1973

Colonial Lawyer, Vol. 4, No. 3 (Spring 1973)

Editors of Colonial Lawyer

THE COLONIAL LAWYER

"LAND USE REGULATION"

SPRING 1973

THE COLONIAL LAWYER

VOLUME 4, NUMBER 3

SPRING, 1973

CONTENTS

The Colonial Lawyer is published tri-annually at The Marshall-Wythe School of Law, College of William and Mary, Williamsburg, Virginia 23185.

Articles

Departments

For Your Thought

After two years in the position of Editor I am delighted to report that the Colonial Lawyer will be receiving a transfusion of new blood when Charles Poston assumes the helm. I had desired to leave Colonial Lawyer on a high key and this issue has satisfied all the requirements.

During the past two years I have become deeply concerned over environmental problems and by using Virginia as a reference point, I have tried to comprehend all of the issues involved and be able to offer a positive solution. After a period of time, I faced the realization that the common denominator which existed for most of the non-technological problems was intelligent land use planning. Whether the problem was overcrowding, autos, oil refineries, second home development or airport location, land use planning offered the optium solution.

The issue of the Colonial Lawyer contains four articles that address themselves to various aspects of this area. Professor Donaldson questions the continued usefulness of Euclid zoning in our fast changing society. Jim Murray's article was part of the winning essay of the Environmental Law Essay Contest here at Marshall-Wythe. He gives a solid case for state level land use planning and suggest other possible approaches to the problem.

With many expanding zoning concepts, the two areas which deserve special attention are aesthetic zoning and the use or abuse of subdivision ordinances. Everett Priestley, photographer turned writer, shows the agonizing development of aesthetics as a basis for action and explains some of the problems that will have to be faced before there is any furthur development in this area. Leslie Hoffman, who will be Departments Editor for the Colonial Lawyer next year, has written a provocative article on the abuse of subdivision ordinances. What demands may a municipality make on the subdivider before they become an unconstitutional taking of the developer's land?

Each one of these articles contains the ingredients for a revolution in the American concepts of an individual's property rights and of the scope of a state's police power. This is an area that cries out for change. I submit that the legal profession should take lead in the discussion and this issue of the Colonial Lawyer can be the first step in that direction. §

News

N.Y. Lawyer

The Marshall-Wythe School of Law honored Whitney North Seymour of New York, a past president of the American Bar Association, at its annual law review banquet Saturday at the Williamsburg Lodge.

Mr. Seymour received the Marshall-Wythe Medallion which was commissioned in 1966 for presentation by the School of Law to leaders of the legal profession in the United States and abroad.

Mr. Seymour, senior partner of the New York law firm of Simpson, Thatcher and Bartlett, was president of the American Bar Foundation from 1960-64; president of the American College of Trial Lawyers, 1963-64; president of the Institute of Judicial Administration, 1968-69; and president and chairman of the American Arbitration Association, 1953-55 and again from 1955-57. He was president of the American Bar Association from 1960-61.

NEW FACULTY

Marshall-Wythe will attain another first with the arrival of one of three new professors expected next September. Dr. Erma M. Lang, A.B. Ohio State; M.A., Ph.D. Harvard; J.D. Georgetown, will be the first woman law professor to teach at William and Mary. Dr. Lang will come to us directly from the University of Mississippi School of Law. She is a member of the District of Columbia, Nevada, and Massachussetts Bars and has practiced law in both Boston and Lake Tahoe, Nevada. She has also served as a foreign service officer, working as an economic analyst in Paris, Vienna and Washington.

The other new faculty members will be Messieurs Douglas Rendleman and Elmer J. Schaefer. Mr. Rendleman received his B.A., M.A. and J.D. at the University of Iowa and his LL.M. at the University of Michigan. He was a law clerk for an Iowa Supreme Court Justice for a year and has been on the faculty of the University of Alabama Law School since 1970.

Mr. Schaefer received his A.B. at Northwestern University and his M.A. and J.D. at Harvard. He has been with the Chicago law firm of Jenner and Block since 1969.

