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# Book Review [City Zoning: The Once and Future Frontier]

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## BOOK REVIEW

CITY ZONING: THE ONCE AND FUTURE FRONTIER. By Clifford L. Weaver and Richard F. Babcock. Chicago, Ill. and Washington, D.C.: American Planning Association Planners Press. 1979. Pp. xiii + 310. Paperback. \$16.95.

*Reviewed by Dorothy J. Glancy\**

Although not exactly a contradiction in terms, even the title of *City Zoning* has a certain ironic twist. During most of this century, as Weaver and Babcock point out, zoning has been primarily a suburban tool, or plaything, depending on one's point of view.<sup>1</sup> Zoning as we know it, however, was actually born in the heart of New York City, an effort by retail merchants to keep the garment manufacturers off of Fifth Avenue.<sup>2</sup> In the closing decades of this century, zoning seems to be returning to the city like T. H. White's *The Once and Future King* from which *City Zoning* derives both its subtitle and its epigraph.

Instead of a more graphic symbol, such as the phoenix rising from its own ashes, Weaver and Babcock deliberately present zoning in the image of a worn and battered warrior. For their point in *City Zoning* is not of the dramatic, fire-bird variety, but rather of a more down-to-earth kind: zoning has been and can be a very useful tool for the stabilization and improvement of older cities, provided city zoners understand the particular applications of this serviceable tool in urban settings. That "provided" is the intriguing subject of *City Zoning*.

The particular audience who would find *City Zoning* most interesting is difficult to pinpoint. Weaver and Babcock describe *City Zoning* as "a book about and for persons who,

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1. Babcock has for some time argued in favor of a certain playfulness in looking at zoning as a game. See R. BABCOCK, *THE ZONING GAME* (1966).

2. See N. WILLIAMS, *1 AMERICAN LAND PLANNING LAW: LAND USE AND THE POLICE POWER* § 35.09 (1974); TOLL, *ZONED AMERICAN* (1969).

as C. P. Snow has described the administrators of public policies, have 'to think of a great many things, widely, in their interconnections, for a short time'.<sup>3</sup> Although written by two lawyers, *City Zoning's* appeal to lawyers comes not so much from the book's legal analysis as from its acutely perceptive, practical insights into the essentially political world of zoning decision making. In that aspect, it is similar to Babcock's earlier classic, *The Zoning Game*. Published by the American Planning Association (APA), *City Zoning* was also written to be read by professional planners. Unfortunately, because the APA does not mass-market its publications, some of the people who would benefit most from *City Zoning*—political officials and community leaders in cities around the nation—are unlikely ever to see it unless they also happen to be planners and/or lawyers.

The strongest aspects of *City Zoning* are its practical approach, readable style, and savvy political insights into what is really going on in U.S. cities. The book's practical approach and informal tone are pleasantly reminiscent of Babcock's *The Zoning Game*. Numerous references, asides and outright arguments in *City Zoning* refer unabashedly to Babcock's earlier writings. *City Zoning's* immediate, conversational style makes such cross-commentary entirely appropriate and contributes to the book's engaging quality. For example, *City Zoning's* discussion of "Professionalization and Procedural Reform" begins by reaffirming earlier Babcock laments about faulty zoning administration, and is followed by an amusing parenthetical: ("Weaver does occasionally wonder why Babcock can never seem to get anything done about this problem.")<sup>4</sup> In a scholarly, legalistic treatise, which might have been titled "The Drafting and Implementation of Zoning Ordinances in Urban Areas," such informal comments would be out of place. But that is not the tone of Weaver and Babcock's low-key *City Zoning*. In essence, this book resembles a structured, witty conversation with two intelligent men who have seen and done a lot about zoning in general and city zoning in particular.

The majority of *City Zoning* is devoted to describing

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3. C. WEAVER & R. BABCOCK, *CITY ZONING: THE ONCE AND FUTURE FRONTIER* 24 (1979) [hereinafter cited as *CITY ZONING*] (citing C.P. SNOW, *SCIENCE AND GOVERNMENT* 72 (1961)).

