Nuisance or offensiveness standards
§ 61:26 —Public need, necessity or convenience standards
§ 61:27 —Public interest as standard
§ 61:28 —Other discretionary standards—Traffic or parking considerations
§ 61:29 —Miscellaneous standards
§ 61:30 Specific conditions precedent to issuance—Consent of neighboring owners
§ 61:31 —Location and distancing
§ 61:32 —Lot size
§ 61:33 —Traffic congestion and safety
§ 61:34 Demonstrating compliance with standards—Applicant’s burden of proof
§ 61:35 —Effect on public interest
§ 61:36 —Supplemental restrictions and performance standards
§ 61:37 —Applicant’s right to permit if standards satisfied
§ 61:38 Issuance dependent on compliance with standards—Generally
CHAPTER 62. JUDICIAL REVIEW OF ADMINISTRATIVE ZONING DECISIONS

§ 62:1 An overview

I. STATUTES GOVERNING REVIEW PROCEEDINGS

§ 62:2 Authorization for judicial review
§ 62:3 Procedure in review proceedings

II. WHAT IS REVIEWABLE

§ 62:4 Quasi-judicial or legislative action
§ 62:5 Floating zones
§ 62:6 Only final actions

III. TIME FOR JUDICIAL REVIEW

§ 62:7 Compliance with statute of limitations—Generally
§ 62:8 —Certiorari proceeding
§ 62:9 —Dismissal—Failure to comply
§ 62:10 ——Laches
§ 62:11 ——Indispensable parties
§ 62:12 Time not suspended by pursuing unauthorized remedies
§ 62:13 Reliance upon determination prior to expiration of review period
§ 62:14 When time period for review begins
§ 62:15 Effect of defect in notice on time period

IV. PARTIES AGAINST WHOM A REVIEW PROCEEDING IS BROUGHT

§ 62:16 Board or board member

lxxxiv
V. PLEADINGS IN A REVIEW PROCEEDING

§ 62:21 Generally
§ 62:22 Petition
§ 62:23 Affidavits
§ 62:24 Answer and objections in point of law
§ 62:25 Return—Generally
§ 62:26 —Findings of fact and conclusions
§ 62:27 —Personal examination of premises
§ 62:28 —Statement of supporting findings and facts
§ 62:29 —Form of return
§ 62:30 —Certification of minutes
§ 62:31 Reply

VI. SCOPE OF REVIEW

§ 62:32 Standards applicable—Generally
§ 62:33 —Errors of law
§ 62:34 —Abuse of discretion
§ 62:35 Presumptions in favor of board—Presumption of validity
§ 62:36 —Role of court
§ 62:37 Power of reviewing court
§ 62:38 Review of errors of law—Interpretation of ordinance
§ 62:39 —Application of incorrect standards
§ 62:40 —No prior ruling
§ 62:41 —Other errors of law
§ 62:42 Review of factual determinations and findings—Generally
§ 62:43 —Meaning of “substantial evidence”
§ 62:44 —Need for competent evidence
§ 62:45 —Reasonable inferences and expertise
§ 62:46 Taking of additional testimony by court
§ 62:47 Remand to board of appeals—Reasons for remand
§ 62:48 —Purpose of remand
§ 62:49 Trial de novo
§ 62:50 Review of rezoning decisions
Volume 4

CHAPTER 63. STANDING TO SUE IN ZONING CASES

§ 63:1 An overview

I. STANDING TO SUE IN ZONING LITIGATION

§ 63:2 Generally
§ 63:3 Standing in zoning cases

II. CATEGORIES OF PERSONS HAVING STANDING

§ 63:4 Owner of locus in question—Generally
§ 63:5 —Constitutional taking claims
§ 63:6 Persons with other interests in locus—Generally
§ 63:7 —Conditional vendees
§ 63:8 —Holders of options
§ 63:9 —Insurance companies
§ 63:10 —Landlords and tenants
§ 63:11 —Mortgagees
§ 63:12 Challenge to ordinance on procedural grounds

III. STANDING TO LITIGATE USE OF ANOTHER’S LAND

§ 63:13 Generally
§ 63:14 Suit for enforcement: Analogy to nuisance
§ 63:15 Suit to invalidate: Test of direct aggrievement—Generally
§ 63:16 —Neighboring owners
§ 63:17 —Public interest plaintiffs

IV. CASES INVOLVING DETERMINATION OF AGGRIEVEMENT

§ 63:18 Based on close proximity to locus
§ 63:19 Based on a showing of specific aggrievement
§ 63:20 Pleading and proof of aggrievement
§ 63:21 Environmental and aesthetic interests
§ 63:22 Historic preservation
§ 63:23 Misuse of public property

V. STANDING BY MUNICIPALITIES AND OTHERS OUTSIDE OF MUNICIPALITY

§ 63:24 Municipality having zoning jurisdiction—Generally
VI. CIVIC ASSOCIATIONS AND SIMILAR ORGANIZATIONS

§ 63:31 Generally
§ 63:32 Environmental cases
§ 63:33 Historic preservation cases

VII. DAMAGES ARISING FROM COMPETITION

§ 63:34 Standing denied competitor
§ 63:35 Standing by other aggrievement

VIII. EXCLUSIONARY ZONING CASES

§ 63:36 Federal standing rules
§ 63:37 State court rules
§ 63:38 Class actions

IX. INTERVENTION IN LITIGATION

§ 63:39 Importance of intervention
§ 63:40 Tests for intervention
§ 63:41 Discretion of court
§ 63:42 Affected private persons
§ 63:43 Municipalities
§ 63:44 Nonresidents
§ 63:45 Taxpayers
§ 63:46 Notice to parties

CHAPTER 64. MANDAMUS ACTIONS IN ZONING CASES

I. INTRODUCTION TO MANDAMUS ACTIONS

§ 64:1 Origin and nature of proceeding
§ 64:2 Utilization in land use cases
§ 64:3 Modern statutory proceedings

II. ESTABLISHING CLEAR LEGAL RIGHT AND CLEAR LEGAL DUTY

§ 64:4 Meaning of and relationship between
§ 64:5 Demonstrating clear legal right

III. MEANING OF CLEAR LEGAL DUTY FOR MANDAMUS

§ 64:6 Distinguishing ministerial from discretionary acts
§ 64:7 Compelling exercise of discretionary acts

IV. MEANING OF CLEAR LEGAL RIGHT FOR MANDAMUS

§ 64:8 Compliance with conditions precedent
§ 64:9 Necessity of prior demand for action
§ 64:10 When prior demand would be futile
§ 64:11 Exhaustion of alternative administrative remedies—Administrative remedies must be pursued
§ 64:12 —Remedy must be adequate and complete

