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American Law of Zoning. by Robert M. Anderson.

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AMERICAN LAW OF ZONING. By Robert M. Anderson. Rochester, New York: Lawyers Co-operative. 1968. 2909 pages. 4 volumes. \$100.00.

PETER SIMMONS*

The last time the United States fought a major civil war—its own, that time—it was considered quite natural that one of the prerequisites of wealth was the opportunity to buy one's way out of personal participation in the fray; for three hundred dollars a draftee could purchase an exemption from military service.¹ Today it would be unthinkable for a public official openly to advocate that patriotism and military obligations should be subject to such barter.² Whatever progress we have made toward a more equitable distribution of the burden of bearing arms in behalf of the commonweal, there is little doubt that we still accept as natural the opportunity for the wealthy, and with increasing frequency, the middle class, to obtain physical isolation from the ravages of city life. Only a few cranks and professional malcontents have the temerity to suggest that the single family dwelling in a racially pure and economically homogeneous suburb is anything less than the natural desert³ of the successful in our society. Perhaps a hundred years from now our great grandchildren will think our notion that one should legitimately be able to buy his way out of contact with his social inferiors just as inconsistent with the democratic ethos as we view the purchase of a military exemption. But the realities of present attitudes being what they are, it is not surprising that we have developed a mechanism within the legal system to facilitate residential exclusiveness.⁴ Zoning, and other techniques of land planning, have achieved public acceptance, if not praise, in no little degree because of their ability to maintain "the character of the neighborhood," and we all know what that means.⁵

The publisher of *American Law of Zoning* sees the big picture: "Few systems of governmental regulation," he writes in the Forward, "have cut so deeply into the economic, social and legal life of the United States" as the public control of private land. This is a subject too important to leave in the exclusive control of the legal profession, and these volumes are intended for the edification of "lawyers, developers, and real estate brokers, and to

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1. J. RANDALL AND D. DONALD, *THE CIVIL WAR AND RECONSTRUCTION* 314 (1969).

2. This is not to suggest that the present system of educational deferments and the interest in establishing a professional army do not reflect a similar concern for the welfare of the affluent majority. Today we are somewhat less direct in our technique and more discrete in our discussion.

3. The accent is on the second syllable.

4. Quite clearly zoning serves other purposes, and other mechanisms are available to achieve the exclusionary goal. For a recent discussion of one of these mechanisms, see Haskell, *Contractual Devices to Keep Undesirables Out of the Neighborhood*, 54 *CORNELL L. REV.* 524 (1969).

5. A somewhat more balanced view of the development of the zoning "reform" movement is presented in Seymour Toll's erudite history, *ZONED AMERICAN* (1969). For a glimpse of the big picture, consult M. SCOTT, *AMERICAN CITY PLANNING SINCE 1890* (1969).

private citizens who seek a community in which urban blight is arrested and efficient development is encouraged." In the hope that public officials and private citizens alike may "find the answers to their particular hopes and problems" and "perform their functions wisely and within the demands of the law" the publisher has endeavored to present "an exhaustive, analytical national treatise" of land planning law containing "numerous case citations" and "valuable references to annotations in the ALR series and noted law review articles"⁶

Professor Anderson⁷ is somewhat more modest in his undertaking, although he has displayed a prodigious amount of energy and discipline. His ambition is to focus upon "the current state of planning law" while giving some attention "to the efficiency of prevailing rules and the probable direction of their development."⁸ A penchant for cases explains why the author has limited his treatment of planning to one hundred pages out of the two thousand devoted to text; "judicial comment is in short supply."⁹ While there is a considerable amount of published literature dealing with land planning, a few items of which are cited in the footnotes,¹⁰ Professor Anderson tactfully suggests that analysis of the planning process ought to be provided by one professionally trained as a planner. Rather than fault the author on this point I believe that most attorneys will appreciate the two introductory chapters which he has provided. Perhaps the paucity of cases also explains the brevity of discussion devoted to the planned unit development,¹¹ although here again published material is avail-

6. 1 AMERICAN LAW OF ZONING pp. v-vi.

