

BOOK REVIEW

ROMÁN ORTEGA-COWAN*

WELL GROUNDED: USING LOCAL LAND USE AUTHORITY TO ACHIEVE SMART GROWTH. By John R. Nolon, *Charles A. Frueauff Professor of Law and Director of the Land Use Law Center at Pace University School of Law*. Environmental Law Institute: 2001.

INTRODUCTION

Zoning . . . represents the unique American contribution to the solution of disputes over competing demands for the use of private land. When there are conflicting interests, it is patently necessary for someone to determine which of these are valid....¹

Clearly we need *someone* to determine the validity of competing interests for the use of land; the real question is who the *right* someone is for such a decision.² A growing distaste with sprawl³ has led to increased public interest in the effective management of land development in response to population growth,⁴ but the collision between resulting federal, state, and local controls has led to more heat than light on the subject.

John R. Nolon clearly states that such confusion is beyond the scope of this endeavor;⁵ his focus is rather on an education strategy in response to the poor results of a top-down regime's attempts to impose land use authority upon local governments with their own

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1. JOHN R. NOLON, WELL GROUNDED: USING LOCAL LAND USE AUTHORITY TO ACHIEVE SMART GROWTH 443 (2001) (quoting RICHARD F. BABCOCK, THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES, at xvi (1966)).

2. The author suggests the *right* someone is local government, at least until a "higher level of government can [effectively unify] the chaotic palette of local land use decisions." *Id.* at 6.

3. See Ann Brown et al., *Sprawl: The Dark Side of the American Dream*, available at <http://www.sierraclub.org/sprawl/report98> ("Sprawl is low-density development beyond the edge of service and employment, which separates where people live from where they shop, work, recreate, and educate — thus requiring cars to move between zones.") (on file with author).

4. The author states the reactive term "growth management" has given way to the proactive term "smart growth," although both share the goal of preventing sprawl. NOLON, *supra* note 1, at 2.

5. *Id.* at 6.

agendas.⁶ The author sums up the point of his work well by quoting the man whose words have guided its creation: "I know of no safe depository of the ultimate power of society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education."⁷

DESCRIPTION

The author begins by introducing the reader to the basic elements of local land use law and practice. A thorough overview of the terms, procedures, and roles of citizens, the judiciary, and local decision-making boards provides the reader with a foundation upon which to base an understanding of how smart growth may be successfully achieved at the local level.

Chapter Two builds on this foundation by explaining the basic requirements of smart growth. It presents an extensive description of zoning methods, then comprehensively compares and contrasts them with smart growth methods. Chapter Three affords an overview of the relationship between comprehensive plans and zoning. The author presents a detailed portrait of these concepts first through a series of diagnostic checklists and then with an evaluation of relevant New York land use law.

Chapter Four gives an extensive description of local practice. It begins with the basic implementation procedure of local authorities and proceeds to describe the variance and permit, as well as subdivision and site plan proposal, evaluation processes. The chapter closes with an extensive discussion of uses that often create conflict among neighboring parties, as well as the enforcement of use regulations.

Chapter Five begins the discussion of environmental impact. Specifically, it leads the reader through New York's State Environmental Quality Review Act (SEQRA)⁸, which has had an enormous impact on New York land use decisions since its adoption in the 1970s.⁹ Chapter Six extends this discussion to techniques such as creative zoning and planned developments available to local governments to balance development and conservation efforts.

6. *Id.* (suggesting it may be better to acknowledge the resiliency of local power and to work with it rather than try to supersede it; if local officials are not educated in land use matters, the solution is to provide them with such education).

7. *Id.* (quoting Thomas Jefferson to William C. Jarvis (1820), available at <http://etext.lib.virginia.edu/jefferson/quotations/jeff0350.htm>) (on file with author).

8. N.Y. ENVTL. CONSERV. LAW §§ 8.0101-8.0117 (McKinney 1997).

9. NOLON, *supra* note 1, at 183 (requiring an environmental impact evaluation as part of almost all decision levels).

Chapter Seven uses examples of New York statutes enabling intermunicipal coordination to describe the authority local New York governments have to bring about better overall development results. Chapter Eight closes out the environmental discussion through description of the body of New York environmental law local governments use to protect their natural resources.

Chapter Nine explains the points of tension where federal, state, and local land use authority overlap. It provides a thorough description of the statutory and constitutional limits on land use that local governments deal with and how such governments have been able to maintain control in the face of such overarching interests. Finally, Chapter Ten discusses the effect land use regulations may have on private property rights and how citizens may challenge the regulations to protect such rights.

ANALYSIS

The author presents a large body of interesting and important information in an easily accessible format. Although the focus is primarily on New York land use law, the book serves a dual purpose: New York citizens and officials may use it as a practical guide and students throughout the country may use it to learn of a valuable strategy that may (and arguably should) be employed by all fifty states.¹⁰

10. It is worth noting, however, that this book may not be a popular choice among professors for a primary text in a land use course taught outside of the Empire State.

