Will homeowners associations lead to a revolution in local government?

The Private Neighborhood

By Robert H. Nelson
University of Maryland

For most of American history, the standard form of housing has been the single home or apartment that is owned or rented by an individual household. If there was a need for collective action among individual homeowners, that need was met by a local government in the public sector. Local governments provided public services such as the construction and upkeep of streets, garbage pickup, and law enforcement. Following the introduction of zoning in the United States in 1916, local government also regulated the interactions among individual properties that could significantly affect the quality of the surrounding neighborhood environment.

Since the 1960s, however, this historic role of local governments has increasingly been privatized at the neighborhood level. In 1970, about one percent of all Americans belonged to private community associations. By 2004, more than 17 percent belonged to a homeowners or condominium association, or were part of a cooperative — and very often those private collective ownerships were of neighborhood size. Since 1970, about one third of the new housing units constructed in the United States have been included within a private community association. The Community Associations Institute estimates that, nationwide, more than 50 percent of new housing units in major metropolitan areas are being built within a legal framework of private collective ownership.

This privatizing of the American neighborhood over the past 40 years represents a fundamental development in the history both of local government and of property rights in the United States. The rise of private neighborhoods, as Steven Spiegel wrote in a 1998 law journal article, is achieving "a large-scale, but piecemeal and incremental, privatization of local government."

NEIGHBORHOOD ASSOCIATIONS

There are three main legal forms of collective ownership of residential property: the homeowners association, the condominium, and the cooperative. In a homeowners association, each person owns his or her home individually, often including a private yard. The homeowners association, which any new entrant into the area is required to join, is a separate legal entity that holds formal title to the "common areas" such as streets, parks, recreation facilities, and other common property. It also enforces neighborhood covenants with respect to the allowable uses and modifications of individually owned homes and other structures. The individual owners of neighborhood properties are also automatically the "shareholders" in the homeowners association who collectively own the assets and control the actions of the association.

The other leading legal instrument for collective ownership of residential property is the condominium. In a condominium, all the individual owners have title to their own personal units and, as "tenants in common," automatically also share a percentage interest in the "common elements." The common elements can include things like dividing walls, stairways, hallways, roofs, yards, green spaces, golf and tennis clubs, and other parts of the project area exterior to the individually owned units.

Despite the somewhat different legal arrangements, the operating rules and methods of management for homeowners associations and condominium associations generally are

Robert H. Nelson is professor of environmental policy at the School of Public Affairs of the University of Maryland. He is the author of *Zoning and Property Rights* (MIT Press, 1977) and the forthcoming book *Private Neighborhoods: A Revolution in Local Government* (Urban Institute Press). He can be contacted by e-mail at nelsonr@umd.edu.

TABLE 1

The Growth of Private Neighborhoods

U.S. housing units in neighborhood associations, by type and year.

Type of Association	1970	1980	1990	1998
Condominium	85,000	1,541,000	4,847,921	5,078,756
Homeowners Association	265,000	613,000	5,967,000	10,562,964
Cooperative	351,000	482,000	824,000	748,840
Total Assoc. Housing Units	701,000	3,636,000	11,638,921	16,390,560
Total Number of Associations	10,000	36,000	130,000	204,882
Total U.S. Housing Units	69,778,000	87,739,000	102,263,678	111,757,000
Neighborhood Assoc. Units, as % of U.S. Total	1.22%	4.14%	11.38%	14.67%

SOURCE: *Community Associations Factbook*, edited by Frank H. Spink; Alexandria, Va.: Community Associations Institute, 1999.

quite similar. As shown in Table 1, there were 10.6 million housing units in homeowners associations in 1998; and 5.1 million housing units in condominium associations.

The third instrument of collective property ownership in the United States is the cooperative. Cooperatives are more likely to be a single building. They became popular in New York City in the decades after World War II, partly as a method for avoiding problems that rent control was posing for owners of rental apartment buildings. As of 1995, there were 416,000 cooperative apartments in New York City. A cooperative is the truest form of collective ownership in that the entire property, including the individually occupied housing units, is owned jointly. Individual occupants of apartments have legal entitlements to the use of their units but are not, strictly speaking, the owners even of the interior portions.

PRIVATE SUBURBS

The privatization of the American neighborhood did not begin with the rise of neighborhood associations. The key development was found much earlier in the public sector in the rise of zoning. Zoning is what first effectively privatized American neighborhoods. Indeed, the differences between a small suburban municipality and a neighborhood association of equal size are not very large. Among the residents themselves, a small suburban town is often seen as little more than a form of homeowners association. The significance of the neighborhood association is not that it is accomplishing a brand new privatization of the suburbs; rather, it is formalizing and extending further a process of privatization of long standing.