V. SPECIFIC APPLICATION IN LAND USE CASES

§ 64:13 Approval of subdivision plats
§ 64:14 Special use permits
§ 64:15 Site plan review
§ 64:16 Compelling action on application
§ 64:17 Compelling abatement of violation
§ 64:18 Testing validity of ordinances
§ 64:19 Compelling issuance of building permits
§ 64:20 Determining lawfulness of nonconforming uses

VI. DISCRETIONARY ASPECTS OF WRIT

§ 64:21 Sound discretion of court
§ 64:22 Equitable considerations

CHAPTER 65. ENFORCEMENT OF ZONING LAWS: POWERS, REMEDIES, AND DEFENSES

§ 65:1 An overview

I. ENFORCEMENT POWERS

§ 65:2 Source of power—Specific statutory provisions
§ 65:3 —Implied by statute
§ 65:4 —Utilization of civil remedies
§ 65:5 —Civil action as quasi-criminal proceeding
§ 65:6 State law preemption issues
§ 65:7 Court jurisdiction and remedies

II. STANDING ISSUES IN ENFORCEMENT
§ 65:8 Confined to municipalities and officers
§ 65:9 Citizen standing recognized

III. CIVIL PROCEEDINGS AND REMEDIES
§ 65:10 Injunctive relief—Generally
§ 65:11 —Enjoining violations
§ 65:12 —Enjoining enforcement
§ 65:13 Mandatory injunctions: Removal of structures—When such relief will be granted
§ 65:14 —When such relief will be denied
§ 65:15 Mandamus actions: Compelling enforcement—Generally
§ 65:16 —Citizen utilization
§ 65:17 Declaratory judgments in zoning—Generally
§ 65:18 —Coupled with further relief

IV. CRIMINAL PROCEEDINGS AND REMEDIES
§ 65:19 Generally—Sources of power and remedies
§ 65:20 —Availability of civil remedies
§ 65:21 Criminal proceedings and defendants’ rights—General safeguards for defendants
§ 65:22 —Evidentiary rules: Judicial notice and presumptions
§ 65:23 —Trial by jury
§ 65:24 —Effect of ordinance change pendente lite

V. DEFENSES IN CIVIL OR CRIMINAL PROCEEDINGS
§ 65:25 Laches defense in zoning—Generally
§ 65:26 —Laches defense recognized
§ 65:27 —Limitations on laches defense
§ 65:28 Estoppel defense in zoning—Generally
§ 65:29 —Estoppel defense recognized
§ 65:30 —Distinguished from vested rights
§ 65:31 —Limitations on estoppel defense
§ 65:32 Laches and estoppel involving adjoining owners
§ 65:33 Nonconforming use defenses
§ 65:34 Exhaustion of administrative remedies and related issues—As generally applied in state court proceedings
§ 65:35 —Litigation in federal courts and abstention doctrines
CHAPTER 66. LEGAL AND EQUITABLE REMEDIES FOR WRONGFUL LAND USE REGULATION
§ 66:1 Overview

I. TORT ACTIONS AND LAND USE CONTROLS
§ 66:2 General tort principles
§ 66:3 —Duty owed
§ 66:4 —Proximate cause
§ 66:5 —Defenses to liability—Procedural defenses
§ 66:6 — —Immunity defenses; Distinctions between liability of government entity and government officials
§ 66:7 Types of tortious government conduct—In general
§ 66:8 —Unlawful denial of permits and approvals
§ 66:9 —Misrepresentation of zoning regulations; Revocation of permits
§ 66:10 —Breach of contract or agreement
§ 66:11 —Other negligent or unlawful actions
§ 66:12 Tortious actions by private parties—Neighboring landowner
§ 66:13 —Building contractor or designer
§ 66:14 Immunity to tort liability—Government entity
§ 66:15 —Government officials—Discretionary versus ministerial functions
§ 66:16 — —Negligent versus willful or malicious acts

II. JUST COMPENSATION FOR REGULATORY TAKINGS
§ 66:17 Regulatory takings—In general
§ 66:18 —Ripeness defense
§ 66:19 —Temporary takings
§ 66:20 Just compensation—First English
§ 66:21 —Post-First English issues—Valuation
§ 66:22 —Inequitable precondemnation activities

III. FEDERAL CIVIL RIGHTS ACTIONS TO REMEDY WRONGFUL LAND USE CONTROLS
§ 66:23 In general—Remedies available at state or federal level
TABLE OF CONTENTS

§ 66:24 —State and federal jurisdiction for federal civil rights actions
§ 66:25 Section 1983 actions—Generally—Overview
§ 66:26 —As alternative to or substitute for direct actions under the constitution
§ 66:27 —Land use claims actionable under Section 1983
§ 66:28 —Land use claims not actionable under Section 1983
§ 66:29 Elements of Section 1983 causes of action
§ 66:30 —“Under color of” state law or policy
§ 66:31 —Deprivation of federal right
§ 66:32 —Causation
§ 66:33 Parties to Section 1983 actions—Plaintiffs—Who can sue?
§ 66:34 —Defendants—Parties potentially liable—Local governments and their officials
§ 66:35 ——States and multistate agencies: Eleventh amendment
§ 66:36 ——Federal officials
§ 66:37 ——Private parties
§ 66:38 Immunities—In general
§ 66:39 —Local government
§ 66:40 —Local legislators
§ 66:41 —Other local land use officials

IV. DEFENSES

§ 66:42 Federal courts lack jurisdiction—Abstention
§ 66:43 —Res judicata and collateral estoppel
§ 66:44 Existing state remedies—Exhaustion of state remedies
§ 66:45 —Adequacy of post-deprivation state remedies
§ 66:46 Damages available under Section 1983—In general
§ 66:47 —Compensatory damages
§ 66:48 —Punitive damages
§ 66:49 Limitations, procedures, litigation concerns, and attorney’s fees—Statutes of limitation
§ 66:50 —Procedural requirements
§ 66:51 —Litigation considerations
§ 66:52 —Recovery of attorney’s fees
§ 66:53 Section 1985(3)—Conspiracies to violate equal protection

V. ANTITRUST CHALLENGES TO ANTICOMPETITIVE LAND USE CONTROLS

§ 66:54 Introduction
§ 66:55 Antitrust claims—Anticompetitive nature of land use controls
§ 66:56 —Substantive elements
§ 66:57 —Procedural prerequisites
§ 66:58 State action immunity from antitrust liability
§ 66:59 Defenses and exemptions—Noerr-Pennington exemption
§ 66:60 —Overbroad remedial orders, unclean hands, in pari delicto
§ 66:61 Remedies

