BOOK REVIEW

AMERICAN PLANNING LAW: LAND USE AND THE POLICE POWER. By Norman Williams, Jr. Callaghan & Co., Chicago, Ill., 1974. Pp. 3,640 (five volumes plus a 25-page addendum). $225.00.

Like the reviewer of an encyclopedia or dictionary, one attempting to comment on Norman Williams' five-volume treatise on American land planning law is struck with the enormity of the task: how can one review a work which seeks to cover virtually all that is known, accepted, or understood? Professor Williams' treatise, however, is not quite congruent with an encyclopedia or dictionary, and not alone because of its more restricted subject. This is a very personal work, displaying little of the anonymity of a committee effort. Moreover, and particularly because of the author's strong views, it is not solely a factual presentation of accepted knowledge. Certainly vast amounts of substantive information are contained,[1] as well as discussion of the myriad techniques and approaches employed by all levels of government as they seek "the proper relationship between private activity and governmental power."[2] Williams moves far beyond such legal and technical presentations, however, to explore two other major themes: "the extent of public responsibility for the less fortunate groups in the population," and "the role of judicial policy-making in American constitutional law."[3] This major work thus combines descriptive, analytical, and normative elements; provided along with the factual information are classification and analysis of that information and informed perceptions as to how the system is or should be working.

Williams' treatise differs markedly from similar efforts in the land use field in that it combines expertise from both contributory

1. For instance, the author has accomplished the unparalleled task of reading, summarizing, and classifying the more than 10,000 reported cases involving zoning and land use.

2. 1 N. WILLIAMS, AMERICAN PLANNING LAW: LAND USE AND THE POLICE POWER v (1974).

3. *Id.* at v-vi.

professions: planning and law.[4] This work, which is not derivative from any course heretofore traditionally offered in the curricula of law schools or graduate planning schools,[5] covers a broadened "scope and subject matter of planning"[6] including six substantive areas: economic development, demographic factors, social and cultural development, physical development, financial implementation, and legal and administrative implementation.[7] While this format may appear self-evident and unremarkable to today's student or practitioner, the relevance of these elements is not universally understood or accepted. Nor do they appear so cogently in any parallel work. More importantly, it is this broadened basis for consideration of land planning law that is essential to Williams' larger purposes in viewing social policy and the role of the judiciary.[8]

The discussion of planning and planners goes far beyond the simplistic materials found in the typical planning law casebook. Its insight is perhaps best exemplified by Williams' perception of the differences between "the plan" and "planning," underlining the distinctions between product and process and their implications for the regulation of land use.[9] In addition, the reader will receive from Williams some frank and revealing portrayals of the various kinds of planners. He names and pungently characterizes the public servant, the bureaucrat, the research specialist, the computer whiz-kid, the bureaucratic infighter, the moneymaker, and the urban expert.[10] While such language doubtless will never be cited by the judiciary, it is somewhat useful in providing the newly initiated with an insight into the characteristics of the various actors on the urban planning scene.

The basic analytical structure used in describing, explaining, and lamenting the overall land use law system is set forth in volume one. Nowhere else can one secure such a clear understanding of such matters as the parties in interest in a zoning case,[11] variations in attitude

4. Williams, a lawyer, who has served as professor of law at several law colleges, also is a professor of urban planning at Rutgers University and has worked on the Princeton, New Jersey, Regional Planning Board and the Princeton Zoning Board of Adjustment.

5. Most texts and casebooks dealing with planning law are derived from courses in real property law, and at least one was built upon course work in municipal government.

6. 1 N. WILLIAMS, *supra* note 2, § 1.11, at 19.

7. *Id.* Those with an interest in observing the evolution of Williams' thinking can find the same six elements discussed in the introduction to an earlier work. *See* N. WILLIAMS, THE STRUCTURE OF URBAN ZONING 1 (1966).

8. 1 N. WILLIAMS, *supra* note 2, § 1.11.

9. *Id.* § 1.14, at 26.

10. *See id.* §§ 1.37-.44, at 62-69. These classifications and the descriptions document the statement that this is a "personal" work. In fact, this reviewer was able to recognize a fair number of specific individuals whom Williams doubtless had in mind when he limned their portraits in sharp and unsparing language.

11. Williams describes the three parties in interest as developers, neighbors, and "third party nonbeneficiaries," the latter being nonresident persons adversely affected by a zoning decision. *See id.* §§ 2.01-.02.

among the states,[12] the manner in which cases arise,[13] the role of judicial attitudes,[14] and the wide variations in judicial quality and intellectual probity.[15] The essential nature of zoning is described at great length, building from its statutory purposes to interpretations of the zoning power by the state and federal courts.[16] Williams' greatest contribution toward bringing order out of the seeming gallimaufry of state zoning law may be his classification of the states, via their case law, into prozoning states, erratic states, the "good gray middle," and strongly developer-minded states.[17] This herculean and needed summarization, never attempted heretofore by any scholar or practitioner, assists greatly in understanding the wide disparity of case law regarding zoning and land use, so difficult of characterization on a national basis. In fact, Williams' perceptive classification system is itself subject to change without notice as the states gradually—or precipitously—shift their intellectual postures.

