

Land Use Law 101

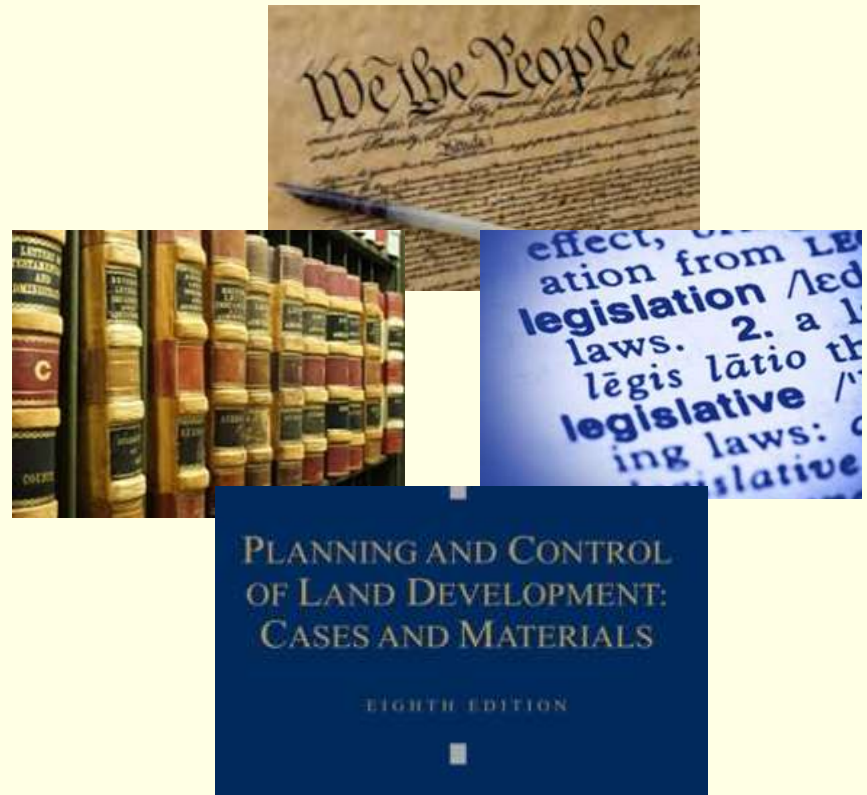


Legal Research

How to Find the Law

Orlando DeLogu

- Land use is a heavily regulated industry like securities, but with no single place where you can find the law...



The Police Power

- to provide for and promote the safety, peace, health, morals, and general welfare of the people...



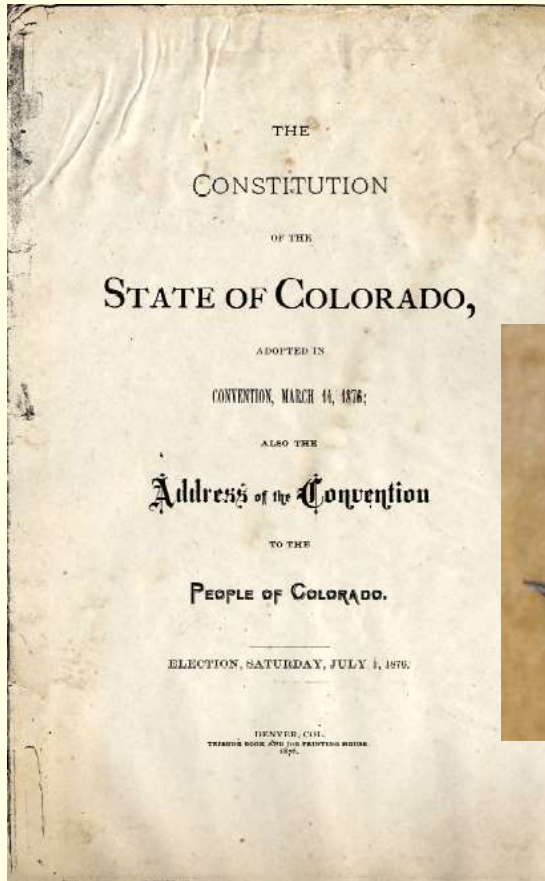
Common Law Nuisance



Spur Industries v. Del E. Webb Development Co.



Constitutions and Statutes



MEETINGS.

**HOME RULE
FOR THE DISTRICT!
GRAND MASS-MEETING
OF CITIZENS AT
ODD-FELLOWS' HALL.**

"No taxation without representation."
"All governments derive their just powers from the consent of the governed."—*Declaration of Independence.*
"No man is good enough to govern another without his consent."—*President Hayes.*

A GRAND MASS MEETING OF CITIZENS, IRRESPECTIVE OF PARTY,
Will be held at
ODD-FELLOWS' HALL,
Seventh street, between D and E, on
Friday Evening, Jan. 23, 1880, at 7:30 o'clock.