CHAPTER 67. ANATOMY OF ZONING LITIGATION
§ 67:1 Purpose of chapter

I. CHOICE OF FORUM: FEDERAL OR STATE
§ 67:2 Standing, case or controversy, and abstention
§ 67:3 Judiciary and discovery
§ 67:4 Pleadings
§ 67:5 Trial preparation: Preparation of evidence
§ 67:6 Data
§ 67:7 Neighborhood
§ 67:8 Graphics, maps, overlays, photographs
§ 67:9 Municipal records and files

II. EXPERT WITNESSES
§ 67:10 Need for expert witnesses
§ 67:11 Proof by experts
§ 67:12 —Real estate experts
§ 67:13 —Planners
§ 67:14 —Traffic engineers
§ 67:15 —Professional engineers
§ 67:16 —Title searchers, surveyors
§ 67:17 Preparing experts for trial

III. MUNICIPAL OFFICIALS AS WITNESSES
§ 67:18 Planners and plans
§ 67:19 Reports, resolutions, and minutes
§ 67:20 Legislative bodies: Inquiry into motives
§ 67:21 On-site inspection by courts

CHAPTER 68. RES JUDICATA AND THE FINALITY OF ZONING DECISIONS
§ 68:1 An overview

xcii
**Table of Contents**

§ 68:2 Res judicata, collateral estoppel, and similar doctrines in zoning cases

I. THE FINALITY OF DECISIONS OF ZONING BOARDS: CONCLUSIVE EFFECT IN SUBSEQUENT BOARD DECISIONS

§ 68:3 Res judicata applied to zoning board decisions—The general rule of finality

§ 68:4 —Reasons for finality doctrine

§ 68:5 —As applied to board renewal of prior relief

§ 68:6 —As applied to lesser form of relief

§ 68:7 —Fraud or mistake or other good cause for change

§ 68:8 —Stare decisis effect of prior board decisions

§ 68:9 Consideration of new applications: Res judicata doctrine inapplicable—Application considered based on changed conditions or plans

§ 68:10 —Deference to board’s determination on application

§ 68:11 —Lifting of prior conditions imposed by board

§ 68:12 —Statutory or ordinance provisions governing new applications

§ 68:13 —Application considered based on different jurisdiction or form of relief requested

§ 68:14 Consideration of new applications: Procedural matters regarding application of finality doctrine—Role of applicant, objectors, and board

§ 68:15 —Judicial intervention and relief

II. THE FINALITY OF DECISIONS OF ZONING BOARDS: CONCLUSIVE EFFECT IN SUBSEQUENT COURT PROCEEDINGS

§ 68:16 Direct review exclusive: Collateral attack on board decisions prohibited

§ 68:17 Deference to board decisions and findings

§ 68:18 Challenge to validity of ordinance itself

III. THE FINALITY OF LEGISLATIVE ZONING DECISIONS: CONCLUSIVE EFFECT ON SUBSEQUENT DECISIONS BASED ON NATURE OF DECISION AND JUDICIAL DOCTRINES AFFECTING VALIDITY OF DECISION

§ 68:19 Legislative zoning decisions

§ 68:20 Quasi-judicial zoning decisions

© 2019 Thomson Reuters, 10/2019
§ 68:21 Judicial doctrines involving validity of rezoning

IV. THE FINALITY OF JUDICIAL DECISIONS: CONCLUSIVE EFFECT IN LATER PROCEEDINGS

§ 68:22 Finality in successive court actions or proceedings involving validity or application of zoning restrictions or decisions—Res judicata effect of finality generally applied

§ 68:23 —Examples of cases where res judicata doctrine controlling

§ 68:24 —Examples of cases where res judicata doctrine not controlling

§ 68:25 —Finality in injunctive proceedings

§ 68:26 —Finality in later adopted ordinance cases

§ 68:27 —Finality in plaintiff standing cases

§ 68:28 —Relitigation in federal court

§ 68:29 Finality in subsequent administrative proceedings before building inspectors or zoning boards—Res judicata doctrine controlling

§ 68:30 —Res judicata doctrine not controlling

§ 68:31 Finality of decisions in criminal proceedings upon later civil proceedings and vice versa—Generally no res judicata effect

§ 68:32 —Cases where collateral estoppel applied

§ 68:33 Finality as applied to later legislative actions—Generally no res judicata effect

§ 68:34 —Cases where collateral estoppel applied

§ 68:35 Procedural matters relating to finality—Cases involving privity of parties

§ 68:36 —Cases involving nature of issues or claims

§ 68:37 —Cases involving prior settlements, consent judgments, or stipulations

CHAPTER 69. BUILDING PERMITS

§ 69:1 An overview

I. BUILDING PERMITS

§ 69:2 Generally

§ 69:3 Standards

§ 69:4 Legal effect

II. BUILDING PERMIT APPLICATIONS

§ 69:5 Approval process
TABLE OF CONTENTS

§ 69:6 Rights secured—Applicants
§ 69:7 —Subsequent owners
§ 69:8 Procedural irregularities
§ 69:9 Misrepresentation, fraud, mistake
§ 69:10 Fairly-debatable interpretations
§ 69:11 Tort claims

III. DENIAL OF BUILDING PERMITS
§ 69:12 Denial valid
§ 69:13 Denial invalid

IV. EFFECT OF PENDING CHANGES
§ 69:14 Existing ordinances control
§ 69:15 Effect of moratorium

V. EFFECT OF INTENTIONAL DELAY
§ 69:16 Frustration by delay
§ 69:17 Frustration by conditions

VI. REVOCATION OF BUILDING PERMITS
§ 69:18 Sufficient basis
§ 69:19 Stop work orders
§ 69:20 Vested rights and estoppel

VII. BUILDING PERMIT FEES
§ 69:21 General validity
§ 69:22 Reasonable fees
§ 69:23 Other processing fees

VIII. CERTIFICATES OF OCCUPANCY
§ 69:24 Generally
§ 69:25 Noncompliance
§ 69:26 Change in use
§ 69:27 Change in tenant
§ 69:28 Denial of certificates
§ 69:29 Revocation of certificates

CHAPTER 70. VESTED RIGHTS AND ESTOPPEL CLAIMS
§ 70:1 Overview

I. VESTED RIGHTS: CONCEPT AND CONTEXT
§ 70:2 Definition of vested rights

© 2019 Thomson Reuters, 10/2019
§ 70:3 Creation of protected property interest

A. A. SECURING VESTED RIGHTS

§ 70:4 By ordinance or statute—Deferred effective date
§ 70:5 —Express exemption
§ 70:6 —Express grant