MOOT COURT TOURNAMENT

Six schools participated in the prestigious Annual William and Mary Invitational Moot Court Competition on Saturday, April 14. Hosted by the Marshall-Wythe team were teams from the University of Maryland, University of Virginia, University of North Carolina, Duke University and defending National Moot Court Team Champion Georgetown University. Oral arguments contested the constitutionality of the "bombshell charge" to juries during criminal trials, i.e. the charge to a deadlocked jury that they must soon come to a decision. Georgetown won first place for their argumentative excellence, while Duke placed second. Heading the list of seven prominent judges for the competition was former Supreme Court Justice Tom C. Clark.

STATUS REPORT

Three hundred twenty graduates had pledged $22,350 to the Marshall-Wythe School of Law Fund as of May 1 toward the $25,000 matching challenge offered by the College's Board of Visitors.

According to the terms of the Board's challenge, a sum of $25,000 will be

(Continued on page 20)

A REASSESSMENT OF THE LEGAL BASES OF ZONING

— John E. Donaldson

The legal and conceptual premises underlying the land use planning and control enabling legislation contained in most of the state statutory codes in this country impose serious constraints on the formulation and implementation of effective land use plans and policies. The majority of such legislation is based upon the Standard Zoning Enabling Act, published by the United States Department of Commerce in 1926, and the Standard City Planning Enabling Act published by the same agency in 1928. These models, and the state enactments they spawned, reflect the trends, attitudes, values and planning notions of an era that has passed, and their utility in the field of land use planning is diminished by the present state of the art.

A well formulated and implemented land use plan requires a knowledge of what the community is, an understanding of what it wishes to become, an appreciation of the forces which may be present in the immediate and distant future, and a familiarity with the range of options and techniques for encouragement and control of development. It requires the skills of the engineer, attorney, statistician, demographer, economist and political scientist, as well as the synthesis and coordination of the professional planner. It also requires a legal framework and climate appreciative of its role and conducive to the realization of its objectives. It is the adequacy of this framework and climate which I will explore.

John E. Donaldson earned his J.D. degree at William and Mary and an LL.M. at Georgetown and is now a Professor of Law at Marshall-Wythe. He is also presently serving as a member of the Board of Supervisors of James City County, Virginia.

Just as water can rise no higher than its source, the limits of the effectiveness of a regulatory system are defined by the range of choices and methods permitted by its legal foundations. When our system of employer-employee relations was premised upon stringent adherence of the principle of "freedom of contract" and abhorrence of "conspiracies in restraint of trade", its effectiveness was defined within a context of prevalence of "yellow dog" contracts and suppression of strikes. Because the system produced or afforded too great an advantage to the employer and placed the employee in too weak a bargaining position, the fundamental legal premises upon which the system was based had to be changed. It wasn't that the system was inherently wrong. It was merely unresponsive to the problems generated by the industrial revolution.

If the legal and conceptual premises underlying land use planning and control enabling legislation unduly limit or fail to afford the range of techniques and controls required for the formulation and implementation of effective land use policies, they should be carefully examined and appropriately modified. I believe the time for examination and alteration is at hand.

The first such premise to be examined is the assumption that Euclidian zoning is the model to be formed and implemented in the particular community. The term "Euclidian zoning" is derived from the case, ***Village of Euclid*** v. ***Ambler Realty Co.***, 272 U. S. 365 (1926), and its notion is expressed in Section 2 of the Standard Zoning Enableing Act, which states:

> Sec. 2. Districts-- For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape and area as may be deemed best suited to corry out the purpases of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but

the regulations in one district may differ from those in other districts.

On the assumption that qualitatively different land uses are incompotible, Euclidian zoning defines a well planned cammunity in terms of a mop whereon is drawn geometric patterns or districts to which qualitatively similar land use authorizations are assigned with the effect of separating "higher uses" from "lower uses". Thus, in a typical case, single family dwelling districts utilizing large lots are isolated from the intrusion of dwellings on smaller lots which are separately districted. Both are protected from the intrusion of higher density residential land uses, and these, as the ever expanding protected class, are protected from the respective intrusions af commercial, light industrial, and heavy industrial uses. Further within each of the districts employed, regulotions are uniform as to like buildings permitted therein.