Volume one, after reviewing planning goals,[18] focuses on an examination of the techniques used to adapt and change land use regulations—spot zoning, floating zones, contract zoning, and interim

12. *See id.* §§ 2.03-.07.

13. *See id.* §§ 3.01-.02. The discussion in this area could have benefited from examination of the types of situations which tend not to generate litigation, thereby creating gaps in the case law.

14. *See id.* §§ 4.01-.05. An irreverent characterization of "stomach jurisprudence" is included, as distinguished from the probably naive hope that rules of law will prevail. See *id.* § 4.01, at 85.

15. *See id.* § 4.05. Williams describes these as ranging from "occasionally brilliant" to "more often humdrum." *Id.* at 100. He takes time to pay his respects to the one figure who "towers above all others—Justice Frederick Hall of New Jersey," *id.* at 98, to whom, incidentally, the treatise is dedicated *inter alia.*

Williams summarizes the key elements of his analysis as follows:

1. The four different periods in judicial attitudes to American land use control (ch. 5).
2. The changing judicial attitudes towards the three principal parties-in-interest in land use litigation (ch. 2).
3. The marked differences between the case law of various states (ch. 6).
4. The dominant role played by other governmental actions affecting land use, including particularly the local real property tax system and the construction of major public works (ch. 14).
5. The frequently wide gap between the content of judicial discussions and what is going on in the real world (throughout).
6. On specifics, that there are some prevailing rules (ch. 7, and throughout), and particularly the length and depth of the antiexclusionary tradition in American zoning laws (chs. 39, 50, and 59 to 66).

5 *id.*, § 161.01, at 417-18.

16. The Supreme Court interpretations are viewed as far less progressive than those of some state courts. *See* text accompanying notes 23-27 *infra.*

17. 1 N. WILLIAMS, *supra* note 2, §§ 6.01-.19. Trends in other states not so easily classifiable, often because of the lack of a body of case law, also are summarized. *See id.* §§ 6.20-.43.

18. *See id.* §§ 8.01-15.07. The goals influencing municipal planning cover the gamut from esthetics to fiscal zoning and include the traditional considerations of density control, traffic generation, psychological nuisances, property values, neighborhood character, and the ubiquitous general welfare clause. The psychological nuisance factor, not elsewhere treated to the reviewer's knowledge, deals with such land uses as funeral parlors.

zoning, among others—all in the context of the perplexing "in accordance with a comprehensive plan" requirement.[19] Such techniques exemplify municipal efforts to change development policy legislatively while preserving a viable image of future development via a master or comprehensive plan that can continue to provide a framework for change. The master plan itself has been likened to a kind of constitution, phrased broadly and subject to continuing reinterpretation, with specific implementation accomplished legislatively. Here lies the nub of the land use regulation problem: how to establish broad social policy as a basis for specific land use controls without unduly restricting a municipality's right to change the rules of the game, as it were. Yet the analogizing of the master plan to a land development constitution suffers from the fact that the plan is seldom adopted legislatively and, in any case, is itself subject to convulsive change as public sentiments and policies change. Zoning—which somehow must straddle realities of the present and hopes for the future—is thus tied to a shifting anchor and, inevitably, the judiciary has been called upon periodically to impose direction and control.

Succeeding materials in the remainder of the five volumes deal with key planning and legal issues related to residential, commercial, and industrial uses of land. Among the most important of these are the exclusionary ("snob") zoning problem, architectural controls, nonconforming uses, signs, variances, special permits, and the conflict between residential and nonresidential uses. This seemingly bland and simple recitation of the primary subjects covered should not mask the incredible quantity[20] and quality of Williams' work. Almost 5,000 cases are cited in the text and footnotes, including the 17 key United States Supreme Court cases dealing with land use regulation.[21] Diagrams and photographs illustrate many of the leading cases, notably demonstrating the realities of the contested situation beyond the facts appearing in the opinion. Additional insight into the underlying planning and legal issues is provided by Williams' reports on field studies, largely post facto, which he supervised while at Rutgers University Law School. Even those who feel familiar with some of the leading zoning cases would find it instructive to read the materials resulting from these onsite investigations, some of which demonstrate the peculiar fashion by which case law is advanced.[22]

---

19. *See id.* §§ 23.01-32.01.
20. The index alone requires 190 pages.
21. Seven of those predate the recognized landmark decision of Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).
22. Unfortunately, a curtailment of financial support during the course of the work