7. Robert M. Anderson is Congdon Professor of Public Law and Legislation at the College of Law, Syracuse University. He brings to this enterprise a wealth of experience. In the years since his graduation from law school in the heart of mid-America, he has engaged in private practice, served in city government and taught; throughout his career he has specialized in land planning and local government law. In addition to numerous law review articles, he has authored a notable one-volume treatise, ZONING LAW AND PRACTICE IN NEW YORK STATE (1963), an article on zoning in OHIO JURISPRUDENCE, 2d (1963), and with Bruce B. Roswig, co-authored PLANNING, ZONING AND SUBDIVISION: A SUMMARY OF STATUTORY LAW IN 50 STATES (1965).

8. 1 AMERICAN LAW OF ZONING, at p. 2.

9. 1 AMERICAN LAW OF ZONING, at p. 4. An additional 602 pages are devoted to forms; these, together with the table of cases, 91 pages, and the index, 184 pages, comprise volume four.

10. Of the eight books which Professor Anderson cites, only one, T. KENT, THE URBAN GENERAL PLAN (1964), appears on the list of ten items dealing with comprehensive planning recommended by the American Institute of Planners for those preparing for their licensing examination. 4 A.I.P. Newsletter 11 (Oct. 1969). In addition to A. ALTSEULER, THE CITY PLANNING PROCESS: A POLITICAL ANALYSIS (1965), which is included on the A.I.P. list, other works of general interest include F. CHARIN, LAND USE PLANNING (1965) and PRINCIPLES AND PRACTICE OF URBAN PLANNING (Goodman ed. 1968). Four exceptionally good law school casebooks contain thoughtful materials on planning: C. BERGER, LAND OWNERSHIP AND USE (1968); J. BEUSHER AND G. WRIGHT, LAND USE (1969); C. HAAR, LAND USE PLANNING (1959); and D. MANDELKER, MANAGING OUR URBAN ENVIRONMENT (1963). Hopefully a fifth D. HAGMAN, URBAN PLANNING AND CONTROLS will soon be available.

11. Given the legal profession's intense concern for the public's interest and its own prerogatives, as seen in the enthusiastic effort of assorted committees on unauthorized practice, it is surprising not to find a discussion of the legal relationship between planners and lawyers in the treatise. Those interested in this fascinating interplay might consult the following: R. BABCOCK, THE ZONING GAME 81-82 (1966); "Are Planners and City Attorneys

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able which the author might have drawn upon or cited.¹² But with this one exception, the reader will find a discussion of practically all of the topics customarily associated with the law of zoning.¹³

Although we were promised a "national treatise" by the publisher, the author freely admits that citations to cases from the northeastern states predominate; this is attributed to the pace at which the courts of these states spew forth decisions and to the headstart which they had in the planning field rather than to provincialism. Of the approximately 5600 cases cited by Professor Anderson, over twenty-five percent are from a single jurisdiction—New York—and the four states of Connecticut, Rhode Island, Massachusetts, and Pennsylvania cumulatively account for another twenty percent. New Jersey and Maryland together are represented by almost thirteen percent of the cases.

Poaching upon Each Other's Domain?" 7 *Institute on Planning and Zoning* (N.Y. 1968); City Planners and Lawyers, 48 *ILL. B.J.* 930 (1960); Craig, *Legal Consultants for Planning Consultants: A Reply to the Chicago Bar Committee*, 13 *ZONING DIGEST* 313 (1961; Care, *The City Planner and the Unauthorized Practice of Law*, *UNAUTHORIZED PRACTICE NEWS* 25 (Summer, 1968) and reprinted in 2 *LAND-USE CONTROLS* 23 (1968).