Private neighborhood associations, like zoning, represent yet another form of institutional response to "the tragedy of the commons," as it was so famously portrayed many years ago by Garrett Hardin. Without the ability to exclude other uses, higher-quality neighborhoods would be invaded by lower-quality uses. Those uses would be able to capture the benefits of the high environmental quality in the neighborhood, while not contributing to and in fact detracting from that quality. If prospective creators of high-quality neighborhoods knew in advance that they would lack tight controls over incoming uses in the future, they would never create such neighborhoods in the first place. There is thus a potential "tragedy of the neighborhood commons" to match the better known tragedy of the grazing commons.

As Hardin emphasized, a solution to the tragedy of the commons can be found in either a governmental regulation or a private property right. In suburban neighborhoods, the establishment of zoning has constituted the regulatory route; the establishment of a neighborhood association has been the private property approach.

PRIVATE PREROGATIVES The range of legally permissible actions and obligations of a private neighborhood association in many areas will be considerably wider than of a municipal government in the public sector. Some important examples of this wider set of options for neighborhood associations include:

- The ability to assign voting rights according to the extent of property ownership or some other possible criteria. That differs from a general-purpose municipal government, which is legally required under the U.S. Constitution — as determined by the U.S. Supreme Court in its 1968 *Avery* decision — to allocate voting rights on the basis of one person, one vote.
- The ability to discriminate in admitting residents to the neighborhood in various ways that would not be acceptable for a municipal government. For example, a neighborhood association for senior citizens can exclude younger people, including any children, from living there permanently. It is doubtful that a municipality in the public sector could legally sustain a similar discriminatory rule to exclude people from the whole municipality based on the age of potential residents.
- The ability to sell the rights of entry into the neighborhood. A municipal government could not similarly sell a zoning change, even though the zoning change might have the identical practical consequence of granting entry. In the public sector, a direct

monetary sale of entry rights — of zoning — by a government would be regarded as an illegal act of "bribery" or other form of municipal "corruption."

- The ability to enter into many forms of commercial activities within (or, in concept, outside of) the neighborhood — such as operating a neighborhood grocery store or gas station, publishing a neighborhood newspaper, or running a restaurant. Under most current state laws, it would be difficult or impossible for a municipal government in the public sector to engage in a similar range of commercial activities oriented to the general public and that may be directly competitive with private suppliers.

- The ability to make a commitment to undertake future actions that would be legally binding and enforceable in court for the lifetime of the association. A current municipal government in the public sector would find it more difficult to bind similarly the future actions of a duly elected municipal legislature.

- The ability to hire a new employee or dismiss an existing employee under the same legal rules as a business corporation or other private firm. In most public jurisdictions, that same action would be subject to different (and typically more exacting) standards of judicial review. Governments generally face greater difficulties in firing their tenured civil servants than businesses do in dismissing the members of their private workforce.

- The ability to create a neighborhood association of virtually any size or shape as an exercise of the private rights of the owner of an appropriate parcel of land (subject to municipal regulatory review and approval under zoning). The establishment of a new neighborhood government in the public sector, even one falling on exactly the same geographic lines, would have to proceed in a legally and politically more complicated way, involving compliance with state laws for municipal incorporation.

A private status in most cases confers a wider range of possibilities that give a greater flexibility in shaping new institutions of local governance. However, a private status can also create some forms of obligation and burdens that would not fall on a government in the public sector. A private neighborhood association is typically required to pay property and other taxes to municipal governments, but a municipal government of neighborhood size in the public sector would have no such financial obligations to any higher level of government. In practice, even if it would be constitutionally permissible, the upward transfer of funds to higher levels of government is almost never required of a local municipality. To the contrary, such governments typically receive significant transfers of funds from state and federal governments — transfers that in most cases would not be available to a private neighborhood association.

COURT OVERSIGHT The legal authority of a neighborhood association today is similar to that of a private business corporation. Indeed, neighborhood associations are generally organized under state law as a form of non-profit private corporation. The private status of a neighborhood association, to be sure, does not mean an absence of any legal limits to its authority. In the past, for example, some courts have shown a willingness to overturn neighborhood restrictions that affected only the interior portions of an individual housing unit. One neighborhood association, for example, was prohibited from imposing a ban on the installation of a TV satellite dish that would have been placed in a way to be entirely out of sight.

