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Urban Planning and Municipal Public Policy, by Donald H. Webster

Daniel R. Mandelker

Indiana University School of Law, Indianapolis Division

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URBAN PLANNING AND MUNICIPAL PUBLIC POLICY. By Donald H. Webster.¹ New York: Harper & Brothers. 1958. Pp. xii, 572. \$8.00.

That America has become an urban society is an accomplished twentieth century fact. With the completion of the new interstate highway network, not only will the smallest county seat be brought closer to its city brother but suburban development at the interchanges is expected to project the urban sprawl even farther into the rural countryside. Accordingly, it is high time for the lawyer, if he has not already done so, to pay attention to the ever-multiplying regulation of land use by towns, cities, and counties. As an introduction to the background and content of urban land use controls, this book can be most helpful.

Professor Webster's book is divided into four parts. Part I deals with the governmental framework of planning. To the reader who is at all versed in the organization of local government this section is an

† Professor of Law, Indiana University.

1. Professor of Political Science, University of Washington.

elementary but thorough primer. In Part II the author discusses the subject matter of planning, and briefly reviews the nature of land uses within the municipality and the basic governmental services that must be a part of any comprehensive municipal plan. Entitled "Plan Implementation," Part III is the most satisfactory part of the book. After recounting the basic regulatory and governmental powers necessary to the implementation of planning, including the power to build and finance public improvements, the author considers zoning, subdivision control, and urban renewal in detail. Unfortunately, some of this material duplicates Part II. Part IV, a brief inquiry into the future of planning, is uninspired and leaves much to be desired considering the nature of the pressing problems that confront municipal governments in the planning area.

The expository and non-critical approach adopted by the author suggests that he wrote the book for use as a basic text in planning and related courses. As such, it can be helpful either to the law student or to the practicing lawyer who wants to acquire basic information in this area. There are few errors, and most are errors of omission. For example, in his discussion of annexation² the author does not seem to be aware of the variety of statutory procedures now available, nor of the advances that have been made to facilitate the expansion of major cities. Elsewhere, his attention to procedural problems is insufficient to be of real use to the practitioner.

Perhaps the book's major difficulty lies in the level at which Professor Webster chooses to discuss his subject. In presenting his material he alternates between expansive generality and trivial detail. For example, the reader is told on the one hand how to set up a house-numbering system,³ and on the other is given the usual ambiguous and tautological precepts in explanation of the legal basis for land use regulation.⁴ As a consequence, the author leaves unexplored that "middle level" of concept, standard and value at which planners, lawyers and courts must operate if they wish intelligently to tie fact and generalization together.

Harold Lasswell has spoken of the creative ambiguity that necessarily inheres in the process of judicial decision. Nowhere is the potential for creative ambiguity greater than in the field of municipal law. A possible explanation may lie in the fact that the origins of municipal law concepts can be traced to constitutional provisions that necessarily are

2. WEBSTER, URBAN PLANNING AND MUNICIPAL PUBLIC POLICY 56-59 (1958).

3. *Id.* at 179.

4. "Is there a public interest to justify the regulation? . . . Does the regulation involve a constitutional right? . . . Is the regulation reasonable?" *Id.* at 271.

broadly phrased and that consequently are ambiguous in content. Zoning presents a case in point.

While it is true that a decision on the validity of a zoning ordinance is predicated on the due process clause of the federal or applicable state constitution, the generalized language of these provisions keeps them from serving as a sufficient tool in the decisional process. As a consequence, the courts have been forced to descend to the "middle level" to find the ideas and concepts that are necessary for decision. These judicial responses are passed off as interpretive of the general welfare requirements of due process, but in fact their content is non-legal. Spot zoning provides an example. In passing on the constitutionality of ordinances of this type the courts have often considered such factors as the relationship between spot zoning and the control of nonconforming uses; the use of spot zoning to introduce considerations into the ordinance unrelated directly to land use, such as the need for garden apartments to alleviate an urban housing shortage; and the use of spot zoning as a quasi-administrative technique to moderate the rigidity of use classifications when the variance process might not be available on a strict interpretation of hardship. This is only a partial list.

Professor Webster never comes to grips with these judicial realities. For example, in his discussion of public purpose as a justification for the exercise of the power of taxation and eminent domain he equivocates and never arrives at a satisfactory statement of the present judicial position on this point.⁵ By way of comparison, in discussing the validity of spot zoning he eventually takes refuge in the same vague public welfare referents which he had originally postulated as the underlying constitutional basis for the exercise of the zoning power in full.⁶ These examples are all the more interesting because the author elsewhere⁷ recognizes and discusses, at least in part, the impact of *Berman v. Parker*,⁸ the United States Supreme Court case which upheld the validity of the District of Columbia urban redevelopment law. He notes that the Supreme Court in that case adopted an expansive attitude toward the function both of the eminent domain and the police power, primarily by recognizing that aesthetic considerations have a proper place in municipal planning. But the impact of this case is twofold, inasmuch as the Court also indicated that in passing on the exercise of either public function it would ordinarily defer to the legislative determination.

5. WEBSTER, *op. cit. supra* note 2, at 275.

6. *Id.* at 366.

7. *Id.* at 422.

8. 348 U.S. 26 (1954).

In defense of this book it must be said that it was not intended as a legal treatise. But this discussion has indicated that the considerations underlying the "law" in the area of land use controls are non-legal in the orthodox sense. Accordingly, law and planning policy cannot be disentangled. Because he does not adequately explore their interrelationship, Professor Webster's book is not as satisfactory as it might otherwise be. Even so, the author has prepared an adequate textbook introduction to the problems of planning and land use.

DANIEL R. MANDELKER†

† Associate Professor of Law, Indiana University School of Law, Indianapolis Division.