The treatise closes with Williams' final peroration, "A Look Towards the Future,"[23] comprising his summary analysis, a statement of his concerns, his projection of likely future actions, and his prescriptions for what should be done. Here is the very heart of the entire effort, and it is the portion in which above all the serious student and practitioner should immerse himself if he is to have a complete understanding of American land planning law. Williams candidly admits that there are plenty of unresolved issues for which he has no ready answers;[24] however, he goes further to describe a number of "promising areas of exploration" for dealing with such issues.[25] An observer with strong and pointed opinions, Williams thus is candid enough to point out what he and other land use professionals don't know now, and what must be learned very soon if the land planning system is to operate effectively, logically, and equitably. Williams sees salvation as coming largely through "vigorous judicial action, in the new mood of creative judicial review, to clear away as much as possible of the fiscal-exclusionary bias pervading the entire current world of American planning and land use controls."[26] He qualifies this view, however, with the hope that the United States Supreme Court "does not effectively intervene to stop the strong anti-exclusionary trend in the state courts."[27] His view has already proved prescient; after the major corpus of the work had been completed and was on the press, New Jersey's highest court decided the landmark case of *Southern Burlington County NAACP v. Township of*

---

forced a cutback of field studies involving other leading cases. Hopefully, others will pick up where Williams left off and continue to add to the literature by undertaking such highly desirable field work.

The aforementioned cutback in support also regretfully forced Williams to eliminate treatment of such key and related matters as housing codes, building codes, and fire-limit ordinances; environmental protection matters, particularly as illustrated by the burgeoning case law in the federal courts; state and federal antipollution legislation; and, perhaps most seriously, treatment of taxation as a factor in determining or controlling land use.

23. 5 N. WILLIAMS, *supra* note 2, §§ 161.01-163.84.

24. *See id.* § 163.83. Such problems include how to handle the effect of land use controls on land price; how to recoup increases in land values and apply those funds to socially valuable purposes; how to create a land use regulation system with wide variations in use intensity, applied equitably and with suitable rewards for those using land less intensively; how to devise growth controls that do not have exclusionary effects or tendencies; and what the federal government's role in urban land use and growth controls should be.

25. Areas discussed include fiscal pressures in relation to use controls; coordinating public facilities and private land use planning; redefinition of the plan as a more dynamic instrument rather than a "steady-state" expression of a desired long term future; means for advance designation of future land uses; regional growth policies; allocation of land use controls between local and regional agencies; relating housing needs to inclusionary growth and zoning controls; meeting the taking-versus-regulation problem; new towns and public ownership; environmental design improvements; and improving administrative mechanisms and related personnel. *See id.* § 163.84, at 525-27.

26. *Id.* at 527.

27. *Id.* n.89.

Mount Laurel,[28] prompting Williams to provide an addendum chapter discussing the case. He there notes that changes in attitudes toward exclusionary zoning have "been initiated, not by the legislatures, but by the courts,"[29] adding that the state courts often have treated the exclusionary zoning issue as a matter of state constitutional law so as to preclude review by the United States Supreme Court.[30]

The fact that a five-volume treatment of the subject had to include, as a postpress improvisation, a back-cover insert on a leading case is obvious proof that even Williams has not had the last word. The field is rapidly changing, and primarily by reason of new judicial interventions rather than by planning or legislative creativity. Planners still have a vast array of substantive problems to solve, particularly that of making planning and plan preparation more effective and reliable. Legislators also have numerous substantive issues to deal with, perhaps most importantly those which are emerging from experience with environmental regulation and related growth controls. Yet neither planners nor legislators are moving quickly or effectively, leaving the judiciary to occupy centerstage.

Professor Williams presents a current analysis of American land planning law, provides the preeminent intellectual benchmark and reference source, clearly identifies the unresolved issues, and lays out his prescriptions for future courses of action. His work will prove particularly useful to practitioners—both planners and lawyers—wanting to know more than merely the right cases to cite; to scholars and students having the mental ambition and ability to understand the larger issues involved in the regulation of private property; and to legislators and judges needing a major reference work to buttress them in efforts to modify and restructure the American system of land use regulation. Within a few years, a supplement will undoubtedly be needed to update the review of actions by all three branches and at all levels of government. Even if *American Planning Law: Land Use and the Police Power* is never so supplemented, however, it will stand for all time as the most significant work in the field, the one most effectively illuminating the past and charting the future. It is a remarkable landmark work

28. 67 N.J. 151, 336 A.2d 713 (1975).
29. 3 N. WILLIAMS, *supra* note 2, § 66.13b, at 2 (addendum).
30. *Id.* Williams' fears that the United States Supreme Court might place obstacles in the way of further antiexclusionary attempts were justified. In *Warth v. Seldin*, 422 U.S. 490 (1975), the Court created rigidly restrictive standing requirements for plaintiffs in antiexclusionary suits. Under the rule of *Warth* it is possible that none of the plaintiffs in *Mount Laurel* would have had standing to bring the action.

which all serious students and practitioners will long find to be their primary source.

*S. J. Schulman**

* Adjunct Professor of Urban Planning, Columbia University Graduate School of Architecture. B. Civ. Eng'r 1949, Cooper Union School of Engineering; M.S. 1954, Columbia University. Mr. Schulman is the current president of the Westchester County Ass'n, Inc., a private group representative of corporate leadership and concerned with promoting sound development.