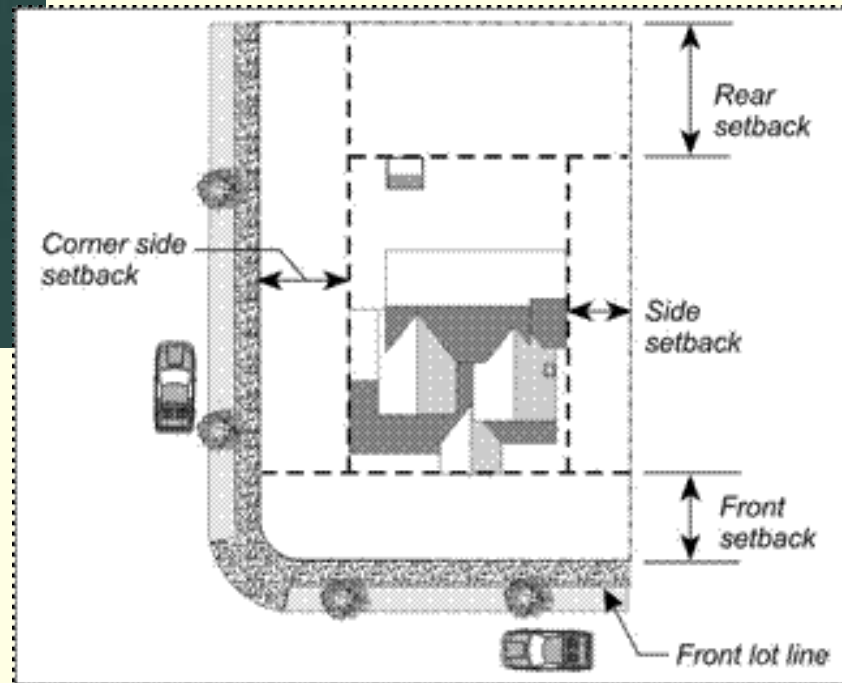
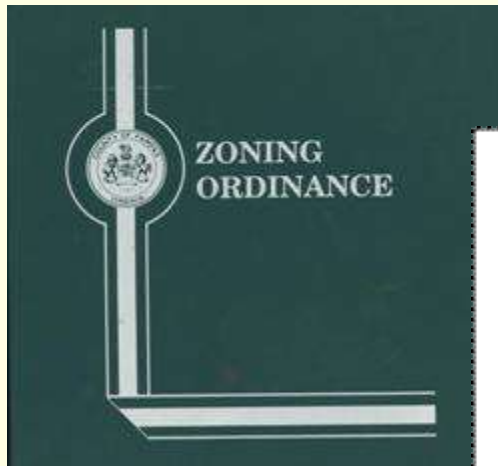
Addresses in favor of SUFFRAGE will be made by
**ROBERT G. INGERSOLL, THOMAS J. DURANT,
I. F. KLINGLE** and others.
All are invited. Reserved seats for ladies.

Members of Congress, you who have established this despotic appointive government over us, are respectfully invited to be present.

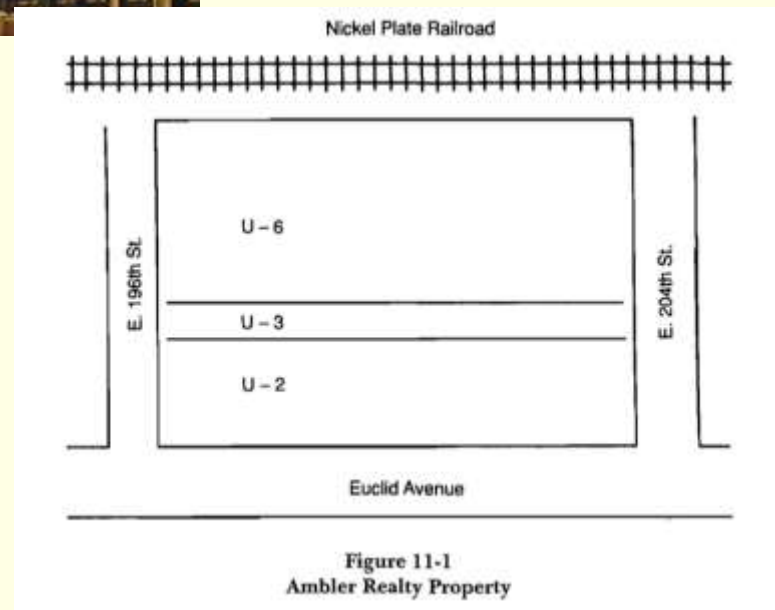
LOOK ON THIS PICTURE: Debt of the District of Columbia in 1871, after 70 years under an elective government.....\$3,000,000	THEN ON THIS: Debt of the District of Columbia in 1880, after 9 years under an appointive government.....\$24,000,000
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FIVE HUNDRED of our best citizens are houseless and homeless to-day in consequence of excessive taxation imposed upon them by this anti-American government.
JAN 19-80

Regulations

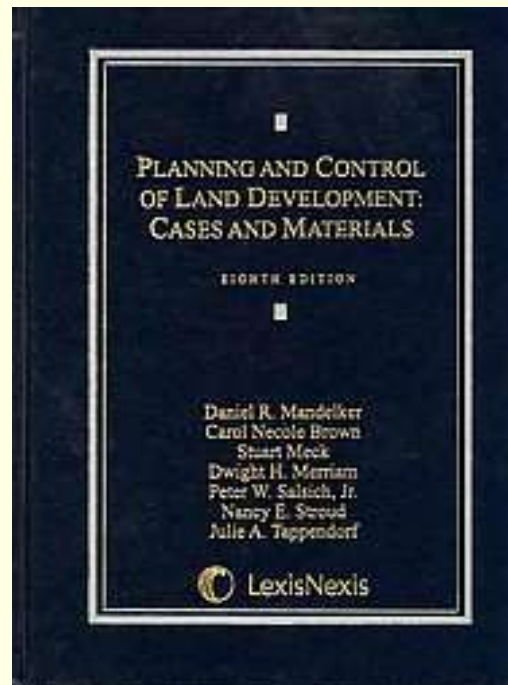


Case Law



Other Research Tools

- The internet, of course
 - Google, www.planning.org
- Casebooks, treatises, and hornbooks



History of Planning Law

Stuart Meck



The Role of the Plan

Daniel Mandelker and Peter Salsich

- “The process of making plans by applying foresight to action,” Mandelker, et al., *Planning and Control of Land Development: Cases and Materials*, 8th Ed., p. 34 (2011).
- Standard City Planning Act
- City Plan Commission
- Local legislative body