The legal issues involved in state attempts to license planners would also have been worthy of some comment. See New Jersey Chapter, A.I.P. v. New Jersey State Board of Professional Planners, 48 *N.J.* 581, 227 *A.2d* 313 (1967).

12. Not only is Professor Anderson's failure to discuss the planned unit development disappointing and surprising, but even the limited treatment which he gives this subject is somewhat difficult to locate. Searching the index I found the entry "planned Development: Model Provisions, §§ 26.60, 26.61." Section 26.61 comprises a seven page excerpt from an ordinance prepared by Planners Collaborative, Syracuse, New York, while § 26.60 offers one page from the "Proposed Zoning Ordinance of Rome, New York" dealing with a "P-1 Civic Center District," one page from the "Proposed Zoning Ordinance of Ogdensburgh, New York," concerning a "Planned Commercial District," and a cross-reference which states that planned development districts are discussed in § 8.37 of the treatise. Following this instruction and turning to § 8.37, I found a discussion of open-land districts, followed in the next section, § 8.38, by the heading "Planned Development District." Here two pages of discussion culminate in two additional cross-references, one to § 8.17 and the other to § 5.16.

Leaving § 26.60 with great expectations I next turned to § 8.17, which is an introduction to "devices employed to make zoning more flexible, generally." After brief comments on the special permit, exceptions, and the floating zone, there is a paragraph devoted to "cluster zoning" which describes the planned unit development and promises additional discussion in the chapter on subdivision controls. But alas, perusal of that chapter does not reveal any material on the planned unit development. Back once again to the index, this time under the heading "Subdivision Controls" for a further clue to the long awaited reward. Among the four columns of topics dealing with subdivision regulations, there was only one even remotely relevant, and this was a listing for "Flexibility of Zoning, § 8.17," where the search began several frustrating minutes ago. Eventually, at § 5.16, under the heading "floating" zone, I located Anderson's brief discussion of "planned development."

Professor Anderson cites two articles dealing with the use of planned unit developments, one from the New York State *Planning News*, and the other from the New York State Federation of Official Planning Organizations' *Planning Institute-1964 Sources of Information* perhaps more freely available include the symposium issue of the *University of Pennsylvania Law Review* (114:1, Nov., 1965) containing articles by Byron Hanke, Jan Krasnowiecki, Daniel Mandelker, David Craig and Richard Babcock, together with a model statute drafted on behalf of the National Association of Home Builders; Goldston and Scheur, *Zoning of Planned Residential Developments*, 73 *HARV. L. REV.* 241 (1959); *Legal Aspects of Planned Residential Development*, Urban Land Institute Technical Bulletin No. 52 (1965); and Mandelker, *Controlling Planned Residential Development*, American Society of Planning Officials (1966).

13. Eminent domain, inverse condemnation, housing codes, land finance, urban renewal, and real property taxation, quite expectedly, are not discussed in these volumes.

Thus seven states from the eastern seaboard contribute sixty percent of the cases. But if it is not possible to represent all of the states equally, there are abundant citations to cases from California, Florida, Illinois, Michigan, Ohio and Texas to add regional diversity.¹⁴

The publisher promised "valuable references to . . . noted law review articles . . ." and Professor Anderson cites over two hundred signed articles and almost three hundred unsigned student notes and comments.¹⁵ In fact the voluminous footnotes comprise fully twenty-three percent of the pages devoted to textual material.¹⁶ Impressive as these figures are, closer examination of the articles selected for inclusion reveals the following distribution: only twelve percent of the signed articles and nine percent of the unsigned notes and comments were published after 1963, while fully seventeen percent of the signed articles and 27 percent of the unsigned notes and comments were published before 1950. The decade of the 1950's accounts for over 50 percent of the signed articles and 37 percent of the unsigned notes and comments. For a field of study which is in constant turmoil, and about which one expert has said "there are no established legal principles,"¹⁷ it is surprising to find this antiquarian emphasis. Not only is there inadequate representation of contemporary law review writing, but the failure to mention certain key articles is perplexing. For example, no discussion of compulsory subdivision dedications is adequate which does not take account of the analysis and proposals of Heyman and Gilhool,¹⁸ to understand the modern law of "delegation" in zoning requires familiarity with Mandelker's article,¹⁹ and the generally agreed classic discussion of official maps is that by Kucirek and Beuscher.²⁰ Who would be so bold as to attempt to grapple with the constitutional limits of the police