B. BY JUDICIAL DECISION

§ 70:7 Point-in-time doctrines—Minority view
§ 70:8 —Majority view
§ 70:9 Equitable estoppel
§ 70:10 Nature of interest affected

II. RIGHTS VESTED BY EXEMPTION PROVISIONS

§ 70:11 Generally
§ 70:12 Nature of rights secured
§ 70:13 Subsequent loss of rights—Conditions imposed
§ 70:14 —Interpretation and construction
§ 70:15 —Time limitation periods

III. VESTED RIGHTS BY POINT-IN-TIME JUDICIAL DOCTRINES

§ 70:16 Minority view: At time of permit application—Generally
§ 70:17 —Good faith or pending ordinance exception
§ 70:18 —Compelling public interest exception
§ 70:19 Intermediate view: Expenditures before issuance of permit
§ 70:20 Majority view: Substantial reliance after issuance of permit—Generally
§ 70:21 —Substantial change in land
§ 70:22 —Proportionate test
§ 70:23 —Cost of land
§ 70:24 —Vested rights and subdivision approval
§ 70:25 —Vested rights and impact fees

IV. VESTED RIGHTS BY EQUITABLE ESTOPPEL

§ 70:26 Generally
§ 70:27 Administrative delay in permit issuance
§ 70:28 Improper revocation of valid permit
§ 70:29 Honest error and invalid permits
§ 70:30 Effect of owner’s lack of good faith
V. VESTED RIGHTS UNDER STATE OR REGIONAL REGULATORY PROGRAMS

§ 70:31 Generally
§ 70:32 State and regional programs—California
§ 70:33 —Florida
§ 70:34 —New York
§ 70:35 —South Carolina
§ 70:36 —Massachusetts

CHAPTER 71. DEVELOPMENT AGREEMENTS

§ 71:1 Overview

I. DEVELOPER—LOCAL GOVERNMENT AGREEMENTS

§ 71:2 Types and function
§ 71:3 Nature and authority
§ 71:4 Validity and enforceability—Bargaining away the police power
§ 71:5 —Applicability of the Nollan nexus test
§ 71:6 —Validity of provisions and promissory estoppel
§ 71:7 —Developer representations and equitable fraud
§ 71:8 —Applicability of referendum process
§ 71:9 —Remedies if breach or provisions invalid
§ 71:10 Annexation agreements
§ 71:11 Intergovernmental agreements
§ 71:12 Developer-public agency agreements
§ 71:13 Developer-private party agreements

CHAPTER 72. PROTECTION AND CONTINUANCE OF NONCONFORMING USES AND STRUCTURES

I. NATURE OF NONCONFORMING USES AND STRUCTURES

§ 72:1 Definition
§ 72:2 Vested right to continue—Generally
§ 72:3 —By constitutional interpretation
§ 72:4 —By statute or ordinance
§ 72:5 Nonconforming use versus nonconforming structure

© 2019 Thomson Reuters, 10/2019
II. REQUIREMENTS FOR PROTECTION

§ 72:6 Requirement that use must have been an “existing use”—Generally
§ 72:7 Requirement that use must have been an “existing use”—Establishing “existing use” on date of ordinance
§ 72:8 Requirement that use must have been an “existing use”—Mere intention or preparation insufficient
§ 72:9 Where principal component of use is land
§ 72:10 Where use by nature is seasonal or occasional
§ 72:11 Requirement that use be substantial
§ 72:12 Requirement that use be lawful when initiated—Generally
§ 72:13 Illegality negating protected status
§ 72:14 Illegality not affecting protected status
§ 72:15 Lack of certificate of occupancy
§ 72:16 Good faith initiation of prior use
§ 72:17 Impact of private restrictive covenants
§ 72:18 Illegality under invalid ordinance
§ 72:19 Effect of annexation or incorporation

III. RIGHT RUNS WITH THE LAND

§ 72:20 Change in ownership
§ 72:21 Change in form of ownership
§ 72:22 Change from exempt to regulated entity
§ 72:23 Right to customary accessory uses

CHAPTER 73. REGULATION AND RESTRICTION OF NONCONFORMING USES AND STRUCTURES

§ 73:1 An overview

I. REGULATION OF NONCONFORMING USES

§ 73:2 Generally
§ 73:3 Police power regulation
§ 73:4 Licenses and special permits
§ 73:5 Registration requirements
§ 73:6 Zoning treatment of nonconforming uses
§ 73:7 Zoning policy regarding nonconforming uses

II. CHANGES IN NONCONFORMING USES AND STRUCTURES

§ 73:8 Changes permitted by ordinance—Change to permitted use or similar nonconforming use
§ 73:9 — No structural alterations
§ 73:10 Changes not permitted by ordinance—Changes from existing nonconforming use
§ 73:11 — Changes held impermissible
§ 73:12 — Changes held permissible
§ 73:13 Effect of change upon previously existing use

III. EXTENSION OR ENLARGEMENT OF NONCONFORMING USES
§ 73:14 Similarity to and difference from unlawful changes
§ 73:15 Increase in volume or intensity of use
§ 73:16 Physical enlargement or extension
§ 73:17 Pennsylvania doctrine of natural expansion
§ 73:18 Increase in land area used—Generally prohibited
§ 73:19 — Extraction of minerals and similar uses
§ 73:20 Other forms of unlawful expansion—Change in building utilization
§ 73:21 — Change in nature of activities
§ 73:22 — Change in height of structures
§ 73:23 — Change in frequency or pattern of use
§ 73:24 — Changes in persons, occupancy or units
§ 73:25 — Location of replacement structures

IV. GRANTING VARIANCES TO NONCONFORMING USES
§ 73:26 Generally
§ 73:27 Use variances: Denial of beneficial use
§ 73:28 Factors considered
§ 73:29 Effect of use variance on limitations and restoration

CHAPTER 74. TERMINATION AND AMORTIZATION OF NONCONFORMING USES AND STRUCTURES
§ 74:1 An overview

I. ABANDONMENT OF RIGHT TO CONTINUE NONCONFORMING USES AND STRUCTURES
§ 74:2 Generally
§ 74:3 Presumption of intent to abandon
§ 74:4 Questions about the conclusive presumption
§ 74:5 Facts sufficient to evidence intent to abandon
§ 74:6 Facts negating intent to abandon—Generally

© 2019 Thomson Reuters, 10/2019
§ 74:7 — Cessation beyond owner’s control
§ 74:8 — Cessation and business activity
§ 74:9 — Cessation and repairs
§ 74:10 — Cessation and eminent domain

