

BOOK REVIEW

The Politics of Land-Use Reform. By Frank Popper.*
Madison, Wisconsin: University of Wisconsin Press, 1981. pp.
309.

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Until recently, land development regulation has been limited to the zoning powers exercised by local governments in large urban areas. Lately, state and federal regulatory programs have supplemented local zoning.¹ Land-use reform, part of the environmental movement of the late 1960s, prompted much of this legislation. Unable to enact a National Land-Use Policy Act,² proponents of land-use reform concentrated their efforts at the state level, and produced a spurt of new state legislation.³ Today, many environmentalists, land-use planners, and reformers view centralized state regulation of land-use as their "big rock candy mountain."⁴ In his book, *The Politics of Land-Use Re-*

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¹ Federal legislation relating to taxes, air and water pollution, hazardous waste disposal, strip-mining, environmental assessment, and farm price support programs all significantly impact on the land development process, and are receiving increasing attention from those interested in land-use issues. See F. BOSSELMAN, D. FEURER & T. RICHTER, *FEDERAL LAND USE REGULATION* (1977); D. MANDELKER & R. CUNNINGHAM, *PLANNING AND CONTROL OF LAND DEVELOPMENT* 1085-1207 (1979); P. RAUP, *THE FEDERAL DYNAMIC IN LAND USE* (1980 NATIONAL PLANNING ASSOCIATION REPORT No. 180).

² See N. LYDAY, *THE LAW OF THE LAND 1970-1975* (1976).

³ State land-use legislation is reviewed in R. HEALY, *LAND USE AND THE STATES* (2d ed. 1979); D. MANDELKER, *ENVIRONMENTAL AND LAND CONTROLS LEGISLATION* 42-55 (1976).

⁴ See, e.g., *MODEL LAND DEV. CODE* (1976); Deloger, *The Misuse of Land*

form,⁵ Frank Popper examines the land-use reform movement. He evaluates the efficacy of centralized land-use regulation by focusing on six states' regulatory programs, each produced by the reform movement.

Dr. Popper's book represents much more than an in-depth account of the land-use reform movement. It is an illuminating study of how the public interest, pursued through centralized regulation, is shaped and sometimes subverted by the pressures of interest group politics. In this regard, Dr. Popper has written a book within a book. His analysis of state land-use reform opens for examination the controversial regulatory issues of corporate power, local autonomy, distribution of benefits and costs, and the competing claims of private property rights versus the general welfare. The trade-off between environmental quality and economic growth is also weighed.

Dr. Popper is a self-proclaimed environmentalist, without the fiery breath of the true believer. Unlike some environmentalists, he believes that one sign of a healthy community "is the sound of a developer's bulldozers."⁶ The sincerity of this perspective, plus his easy, journalistic style, make the book enjoyable to read. Overall, the work presents a remarkably objective account of both the land-use reform movement and the state programs it has spawned.

Dr. Popper begins by examining land-use regulation as it became a national public issue. He then details the politics of land-use reform, viewed through the state programs established in California, Florida, Maryland, New York, Pennsylvania, and Vermont. Dr. Popper follows this with a discussion of the economic and environmental effects of these state programs. He concludes by analyzing the shortcomings of centralized regulation as a land-use control device, suggesting alternative means for land-use reform. An especially noteworthy proposal is his organization of activist "land-consumer coalitions" at the local level.

Use Control Powers Must End: Suggestions for Legislative and Judicial Responses, 32 MAINE L. REV. 29, 56-66 (1980).

⁵ F. POPPER, *THE POLITICS OF LAND-USE REFORM* (1981) [hereinafter cited as F. POPPER].

⁶ *Id.* at 7.

The Land-Use Reform Movement

Intensive industrial and residential development of the American landscape, which began during the 1950s, slowly generated public concern over the ill-effects of rapid growth and inadequate local land-use controls.⁷ Municipal planners and other proponents of controlled growth were the initial supporters of the land-use reform movement. It was only in the late 1960s, however, that the movement became a significant political force, riding on the coattails of a more generalized public concern over environmental issues.

Dr. Popper maintains that the problems engendered by rapid growth were not caused solely by the avarice of developers or the isolationism of threatened communities. Rather, local planning and zoning, where they existed, simply were inadequate to manage the rate of growth or to achieve environmental objectives.⁸ Coherence often gave way to expedience. In addition to pay-offs and conflict-of-interest abuses, local zoning boards were usually hospitable to business and developer applications for zoning variances, rezonings, and exemptions. Even when local zoning managed to promote the best interests of the community, it sometimes did so at the expense of regional or statewide goals. In the early 1970s, as awareness of these problems became increasingly widespread, proponents of land reform pushed for more centralized regulation.