Euclidian zoning, in short, emphasizes the mutual repugnance of qualitatively different land uses and invites classification and districting along economic, aesthetic and functional lines with little regard to the interdependence of the activities permitted within the dynomic urban system. The Euclidian system, emphasizing the isolation of commercial and industriol activities and encouraging the segregation of "higher" residential uses from "lower" or more intense residential uses, is a major contributor to the problem of urban sprawl and to the boring symmetry of housing developments laid out in ticky-tac patterns characterized by block after block of houses on 12,000 square ft. lots set back 35 ft. from the road, having side yards of 20 ft. and each costing $23,000. That the separation of "higher" residential uses from "lower" residential uses contributes to racial segregation of housing within a given community is self-evident.

The orientation of enabling legislation to the model of Euclidian zoning has caused the development of a number of doctrines inimical to the formulation and implementation of effective land use policies, chief omong which are the following:

1. Uniformity af regulations pertoining to lot size, set-bock, side yards, etc. as they relate to similar structures is essentiol. Development is to occur in accordance with a preconceived, static objective and a readily measurable spatial standard .of what is tolerable for particulor kinds of structures. Variances from the standard are not to be permitted merely because the variance is compatible; a variance is to be allowed only if there is undue hardship in compliance.

2. Non-conforming uses by definition are bod, should not be enlarged, and should either be encouroged to decay or to be removed. That a particular non-conforming use may be compatible, or may afford some desiroble service or amenity is afforded little weight.

3. The introduction into a district of a dissimilar use either by special use permit or omendment to the zoning map contravenes the "ideal" of "symmetry of the same" and constitutes illegal "spot zoning", which in a number of stotes is presumed when symmetry is compromised.

Although Euclidian zoning is the model envisioned in enabling legislation, it is not the ideal of increosing numbers of professional planners and students of urban order. More and more modern land-use-planning thought asserts that the key to harmanious, functional, and responsive urban and suburban environments is planning that emphasizes the unity of the community, the interrelationship of qualitatively different land uses, and the need for imaginative and creative design and arrangement of

(Continued on page 17)

"... and the need for imaginative and creative design and arrangement of structures."

The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both men and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy.

As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd_"... The rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another.... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit - in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

LAND DEVELOPMENT- A *Right* Or A *Privilege?*

— James Murray

Surprisingly, this allegorical archetype is not the futuristic rumination of Buckminister Fuller or Constantine Doxiadis but rather it is one segment of a series of lectures on "The Checks of Population" delivered at Oxford University in 1833 by one W. F. Lloyd. Yet, despite the deligent and prophetic work by the precursors of our modern urban planners, it has only been in very recent history that the general public has become aware of the importance of managing land use.

The trend of contemporary thinking in the study of land use is fairly simple to describe. We are ceasing to view land as a "commodity" and are now realizing that it represents a "natural resource", worthy of, and demanding, protection. This represents more than a mere exercise in semantics. Our characterization of the land upon which we live carries with it important legal consequences. It is this changing trend and its legal ramifications which are the subjects of this writing.

If indeed land is a resource then it represents something in which the entire public has an interest. Government regulations of land use then becomes constitutionally permissible, because the protection of exhaustible natural resources is a valid exercise of the police power of the state.[1] More than fifteen years ago a federal judge noted "[W]e cannot close our eyes to the manifold illustrations of experience, where man's over-exploitation has sharply diminished or even extinguished the supply of natural resources, wild game, and fish.[2]

It has been said that "the need for effective environmental land-use regulation is at least as great as the need for ordinary zoning regulations."[4] This attitude is so prevalent among students and practitioners in the planning field that it might be called an empirical "truth" rather than a postulate. The logic and arguments for the environmental necessity of land-use planning and the legal ramifications involved will be partially cataloged here.

Classifying land as a "resource" and thus bringing it within the penumbra of the state's police power is only the first step in attacking a number of legal problems inherent in any state control of land use. A number of these problems have been solved, in part, by the new Virginia Constitution.