14. These six states account for 18 percent of the cases. In addition to the cases, there are frequent references to OHIO JURISPRUDENCE, 2d; TEXAS JURISPRUDENCE, 2d.; CALIFORNIA JURISPRUDENCE, 2d; and FLORIDA JURISPRUDENCE.

15. In addition to the case and law review citations, almost two hundred ALR annotations are identified, and there are almost one hundred citations to R. ANDERSON and B. ROSWIG, PLANNING, ZONING AND SUBDIVISION: A SUMMARY OF STATUTORY LAW IN THE FIFTY STATES. These latter references may or may not be of value. In reading the pages devoted to Ohio, I was surprised to find stated, at page 121, that even though municipal corporations have constitutional home rule power, their authority with respect to zoning is "restricted by the general law of the state. . ." This is an unexpected conclusion in light of OHIO REVISED CODE § 713.14 and the discussion in Professor Anderson's articles in OHIO JURISPRUDENCE, 2d at § 105 where he says that charter cities are not restricted by the state enabling act.

16. At one hundred dollars for the set, the pro rata cost of the footnotes is seventeen dollars and twenty-five cents.

17. This judgment was pronounced by Dennis O'Harrow, former Executive Director of the American Society of Planning Officials while commenting upon Paul Mishkin's presentation before the local government roundtable at the annual meeting of the Association of American Law Schools in December, 1959. 10 *Muni. Law Service Letter* 7 (Jan., 1960).

18. *The Constitutionality of Imposing Increased Community Costs on New Suburban Residents through Subdivision Exactions*, 73 *YALE L.J.* 1119 (1964).

19. *Delegation of Power and Function in Zoning Administration*, 1962 *WASH. U.L.Q.* 60.

20. *Wisconsin's Official Map Law: Its Current Popularity and Implications for Conveyancing and Platting*, 1957 *WIS. L. REV.* 176.

power without consulting Sax²¹ or Dunham?²² And certainly anyone expressing a serious concern for the social consequences of zoning is culturally deprived if he has not been exposed to Norman Williams' masterpiece.²³

The omission of any one, or even a modest number of significant articles from the footnotes would not be a matter of serious concern if Professor Anderson provided even a brief section on research aids in planning law.²⁴ The reader is told that the American Society of Planning Officials was formed in 1934, that the American Institute of Planners blossomed after World War II, and that the A.I.P. publishes the "A.S.P.O. *Planning Advisory Service* and the *Zoning Digest*."²⁵ No mention is made of the publications of the Urban Land Institute, the Advisory Commission on Intergovernmental Relations, or the many other sources of information relevant to the work of lawyers and planners alike. Moreover citations to scholarly works somewhat less ephemeral than periodicals and yet not as imposing as this multi-volume treatise are inadequate. While it may be unrealistic to expect Professor Anderson to identify the works of his major competitors—and the *American Law of Zoning* comes off very well in any such comparison—it is surprising that Babcock's *The Zoning Game*, Williams', *The Structure of Urban Zoning*, and Haar's *Land and Law*, and the work of Herbert Gans, Jane Jacobs, or Lewis Mumford,²⁶ go unmentioned. While the reader of *The Zoning Game*, or any of the other works mentioned above, may not come away with a string of case citations not otherwise obtainable through the digest system, these are the repositories of the ideas and insights which may help the government official and private citizen "perform their functions wisely"—and remember, that is what the law is really all about!