In other cases, courts have simply ruled that actions of neighborhood associations have been too intrusive without any reasonable basis. A court thus overturned a neighborhood rule to ban the parking of a small noncommercial pickup truck in a driveway when an ordinary car would have been allowed under association rules in exactly the same place. The court reasoned that "cultural perceptions" change and neighborhoods must adjust; in recent years, light trucks have come to no longer have a "pejorative connotation." For many people, they are now considered rather fashionable — perhaps even the contemporary social "equivalent of a convertible in earlier years," the court noted. Hence, the court ruled, it was altogether unreasonable for the association to ban the parking of a small pickup truck in a driveway within the neighborhood.

For the most part, however, the courts have deferred thus far to the private autonomy of neighborhood associations. One should give substantial deference, the courts have been saying, to the expressed preferences of many millions of Americans who have already chosen to live under the collective system of controls of a neighborhood association. They knew in advance what they were getting into, and explicitly agreed to abide by the terms of the neighborhood restrictions as a condition of the original purchase of their home. Hence, absent a compelling demonstration to the contrary, the normal decision-making and enforcement procedures of neighborhood associations should be allowed to operate according to the rules of the founding documents — the original "neighborhood constitution" — with a minimum of judicial intervention. As a practical matter, this has amounted to a presumption in favor of the actions of neighborhood associations, but with the courts maintaining an option to intervene in particular circumstances that they may perceive as grossly unfair or arbitrary.

CAN ASSOCIATIONS EXCLUDE?

Neighborhood associations may seek to control the age or other personal characteristics of prospective entrants. Given the long history of active racial discrimination in the United States, this is a particularly sensitive area in which to exercise collective control over the neighborhood environment.

Although private restrictive covenants to exclude blacks were once widespread in American housing, they were declared unconstitutional by the U.S. Supreme Court in the 1948 case of *Shelley v. Kraemer*. There is no question that it would be unconstitutional today for a neighborhood association to deny entry to any prospective unit owner on the basis of his or

her race. However, the ability of an association to accept or reject entry of new unit owners based on other personal characteristics is subject to wide current uncertainty. Discriminatory actions that are unconstitutional in a "public" setting could well be constitutional in a "private" setting.

Thus far, the issue that has received the most attention is discrimination on the basis of age. Public policy has been caught between two powerful trends in society. Legislatures in general have been moving to include age as a prohibited category for discriminatory actions, but the creation of neighborhood associations that limit residents to certain age groups has proved very popular. Neighborhood associations limited to senior citizens today constitute a significant portion of all private associations.

In 1988, Congress made housing discrimination on the basis of "familial status" illegal under federal law. ("Familial status" is defined by the presence or absence of a child under 18 years who is living permanently as a member of the family.) Lawmakers did give neighborhoods for senior citizens an exemption from this new limitation. At present, private neighborhood associations can gain senior citizen status, and the legal right to exclude children, if they have at least 80 percent of their units occupied by at least one person 55 years or older.

The precise extent of legally acceptable exclusions — which kinds of people can be kept out, and when attempts at exclusion cross the boundary to become impermissible forms of discrimination — may arise in many other forms. Those issues will be worked out in the courts, legislatures, and other policy-making arenas. Whether it would be possible to create a neighborhood association limited to, say, unmarried adults or gay people remains cloudy. Questions of separation of church and state, for example, also will likely come before future courts in considering the actions of neighborhood associations. Churches can legally limit their membership to fellow believers in the faith, but can a developer establish a neighborhood association that limits membership to Mormons or Seventh Day Adventists? It is even possible that the state would be constitutionally prohibited from interfering with the creation of a "residentially based church."

"TAXES" AND SERVICES

As part of protecting and maintaining an attractive neighborhood environment, most associations also provide common services of one kind or another. The services most frequently include garbage collection, lawn mowing, street maintenance, snow removal, landscaping, and management of common recreation facilities. Another important function of many neighborhood associations is protection of residents' personal security through private policing. Some neighborhood associations also provide services such as bus transportation, child care, nursery schools, health clinics, and a community newsletter. In the future, neighborhood associations may expand their services – say to a neighborhood charter elementary school.