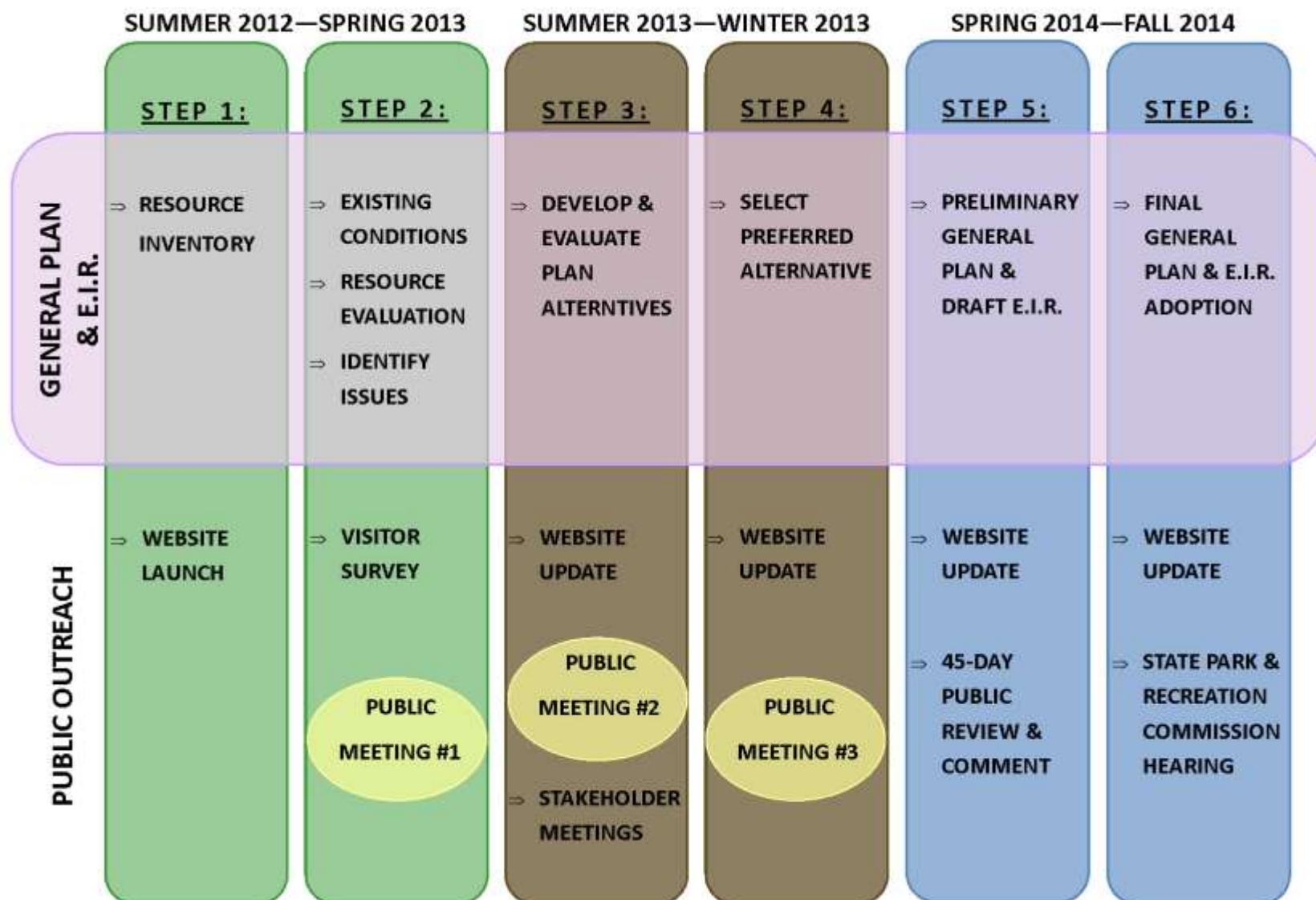


Comprehensive Planning Process (“Rational” Planning)