II. DESTRUCTION BY FIRE, FLOOD, OR FORCE MAJEURE

§ 74:11 Generally
§ 74:12 Construction and validity of provisions prohibiting restoration—Generally
§ 74:13 — Meaning of “value” lost as used in ordinance
§ 74:14 — Meaning of “property” destroyed as used in ordinance
§ 74:15 — Meaning of “restoration” as used in ordinance

III. FORCED TERMINATION OF NONCONFORMING USES AND STRUCTURES

§ 74:16 Nuisance rationale
§ 74:17 Eminent domain

IV. AMORTIZATION OF NONCONFORMING USE AND STRUCTURES

§ 74:18 Generally
§ 74:19 Upheld as valid
§ 74:20 Held invalid
§ 74:21 Reasonableness of phase-out period—Factors considered
§ 74:22 — Reasonableness of time period
§ 74:23 Evaluation of loss to owner
§ 74:24 Limitations of amortization

CHAPTER 75. ZONING IN EMINENT DOMAIN PROCEEDINGS

I. ZONING AND THE DETERMINATION OF FAIR MARKET VALUE

§ 75:1 Generally
§ 75:2 Issues in regulatory taking cases
§ 75:3 Issue in eminent domain proceedings—Allowing collateral attack and if invalid no impact on price that would be paid by prospective buyer
§ 75:4 — Allowing only probability of zoning change or repeal
AND ENHANCEMENT IN VALUE OF PRICE THAT WOULD BE PAID
BY PROSPECTIVE BUYER
§ 75:5 EFFECT ON VALUE OF THE NOTICE DEFENSE, INVESTMENT-
BACKED EXPECTATIONS, AND PROBABLE INVALIDITY OF ZONING
§ 75:6 EVIDENCE OF PROBABILITY OF ZONING CHANGE
§ 75:7 EFFECT OF NONCONFORMING USES AND USES PERMITTED BY
VARiANCE UPON DETERMINATION OF VALUE

II. EFFECT OF PARTIAL TAKING ON DAMAGES
AS RELATED TO ZONING RESTRICTIONS ON REMAINING LAND
§ 75:8 COMPUTING COMPENSABLE DAMAGES AT CONDEMNATION
§ 75:9 ENTITLEMENT TO VARIANCE AFTER CONDEMNATION
§ 75:10 FINDING OF NO ADVERSE ZONING CONSEQUENCES

CHAPTER 76. GOVERNMENTAL USES
§ 76:1 OVERVIEW

I. ZONING FOR GOVERNMENTAL USES
§ 76:2 ORDINANCE REGULATING GOVERNMENTAL USES
§ 76:3 INTERPRETING SCOPE OF ORDINANCE PROVISIONS

II. LOCAL INTERGOVERNMENTAL DISPUTES
§ 76:4 GOVERNMENTAL USES OUTSIDE ZONING JURISDICTION
§ 76:5 RESOLUTION BY TRADITIONAL IMMUNITY DOCTRINES
§ 76:6 RESOLUTION BY BALANCING OF INTERESTS TESTS
§ 76:7 RESOLUTION BY EXCLUSIVE INTENT BASED TEST

III. STATUTORY IMMUNITY FROM ZONING
§ 76:8 OVERVIEW
§ 76:9 EXPRESS STATUTORY RESOLUTION
§ 76:10 IMPLIED STATUTORY PREEMPTION

IV. TRADITIONAL GOVERNMENTAL IMMUNITY
   DOCTRINES
§ 76:11 GOVERNMENTAL-PROPRIETARY TEST—EXPLAINED AND
   APPLIED
§ 76:12 —CRITICIZED AND REJECTED
§ 76:13 POWER OF EMINENT DOMAIN TEST—EXPLAINED AND
   APPLIED
§ 76:14 —CRITICIZED AND REJECTED
§ 76:15 STATE SOVEREIGNTY TEST—EXPLAINED AND APPLIED

© 2019 Thomson Reuters, 10/2019
§ 76:16 —Criticized and rejected
§ 76:17 Miscellaneous quasi-governmental entities
§ 76:18 Public authorities
§ 76:19 Inadequacy of traditional immunity doctrines

V. MODERN GOVERNMENTAL IMMUNITY DOCTRINES

§ 76:20 Balancing of interests test
§ 76:21 Variations thereof
§ 76:22 Exclusive intent based test
§ 76:23 Federal governmental uses

CHAPTER 77. MINING AND EXTRACTION ACTIVITIES

§ 77:1 An overview

I. ZONING ORDINANCES PROHIBITING MINING AND EXTRACTION ACTIVITIES

§ 77:2 Early cases
§ 77:3 Upheld if reasonable
§ 77:4 Zoning prohibitions
§ 77:5 Total exclusion
§ 77:6 Regulatory taking claims
§ 77:7 Extraction activities prior to allowed site development

II. ZONING ORDINANCES REGULATING AND PERMITTING MINING AND EXTRACTION ACTIVITIES

§ 77:8 Restrictions upheld
§ 77:9 Restrictions invalid

III. MINING AND EXTRACTION ACTIVITIES AS A PROTECTED NONCONFORMING USE

§ 77:10 Generally
§ 77:11 Establishing nonconforming use status
§ 77:12 Expansion of nonconforming use
§ 77:13 Restriction on preexisting operations—Restrictions upheld
§ 77:14 —Restrictions invalid

CHAPTER 78. ZONING AND PUBLIC UTILITIES

§ 78:1 An overview
I. ZONING STATUS OF PUBLIC UTILITIES

§ 78:2 Generally
§ 78:3 State preemption
§ 78:4 Exemption by judicial decision
§ 78:5 Statutory exemption schemes
§ 78:6 Zoning exclusion of utilities
§ 78:7 Reasonable accommodation and regulation

II. DEFINITION OF TERM “PUBLIC UTILITY”

§ 78:8 Generally
§ 78:9 Electric, gas, and energy projects
§ 78:10 Radio broadcast towers
§ 78:11 Telecommunication facilities and towers
§ 78:12 Transportation facilities and projects
§ 78:13 Water and sewer projects

III. VARIANCES AND SPECIAL EXCEPTIONS

§ 78:14 Variances
§ 78:15 Special exceptions

CHAPTER 79. ZONING FOR BROADCASTING TOWERS, CELLULAR AND PERSONAL WIRELESS FACILITIES, AMATEUR ANTENNAE, AND SATELLITE DISHES