Neighborhood associations pay for the administration and delivery of services by levying assessments on members. In a 1995 survey conducted by the Community Associations Institute, the median neighborhood association budget was

MORGAN BALLARD

$165,000; however, the average budget (reflecting the existence of some very high budget associations) was $510,000. There is wide variation, but a typical association assessment falls in the range of $100 to $300 per month per housing unit. It amounts to a private form of taxation. Municipalities, by contrast, typically collect property taxes that are assessed as a percentage of value. Unlike municipalities, however, there is little or no expectation in a neighborhood association that the "taxing" system will be used for internal redistributive purposes.

TERMINATION

One important type of collective choice that many neighborhoods have not addressed is the possibility of termination of the neighborhood association itself. Few neighborhoods will last forever. There might be, for example, a future change in economic circumstances that would make the entire neighborhood uneconomic for its existing location. A new subway stop, for example, could open up nearby. As a result, it might make economic sense to demolish the existing structures in order to accommodate, say, the construction of an office tower or large apartment building. A developer might well be willing to offer the unit owners a price equal to two or three times the existing values of the properties.

In that case, the great majority of unit owners might prefer to abolish their neighborhood association and move away — and be rewarded for leaving by taking large windfall gains with them. It would be desirable to have available some form of neighborhood collective process to approve or disapprove such a sale of the entire neighborhood (presumably as one large block of properties or perhaps as several large packages). It would be in the same spirit as the procedures whereby the stockholders of a business corporation might vote to accept a takeover offer by another corporation, possibly abolishing the corporation outright in return for new stock or other appropriate compensation.

If a private neighborhood association were to vote to abolish itself in this fashion, there would be important issues of the proper voting procedure, the percentage of votes required, exactly how the properties in the neighborhood would be sold, and how the profits would be divided up (in proportion to square feet, to individualized assessments of properties, or in other ways). At present, few neighborhood associations have made any provision in their voting rules for such a radical form of "amendment" in their founding declarations.

The possibility of neighborhood termination represents one of the important ways in which a land-use system based on private neighborhood associations might offer large advantages over the current zoning system. Under zoning, it is virtually impossible to organize an orderly process of transition from one basic type of land use in a neighborhood to another. The city would have to change the zoning in advance to accommodate the new use. However, the existing residents would almost always resist any such changes. Instead, speculators may have to buy up neighborhood properties one or a few at a time, possibly letting the neighborhood run down during an interim period of transition. Eventually, if enough properties are sold and enough older residents of the neighborhood move out, it may be possible to change the zoning to accommodate a brand new use of the land. In such a process, much of the ultimate gain in land value ends up going to the speculators. The financial losers are the original owners who failed to act collectively and were instead picked off one at a time.

In effect, a neighborhood constitution that allows for full neighborhood termination might be regarded as a new system of urban land assembly. Urban renewal was used in the 1950s and 1960s for the purpose of putting together large land parcels that would allow comprehensive redevelopment of a whole neighborhood area. However, urban renewal was involuntary for many participants; the city condemned the properties and paid only "fair market value" in the current use, often generating great ill will. Much of the monetary gain then went to the city on the resale of the land, not to the property owners.

Neighborhood termination might be described as providing a private system for accomplishing the aims of urban renewal. It would not be entirely voluntary because some neighborhood unit owners might vote against termination. However, assuming a large supermajority vote of the neighborhood association — perhaps 85 percent — were required to approve its termination, the number of such losing voters would be a small percentage of the total units in the neighborhood. And the decision to override their preferences would be in the hands of their fellow unit owners, not some distant municipal officials.

The greatest obstacle to planned redevelopment in existing built-up areas is the land assembly process. In the outer suburbs today, large attractive communities with hundreds of housing units can be planned and built from scratch. These are the same places where neighborhood associations are now being formed to provide for private governance. Lacking a way of assembling large-enough units of land, similar planned communities are now very difficult or impossible in areas closer to big cities. Yet, based on the evidence of consumer choice in the market, there is a high demand among Americans for planned developments with new kinds of governing institutions that a private status makes possible.

A PROPOSAL

In previous writings, I have offered a proposal for state legislative action that would provide a procedure for the creation of new private neighborhood associations in established neighborhoods. Among a number of benefits, the creation of a private neighborhood would resolve the land assembly problem in existing neighborhoods that may be facing powerful transitional pressures. Those interested in a more complete explanation can consult those papers, which can be found in the Readings list following this article. For now, I will merely sketch here the basic concept.

I propose to establish a legal mechanism by which an existing neighborhood could create a private neighborhood association. It would be similar to the incorporation of a new municipality, but it would result in the creation of a private neighborhood based on a private property relationship among the property owners of the neighborhood. In order to approve the establishment of the new private neighborhood associa-

tion, a large supermajority vote would be required. Assuming the supermajority could be achieved, those who voted against forming a neighborhood association would nevertheless be required to become members.