If wise use of our resources is the point at which law and planning converge, what is the first step toward the chosen land? Perhaps it is the recognition that problems exist, and an attempt to identify the nature of the problems. The National Commission on Urban Problems published a study

21. *Takings and the Police Power*, 74 YALE L.J. 36 (1964).

22. *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650 (1958); *Griggs v. Allegheny in Perspective: Thirty Years of Supreme Court Expropriation Law*, 1962 SUPREME COURT REV. 63.

23. *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROB. 317 (1955).

24. Professor Donald Hagman does an exemplary job of this in only eight pages in D. HAGMAN, LARSON and MARTIN, CALIFORNIA ZONING PRACTICE (1969). Certainly considerations of space could not have dissuaded Professor Anderson from discussing this subject. The treatise contains an excessive number of repetitious citations to articles and ALR annotations and the pages necessary for an introduction to the literature of planning law could have been obtained by a little judicious pruning among the footnotes.

25. 1 AMERICAN LAW OF ZONING 19. The confusion of the two organizations would not be particularly distressing if the author identified the publications of each. The American Institute of Planners publishes a monthly newsletter and an annual volume of conference proceedings in addition to the *Journal of the A.I.P.* The American Society of Planning Advisory Service and the *Zoning Digest*, publishes an annual volume of conference proceedings, a quarterly entitled *Land Use Controls*, and occasional reports and monographs.

26. Jacobs and Mumford may aggravate more professionals than they please, but these are the authors the *people* read.

undertaken by the American Society of Planning Officials on problems of zoning and land-use regulation. In compiling this report the executive director of ASPO sought the opinion of seventy-five experts in the field, and the collective views of the group were published during the same year Professor Anderson's volumes appeared. The findings of this study, as summarized by Senator Paul Douglas include the following:

Land use controls often have the unfortunate consequence, if not the intent, of making it difficult for low-income minority families to live in many urban places.

Attempts to use land rationally are thwarted because crucial land-use decisions are in the hands of too many uncoordinated political units.

Fiscal zoning—the efforts to use land to serve the revenue needs of communities—too frequently runs counter to sound long-range development policy.²⁷

Here then is at least one test of relevance; these are the key problems as seen by the professionals and the experts. Time and space do not permit an examination of Professor Anderson's treatment of all three problems but inquiry into his coverage of the first will help us determine if low-income minority families will "find the answers to their particular hopes and problems" as the publisher has promised.²⁸

Assume an attorney agrees with Ralph Brown of the New Jersey Housing Finance Agency that there is a need for courts "to deal with the problem of discrimination through local exclusion in their zoning against lower income housing;"²⁹ what assistance will he get by consulting the *American Law of Zoning*? The index does list "Negroes" and identifies a section discussing "zoning to exclude persons of a certain race or color," with appropriate citations to *Buchanan v. Warley*³⁰ and subsequent cases invalidating overt attempts to segregate along racial lines.³¹ While race is not listed under the index heading "Discrimination" the entry "Racial Matters," in addition to referring back to the section on "Negroes," cites a section on "Improper Purpose" which contains a discussion of *DeSena v. Gulde*,³² an important recent New York decision in which the reviewing court held invalid an amendment adopted by a village board because that body acted, not for purposes authorized in the enabling act, but to pacify an angry group of citizens who threatened an economic boycott if they did not get their way.³³ Although in this case the pressure was

27. American Society of Planning Officials, *Problems of Zoning and Land-Use Regulation* (Washington, D.C., 1968) iii. See also, *A Decent Home: The Report of the President's Committee on Urban Housing* 142-43 (Washington, D.C., 1969) and *Building the American City* 199-208 (Washington, D.C., 1969).

28. 1 AMERICAN LAW OF ZONING, p. v.

29. N.Y. Times. Nov. 7, 1969.

30. 245 U.S. 60 (1917).

