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LAND USE REGULATION
Cases and Materials

*Fifth
Edition*



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LAND USE REGULATION

Cases and Materials

Fifth Edition

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Published by Wolters Kluwer in New York.

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Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-7754-7

Library of Congress Cataloging-in-Publication Data

Names: Selmi, Daniel P., author. | Kushner, James A., author. | Ziegler, Edward H., author. | DiMento, Joseph F., author. | Echeverria, John D., author.

Title: Land use regulation : cases and materials / Daniel P. Selmi, Professor of Law, Fritz B. Burns Chair in Real Property, Loyola Law School; James A. Kushner, Professor Emeritus, Southwestern Law School; Edward H. Ziegler, Professor of Law, University of Denver Sturm College of Law; Joseph F. C. DiMento, Professor of Law, University of California, Irvine School of Law; John Echeverria, Professor of Law, Vermont Law School.

Description: Fifth edition. | New York : Wolters Kluwer, 2017. | Series: Aspen casebook series | Includes bibliographical references and index.

Identifiers: LCCN 2017002326 | ISBN 9781454877547

Subjects: LCSH: Land use — Law and legislation — United States. | LCGFT: Casebooks.

Classification: LCC KF5698 .S45 2017 | DDC 346.7304/5 — dc23 LC record available at <https://lcn.loc.gov/2017002326>

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To the Hon. Manuel L. Real
—DPS

In memory of Solomon Kushner
—JAK

In memory of Hank Seney and John Batt
—EHZ

To all of my land-use students
—JFCD

To Carin
—JE



Preface to the Fifth Edition

For the fifth edition, the casebook welcomes two new authors and bids farewell to two others. Joining the book are Professor Joseph DiMento from the University of California at Irvine Law School and Professor John Echeverria from the Vermont Law School. Joe brings to the book a lengthy background in planning issues. In particular, his writings on the so-called “consistency doctrine” have been enormously influential. John is well-known nationally as a prolific scholar on the takings clause and on other constitutional questions raised by land use regulation.

Leaving us is founding author Professor James Kushner of Southwestern Law School. Jim leaves behind four editions of this casebook as well as a voluminous and remarkable legacy of publications in the land use and housing fields. Professor Edward Ziegler also has retired. Ed is well-known for his writing in the land use field, and in particular for his work as the principal editor of the national multi-volume treatise, Rathkopf’s *The Law of Zoning and Planning*. Both have more than earned their retirements, and we wish them well.

When the casebook was initiated in 1989, the first edition of the book noted that one of its pedagogical goals was to emphasize very recent cases so as to place students squarely within the context of modern land use law. We wanted a book that exposed students to ongoing issues and to the lively political undercurrents of this dynamic field of law. With this fifth edition, we have undertaken a broad review of recent developments so as to continue to fulfill that goal.

Users will see that we have re-worked the takings chapters to consolidate all the takings issues into one chapter. The materials have also been expanded to better reflect the current debate over preferred directions for takings law. Additionally, the chapter on other constitutional law issues, particularly those arising under the First Amendment, has also been substantially revised.

The biggest change, however, has been the addition of a new chapter entitled “Confronting New Challenges: Smart Growth, Health, Climate Change, and Vulnerable Populations.” In addition to an expanded set of materials directed to the continuing development of “smart growth” principles, the chapter captures some new issues bearing on land use that have emerged. These include the land use impacts of climate change, a subject that some local governments are addressing even if state governments (and now, perhaps, the federal government) try to ignore it. Other parts of this new chapter address the relationship between land use policies and the rise in obesity among the American population, the continuing disputes over local regulation of homes for individuals battling substance abuse, and the land use implications of responding to problems posed by homelessness. Finally, the chapter addresses state and local land use efforts directed at regulating sites that dispense marijuana, both for medical use and now increasingly for recreational use.

These new materials are topical and highly interesting to students. We believe that both professors and students will enjoy them.

Professor Echeverria gratefully acknowledges the valuable research assistance of James LaRock as well as the support of Vermont Law School librarians Cynthia Lewis, Christine Ryan, and Michelle LaRose.

Professor DiMento wishes to thank his research assistants Ian Deady and Ethan Mora, who were extraordinary in their commitments and professionalism, and Ms. Lisa Payne, faculty assistant, whose organizational skills kept all of the background resources available and provided superior production services. Librarians Lisa Junghahn, Christina Tsou, and Dianna Sahhar identified sources and resources that make for a comprehensive treatment. Writing casebooks in the digital world often requires the professional services of information technology staff; Joe Macavinta, Jose Diaz, and Enrique Morones were generous in their support. Enid Zhou provided essential citation assistance.

Professor Selmi wishes to thank Loyola Law School and the Fritz B. Burns Foundation for their generous support. He also wishes to thank Dan Martin, Director of the Law Library, and Caitlin Hunter, Reference Librarian, for their invaluable assistance. Finally, he thanks Mell Banez, Pam Buckles, and the other members of the Faculty Support Office who worked tirelessly on the project.



Acknowledgments

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