§ 79:1 An overview

I. LOCAL REGULATION OF COMMUNICATION TOWERS, ANTENNAE, AND RELATED FACILITIES

§ 79:2 Public purposes supporting regulation
§ 79:3 Reasonable regulation upheld
§ 79:4 Inadvertent regulation by oversight—Allowed uses
§ 79:5 —Accessory uses
§ 79:6 Height restrictions
§ 79:7 Variances
§ 79:8 Special permits
§ 79:9 Co-location requirements
§ 79:10 Amortization
§ 79:11 Overbreadth, vagueness, and equal protection claims
§ 79:12 State law preemption claims—Generally
§ 79:13 — Governmental immunity
§ 79:14 — Treatment as public utility
§ 79:15 Implied federal preemption claims— Burdening interstate commerce claims
§ 79:16 — First amendment speech claims
§ 79:17 — Implied FCC preemption claims

II. LOCAL REGULATION OF CELLULAR TOWERS AND PERSONAL WIRELESS FACILITIES

§ 79:18 Reasonable regulation upheld
§ 79:19 Limited federal preemption
§ 79:20 Ban on wireless services within community
§ 79:21 Effects of nonionizing electromagnetic radiation
§ 79:22 Unreasonable discrimination among providers
§ 79:23 Decision within reasonable time
§ 79:24 Decision in writing and substantial evidence

III. LOCAL REGULATION OF AMATEUR RADIO ANTENNAE

§ 79:25 Reasonable regulation upheld
§ 79:26 Limited federal preemption

IV. LOCAL REGULATION OF SATELLITE DISHES AND TELEVISION RECEPTION ANTENNAE

§ 79:27 Reasonable regulation upheld

   A. LIMITED FEDERAL PREEMPTION

§ 79:28 Satellite receiving dishes of one meter (39.37 inches) or less in diameter (or of any size in Alaska) and television broadcast reception antennae— Applicability and scope
§ 79:29 — Local restrictions preempted
§ 79:30 — Unreasonable delay
§ 79:31 — Cost of regulatory compliance
§ 79:32 — Impairment of reception
§ 79:33 — Height limitations
§ 79:34 — Otherwise preempted restrictions allowed— Generally
§ 79:35 — — Safety restrictions
§ 79:36 — — Historic preservation
§ 79:37 — — Waiver by FCC of preempted restrictions
§ 79:38 — — Declaratory ruling prior to enforcement
§ 79:39 Satellite transmission or receiving dish antennae of
more than one meter (39.37 inches) in diameter—
Local regulation preempted
§ 79:40 —Reasonable regulation allowed
§ 79:41 —Waiver by FCC of preempted restrictions
§ 79:42 —Declaratory ruling by the FCC
§ 79:43 Satellite dish antenna of two meters (78.74 inches) or
less in diameter and located in areas where
commercial or industrial uses are allowed—Local
regulation preempted
§ 79:44 —Reasonable regulation allowed
§ 79:45 —Waiver by FCC of preempted restrictions
§ 79:46 —Declaratory ruling prior to enforcement
§ 79:47 Federal preemption and Section 1983 damage claims

Volume 5

CHAPTER 80. LEASES AND LAND USE
RESTRICTIONS
§ 80:1 Overview
I. ZONING PROHIBITION OF INTENDED USE
§ 80:2 Lease held void or unenforceable
§ 80:3 Landlord warranty, representations, or concealment
§ 80:4 Tenant assumption of risk—Where use not entirely
prohibited
§ 80:5 —Where use is entirely prohibited
§ 80:6 Tenant obligation to seek permit or variance
§ 80:7 Landlord agreement to obtain zoning approval
§ 80:8 Leases and nonconforming uses
§ 80:9 Enforcement by municipality
§ 80:10 Effect on broker’s rights

II. OTHER ISSUES WITH LEASES
§ 80:11 Lack of certificate of occupancy
§ 80:12 Municipality as landlord
§ 80:13 Air rights in New York City

CHAPTER 81. RESIDENTIAL USES:
OCCUPANCY, OWNERSHIP, RENTAL
CONVERSIONS, AND RENT CONTROL
§ 81:1 An overview
I. REGULATION OF OCCUPANCY OR OWNERSHIP
§ 81:2 Occupancy or ownership—Generally
§ 81:3 —Land use impact analysis
§ 81:4 —Identity of occupant or owner
§ 81:5 —Marital status
§ 81:6 —Household composition
§ 81:7 —Owner-occupancy restrictions
§ 81:8 —Form of ownership restrictions
§ 81:9 Condominium development
§ 81:10 Time-sharing arrangements
§ 81:11 Short term rentals

II. REGULATION OF RENTAL HOUSING CONVERSIONS

§ 81:12 Zoning and condominium conversions
§ 81:13 Zoning and conversion of seasonal rentals
§ 81:14 Home rule power to regulate conversions
§ 81:15 Restrictions on conversion of rental housing—Generally
§ 81:16 —Taking claims
§ 81:17 Condominium and Cooperative Abuse Relief Act

III. RENT CONTROL, CONVERSION, AND TENANT PROTECTION PROVISIONS

§ 81:18 Generally
§ 81:19 Substantive due process claims
§ 81:20 Regulatory taking claims—Generally
§ 81:21 —Fair return on investment
§ 81:22 —Economically viable use analysis
§ 81:23 —Physical occupation analysis
§ 81:24 —Benefit extraction analysis—Generally
§ 81:25 — —Nollan substantial nexus test
§ 81:26 — —Dolan rough proportionality test
§ 81:27 — —Agins “substantially advance” test

CHAPTER 82. PUBLIC LAND USE CONTROLS AND PRIVATE COVENANTS

§ 82:1 An overview

I. RELATIONSHIP BETWEEN PUBLIC LAND USE CONTROLS AND COVENANTS

§ 82:2 Zoning ordinances and private covenants operate independently: Validity of one unaffected by the other
§ 82:3 Rezonings, variances, special exceptions, subdivision
approvals, and building permits do not affect and are unaffected by private covenants

§ 82:4 Zoning as factor in holding more restrictive covenants unenforceable

§ 82:5 When zoning and inconsistent covenant restrictions deny all use of land: Taking claims and remedies

§ 82:6 Covenant restrictions and acquisition of vested nonconforming use rights

§ 82:7 Public policy and statutory limitations on covenant enforcement and the constitutionality thereof

§ 82:8 Constitutional limitations on covenant enforcement

II. LARGE DEVELOPMENT PROJECTS

§ 82:9 Stricter zoning prevails

§ 82:10 Pitfalls of contract zoning

§ 82:11 Conveyance of municipal land subject to covenants followed by less restrictive zoning

III. CONSERVATION EASEMENTS

§ 82:12 Generally

§ 82:13 Federal tax incentives—Introduction

§ 82:14 —Conservation easements defined

§ 82:15 —Tax incentives

§ 82:16 —Requirements for “qualified conservation contributions”—Generally

§ 82:17 ——“Clearly delineated conservation policy”

§ 82:18 ———Policy statement

§ 82:19 ———Identification of conservation lands

§ 82:20 ———Governmental commitment to policy objective

§ 82:21 ———“Pursuant to . . . .”