Article XI of the revised Constitution of Virginia requires that all state government action be taken with explicit consideration of the environmental consequences. Any effect this article will have on land-use management in the State must be limited to

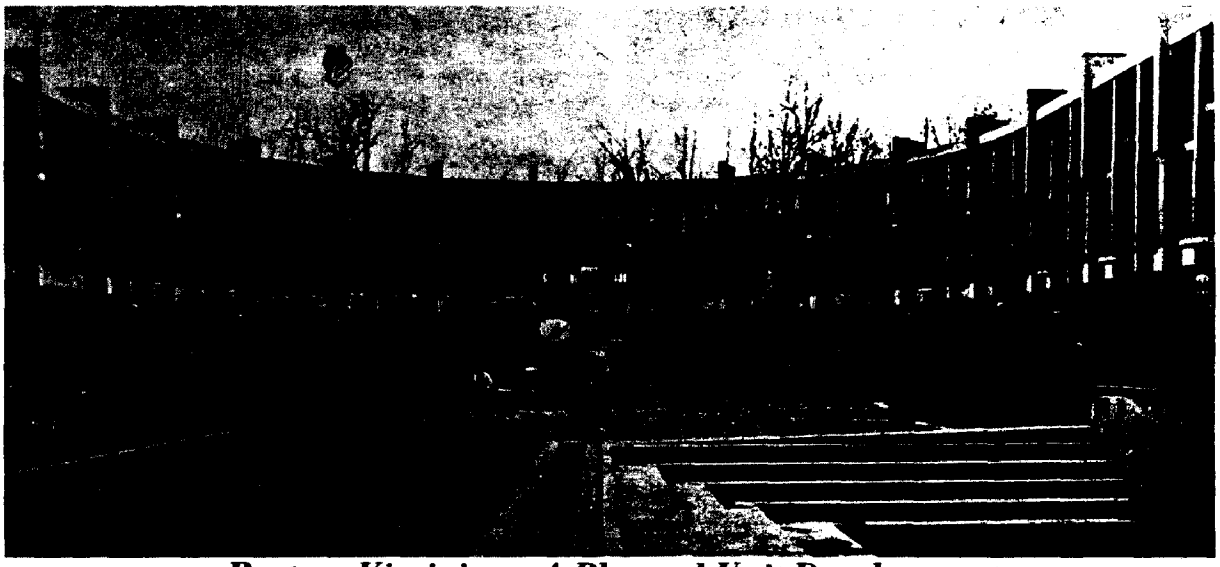
those land-use activities with environmental consequences. The planners' response to this maxim would be that *every* land use activity has important environmental consequences. However this principle has seen little legal recognition. In fact, only in the case of power plant sitings have courts been generally cognizant of the serious environmental impact of a land-use decision. This does not preclude arguments that other land-use decisions have important environmental ramifications. It does, however, restrict the environmental lawyer to non-legal, but extensive, technical evidence.

The Division of State Planning and Community Affairs, in its report on Critical Environmental Areas,[5] sees land-use planning as an environmental necessity. They note that by the year 2000 (when the state's population will have doubled) we will need a 300 percent increase in recreational areas. "A single development decision of sufficient magnitude in even a rural area can do extensive harm to an environmentally critical area. If state park land is not acquired or planned for soon it will no longer be available. The selected critical environmental areas [established by the study] are generally privately owned properties with inadequate protection against adverse development."

The environmental importance of land use management is usually viewed as so pervasive in the fight to save our environment that extensive government control over the field is seen as inevitable. One environmental policy commentator has written that:

> ...[A]n ecosystems approach [to land-use planning] may ultimately become necessary to human well being and even to survival...The discourse can no longer be confined realistically to lands in government ownership, but must take into account whatever lands are included in particular ecosystems, regardless of who holds title to them. This broadening of the policy context may be opposed by persons committed to the inviolate right of private land ownership, or who hold specific interests in land use that they believe might be threatened by public action....But if the management of whole ecosystems becomes a matter of public policy, then the formulation of public policy must proceed upon the basis of the proposition that all land is in some degree public. The metes and bounds of ecosystems are determined by physical, biological, and cultural forces. Men may impose their own arrangements on natural systems, but engineers, surveyors, and lawyers neither amend or repeal the so-called laws of nature.[6]