There are many possible ways that such a concept could be implemented. For the purposes of discussion, I propose that each state enact a law to provide for the following six-step process:

- A group of individual property owners in an existing neighborhood could petition the state to form a private neighborhood association. The petition would describe the boundaries of the proposed neighborhood and the instruments of collective governance intended for it. The petition would also state the services expected to be performed by the neighborhood association and an estimate of the monthly assessments required. The petitioning owners should possess cumulatively more than 60 percent of the total value of neighborhood property.

- The state would then have to certify that the proposed neighborhood meets certain standards of reasonableness, including having a contiguous area; boundaries of a regular shape; an appropriate relationship to major streets, streams, valleys, and other geographic features; and other considerations. The state would also certify that the proposed private governance instruments of the neighborhood association meet state standards.

- If the application meets state requirements, a neighborhood committee would be authorized to negotiate a service transfer agreement with the municipal government that has jurisdiction over the neighborhood.

- Once state certification of the neighborhood proposal is received and a municipal transfer agreement has been negotiated, a neighborhood election would occur no less than one year after the submission of a complete description of the neighborhood proposal.

- Approval of the creation of a new private neighborhood association would require both an affirmative vote of unit owners cumulatively representing 80 percent or more of the total property value within the proposed neighborhood, and an affirmative vote by 70 percent or more of the individual unit owners in the neighborhood. If those conditions are met, all property owners in the neighborhood would be required to join the neighborhood association and would then be subject to the full terms and conditions laid out in the neighborhood association documents.

- Following the establishment of a neighborhood association, the municipal government would transfer the legal responsibility for regulating land use in the neighborhood to the unit owners in the association, acting through their instruments of collective decision-making. The municipal zoning authority within the boundaries of the neighborhood association would be abolished — except in so far as such zoning serves to regulate direct adverse impacts on other property owners located outside the boundaries of the neighborhood association.

As I have argued elsewhere, the creation of private neighborhood associations would establish a much more secure neighborhood environment and thus create market incentives for the redevelopment of many deteriorated neighborhoods in existing cities and inner suburbs. At the same time, much of the monetary benefit of such redevelopment would be received by the current property owners. In outer suburbs, new private "landowner associations" could be formed along the same lines. That would facilitate a change in democratic voting procedures to allow developers to retain control over the process of development of large parcels of land until that development nears completion. At present, under the one-person, one-vote rules that apply to municipal government, residential newcomers obtain political control over land use at a much earlier stage of development. Groups of "door-slammers" have often used this control to block the completion of socially desirable and efficient development plans. This has not only been unfair to the willing landowners but it has been socially inequitable from a full metropolitan perspective. It has resulted in the tying up of large areas of undeveloped land in less productive forms of use than are warranted by the quality and location of the land. The biggest losers have been lower and moderate income groups that have been denied access to new housing opportunities in attractive locations within their means.

CONCLUSION

The privatization of the American neighborhood was an ongoing process over much of the twentieth century. Most "private" neighborhoods, however, operated formally until the 1960s under a public status. Those neighborhoods were parts of a small suburban municipality that might have one or a few neighborhoods. Entry into such a neighborhood was almost as restricted as it is today in a typical private neighborhood association. Zoning was the key legal instrument in this system. Zoning regulations in effect enforced a collective property right to the local neighborhood environment, operating in the guise of a "public" action. Fenced off from the outside world by their controls on new land uses, over the course of the twentieth century suburban municipal governments would increasingly become private entities for many practical purposes.

As I argued in *Zoning and Property Rights*, various legal fictions had to be maintained to justify the use of zoning for such private purposes. Perhaps more often than not, the legal form of the land laws has shown little relationship to the actual practice. Informal understandings on the ground have frequently been more important than any formal codes written in the law books. The judiciary would learn to look the other way when obvious discrepancies between legal theory and practice might arise.

CHANGE New property rights are seldom created by legislatures from whole cloth. Rather, such rights typically emerge gradually from informal practice, often at odds with the accepted economic and legal theories of the day. As experience accumulates over many years, the informal practice comes to be better understood and the merits to be more fully appreciated. At a still later point, the informal practice may come to be accepted and finally codified by the legislature in the law. In describing the evolution of property rights to land in England over many centuries, Sir Frederick Pollock once wrote that "the history of our land laws, it cannot be too often repeated, is a history of legal fictions and evasions, with which the Legislature vainly endeavoured to keep pace until their results . . . were perforce acquiesced in as a settled part of the law itself."