§ 82:22 ———Significant public benefit

CHAPTER 83. PARKING

I. INTRODUCTION

§ 83:1 Generally

§ 83:2 Parking minimums

§ 83:3 Parking credits

§ 83:4 Parking maximums and elimination of minimums

§ 83:5 Bicycle parking

II. VALIDITY OF PARKING REQUIREMENTS

§ 83:6 Zoning authority for requirements
§ 83:7 Constitutionality: Reasonableness of requirements
§ 83:8 Number and size of spaces
§ 83:9 Administrative discretion and performance standards—Generally valid
§ 83:10 —Adequacy and interpretation of standards
§ 83:11 —Waiver or modification of standards
§ 83:12 Validity as applied to religious uses—Generally
§ 83:13 —Unreasonable as applied
§ 83:14 —Reasonable as applied
§ 83:15 Reasonableness of particular requirements—Held unreasonable
§ 83:16 —Held reasonable

III. INTERPRETATION OF PARKING REQUIREMENTS

§ 83:17 Generally
§ 83:18 Off-street parking
§ 83:19 Accessory use
§ 83:20 Calculations
§ 83:21 Intersecting street

IV. SATISFACTION OF PARKING MINIMUMS OFF-SITE

§ 83:22 Generally
§ 83:23 Use of public parking lots
§ 83:24 Use of other off-site property
§ 83:25 Use of lot in another zoning district

V. REMEDIES TO SECURE OFF-STREET PARKING

§ 83:26 Challenge to validity of ordinance
§ 83:27 Variance
§ 83:28 Special exception
§ 83:29 Rezoning
§ 83:30 Planned unit development

VI. REMEDIES TO AVOID OFF-STREET PARKING REQUIREMENTS

§ 83:31 Challenge to validity of ordinance
§ 83:32 Variance—Nature of and standards for relief
§ 83:33 —Use variance or area variance
§ 83:34 —To promote zoning plan
§ 83:35 —Unique hardship
§ 83:36 Special exception

VII. PARKING ISSUES RELATED TO NONCONFORMING USES

§ 83:37 Vested rights
§ 83:38 Nonconforming uses

CHAPTER 84. TRAFFIC CONDITIONS AND ZONING

§ 84:1 Overview
§ 84:2 Traffic considerations in zoning—As legitimate public purpose supporting zoning classification and restrictions
§ 84:3 —As standard or ground for zoning decision— Generally
§ 84:4 — —Conditional or special exception uses
§ 84:5 — —Variances
§ 84:6 — —Planning board actions
§ 84:7 — —Approval conditioned on off-site traffic or highway changes
§ 84:8 —Significance of record and expert testimony
§ 84:9 Zoning as improper substitute for adequate traffic management or infrastructure—Generally
§ 84:10 —When utilized to unreasonably limit growth
§ 84:11 —When particular use simply increases traffic
§ 84:12 —When particular tract given unsuitable use classification
§ 84:13 —Unreasonable discrimination between neighboring tracts or similar uses
§ 84:14 —When particular tract uniquely burdened for public benefit
§ 84:15 Traffic as ground for denial of rezoning
§ 84:16 Traffic as ground for challenging existing zoning classification
§ 84:17 Traffic as ground for challenging grant of rezoning
§ 84:18 Traffic increase by nonconforming use
§ 84:19 State preemption of local traffic control
§ 84:20 Development exactions related to traffic conditions and roads

CHAPTER 85. ZONING FOR AIRPORTS AND ADJACENT LANDS

§ 85:1 Overview
I. ZONING LAND FOR AIRPORTS

§ 85:2 Reasonable zoning regulation upheld
§ 85:3 Statutory authority and state preemption
§ 85:4 Federal preemption and local zoning
§ 85:5 Intermunicipal disputes and zoning immunity

II. ZONING LAND NEAR AIRPORTS

§ 85:6 Reasonable zoning regulation upheld
§ 85:7 Special airport zoning
§ 85:8 Nearby residential zoning
§ 85:9 Inverse condemnation claims—Regulatory taking claims
§ 85:10 —Precondemnation zoning

III. AIRPORT-RELATED ZONING MECHANISMS AND TECHNIQUES

§ 85:11 Conditional or specially permitted uses
§ 85:12 Variances
§ 85:13 Nonconforming uses
§ 85:14 Accessory uses
§ 85:15 Public utility

CHAPTER 86. DEFINITIONS

§ 86:1 Definition and construction of ordinance terms
§ 86:2 Particular terms defined and construed—In alphabetical order

CHAPTER 87. SITE PLAN REVIEW AND APPROVAL

I. THE PROCESS OF SITE PLAN REVIEW/ APPROVAL

§ 87:1 Site plans
§ 87:2 Site plan process
§ 87:3 Site plan approval
§ 87:4 Purpose of site plan review/approval
§ 87:5 Difference between subdivision approval and site plan review/approval

II. STATUTORY AUTHORITY

§ 87:6 Express authority
§ 87:7  Implied authority

III.  GENERAL PRINCIPLES OF SITE PLAN REVIEW/APPROVAL

§ 87:8  Local review decisions
§ 87:9  Procedures required
§ 87:10  Decisions, standards, and evidence
§ 87:11  Validity of conditions imposed

IV.  JUDICIAL REVIEW OF SITE PLAN REVIEW/APPROVAL DECISIONS

§ 87:12  Reviewability of decisions
§ 87:13  Deference to local decisions
§ 87:14  Sample site plan approval ordinance

CHAPTER 88.  PLANNED UNIT DEVELOPMENTS

§ 88:1  Defined and explained

I.  ESTABLISHMENT AND IMPLEMENTATION

§ 88:2  Authority to enact
§ 88:3  Procedure
§ 88:4  —Application process
§ 88:5  —Information to be submitted with application
§ 88:6  —Hearing
§ 88:7  —Written findings
§ 88:8  —Referendum and recordation
§ 88:9  Standards and conditions—Generally
§ 88:10  —Consistency with the comprehensive plan
§ 88:11  —Requirements of non-zoning statutes

II.  JUDICIAL REVIEW

§ 88:12  Generally
§ 88:13  Interpretation of ordinances
§ 88:14  Ripeness
§ 88:15  Standing
§ 88:16  Plan consistency and spot zoning
§ 88:17  Lack of adequate standards and improper delegation of legislative authority