This was resisted by opponents of land-use reform, who argued that the movement largely reflected the self-concern of affluent urbanites and suburbanites,⁹ offering them "the extraordinary opportunity to combine the qualities of virtue and selfishness."¹⁰ These attacks have stressed that the movement's promotion of land-use regulation for aesthetics, recreation, and architectural and ecological integrity effectively repress the aspi-

⁷ Suburban growth between 1950 and 1970 involved one of the largest migrations in the country's history. During this period over 35 million people, the population of ten Chicagos, moved to the suburbs. *Id.* at 28.

⁸ *Id.* at 46-55. An excellent discussion of the use of zoning to control the rate of growth and quality of development is found in Krasnowiecki, *Abolish Zoning*, 31 SYRACUSE L. REV. 719, 734-44 (1980).

⁹ F. POPPER, *supra* note 5, at 67-70.

¹⁰ *Id.* at 69 (quoting Tucker, *Environmentalism and the Leisure Class*, HARPER'S 49, 50 (December 1977)).

rations of the have-nots of American society.¹¹

Dr. Popper acknowledges the truth of these attacks. He also acknowledges that they are a source of embarrassment to movement liberals, who pride themselves on their egalitarianism. Both the poor and minorities, as groups, have been ambivalent to or have opposed centralized land-use regulation. Having been excluded from some areas, or relegated to "buffer zones" through local land-use controls, they are rightfully skeptical of the extent to which their interests will be considered in more centralized programs.¹²

The State Programs

The six state programs examined by Dr. Popper all use centralized regulation in some fashion, and generally are considered model land-use programs. Dr. Popper points out that as a result of political trade-offs, most of the state programs contain exemptions and loopholes that substantially modify their original environmental goals.

According to Dr. Popper, these modifications exemplify the politics of "interest group liberalism" as described by Theodore Lowi.¹³ These programs reflect competing interest groups compromising their positions to ensure that their presence is institutionalized in a centralized regulatory program. Consequently, it is not surprising that reformers have been disappointed with programs they worked so hard to enact.

Dr. Popper finds that state programs with the power to regulate development state-wide are much weaker than programs that can regulate only one kind of development¹⁴ or one part of a state.¹⁵ Dr. Popper attributes the efficacy of the less ambitious state programs to the fact that single-purpose or single-area laws do not require compromise with a multitude of opposing interest groups. Also, the more limited programs are implemented in a

¹¹ For an expansion of this argument see B. FRIEDEN, *THE ENVIRONMENTAL PROTECTION HUSTLE* 119-38 (1979).

¹² F. POPPER, *supra* note 5, at 68. On this point, Dr. Popper quotes a Chicago ghetto activist: "Open space does not draw a great deal of attention down at the pool hall." *Id.*

¹³ *Id.* at 215. See T. LOWI, *THE END OF LIBERALISM* 55-97, 125-56 (1969).

¹⁴ F. POPPER, *supra* note 5, at 115 (e.g., Pennsylvania's strip mining plan).

¹⁵ *Id.* (e.g., California's coastal development plan).

simpler political and administrative setting.¹⁶

Centralized Regulation and Land-Use

Dr. Popper finds that all state land-use programs have made a virtue of steering a middle course. They are neither pro-growth nor no-growth.¹⁷ In addition, because of the absence of detailed planning and clear regulatory standards and policies, state programs have operated largely on an *ad hoc* basis.¹⁸

This development-by-development control involves implicit and explicit concessions to the supposedly regulated interests. This is evidenced by the high approval rate¹⁹ of proposed developments in the state programs.²⁰ Dr. Popper asserts that this method of regulation effectively grants developers a putative right to build, and governs only the details of how they will build. This decision-making process has generally resulted in very little regulation of location, rate, and timing of development — issues generally recognized as essential to any effective land-use management system.²¹ The bargaining and negotiation involved in case-by-case regulation also favors developers, who have proven to be stronger negotiators than either state planning agencies or environmental interest groups.²²

Costs and Benefits

In the latter part of his book, Dr. Popper assesses the costs and benefits of state land management programs. He notes the difficulty of estimating such impacts, as reflected by the very paucity of rigorous quantitative studies. Dr. Popper notes, however, that the few studies conducted to date have indicated that state programs add five to fifteen percent to the cost of new housing.²³

¹⁶ *Id.*

¹⁷ *Id.* at 149.

¹⁸ *Id.* at 151.

¹⁹ State programs in California (coastal program), New York (Adirondack Park Agency), Pennsylvania (surface mining reclamation program), and Vermont (land development program) each have a proposed development approval rate of above 90 percent. *Id.* at 149-50.

²⁰ For a discussion of six state programs, see *id.* at 76-91.

²¹ *Id.* at 151.

²² *Id.* at 152-53.

²³ *Id.* at 182.