31. 1 AMERICAN LAW OF ZONING, § 7.30, pp. 553-54.

32. 24 A.D.2d 165, 265 N.Y.S.2d 239 (2d Dep't 1965).

33. 1 AMERICAN LAW OF ZONING, § 4.20, pp. 191-93.

brought by Negroes and not against Negroes, the case will be useful in those instances in which the record discloses that legislative action was the result of coercion seeking to exclude minority groups; certainly anyone familiar with the tortured history of *Deerfield Park District v. Progress Development Corporation*³⁴ will welcome the opportunity which *DeSena v. Gulde* offers when the racial motive is overt and identifiable. But racial and economic exclusion are accomplished by more subtle and sophisticated means, and courts and planners alike have become accustomed to "the subterfuge of dealing with social and economic protectionism in the language of controlling the physical form of development."³⁵ Unfortunately Professor Anderson offers little assistance to an attorney seeking to pierce this subterfuge, both in cases of racial exclusion, and in those of economic exclusion as well. Pursuing the theme of social and economic exclusion first through the index, and then through the text itself, discloses several relevant sections, including a discussion of mobile homes and apartments,³⁶ but few insightful leverage points are offered in reward.³⁷

The law of land use controls may be of only marginal significance in determining the quality of urban life enjoyed by minority and low income families, and thus not worthy of extended discussion in these volumes,³⁸ but Professor Anderson's treatment of another topic—the role of the judiciary in reviewing land use determinations—is disappointing. Here is a topic of central interest to both bench and bar, and one which goes to the very heart of the present system which places heavy reliance upon the decision-making authority of lay bodies.³⁹ This system of government regulation cuts "deeply into the

34. 26 Ill. 2d 296, 186 N.E.2d 360 (1962), cert. denied 372 U.S. 968 (1963). Life in Deerfield Park is detailed in ROSEN and ROSEN, *BUT NOT NEXT DOOR* (1962).

35. Doebele, Book Review, 81 HARV. L. REV. 266-67 (1967).

36. The numerous inconsistent citations and misspellings which appear in the footnotes of this treatise may be a source of annoyance to some readers, but one entry almost makes the lack of proof reading a virtue. Babcock and Bosselman's well known article, which appeared in 111 U. PA. L. REV. 1040 (1963) is listed under the title *Suburban Zoning and the Apartment Boob. Sic* intended?

37. The reader interested in this problem will find Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767 (1969) and Aloï, Abba, and White, *Racial and Economic Segregation by Zoning: Death Knell for Home Rule*, 1 TOLEDO L. REV. 65 (1969) useful.

38. We should not permit ourselves to overestimate the significance of mere legal doctrine in dealing with social and economic problems. The intellectual and emotional rewards gained by academics and other middle class reformers probably exceed those enjoyed by the client group in many instances. It is easier to confront the inconsistency between constitutional theory and social institutions in a supreme court brief than to do so in the halls of Congress or the city council chamber.

39. Professor Anderson appreciates the legal and practical problems inherent in reliance upon non-professional zoning review agencies. His "law-in-action" study of the Syracuse Zoning Board of Appeals, which appeared in 13 SYRACUSE L. REV. 353 (1962) is cited in the treatise at least five times and is reprinted in his *Zoning Law and Practice in New York State* as Appendix B at pages 1077-97. Additional studies of the operation of such agencies, not cited by Professor Anderson, include Dukeminier and Stapleton, *The Zoning Board of Adjustment: A Case Study In Misrule*, 50 KY. L.J. 273 (1962); Comment, *Zoning Variance Administration in Alameda County*, 50 CALIF. L. REV. 101 (1962); Note, *Board of Zoning Appeals Procedure—Informality Breeds Contempt*, 16 SYRACUSE L. REV. 568 (1965); Note, *Zoning Variances and Exceptions: The Philadelphia Experience*, 103 U. PA. L. REV. 516 (1955).

economic, social and legal life of the United States,⁴⁰ and we have, in recent years, become accustomed to look to the courts for protection against the abusive misuse of such power over persons and property. Perhaps there is not a great deal to say about the role of the United States Supreme Court in the land use area—although this fact alone might be worthy of comment⁴¹—but state courts, except in those few jurisdictions like California where apparently anything goes,⁴² have been struggling for many years with the problem of defining their appropriate role. The *American Law of Zoning* offers little assistance to the judge or the attorney who is concerned with this problem.