The principal impediment to government control of land use and development is the most basic of American socioeconomic tenets—the free enterprise system. The English companies formed to colonize America were primarily real estate consortiums organized for speculative purposes, and they initiated a uniquely American tradition of treating land as a commodity. Prior to the Revolutionary War the colonies were under a "socage" system of land tenure which recognized an underlying state interest in all lands within the jusrisdiction. However, the United States Constitution eliminated this system in favor of a system of "alloidal" tenure in fee simple. This decision hos been termed a "most fateful and potentially tragic development" for 20th Century land management problems and has been said to have "conferred on the individual owner a virtually unrestricted right of use and abuse, limited in practice only by the legal doctrine of nuisance, the tenuous application of the police power, and the



Reston, Virginia — A Planned Unit Development

power of taxation."[7] This system is now firmly imbeded in the psyche of every American. No rights are more sacred than "property rights." "Subordination of concern over the environment to private property rights was accentuated by the ideas of such men as John Locke, who were deeply concerned with individual property rights, and reasoned that there would always be enough land and water for future generations."[8]

It is important to understand both this historical background of the American approach to land as a "commodity" and the economic motivation of those who would perpetuate it. In many instances the courts will balance the equities involved when a landowner argues that the use of his land is being unduly restricted. The environmental lawyer would be wise to compare the ecological consequences of particular uses and their broad effects for society with the economic motivation of the landowner[9]

Local economics is the basis of all regular American zoning decisions. But, even economists recognize the futility of a purely profit-oriented approach to exploitation of resources, including land: "[T]he system is finite. It cannot last because, for one thing, it fails to calculate in its earnings formulas the ultimate capital expenditure: the earth itself. We are rapidly running out of natural resources."[10]

Thus, any legal activity involving land-use planning must be undertaken with consideration of this basic conflict between American free enterprise economics and the newly-recognized environmental detriments to the public generally. Social scientists have little difficulty in determining where the balance should be struck: "If our cities are to remain liveable, they will need parks and open space and in most cases in much greater quantity than at present. Surely the public health rights of hundreds of thousands of city dwellers are at least equal to the speculative money-making rights of individual or, increasingly, corporate landowners."[11]

The traditional, preeminent American view of land as an economic commodity with salability at the root of all land-use regultion finds support in the Constitution: no citizen of the United States may be deprived of property by his government without just compensation. This right is guaranteed by the Fifth and Fourteenth Amendments, as well as by most state constitutions. It is the primary point of conflict in the vast majority of land-use cases. Deprivation of use or use potential by the government reduces market value and, it is argued, amounts to "taking" of property. "To be effective, environmental law must come to grips with [this] basic tenet of the American way of life:...An individual is free to utilize, change, or destroy his possessions insofar as his actions do not seriously affect some other person; natural resources are meant to be used, i.e. consumed; there is no land form or physiography which is prima facie non-developable."[12]

Zoning is recognized as an exercise of the police power of the state for the purpose of promoting "the health, safety, morals, and general welfare of the community" and encouraging "the most appropriate use of the land". Courts will not invalidate a zoning ordinance simply because it diminishes the value of a landowner's property. The problems arise when a zoning or other land-use ordinance seriously restricts the permissable uses an owner may make of his property; for any major restriction which substantially deprives the owner of "all beneficial use and enjoyment" is usually classified as a constitutionally-prohibited "taking". However, this doctrine is limited by an exception which allows virtually unlimited regulation of land use if there is a substantial "public safety" interest involved. For example, flood plain ordinances are often allowed to virtually sterilize a citizen's land, prohibiting any beneficial use on grounds that constructive use of the land would amount to maintenance of a public nuisance.

Another restriction imposed on land-use regulation under the compensation argument is the "public benefit theory". The essence of this restriction is that a zoning regulation which is enacted solely for the benefit of the public, but which severely restricts the uses to which a private landowner may put his land, should give rise to an obligation on the part of the public to pay the landowner for the benefit it receives. This situation arises when the only uses permitted the landowner are of a "public character", in which case "the courts sometimes seem to suspect the government of using the police power to create parks and wildlife sanc-

tuaries without paying for them."[11]

Whenever a land-use regulation is held confiscatory with respect to a particular parcel of land the state may then determine whether the protection of that property from a particular type of development is important enough to warrant some limited or complete acquisition of the fee. One alternative use of the police power, using eminent domain to control land use, is of limited effectiveness because the cost of any extensive program is prohibitive.

