

PREFACE TO THE 2026 EDITION

Welcome to the 2026 edition of *Discretionary Land Use Controls*. This treatise provides an overview of the ways that discretion is embedded into every part of the land use decision. This scope includes the most common forms of discretion encountered in the land use process such as variances, special use permits, planned unit developments, as well as the turn toward contractual land use instruments like development agreements. This year's update provides summaries and citations to the most important new cases and trends from across the country. Some of the most interesting cases this year include:

- a case evaluating the reasonable return prong of New York state's use variance statute (790 Holdings Corp. v. Bd. of Appeals of Town of Hempstead, 237 A.D.3d 924, 927, 232 N.Y.S.3d 209, 212–13 (2025));
- a case evaluating whether hardship should be considered self-imposed when the applicant for a variance acquired a property subject to restrictions and was aware of the restrictions at the time of purchase (80 Woodland Ave, LLC v. Vill. of Catskill, 240 A.D.3d 1102, 1104, 239 N.Y.S.3d 350, 354 (2025));
- a case evaluating the legality of attaching conditions to use variances (Sargent v. Zoning Bd. of Appeals of Town of Fairfield, 236 Conn. App. 269, 280, 347 A.3d 930, 939 (2025));
- a case on whether a property owner in an inverse condemnation case must submit an application for the proposed use and seek a variance if denied (Commons of Lake Houston, Ltd. v. City of Houston, 711 S.W.3d 666, 684–85 (Tex. 2025), reh'g denied (May 30, 2025), cert. denied sub nom. City of Houston, Texas v. Commons of Lake Houston, Ltd., 146 S. Ct. 299, 223 L. Ed. 2d 124 (2025));
- a case on the role of the comprehensive plan in states where it is an advisory document (Pierson v. Bd. of Potawatowmie Cnty. Commissioners, 66 Kan. App. 2d 20, 28, 576 P.3d 860, 865 (2025));
- a case on whether a property owner has a property interest in a conditional use permit and the role of discretion

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to deny the permit where the application complies with certain minimum, mandatory requirements (Nat. Res. Mgmt., LLC v. Twp. of Parma, 766 F. Supp. 3d 748, 752 (E.D. Mich. 2025));

- a case distinguishing use permits from variances (Day v. Town of Hiram, 2025 ME 8, ¶ 6, 331 A.3d 365, 368);
- a case evaluating state mandated procedures for a supermajority of votes on a planned unit development (Austin Properties, LLC v. City of Shawnee, 320 Kan. 226, 234, 564 P.3d 1262, 1268 (2025));
- a case applying the federal *Mathews v. Eldridge* factors to determine whether a due process violation had occurred in a PUD (Clark v. City of Galena, 2025 IL App (4th) 241245, ¶ 28);
- a case on whether local municipalities can bargain away their legislative power by promising to rezone land if some condition is met (Lifestyle Communities, Ltd. v. City of Worthington, Ohio, 165 F.4th 1013, 1027 (6th Cir. 2026));

A review of new state statutes mandating objective design standards for certain housing projects and the broader movement toward such objectivity in design review is also included in this edition.

I look forward to your comments on these revisions and comments on how to improve the treatise in future editions.

Stephen R. Miller
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