Professor Anderson provides an exhaustive description of the legislative and administrative mechanisms for changing the impact of a zoning ordinance upon individual property owners. His discussion of amendments and variances is rich in detail and meticulously catalogues the factual patterns likely to arise in litigation.⁴³ Yet, the treatment of these topics, when taken together with his discussion of the major limitation upon judicial review, the presumption of constitutionality, is disquieting. Apparently we are to assume that because the presumption of constitutionality was an effective technique for limiting judicial interference with the development of a mixed economy on a national scale, it is a necessary component of a land use system which entrusts thousands of individualized decisions to lay bodies acting in a quasi-judicial capacity. Clearly the power relationship existing between Congress and a major national industry is quite different from that between an individual landowner and the zoning board of adjustment. When Congress regulates the steel industry, for example, there is reality in the suggestion that the industry has an adequate remedy through the political process and that judicial intervention is unnecessary to protect against tyranny; but when an individual landowner is pitted against city hall, it may well be that an alert and vigilant judiciary is the only protection realistically available.⁴⁴ Certainly there must be a choice more acceptable than either following those courts which would serve as superboards-of-adjustment⁴⁵ or those which would abdicate all responsibility⁴⁶.

40. 1 *AMERICAN LAW OF ZONING*, p. v.

41. It was Holmes who recognized the significance of the non-happening of an event—in his case, as he explained it to Dr. Watson, the tip-off came when the dog did *not* bark! For a discussion of the application of the law of the land to land law by the United States Supreme Court, see Johnson, *Constitutional Law and Community Planning*, 20 *LAW & CONTEMP. PROB.* 199 (1955).

42. Nothing in recent years suggests that the California courts have lost any of their adulation for "the siren song of regulation" as practiced on the local level in the administration of zoning laws. See *McCarthy v. Manhattan Beach*, 41 Cal. 2d 879, 264 P.2d 932 (1953) as an example of the highwater mark of judicial permissiveness.

43. This discussion extends over 500 pages of the treatise and contains a wealth of information presented in a very readable style.

44. See *United States v. Carolene Products Co.*, 304 U.S. 144, 152-54, especially n.4 (1938).

45. *Vickers v. Township Committee of Gloucester Township*, 37 N.J. 232, 252, 181 A.2d 129, 140 (1962) *appeal dismissed*, 371 U.S. 233 (1963). Professor Anderson cites *Vickers* twice, both times for unexceptional points, but does not refer to Justice Hall's dissent or discuss the issues which it raises.

46. *ALI A MODEL LAND DEVELOPMENT CODE*, (Tent. Draft No. 1, Philadelphia, 1968).

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One scholar has summed up the current status of the art of judging in land use cases:

Appellate judges have not in general brought the same level of creative analysis to zoning as they have to other modern problems. As a result, important zoning decisions appear as routine opinions and furnish little insight into judicial analysis of such cases.⁴⁷

Unfortunately I am fearful that the *American Law of Zoning* will do little to stimulate creative analysis. Certainly Professor Anderson has provided planners and lawyers with a lucid and encyclopedic description of the formal legal system of land use control in the United States and this accomplishment alone will make it a popular work; but what is a convenience to the profession does not always advance the art.

Article 2, Land Development Plans, and article 8, Local Administration, and the commentary to both, are particularly relevant.

47. Tarlock, Book Review, 55 *Kx. L.J.* 901, 903 (1967).