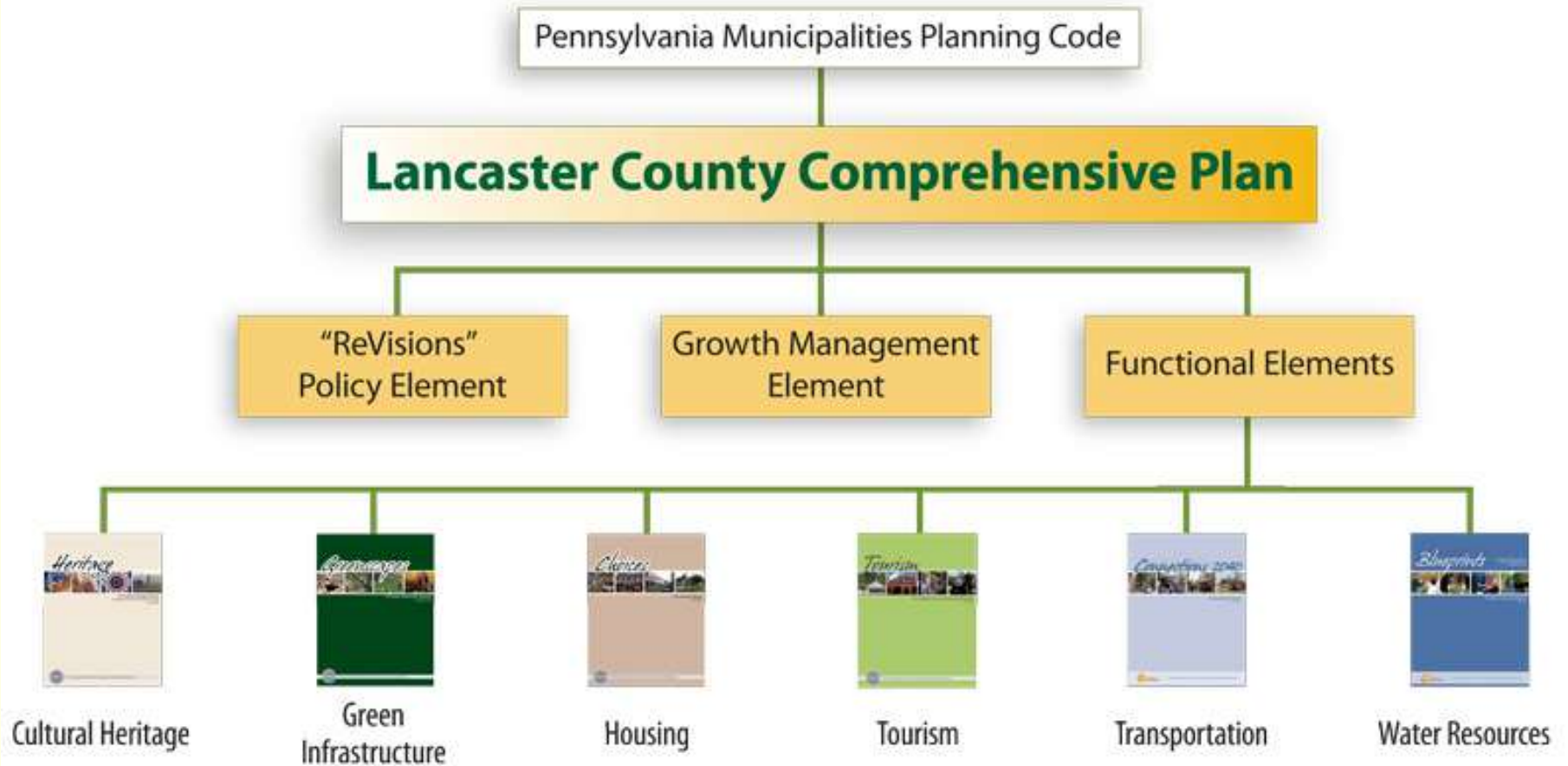
- Traditional concern – “rational” planning
- Goals, objectives and policies



GENERAL PLAN PROCESS & TIMELINE SUMMARY



Plan Format



Citizen Participation

PUBLICITY	PUBLIC EDUCATION	PUBLIC INPUT	PUBLIC INTERACTION	PUBLIC PARTNERSHIP
Building public support	Disseminating information	Collecting information	Two-way communication	Securing advice and consent
<div> <div><----- PASSIVE</div> <div>ACTIVE-----></div> </div>				

Alternatives to Traditional Rational Planning

- Participatory planning
- Equity planning (the “Just” City)



Current Approach

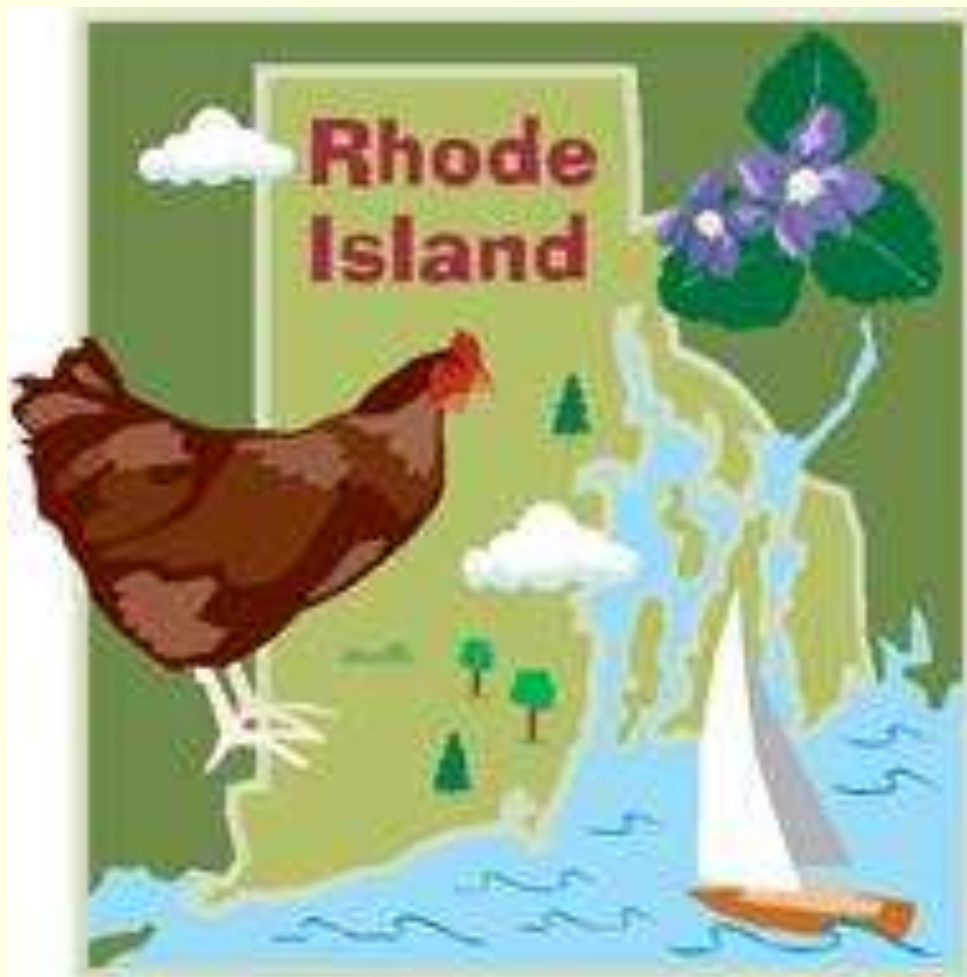
- **Planning is a part of the political process. “Political decision maker [is] responsible for the adoption of planning policy. Planners assist by presenting and clarifying policy alternatives,”** [Mandelker, § 304.](#)