This process can take decades or even centuries. In the long transition from medieval property concepts to those of a capitalist economic system, the law of usury evolved in this manner. For many centuries, there were also strong social prohibitions on the sale of land. For much of history, as Richard Pipes writes, "land was universally considered a resource that one could exploit exclusively but not own and sell." In England, it took from the thirteenth to the nineteenth century to establish the modern concepts of private property rights with respect to land, including the right to sell the land. As Pollock wrote at the end of the nineteenth century, although "the really characteristic incidents of the feudal tenures have disappeared or left only the faintest of traces, the scheme of our land laws can, as to its form, be described only as a modified feudalism."

In the United States, things have not been much different. In the nineteenth century, millions of squatters illegally entered the public lands. Although the federal government regarded them as criminal lawbreakers, it was powerless to do anything on a distant frontier. After a few years, strong political pressures often resulted in Congress retroactively confirming the original squatter occupancy, granting a formal property right. When the Homestead Act passed in 1862, it was not a new concept but a final recognition by the federal government that a squatting mode of land settlement was a simple fact of life on the western frontier.

The evolution of American land law in the twentieth century has followed those patterns. Zoning was a radical departure in American land law, but it was justified in terms that served to obscure the real degree of change from traditional practice. The practical effect of zoning, along with other laws and court rulings, was the privatization of the suburban municipality. It became virtually a form of private government. When the various zoning fictions were eventually exposed as such, judges were simply forced to look the other way. Short of a revolution in American land law, they had little choice but to sustain longstanding property arrangements, whatever the legal awkwardness.

Today, at the beginning of the twenty-first century, perhaps the time has arrived for a new truth in advertising with respect to the American land system and the processes of land development and local governance. It may be time to dispense with the old zoning fictions and to align the official forms of the law more closely with the actual realities on the ground. Perhaps the true function of zoning should be explicitly recognized for what it long ago became: a private collective right to the common elements of the neighborhood environment.

The creation of neighborhood associations is already accomplishing this purpose in the outer suburbs, the places where most new development is occurring today. A new legal mechanism is necessary, however, for the privatizing of land-use controls and neighborhood governance in inner cities and other existing developed areas. If such a mechanism were established by a state legislature — perhaps along the lines sketched above — private neighborhood government might extend some day to encompass the entire metropolitan area. It would not only be the well-off residents of new developments in the outer suburbs but the poorer residents of existing neighborhoods in inner cities who would gain a much higher degree of control over their own immediate environments. R

READINGS

- "Common Interest Communities: Evolution and Reinvention," by Wayne S. Hyatt. *John Marshall Law Review*, Vol. 31 (Winter 1998).
- "Devolution of Power to Community and Block Associations," by George W. Liebmann. *The Urban Lawyer*, Vol. 25 (Spring 1993).
- *The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls*, by William A. Fischel. Baltimore, Md.: Johns Hopkins University Press, 1985.
- *The Fall and Rise of Freedom of Contract*, edited by F. H. Buckley. Durham, N.C.: Duke University Press, 1999.
- "New Institutions for Old Neighborhoods," by Robert C. Ellickson. *Duke Law Journal*, Vol. 48, No. 1 (1998).
- "Planning and Dealing: Piecemeal Land Use Controls as a Problem of Local Legitimacy," by Carol M. Rose. *California Law Review*, Vol. 71 (May 1983).
- "Privatizing the Neighborhood: A Proposal to Replace Zoning with Private Collective Property Rights to Existing Neighborhoods," by Robert H. Nelson. *George Mason Law Review*, Vol. 7 (Summer 1999).
- *Privatopia: Homeowners Associations and the Rise of Residential Private Government*, by Evan McKenzie. New Haven, Conn.: Yale University Press, 1994.
- *Residential Community Associations: Private Governments in the Intergovernmental System?* published by the U.S. Advisory Commission on Intergovernmental Relations. Washington, D.C., May 1989.
- "The Rise of the Private Neighborhood Association: A Constitutional Revolution in Local Government," by Robert H. Nelson. In *The Property Tax, Land Use and Land Use Regulation*, edited by Dick Netzer; Northampton, Mass.: Edward Elder with the Lincoln Institute of Land Policy, 2003.
- *Zoning and Property Rights*, by Robert H. Nelson. Cambridge, Mass.: MIT Press, 1977.