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REVIEWS

PUBLIC PLANNING AND CONTROL OF URBAN AND LAND DEVELOPMENT, CASES AND MATERIALS. By Donald G. Hagman†. West Publishing Co. 1973. Pp. XLI, 1208. \$17.50.

*Reviewed by David L. Callies**

Professor Hagman's book is indeed an ambitious undertaking. It spans in twenty-two chapters a vast range of planning and land-use control information—from national, state, regional, and local planning and control to environmental policy and taxation.¹ The casebook, which is clearly geared by its subject matter and scope to the survey type of land-use controls course (presumably of the one term variety), will do much to acquaint not only the law student but also the practicing attorney with the broad range of problems and issues associated with land-use controls.

The book follows the tradition of land-use control casebooks, estab-

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¹ Chapter I. Introduction (information about the book and individual chapters); Chapter II. Plans, Planning and Planners: A Description and Critique; Chapter III. National Planning (a summary of federal aid, revenue sharing, urban growth policy, national land use policy, and publicly owned lands); Chapter IV. Interstate, State, and Regional Planning and Control (summary of statutes and cases); Chapter V. Local Planning (discussing organization for planning and the local plan); Chapter VI. Citizen Participation, Advocacy Planning (discussing poverty programs, HUD programs, DOT programs and advocacy planning); Chapter VII. Reorganization and Reform of Local Government, Incorporation and Boundary Change; Chapter VIII. The Uses and Effects of Local Plans; Chapter IX. The Relationship Between Planners and Lawyers (principally concerned with the ethics involved in one doing the other's work); Chapter X. The Zoning Classics (the traditional cases discussed in a casebook of this sort); Chapter XI. The Zoning Forms of Action; Chapter XII. Some Additional Zoning Flexibility Devices; Chapter XIII. The Police Power and Aesthetics (containing a summary of the usual architectural controls, sign controls, highway environs, and historic areas controls); Chapter XIV. Subdividing Lands (explaining the place of subdivision control in this general area); Chapter XV. Building and Housing Codes (explaining the place of building and housing codes); Chapter XVI. Nor Shall Private Property Be Taken for a Public Use Without Just Compensation (the difference between the exercise of the police power and eminent domain); Chapter XVII. Taxation as a Land-Use Control; Chapter XVIII. Land-Use Controls, Race and Poverty (discussing exclusionary zoning and fair housing); Chapter XIX. Development on Unstable Land (a discussion of uniquely western, almost solely Californian, problems associated with slopes and sliding soils); Chapter XX. Environmental Policy Acts (discussing EPA and NEPA); Chapter XXI. New Towns (federal and private); Chapter XXII. English Planning Law (containing a general description of the English land-use control system).

lished by Professor Charles A. Haar's text,² by including a great deal of general, nonlegal information that is calculated to give the reader a grasp of the subject matter of planning and land use before proceeding to the law itself in the traditional casebook fashion. This information is presented by means of heavily edited articles and excerpts from articles and books. If used as Professor Hagman intends, *i.e.*, to be read quickly by the law student to give him a feel for the subject matter, the method of presentation will be very effective. In fact, Professor Hagman warns the student against reading carefully every word as he would in a traditional casebook.³

It is worthwhile to examine the assumption of Professor Hagman and almost everyone else writing in this field that land-use control law is a subject *sui generis* that a reader cannot comprehend it without being burdened with a great deal of comment and other information unrelated to the cases. One might equally argue that subject areas such as securities, torts, and real property would be more comprehensible if casebooks contained more general information concerning the business practices of banks and other leading institutions—insurance companies, hospitals, and the like. This observation is not meant to imply that Professor Hagman and others are wrong, but that perhaps casebooks in suitable areas should include this kind of information.

Professor Hagman's own comments, which are interspersed with the materials that he has collected, provide a number of penetrating insights. His casebook is ahead of a number of others in suggesting that the Federal Environmental Protection Agency will have a strong influence on land-use controls. Moreover, the treatment of new techniques and problems—such as transfer of development rights⁴ and subdivision extractions as a condition of subdivision approval⁵—in the "classical" treatment portion of the casebook makes the casebook exceedingly timely.

Professor Hagman is at his editorial best when collecting and presenting bits and dollops of intensely practical information that rarely make their way into the typical casebook. The presentation of a zoning ordinance in great detail in Chapter XI is a superb idea, since students and laymen alike often leave a course in land-use controls with only bits and pieces of information about zoning, which is still the primary method of controlling the use of land in the United States today. Further, it is obvious to the legal practitioner that there *is* a relationship between planners and lawyers; thus, it is useful to have a chapter explaining this relationship⁶ in a book that will be used in schools training both classes of professionals.