4. *Id.* at 270.

what is; that is, what a number of U.S. cities are doing with and about zoning. But the description also critically focuses on why and how zoning is done in certain U.S. cities in specific ways, as well as on whether these applications of city zoning actually work. For example, Weaver and Babcock evaluate the proliferation of special districts, as illustrated by the Vieux Carré in New Orleans, the Special Design District for Waikiki, and the proposed "Planned International Zone" in Washington, D.C. They note that at the time they wrote, New York City alone had created more than thirty-three special districts. The authors point out that it takes a measure of political moxie to translate certain neighborhoods into special districts, such as the Little Italy District created in an area of New York City which is thirty-eight percent Chinese and only thirty percent Italian.<sup>5</sup>

Eleven diverse, older cities are the source of most of the examples of *City Zoning*: Atlanta, Boston, Detroit, Honolulu, Indianapolis, Jacksonville, Minneapolis/St. Paul, New York, San Diego, and Seattle. The authors rely primarily on interviews with a variety of the people actually involved in making zoning decisions in these cities. Thus, the viewpoints of elected politicians, staff planners, community organizers, neighborhood leaders, lawyers, architects, builders, environmental consultants and omnipresent critics of the urban scene provide the main source materials for *City Zoning*. Although the authors, as lawyers, looked at the ordinances, legislation, guidelines and reports on the zoning of these cities, their book is not about these documents. Experienced zoning practitioners like Weaver and Babcock are acutely aware that the realities of city zoning can be obscured by focusing only on what is on paper, as opposed to what is on the streets and in the council chambers.<sup>6</sup>

The clarity of *City Zoning's* critical analysis is enhanced by its three-part organization. The first three chapters which comprise "Part I: Introduction"<sup>7</sup> in fact make possible the analysis in "Part II: A Report on What Is"<sup>8</sup> and "Part III: A

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5. *Id.* at 129.

6. For example, Weaver and Babcock point out that although Indianapolis' UNIGOV Legislation mandates subdistricts, these "mini-gov's" have never been actually implemented. *Id.* at 188.

7. *Id.* at 3-25.

8. *Id.* at 29-214.

Preliminary Prescription for What Might Be.”<sup>9</sup> In the introductory part, Weaver and Babcock not only describe their subject matter and methodology; they seek to disclose some of their own “preconceptions, assumptions, and attitudes—those biases that invariably shape and color both the collection and the analysis of data in any work such as this.”<sup>10</sup> This old-fashioned practice of stating one’s axioms before proceeding with analysis and proof is extremely effective in adding credibility to the rest of the book.

A curious omission in the authors’ laudably up-front approach, however, is their failure at the outset to mention the laissez-faire, free-market economics that pervade, sometimes to the point of overshadowing, their conclusions in the final chapters. When, after 274 pages of fascinating analysis of the development, passage, and implementation of zoning solutions to actual city problems, one suddenly encounters what can only be described as the apotheosis of Adam Smith, wide-eyed surprise is perhaps too tame a description of the reader’s reaction. Perhaps readers should expect no less from Messrs. Weaver and Babcock of the Chicago law firm of Ross, Hardies, O’Keefe, Babcock & Parsons. But this inconsistency does point out the fundamental tension between the authors’ commitment to the regulation of private property by public zoning requirements and these same authors’ almost religious belief in free enterprise economics.

In the introductory chapters, Weaver and Babcock enthusiastically point to *Just v. Marinette County*<sup>11</sup> and former Chief Justice Breitel’s opinion in *Penn Central Trans. Co. v. City of New York*<sup>12</sup> as “encourag[ing] new faith in the potency of the police power.”<sup>13</sup> Toward the end of the book the authors appear to have changed their minds. In a footnote, they more skeptically describe these two cases as suggesting “a radically new definition of private property and a sweeping expansion of government’s regulatory power over it. By their teaching, private property no longer includes the right to exploit either nature or society for individual development gain,

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9. *Id.* at 217-310.

10. *Id.* at ix.

11. 56 Wis. 2d 7, 201 N.W.2d 761 (1972).

12. 42 N.Y.2d 324, 366 N.E.2d 1271, 397 N.Y.S.2d 914 (1977), *aff’d*, 437 U.S. 104 (1978).

13. CITY ZONING, *supra* note 3, at 15.

and government may regulate land to prevent such exploitation."<sup>14</sup> Nowhere do Weaver and Babcock square the regulatory theories on which *Just* and *Penn Central* are based with the economics of Adam Smith, who, according to Weaver and Babcock, described "the foundation of a modern urban zoning system"<sup>15</sup> in *An Inquiry into the Nature and Causes of the Wealth of Nations*.

Fortunately or unfortunately, *City Zoning* does not attempt the reconciliation of Adam Smith with the public value theories sketched in Justice Breitel's *Penn Central* opinion. Although any ultimate solutions to urban problems in the United States may require such a reconciliation, Weaver and Babcock appear to be more interested in the immediate problems of the here and now of zoning in American cities. That is why their excursion into economic theory seems so anomalous.