A less expensive and particularly useful alternative to acquisition of the fee is state purchase of an open-space easement in the property. Another, is state purchase of "development rights" from the landowner. Several states provide for such practices with the usual procedure providing that the owner retain all ownership rights subject to a very restricted right of development in return for a tax advantage, usually a tax freeze at current rates or value. Virginia's Constitution specifically allows for state acquisition of such interests and it provides for tax incentives through tax assessment of property according to its actual use. The chief fault with the easement or development right approach is that in order to be effective such an interest may often have to so restrict the owner's development rights that the property's market value is drastically reduced for the near future. The result is that the fair market value of the easement may be very close to the cost of purchasing the fee.

Non-legal cammentators have gone so far as to argue that development rights are privileges granted by government acquiesence and therefore are freely alienable by government action. They contend that land ownership should be treated like any other investment. Thus it is subject to diminution in value by government action, such as down-zoning, just as investment in the stock market is subject to the vicissitudes of a government controlled economy.[13]

A factor commonly overlooked by those with economic interests opposed to land-use control is that the net long-term effect on the land investar may be beneficial. As space becomes scarce through the continued geometric expansion af population, the value of open space and potential park and recreation lands will grow proportionately. Land which is zoned to insure its character as open space and which carries a low annual property tax rate, as envisioned by many proposals, will be exceptionally valuable. "This recognition of new purposes for regulating land should not and does not mean that the old concerns with land's value and salability should be ignored. On the contrary, the longer-range view expressed in the new land regulatory systems will enhance land values over the long run to a far greater degree than systems motivated

(Continued on page 13)

THE LOCAL GOVERNMENT "LAND GRAB"

— Leslie A. Hoffmann

The theories behind requiring land/fee exactions for municipal facilities as a condition precedent to subdividing are based upon the assumption that the municipality is "allowing" the subdivider to sell his land as lots and he therefore must compensate for any additional burdens his activity places upon public facilities. The question here does not concern the desirability of these improvements, but rather concerns who shall poy for them. The legal issue to be explored is: to what extent is it reasonable for a subdivider to be required under the guise of police power regulation to dedicate a portion of his property to public use and at what point does this omount to confiscation of property in contravention of 5th amendment rights? There are several subissues to be pondered: To what extent, if any, are the rationoles behind lond dedications valid? Must the burden of improvements cast upon the developer be specifically ond uniquely ottributoble to his activity or can he be required to confer substantial benefits upon the public without receiving just compensation? Since in actuality the developer passes on as much of these additional costs as possible to his purchasers, does requiring these new residents to "pay their own woy" into the community discriminate against persons who can not poy the cost of admission? Does this have an exclusionary impact based upon income resulting in concomitant racial exclusion? Do not these exactions result in a disproportionate burden upon new subdivision residents in contravention of the equal protection clause which requires fair and equol treatment among all persons similarly situated? Are not these exoctions a form of revenue raising and should not they be treated as a tax and not as a police power regulation?

PURPOSES OF LAND EXACTIONS

According to the Census bureau, the U.S. population increased by 50 million in the last 30 years and is projected to increase another 50 million in the next 30 years. In addition, since 1950 the U.S. has experienced great urban expansion in the fringe areas around our cities and this population movement is expected to continue at on even faster rate in the future.[1] These two factors have burdened many municipal budgets to the point of financial crises in the effort to meet increasing demands with inodequate economic resources. Local governments hove been engaged in a continual struggle to provide expanding suburbs with adequote schools, roads, recreationol and municipol focilities. Unfortunately, population growth and exponsion has proceeded more rapidly than planning, and cities have been caught with inodequate funds. In addition, it seems inevitable thot demand will always exceed supply, and spending will olways keep poce with revenues so that there will never be sufficient tax money to meet all current and long term obligations. Since subdivisions represent o potential drain on many aspects of the municipal budget (additional recreational space, police and fire protectian, and school facilities), many municipalities have sought to minimize the economic impact of the influx of new people into the community by requiring subdividers to bear the costs of parks, schools, ond other municipal facilities. These costs are in addition to improvements within the subdivision itself such as interior streets, sewers, etc. In ***Pa. Coal v. Mahon*** (260 U.S. 393, 416 (1922) Justice Holmes worned; "We are in danger of forgetting thot o strong public desire to improve the public condition is not enough to warrant achieving

the desire by a shorter cut than the constitutional way of paying for change". Have we ignored or forgotten this admonition?

