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BOOK REVIEW

Urban Planning and Land Development Control Law. By Donald G. Hagman. St. Paul: West Publishing Co., 1971 Pp. xxvii, 559. Cloth:

This recent addition to the West Hornbook Series is oriented primarily to students rather than to practicing lawyers and land use planners.¹ It is within that context, I believe, that one should read the author's statement that the book is offered as a "basic, simplified, comprehensive discussion" of urban planning and controls.² If the term "comprehensive" refers to the number of problem areas treated rather than to the intensity with which the problem areas are considered, the book performs its function well.

Professor Hagman devotes considerable care to sketching the background of each specific topic discussed, a feature particularly valuable to students. The first two chapters provide an overview of the planning process; of the 178 pages devoted to zoning—the most extensively discussed land use control—34 are introductory. Throughout the book, detailed discussion of topics is consistently preceded by orienting description. In addition to zoning, coverage includes subdivision controls, official maps, building and housing codes, nuisance, private restrictions of land use, eminent domain, taxation, urban renewal, new towns, economic and racial discrimination in planning, and the legal literature of planning and development control law. The book will materially aid students in pulling together class notes and placing them in perspective.

But what of the student perplexed by his class notes? Is the book helpful in explaining and criticizing technical doctrine? Professor Hagman's "simplified discussion" proves a bit frustrating. For example, in the section on

1. Professor Hagman describes the book as both summarizing the wisdom of nineteen different casebooks, which he lists, and covering problem areas not included in the casebooks. He has designed the book to be supplementary reading in courses concerned in whole or part with land planning and development controls, and hopes it will bridge property and local government materials. Specifically it is designed to supplement Professor Hagman's own coursebook by providing breadth of coverage. HAGMAN, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* xi-xii (1971) [hereafter referred to as HAGMAN].

2. HAGMAN xi.

public nuisance, the statement is made that a private person who suffers special injuries from a public nuisance can generally recover damages.³ Yet no explanation of why this is true, or whether it should be true, is offered, nor is aid given in identifying those special injuries beyond the phrase "different in kind rather than degree from those of the general public."⁴

The treatment of defeasible estates, easements, and promises respecting the use of land focuses on their utility to impose area-wide controls on land use,⁵ so perhaps it is unfair to expect that technical problems of their creation would be considered. But one would expect problems of their administration to be treated, and here again the student seeking clarification of class notes will be disappointed. Defeasible estates are asserted to have limited usefulness as area-wide controls⁶—an assertion that students in my land use classes are likely to find familiar. Why, though, are they so limited? Because of inability in some jurisdictions to assign the right of re-entry or possibility of reverter, because the condition upon which the title is conveyed may endure too long, because forfeiture of estate is the only remedy for breach of condition, and because the grantor may terminate the estate at any time if the condition is breached.⁷ Assuming the accuracy of these statements, their net effect is to overemphasize the inhibiting effects of defeasible estates on land development.

A longer list of the reasons why defeasible estates are not favored controls of land use might have included the reluctance of courts to declare forfeitures, which in turn may lead to a court's finding that the condition had not failed, that it had been waived, or that some other basis for avoiding a forfeiture existed. By so expanding the list, the hazard that an attempt at control through defeasible estates may result in no control at all would be revealed, in addition to the hazard of excessive control.

Returning to the reasons the book does advance for the inadequacy of defeasible estates for controlling land use, it seems Professor Hagman might readily have made a more helpful presentation. He states that "some jurisdictions" do not allow the right of entry or possibility of reverter to be assigned, yet cites Illinois as the only example.⁸ Citing other jurisdictions would have indicated the extent to which the doctrine of nonassignability is

3. HAGMAN 290.

4. At 289-90, HAGMAN, it is said, "private nuisance unreasonably interferes with the use and enjoyment of another's land." But nothing is said of situations where the occupant experiencing the discomfort of the allegedly wrongful conduct is neither the owner nor possessor of the land.

5. HAGMAN 296.

6. HAGMAN 297.

7. HAGMAN 297.

8. HAGMAN 297, n.3.

followed. With somewhat more effort, the wisdom and future trend of the doctrine might have been assessed. The statement also is made that "in a few states" substantial changes in circumstances remove the condition from defeasible estates.⁹ The states are not mentioned and no examples are given of concrete circumstances that have been held effective or ineffective to lift the condition. Similarly, in the section on real covenants, a statement that "most" jurisdictions apply a particular test of "touching and concerning" is not buttressed by a single citation.¹⁰ Even if this statement is accepted, one is left with nagging questions as to which jurisdictions apply a different test. Perhaps the basic explanation of these features of the book lies in the author's background, which is local government rather than property.¹¹

What help does the book offer the student seeking clarification of class notes dealing with public controls of land? Here he will fare better. Problems of nonconforming uses—the effects of changes in the use, of repairs and alteration, and of destruction and abandonment are discussed in some detail.¹² The several devices to introduce flexibility to zoning are well distinguished and discussed,¹³ as is the imposition of various costs on subdividers as part of the subdivision approval process.¹⁴ Even here, however, are found broad statements that "some" or "many" courts take a certain position while "other" courts take another, unsupported by particularizing, helpful citation.¹⁵ Problems of discrimination are helpfully discussed in a substantial chapter. The review of legal literature on planning and development controls provides a helpful guide to further reading.

In summary, Professor Hagman has produced a well written book of broad perspective, oriented to undergraduate students. Its treatment of public land use controls is more effective than its treatment of private ones. The book would be improved by a more detailed presentation, particularly in the footnotes.

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9. HAGMAN 297.

10. HAGMAN 298.

11. HAGMAN xii.

12. HAGMAN 146-62.

13. HAGMAN 117-19, 174-76, 190-211.

14. HAGMAN 253-59.

15. In discussing conditional zoning, it is said "some courts approve" it. HAGMAN 176. "Some" courts are said to approve rezoning where the owner voluntarily restricts his property. One case is cited. *Id.* at 176, n.53. "Others" will hold it invalid. Again, only one case is cited. *Id.* at 176, n.54. Discussing rezoning it is said, "[i]n many states" courts defer to legislative bodies and only invalidate grossly erroneous legislative acts but "[i]n other states" courts act like super zoning agencies. *Id.* at 192-93.

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