

1957

Zoning and Planning

Isidore Stephen Sussna

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Isidore Stephen Sussna, *Zoning and Planning*, 26 Fordham L. Rev. 389 (1957).
Available at: <https://ir.lawnet.fordham.edu/flr/vol26/iss2/11>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

BOOK REVIEW

ZONING AND PLANNING. By Charles A. Rathkopf and Arden H. Rathkopf. Clark, Boardman Co., Ltd., New York: 3d ed. 1956. 2 vols., pp. 931, 928.

In the beginning of this work, appropriately enough, the authors deal with the meanings and distinctions of the terms "planning" and "zoning." Twenty-two pages are used for this purpose. These pages contain repetitious excerpts from cases in various states, and from planning associations. A comparatively concise statement concerning planning for this discussion is that its "purpose is to advise in advance for the needs of the municipality as it is expected to grow." (vol. 1, p. 6). "The essence of zoning is territorial division according to the character of the lands and their structures and their peculiar suitability for particular uses, among other considerations and uniformity of use within the division." (vol. 1, p. 13). "Planning" and "zoning" are not interchangeable terms. The concept of planning includes zoning. However, the converse is not true.

Throughout the nation, state statutes enable cities and towns to create administrative agencies with quasi-legislative, quasi-executive, and quasi-judicial powers. The powers of a planning and zoning commission or board include the adoption of the many facets of a comprehensive master plan—such as zoning ordinances, major street plans, subdivision regulations, capital improvement programs, etc. A board of zoning adjustment or appeals' powers are essentially quasi-judicial.

The above was mentioned to point out that within the law of planning and zoning are involved the problems of a more comprehensive and embracing field—administrative law. One of the cardinal defects of the Rathkopfs' work is that this distinction is not recognized. Various questions, such as those dealing with the *Delegation of Zoning Powers to Zoning Commissions, Planning Commissions and Planning Boards* (Chapter 30), *Procedure at Hearing Before Board* (Chapter 40), *Courts Will Not Set Aside Decision of Board If Reasonable or Fairly Debatable* (Chapter 51), and others are not immediate questions of planning and zoning law. These are the traditional problems of administrative law and should be considered separately.

In addition to eighty-three chapters, the authors (who are father and son) provide forms for village and town use. Even where there is an attorney on a board or commission, as there often is in larger jurisdictions, there is great likelihood that the attorney, ordinarily a general practitioner, will find these forms of great benefit. A section containing representative ordinances of cities, towns and villages follows the forms section.

The authors have compiled 14,000 citations. This style is worthwhile in that: (1) they have attempted to gather cases dealing with many pertinent headings; (2) these citations are from many states. But the authors have not organized and analyzed this material with thorough thought, so that often simple, worthless generalizations are given. Consider the following sample of what exists throughout the work: "The Board, in granting or denying a variance, must do substantial justice to all concerned, it must consider the public interest and the effect of the variance upon other property in the district.

"A grant of variance is a special privilege granted to an owner because of the practical difficulty or unnecessary hardship caused to his property by the restrictions contained in the ordinance; the variance when granted must be in harmony

with the general intent of the ordinance and if it will not cause injury or injustice to others." (vol. 1, p. 671).

On the pages immediately following there appear twenty-seven case citations, and two, short, general, meaningless blurbs, one from a decision and the other from McQuillin's text on Municipal Corporations. As in this short sample, so throughout the two volumes, the authors supply legal tags which perhaps a judge can use to embellish his decision. But they do not offer what the lawyer needs—"prophecies of what the courts will do in fact" concerning the particular situation confronting him. The authors do not describe the different fact situations—what does or does not constitute proof of hardship so that relief may be granted, under what fact situations ordinances have been held reasonable or unreasonable.

It is a reasonable prediction that planning and zoning cases and matters will increase in the future. The federal government, in the guise of the Housing and Home Finance Agency, has recently been offering financial aid to localities for planning assistance and urban renewal. But these 50 per cent, and 66 $\frac{2}{3}$ per cent federal matching grants come with strings attached. The conditions that the city officials have to comply with entail the adoption of zoning ordinances, subdivision regulations, building codes, and so on. Inevitably, some property owners will contest this official action in the courts.

State economic development agency officials throughout the nation realize the intimate relationship between planning and zoning, and attracting industry. There are impatient men who request and demand technical planning and zoning help so that their towns might be ready for industrial development both before and after it arrives. The new communities that are created will more probably be subject to planning and zoning.

The tempo of planning and zoning activity in the United States will increase, and the acceleration will be even faster than at present.

At this time the American Society of Planning Officials (A. S. P. O.) offers the lawyer or planner a service that far surpasses the Rathkopfs' work. A. S. P. O.'s Zoning Digest is a monthly publication that is lucid, critical and interpretive. Unlike the volumes under review, the Zoning Digest is extremely well indexed.

It requires leisure and abundant experience to think things out. Somehow time must be found for the citizen, the planning commissioner, the planner, the practicing lawyer, the law professor, and the interested student to think and talk with one another. Perhaps the superficial, scissors and glue-pot approach to text writing in this field will end when the rushing about ends, and when reflection and integration begin. Perhaps then a planning and zoning text will be offered that approaches the performance of a master, of a Williston, for example.

ISIDORE STEPHEN SUSSNA†

† Member of the Kentucky, New York and Federal District Court Bars.