Although Dr. Popper characterizes this increased cost as “substantial,” he sees other factors — the rising cost of labor, materials, energy, and financing — as more influential in shaping the land development market.²⁴ Dr. Popper finds “very few cases” where builders were unable to resort to adaptation or avoidance to keep a project alive or profitable.²⁵ He does find, however, that the state land-use programs, by increasing housing prices, have exacerbated the housing shortage. Moreover, these price increases have hit hardest those least able to afford them: the poor and minorities.²⁶ In this respect, those at the lower income levels have had their original fears in opposing the state programs confirmed.

The immediate benefits of the state land-use programs are the consequent improvements in the quality and design of land development. Although the benefits may be largely intangible, environmentalists, builders, and administrators generally agree that these programs have made a difference.²⁷ Further, long-term economic benefits may result from these state programs, benefits that could more than compensate for the immediate cost increases caused by the programs. The improvements in the design and quality of development are likely to increase property values, and in the long-run, to reduce the costs of maintenance, utilities, and energy.²⁸

Dr. Popper also discusses an important indirect benefit of the programs, the increased public awareness and acceptance of environmental goals. Debate now presumes environmental protection. The focus is on measures to achieve environmental goals, and the compatibility of these goals with other important objectives, such as a strong economy, private property rights, local government autonomy, and restraint of bureaucracy.²⁹

Overall, Dr. Popper believes that the benefits of state land-use programs outweigh their costs. Despite their weaknesses, he contends the programs have performed admirably under difficult circumstances, and that they are not likely to be repealed or further weakened by amendments. He observes, however, that at-

²⁴ *Id.* at 183.

²⁵ *Id.* at 172.

²⁶ *Id.* at 184-85.

²⁷ *Id.* at 194.

²⁸ *Id.* at 189-92.

²⁹ *Id.* at 202-06.

tempts to strengthen state programs by providing fewer exemptions, more citizen participation, and more stringent standards are unlikely to succeed in the present political climate. In effect, the land-use reform movement has reached an impasse.

Land-Consumer Coalitions

Dr. Popper proposes adopting what he believes are politically feasible methods of land-use reform that do not rely on centralized regulation. Although most of his suggestions are not new,³⁰ his main proposal involves a concept he calls "land consumerism."³¹

Dr. Popper believes in the existence of widespread and commonly held economic interests in land. Such interests include minimizing the cost of land, housing, utilities, and energy; low taxes; a fair return on land investment; and the long-term economic benefits of environmentally sound development. He proposes the organization of "land-consumer coalitions" that would represent the common interests of consumers in land-use decisions at the state and local levels. Through these coalitions, proponents of the land-use reform movement would rally around collective economic self-interest. Dr. Popper acknowledges that many upper-middle class supporters of land-use reform may well oppose land-consumerism or be indifferent toward it. Middle and lower-income groups, along with builders of middle-income housing and non-building trade unions, would provide the primary support for these coalitions. Land consumerism would thus broaden the base of political support for land-use reform.

Dr. Popper firmly believes that environmentally sound development is compatible with the long-run economic self-interest of land consumers.³² This assumption may or may not be true. Even assuming that it is, his land-consumer proposal seems flawed in several respects.

First, Dr. Popper's proposal assumes that individuals, once aware of their long-term interests, would act rationally through such coalitions to pursue those interests. However, every-day experience dictates the opposite conclusion. Because of real or perceived economic necessity, middle-income and lower-income

³⁰ *Id.* at 224-28.

³¹ *Id.* at 217-24.

³² *Id.* at 218-19.

groups are more likely to prefer immediate short-term gain over known but potential long-term benefits in land-use decisions. Also, conflicts are likely to emerge between the different short-term interests of members of such coalitions. This raises the question of the long-term viability of such coalitions.

There is also the practical problem of who will organize these coalitions if they are not designed primarily to enhance the interests of the relatively leisured upper-middle class. In the past, this class has provided the core of support for land-use reform. Dr. Popper's land-consumerism concept thus seems feasible only if created by a group representing the interests of all land consumers, a body with pre-existing ties to state and local land-use agencies.

Despite these criticisms, however, it is true that the common economic interests of land consumers are too often slighted in land-use decisions. Moreover, the interests of *future* land consumers have been conspicuously ignored in the regulation of land development.³³

Frank Popper has written a very good book. It is the first major review of the land-use reform movement in America, and the first attempt to examine the performance of the recently adopted state land-use programs. As a law professor, I have found that the book provides students with a much needed appreciation of the social, political, and governmental context within which land-use regulation operates. The book will surely find an audience among attorneys, planners, and public officials interested in land-use issues. By analyzing the negative impacts and systemic political weaknesses of centralized regulation in land-use, Dr. Popper provides a framework for similar reform efforts in other fields. This book deserves a very broad audience.

³³ See, e.g., F. GRUEN, EFFECTS OF REGULATION ON HOUSING COSTS (Urban Land Institute 1977); FRIEDEN, *supra* note 11, at 139-56.