© 2019 Thomson Reuters, 10/2019  cxi
CHAPTER 89. SUBDIVISION CONTROL: ENABLING STATUTES, DEFINITIONS, AND APPROVAL AUTHORITY

I. LOCAL CONTROL OF SUBDIVISION DEVELOPMENT

§ 89:1 Background and context of local regulation
§ 89:2 Effective planning and subdivision regulation
§ 89:3 Authorized purposes for local regulation
§ 89:4 Relation between zoning and subdivision controls

II. DEFINITIONS OF REGULATED SUBDIVISIONS

§ 89:5 Various statutory definitions—Generally
§ 89:6 —Number, size, or sale of lots
§ 89:7 —New streets or street frontage
§ 89:8 —Nonresidential subdivisions
§ 89:9 Judicial construction in atypical contexts—Parcels split by roads
§ 89:10 —Condominiums and cooperatives
§ 89:11 —Mobile home parks and campsites
§ 89:12 —Transfers by gift or testamentary disposition
§ 89:13 Special treatment of minimal subdivisions—Minor subdivisions or short plats
§ 89:14 —Partitioning or severance
§ 89:15 —Resubdivision
§ 89:16 —Plat vacation
§ 89:17 —Lot boundary adjustments

III. SUBDIVISION OR PLAT APPROVAL AUTHORITY

§ 89:18 Generally
§ 89:19 Standards for approval
§ 89:20 Extraterritorial jurisdiction
§ 89:21 Relation to private covenants

CHAPTER 90. SUBDIVISION CONTROL: SUBSTANTIVE STANDARDS

§ 90:1 An overview

I. REVIEW OF PROPOSED SUBDIVISION APPLICATION

§ 90:2 Standards and purposes
§ 90:3 Supplementing local standards
§ 90:4 Adequacy of standards
§ 90:5 Application of standards
§ 90:6 Proper versus irrelevant considerations—Generally
§ 90:7 —Required information
§ 90:8 —Impact on water courses
§ 90:9 —Lot size
§ 90:10 —Impact on adjacent land
§ 90:11 —Traffic impact
§ 90:12 —Future public uses
§ 90:13 —Proposed zoning change
§ 90:14 —Fire protection
§ 90:15 —Environmental protection
§ 90:16 —Street and drainage maintenance
§ 90:17 —Effect on private rights
§ 90:18 —Sewerage disposal
§ 90:19 —Frontage
§ 90:20 —Steep slopes
§ 90:21 —Poor planning
§ 90:22 —Historic preservation
§ 90:23 —Extraterritorial jurisdiction

II. GROUNDS FOR DENIAL OF SUBDIVISION APPLICATIONS

§ 90:24 Compliance with other development controls—
   Existing zoning ordinance
§ 90:25 —Comprehensive or master plan
§ 90:26 —Statewide or regional plan
§ 90:27 Compliance with environmental protection mandates—Generally
§ 90:28 —Environmental impact reviews
§ 90:29 —Other authority for environmental considerations
§ 90:30 Streets, roads, and highways—Approval of subdivision streets
§ 90:31 —Widening of adjacent streets
§ 90:32 —Improvement of off-site streets
§ 90:33 —Public access easements
§ 90:34 Flooding and drainage
§ 90:35 Water facilities—Water supply
§ 90:36 —Sanitary sewerage

A. PUBLIC FACILITIES AND AMENITIES

§ 90:37 Parks and playgrounds—Generally
§ 90:38 —Local authority

© 2019 Thomson Reuters, 10/2019
§ 90:39 —Validity and constitutionality
§ 90:40 Schools

III. DEVELOPMENT CONDITIONS, IMPROVEMENTS, EXACTIONS AND IMPACT FEES

§ 90:41 Validity of conditions
§ 90:42 Required improvements
§ 90:43 Exactions and impact fees
§ 90:44 The federal Nollan and Dolan nexus tests—Generally
§ 90:45 —The Nollan nexus test
§ 90:46 —The Dolan nexus test
§ 90:47 —Incentive or voluntary conditions

IV. VARIANCE AND WAIVER OF STANDARDS

§ 90:48 Powers of planning board—Variances from zoning standards
§ 90:49 —Cluster development
§ 90:50 —Waiver of subdivision standards
§ 90:51 Powers of board of appeals
§ 90:52 Subdivision approval by private associations

CHAPTER 91. SUBDIVISION CONTROL: PROCEDURES AND ENFORCEMENT

§ 91:1 An overview

I. STANDING FOR SUBDIVISION APPROVAL

§ 91:2 Owner of land
§ 91:3 Individual lot owner

II. SUBDIVISION APPROVAL PROCESS

§ 91:4 Sketch plans
§ 91:5 Preliminary plats and final plats—Relation between preliminary and final plats
§ 91:6 —Timing, process, and importance of preliminary plat approval

III. APPROVAL BY INACTION

§ 91:7 Required time for action
§ 91:8 Waiver of time period
§ 91:9 Improper action during period
§ 91:10 Relation to site plan approval

cxiv
Table of Contents

§ 91:11 Final action for plat approval

IV. MISCELLANEOUS MATTERS

§ 91:12 Fees and charges
§ 91:13 Procedural obligations of reviewing body
§ 91:14 Findings supporting decisions
§ 91:15 Finality of approval and attached conditions
§ 91:16 Performance bonds

V. REVIEW OF ADMINISTRATIVE ACTIONS

§ 91:17 Review of final decisions
§ 91:18 Review process and procedures
§ 91:19 Standards for review

VI. ENFORCEMENT OF SUBDIVISION CONTROLS

§ 91:20 Sanctions for failure to comply—Available penalties and remedies
§ 91:21 —Effect on innocent purchasers
§ 91:22 Securing development as approved—Action on the performance bond
§ 91:23 —Questions involving proceeds and refunds
§ 91:24 —Other public remedies
§ 91:25 —Rights of purchasers

VII. VESTED RIGHTS IN PLAN FOR SUBDIVISION

§ 91:26 Generally
§ 91:27 Under old filed maps
§ 91:28 Changes in subdivision regulations and zoning—After submission of preliminary plat
§ 91:29 —After approval of preliminary plat
§ 91:30 —After final plat approval
§ 91:31 Forfeiture of prior approval

APPENDICES

APPENDIX A. A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations: (Recommended by the U.S. Department of Commerce, 1926)

Table of Laws and Rules
Table of Cases
Index

© 2019 Thomson Reuters, 10/2019 cxv