If *City Zoning's* strong suit is its practical and very entertaining look at such aspects of city life as the growth of neighborhood power, the book has some weak suits that bear mentioning. In addition to glossing over the enduring tension between laissez-faire economics and public zoning regulations, Weaver and Babcock fail to come to grips with the fundamental importance of taxes and tax policy to the viability of cities.<sup>16</sup> The authors' skepticism that, "while taxes are always with us, one can never, in these days of tax revolt and egalitarianism, be so sure about tax breaks,"<sup>17</sup> seems archaic at a time when a newly elected President and congressional leaders are seriously looking to the creation of "free enterprise zones," a combination of zoning and tax policies.<sup>18</sup> Instead of

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14. *Id.* at 233 \*. To California zoning lawyers these cases seem not particularly surprising nor revolutionary. In 1925, the California Supreme Court ruled in *Miller v. City of Los Angeles*, 195 Cal. 477, 488, 234 P. 381, 384-85 (1925), *appeal dismissed*, 273 U.S. 781 (1927), that although "[m]uch is said about the constitutional guarantees attaching to the ownership of private property . . . it will be noted that: 'It is thoroughly established in this country that the rights preserved to the individual by these constitutional provisions are held in subordination to the rights of society.'" (citation omitted). The point was not new in 1925, and has been repeated frequently in recent years. See, e.g., *H.F.H., Ltd. v. Superior Court*, 15 Cal. 3d 508, 542 P.2d 237, 125 Cal. Rptr. 365 (1975) and *Agins v. City of Tiburon*, 24 Cal. 3d 266, 598 P.2d 25, 157 Cal. Rptr. 372 (1979), *aff'd*, 446 U.S. 907 (1980).

15. *CITY ZONING*, *supra* note 3, at 274.

16. See N. WILLIAMS, *supra* note 2, § 163.18.

17. *CITY ZONING*, *supra* note 3, at 297.

18. See H.R. REP. NO. 7875, 96th Cong., 2d Sess. (1980).

such superficial, back-of-the-hand treatment, Weaver and Babcock could have focused exclusively on conventional zoning regulations. Such a discussion is, after all, what one expects from a book entitled *City Zoning*.

Related to the authors' superficial treatment of taxes, is a certain inattention to detail that, although part of the book's informal style, may annoy the more fastidious of its readers. For example, the index is spotty and remarkably unhelpful—omitting just what one most wants to find. Moreover, perhaps because its citations may have been an afterthought, *City Zoning* is somewhat light on its footnotes. On the other hand, Weaver and Babcock did not pretend to be writing a scholarly, much less a definitive, treatise full of charts, statistics, surveys, and citations. Rather they intended a book based on interviews and conversations. Part of the book's special charm is that the authors cheerfully admit to conjecture and openly embrace the fine art of informal understanding and quick perceptions.

The weakest section of *City Zoning* is the last part, ponderously entitled "A Preliminary Prescription for What Might Be." If the title of this section is convoluted, so are its contents. It begins logically enough with a delightfully critical inventory of most of "the currently popular prescriptions for reform."<sup>19</sup> These reform proposals include: Siegan's no-zoning, land banking, public real estate ventures, Hagman's windfalls for wipeouts, Costonis' transfer of development rights (TDR's), and non-local land use controls. Weaver and Babcock's adroit refutation of Siegan and their criticism of Costonis' TDR's are particularly adept. But they duck Hagman's and Misczynski's windfalls for wipeouts approach as "horribly complex,"<sup>20</sup> only to propose less than sixty pages later a highly complicated solution of their own. The authors' approach includes combination of incentive transferable development rights with a Redevelopment Overlay District as a means of preventing marginal neighborhoods, which they call "gray areas," from becoming slums. It seems that Weaver and Babcock have taken to heart Emerson's old motto that "A foolish consistency is the hobgoblin of little minds."<sup>21</sup>

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19. CITY ZONING, *supra* note 3, at 217.

20. *Id.* at 232.

21. R. W. EMERSON in *ESSAYS* 58 (1890).

Nevertheless, *City Zoning* offers an extremely helpful, practical approach to the effective use of zoning regulations in the nation's older cities. Recognizing the reality of "neighborhood power," *City Zoning* makes some perceptive suggestions as to how this power can, through zoning regulations, help to stabilize and improve residential, commercial, and even industrial areas. It also makes enjoyable reading.