² C. HAAR, *LAND-USE PLANNING: A CASEBOOK ON THE USE, MISUSE AND RE-USE OF URBAN LAND* (2d ed. 1971).

³ See Chapter I, at 4-5.

⁴ See Chapter XIII.

⁵ See Chapter XIV.

⁶ Chapter IX.

All in all, the book is a delightful potpourri for the student, planner, and anyone else interested in the broad area of land use and planning. It is a first-class introduction for the uninitiated as well as a useful reference for the professional. However, such broad treatment is bound to lead to some problems and omissions, to which every practitioner in the field, lawyer and planner alike, will bring his own prejudices.

Technically, the casebook has its virtues and its sins. The use of graphics in the form of pictures and cartoons is both useful and amusing.⁷ More text and casebook authors should develop the practice! Law school casebook treatment of cases themselves tends to be tedious and dull, and this tedium is augmented in Professor Hagman's book by the fact that all the cases are printed in small type of the sort generally reserved for notes and questions following the treatment of major cases. While this method perhaps reflects a necessary economy, it makes for difficult reading, especially for a readership already overburdened with such stuff.

No single subject in the casebook is treated in sufficient depth to permit the use of this book alone for an extensive course in, for example, zoning, housing and urban development, or environmental law. There may, of course be no need for it to do so, as these aspects of land-use control are adequately treated in other major and recent casebooks, all generally of very good quality. Nevertheless, this light treatment may limit the book's usefulness in a law school curriculum that is geared to more than a survey course—however useful—in land-use controls. Moreover, many law professors prefer to pick and choose among the materials in such casebooks. This would be a shame in the case of Professor Hagman's book, since the chapters are really meant to be used *en groupe*, without deletion of a single chapter. Once again, however, while limiting its potential for adaptation to individual courses, it is the very breadth and completeness of the survey of the literature and case law that is the principal strength of this casebook.

There is also a degree of randomness to the order among and emphasis within many chapters in the book. For example, the chapter on national planning⁸ is first-rate in both content and treatment of subject matter. One wonders, therefore, why it is presented so early where, as Professor Hagman himself notes in his introductory chapter,⁹ the uninitiated will have difficulty dealing with this material. In contrast, the chapter on state regulation and planning¹⁰ is too sparse. Both the National Land Use Policy Act¹¹ currently before Congress and the American Law Institute's Model Land Development Code¹² stress the key role of the state in effective land-use controls. Although much that has been done in this field

⁷ See, e.g., Chapter II, at 17-19; Chapter V, at 149.

⁸ Chapter III.

⁹ Chapter I, at 5.

¹⁰ Chapter IV.

¹¹ See Chapter II, at 94.

¹² ALI MODEL LAND DEVELOPMENT CODE (Tent. Draft No. 2, 1970). See Chapter VIII at 339-41.

is recent, there was still plenty of time for developments to have been included in this casebook.

In regard to emphasis within the casebook, it is an excellent idea to set out the forms of action pertaining to zoning,¹³ since most students do not have the faintest notion of how to get a foot in the door of the courtroom in any sort of suit involving any subject. On the other hand, one must question the effectiveness of using several pages (twenty-seven, to be exact) of headnotes from one of the leading law digests to illustrate so-called black letter law on the subject of land use and zoning.¹⁴ In the specialized field of land-use and zoning controls, these headnotes and summaries have generally proved to be notoriously inadequate, if not downright misleading and sometimes even wrong. It also seems to this reviewer that Chapter XVI, on private property and just compensation, errs in failing to give more extensive treatment to the Supreme Court's decision in *Pennsylvania Coal v. Mahon*.¹⁵ This was the first case in which the Court held that a regulation of property could be considered a taking for which compensation must be paid under the fifth amendment.¹⁶

Finally, what works well for the rest of the book—a breezy and eminently readable juxtaposition of articles and cases, together with a minimum (a bit too minimum, really) of editorial comment for “glue”—does not work well for the final chapter on English planning law. Professor Hagman has studied in England and knows his subject. But the area is exceedingly complex, and the reader, especially a law student, will need to be led more carefully through the intricacies of development control, planning permissions, and compulsory purchase. Perhaps Professor Hagman intends this to be done by way of classroom lecture, and this approach is not completely illogical. After all, this is first and foremost a casebook, and a very good one at that.

¹³ Chapter XI.

¹⁴ Chapter XI, at 425-51.

¹⁵ 260 U.S. 393 (1922).

¹⁶ 260 U.S. at 415.