Four Prototypes

- **Traditional Land Use Design Plan**
 - designated land uses and a circulation system
- **Land Use Classification Plan**
 - “growth policy areas” map
- **Policy Plan**
 - verbal discussion of projected future development; less reliance on maps
- **Development management plan**
 - policy proposals for public investment



Mandatory Planning



Consistency Doctrine

DEFINITION OF “CONSISTENCY”

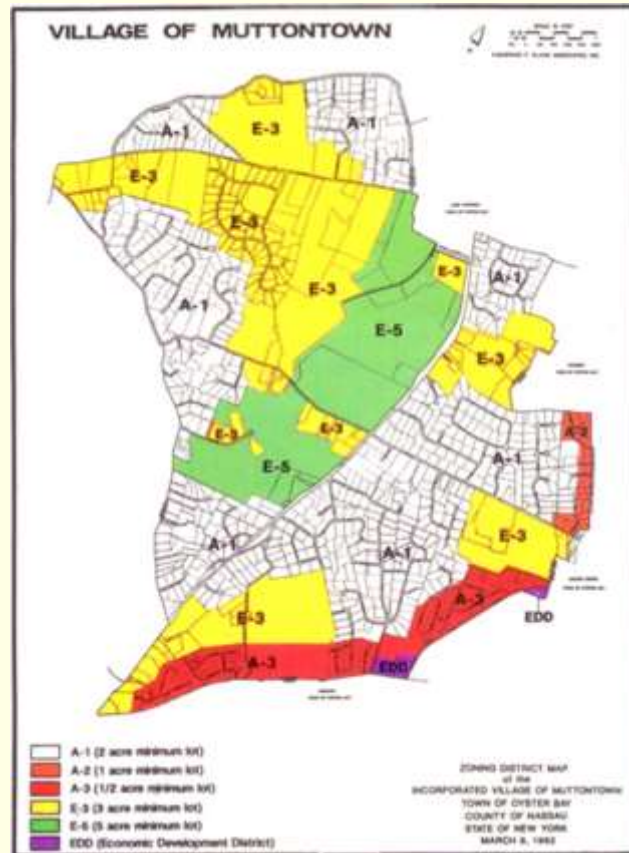
A Planner's Dictionary (PAS Report Number 521/522, April 2004) provides three definitions of “consistency.”

- ♦ All regulations that are used to implement the local comprehensive plans must be consistent with the recommendations and policies of the plan, and state and local funding decisions must be consistent with the local plan. [Rhode Island Statutes]
- ♦ Free from variation or contradiction. Programs in the general plan are to be consistent, not contradictory or preferential. State law requires consistency between a general plan and implementation measures such as the zoning ordinance. [California Planning Roundtable]
- ♦ Compatibility and agreement with the general plan of the [municipality]. Consistency exists when the standards and criteria of the city general plan are met or exceeded. [Moorpark, California]

Implementing the Plan through Regulation

Dwight Merriam

- **Basic processes**
 - Subdivisions
 - Zoning
 - Variances
 - Enforcement



- **State law and federal law claims**

- **The “Police Power”**

- **Enabling statutes and charters**

- **This guy’s**



- rule**

- **State overrides**

- **Federal zoning? Yes, but under other names**

- **RLUIPA**

- **NFIP**

- **FHAA**

- **CWA**

- **Private controls**

Table 1. Spread of Common Interest Developments

Year	CIDs	Housing units	Residents	% of population
1964	<500	n.a.	n.a.	n.a.
1970	10,000	701,000	2.1 million	1.0
1980	36,000	3.6 million	9.6 million	4.2
1990	130,000	11.6 million	29.6 million	11.9
2000	222,500	17.8 million	45.2 million	16.1
2009	305,400	24.4 million	60.1 million	19.7

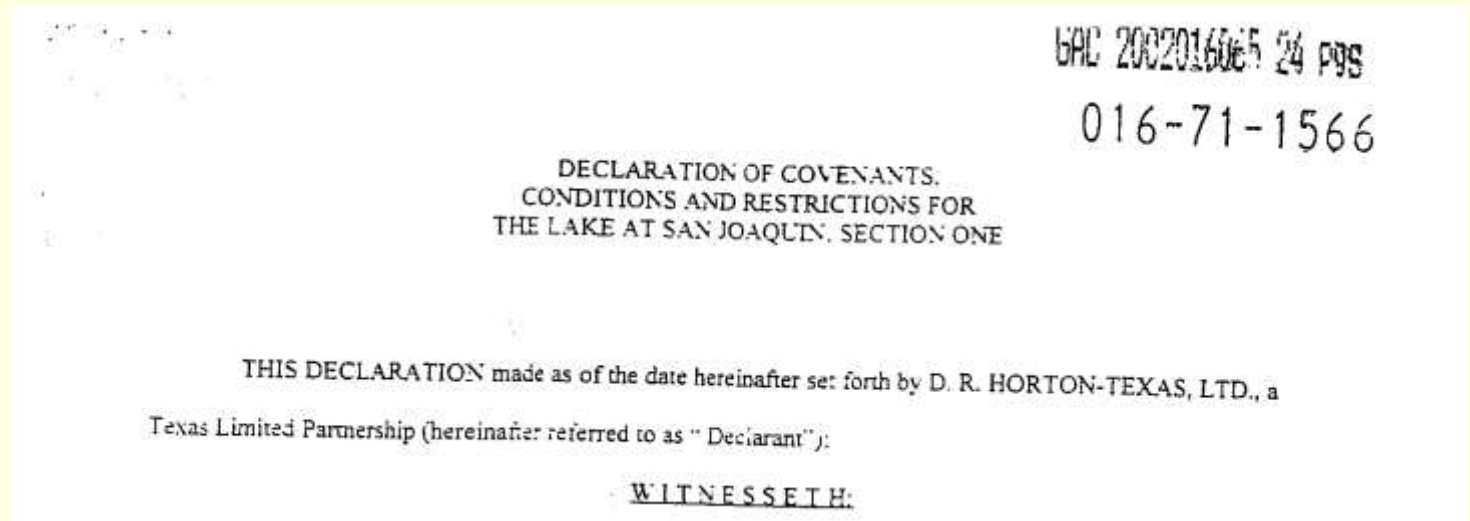
Sources: Community Associations Institute (2010) and U.S. Census.

