Preface

The purpose of this book is to provide a handy guide to zoning law. This is not intended to be a treatise. It is a tool for the land use practitioner to find a quick answer or the guidance necessary to begin more in-depth research.

Lay persons or professionals who are not familiar with land use law will find simple explanations of common land use terms, such as “special use,” “planned unit development,” “variation,” “conditional use,” “comprehensive plan,” and other similar terms.

The book will explain how the planning process relates to zoning laws. It explores property rights as guaranteed by the United States Constitution as well as examines the legislation that lays out the planning process and basic zoning procedures. There is also discussion of legislation that furthers the rights of certain classes of persons, such as those who have disabilities or those who qualify for low- or moderate-income housing.

This book also discusses the nature of zoning litigation and the fundamentals of litigating a zoning case. This discussion includes basic issues such as the standing to challenge a zoning decision, the procedures necessary to satisfy due process, and the nature and types of causes of action to challenge either a zoning approval or zoning restriction.

This book also examines zoning issues implicating the First Amendment to the United States Constitution. These are fascinating issues, which run the gamut from the regulation of signs to the protection afforded to adult uses. The United States Supreme Court has spoken on both of these issues and the discussions found in the associated cases are wide-ranging, providing insight into social, economic, and philosophical implications of the First Amendment.

Different forms of energy production have also been the subject of zoning legislation. They have also been the subject of considerable litigation. Hot topics such as wind energy, solar energy, and fracking are in the news on almost a daily basis. Each one of these forms of energy production has been the subject of judicial scrutiny. The challenges being raised by surrounding property owners who object to these types of uses have been wide ranging.

Writing this book has served a long-standing personal goal. When I was a young lawyer fresh out of law school, I knew nothing about zoning law. It may have been part of a course on municipal government, but, if it was, it was not something that I remember having studied. Quite by chance, my first job was as an Assistant Corporation Counsel in the Appeals and Review Division in the City of Chicago Law Department. The head of this Division, a lawyer’s lawyer named Sidney R. Drebin, put on my desk an appellate court record bound with
a red ribbon, as was the court practice, and told me to prepare the praecipe for record. My University of Chicago Law School training had not prepared me for this request. I had no idea what a praecipe was, and, worse still, I discovered that the case was about zoning—a subject that was foreign to me. I could find no ready handbook to guide me, and so, since this was my only case, I devoted all of my energies to it and read every Illinois published opinion on the subject. This was not as difficult a job as it might sound at the time I undertook it. I became almost an instant expert, and my interest in the subject has continued unabated, as has the opportunity to continue to practice land use law.

I am certain that my experience, in many different settings, has been faced over and over again by young lawyers given their first assignment or by experienced attorneys being introduced to a new subject matter because of the needs of a client. This book is designed to provide an introduction to zoning and, in many cases, to answer puzzling zoning questions. This edition of this book is my personal response to how I felt at the time I began my great adventure into the law.

I would like to extend my great thanks to the editors of the American Bar Association who have worked with me on this book, including Kimberly Rosenfeld. I would also like to thank Bill Scheiderich who has served to review my work and to provide valuable suggestions and corrections. I would also like to thank Erin Kansy, Greg Linde, Ian O’Banion, and Jacqueline Ryu for their valuable contributions. And, I would like to thank my partners at Nixon Peabody for allowing me the time to work on the book, and to extend my special thanks to Andrew Glincher, our Managing Partner, to Denise Pursley who heads up the Real Estate Department of our firm, and to Tom Fahey, our office Managing Partner in Chicago. To all of those who have spent many hours providing me with assistance both in guiding and cajoling and who have made valuable contributions, I extend my heartfelt thanks.

I hope that our efforts here will serve in some small measure those whose need or curiosity causes them to venture into the realm of land use law.