CIDs = common interest developments

n.a. = not available



- **Covenants and easements**
- **Common interest communities**
- **“The right to dry” issue**
- **Dog amortization**



Other Powerful Controls

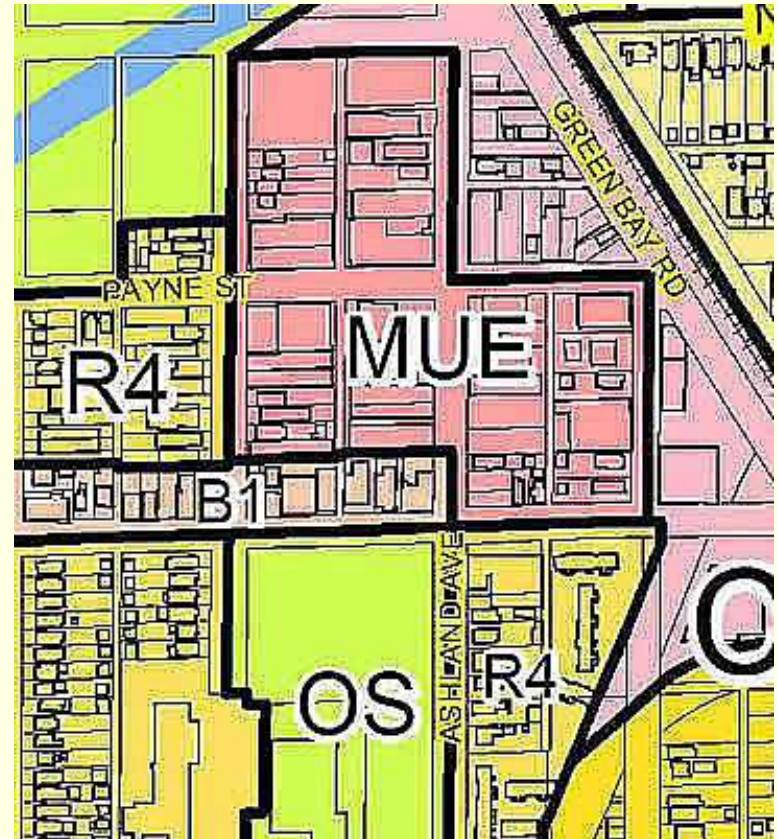
- The market
- Infrastructure
- Taxes
- Government spending



Traditional Regulation

Daniel Mandelker and Nancy Stroud

- **Zoning**
 - **Uses**
 - permitted uses
 - conditional uses/
special exceptions
 - mixed uses
 - accessory uses
 - specially protected uses
 - bulk and lot restrictions
 - density restrictions
 - planned development



- **Zoning ordinance administration**
 - **Review bodies**
 - staff level review and approval
 - planning and zoning board
 - legislative body
 - **Review/approval processes**
 - quasi-judicial review and approval v. legislative
 - variances
 - rezoning
 - **Site plan review**
 - **Enforcement**

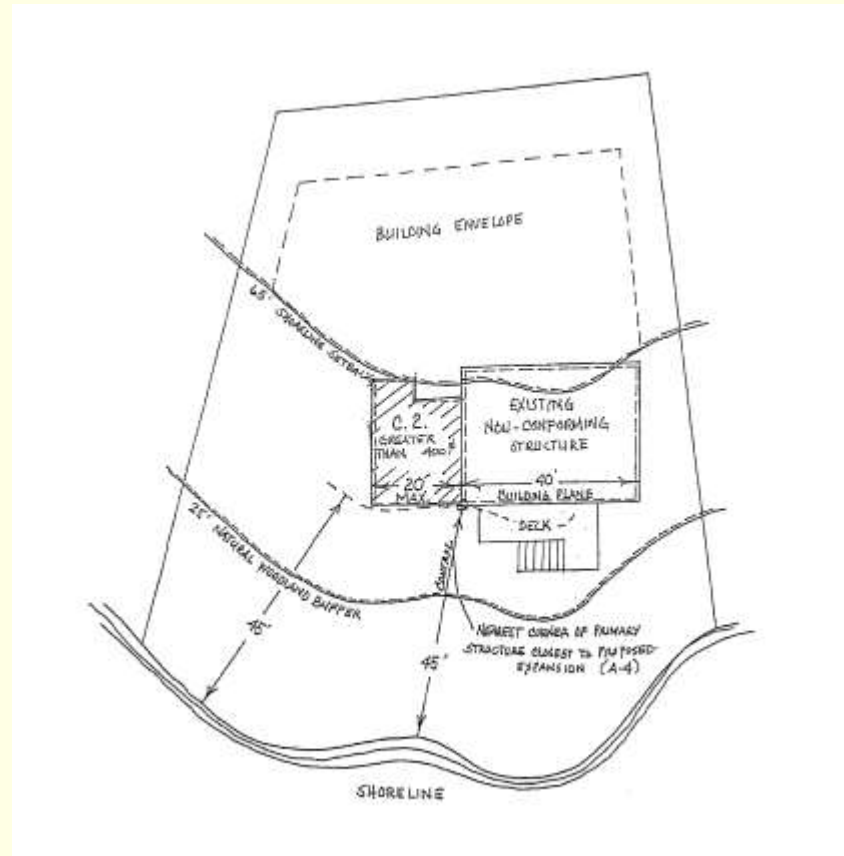


- **Subdivision controls**
 - Standards
 - Administration



- **Property Rights Issues**

- Vested rights
- Nonconforming uses
- Estoppel



Cutting Edge Regulation

Peter Salsich and Tom Ragonetti

- **Clustering**
- **TDR**
- **Overlays/floating zones**
- **TOD**
- **New Urbanism**
- **Growth management**
- **Sustainability**

Clustering

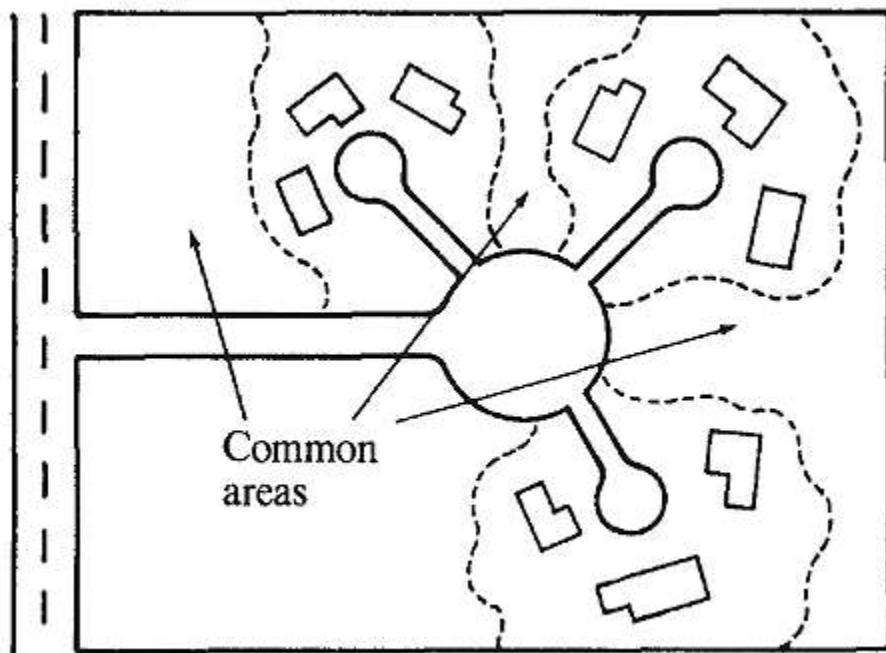
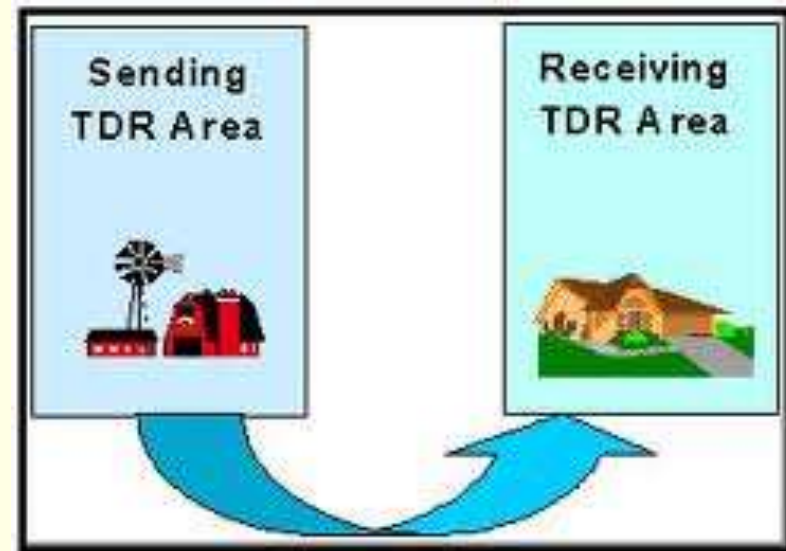
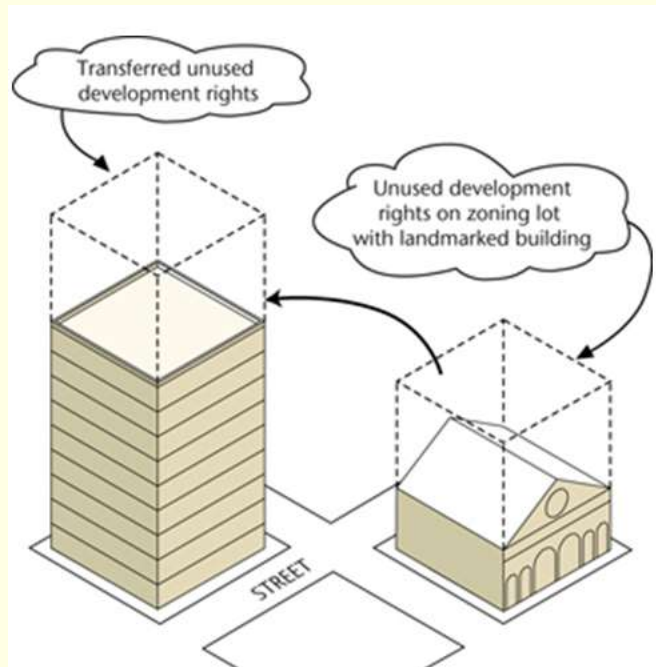


FIG. 143. PLANNED UNIT DEVELOPMENT



Transfer of Development Rights (TDR)

- Landmarks and undeveloped land
- Often with restrictions

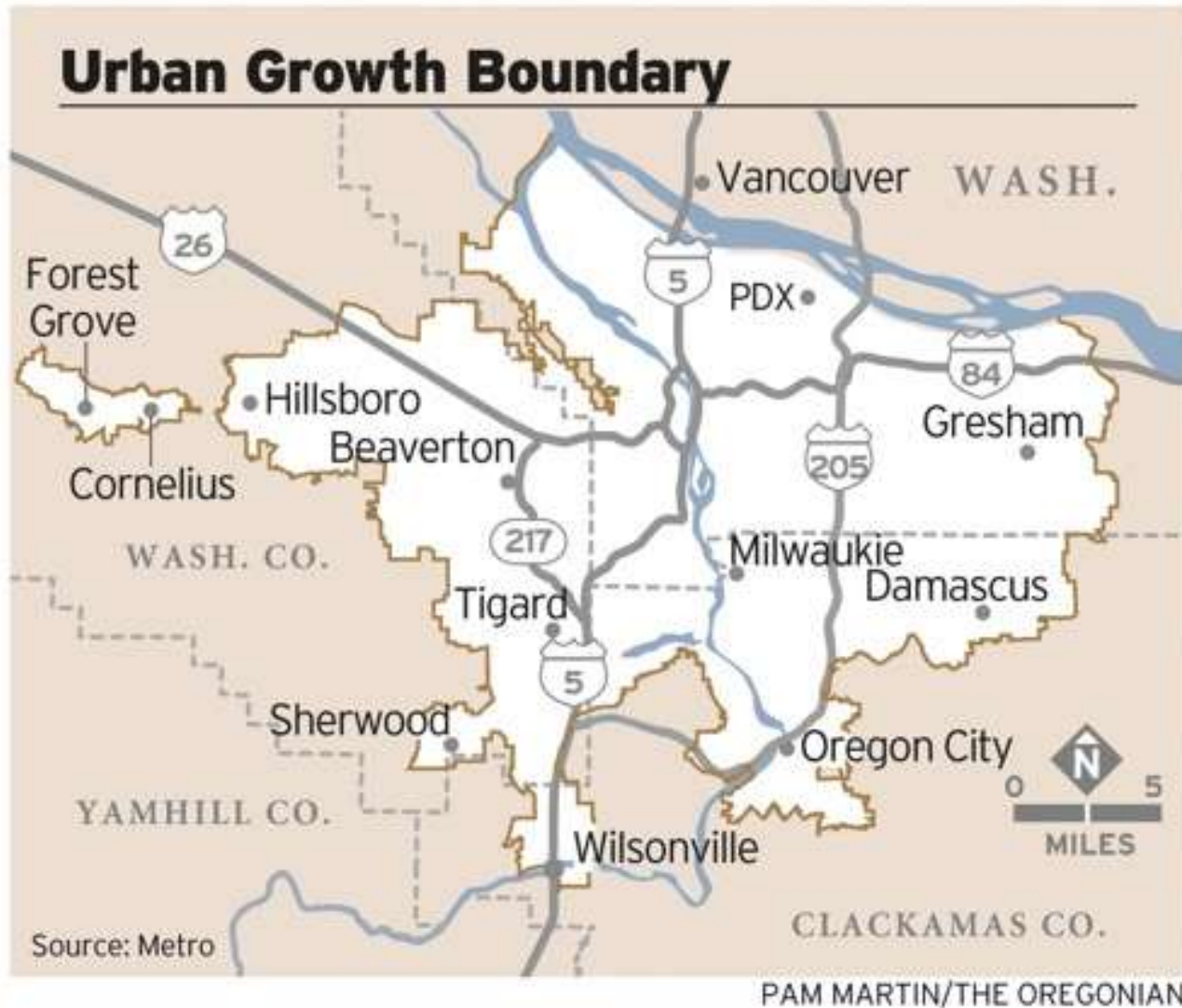


Overlays/floating zones

Village Review Overlay Zone,
Westbrook, Maine



Growth Management



Transit-Oriented Development (TOD)



New Urbanism



The Transect

Principles

- 1. Walkability**
- 2. Connectivity**
- 3. Mixed-Use & Diversity**
- 4. Mixed Housing**
- 5. Quality Architecture & Urban Design**
- 6. Traditional Neighborhood Structure**
- 7. Increased Density**
- 8. Smart Transportation**
- 9. Sustainability**
- 10. Quality of Life**



Sustainable Development



Constitutional Issues

**Nancy Stroud, Orland DeLogu
and Stuart Meck**

- **Due process (substantive and procedural)**
- **Takings**
- **Equal protection**
- **Estoppel**
- **First Amendment**
 - freedom of speech
 - signs
 - adult uses
 - flag displays



A Bouillabaisse of Land Use Law

Tom Ragonetti, Stuart Meck and Dwight Merriam

- **Wetlands**
- **Floodplain regulation**
- **Historic preservation**
- **Airport regulations**
- **Fair Housing Act**
- **Manufactured housing**



- **Aesthetics**
- **Green building**
- **Telecommunications**
- **RLUIPA**
- **Agricultural lands**
/open space



Q&A/Open Discussion

The Faculty