THE RATIONALES BEHIND REGULATION

Not infrequently, when a subdivider approaches the local planning commission to seek approval of his plat, he is asked to dedicate a portion of his ground for arterial streets, playgrounds, schools, and other public facilities. If he refuses, his plat will not be approved. In many cases this practice of requiring land dedication as a condition precedent to plat approval can look suspiciously like a veiled unconstitutional exercise of the power of eminent domain; yet, none of the cases to date squarely face the question of why an uncompensated taking for public use is unconstitutional in all areas except that of subdivision controls.[2] Rather, courts have relied upon a number of rationales. Two such overlapping theories are the "voluntary" and "privilege" theories. The reasoning is as follows: because there is no right to subdivide, and the state need not permit it, exactions can be imposed. Thus, theoretically, the owner "voluntarily" dedicates land to the municipality for the "privilege" of having his plat recorded. Two problems exist in these theories. First, since plat approval is generally statutorily required before the sale of lots commences, can it realistically be said that land dedications are voluntary? Secondly, recordation is a method of enforcement to insure the orderly planned growth of undeveloped areas. As such, recordation is merely a statutory grant of authority by which the municipality supervises land tranfers and is not a source of power or privilege in and of itself.

The second rationalization generally used to justify the taking of property without the due-process requirement of just compensation is the state's police power. The thrust of this theory is that subdivision control is like any other land use "regulation" which can constitutionally impose limitations upon the use of property. A word of caution: even though it is easy to relate any type of subdivision control "regulation" to the public health, safety and welfare, this does not mean that constitutional guarantees of due process and just compensation for property taken for public use may be ignored. Traditionally, the police power authorizes the state to prohibit only "uses" of property that are harmful to the public; it does not authorize the ***confiscation*** of property simply because it is useful to the public. The distinction between "taking" & "regulation" is outlined by Nichols in his treatise on Eminent Domain: "The distinguishing characteristic between eminent domain and the police power is that the former involves the taking of property because of its need for the public use while the latter involves the regulation of such property to prevent the use thereof in a manner that is detrimental to the public interest."[3] "It is universally conceded that when land or other property is actually taken from the owner and put to public use by the public authorities, the constitutional obligation to make just compensation arises, however much the use to which the property is put may enhance the public health, morals, and safety."[4] Since land dedicatian requires the developer to ***deed*** the land to the local government for public use and benefit, it is difficult to understand how this action can be justified under the state's police power when it constitutes a blatant taking of land in contraventian of 5th Amendment guarantees.

Today, zoning ordinances and official mop requirements give the community effective control over the layout and design of proposed subdivisions which was the original purpose for required plat recordation and subdivision control regulations. However, municipalities under the guise of subdivision control seek not only to control subdivision design but also to shift the burden of needed municipal improvements upon the individual subdivider through a system of positive exactions which go far beyond the negative prohibitions which are the narmal exercises of the police power. On this basis some authorities argue that exactions are a form of taxation.[5] These authorities maintain that exactions, in no real sense, regulate subdivisions in the interest of public health, safety and welfare, but rather represent municipal efforts to shift the burden of providing necessary public improvements upon the new subdivision homeowners. Thus, they claim that this is a tax problem and should be treated as such.

(Continued on page 15)

Many land dedication ordinances are deliberately made unreasonably severe in order to discourage residential development.

Beauty and the Police Power

— Everett P. Priestley

One facet of zoning law is particularly irritating to me because of its lack of vision. More and more citizens are beginning to insist upon improvement of the quality of their environment, including demands that their communities be made more pleasing to the eye. Many people are concerned about the growing number of unplanned "shopping center rows," and monotonously designed residential developments. Yet, despite this desire for attractive surroundings, until recently there has been no statutory or decisional law bases for considering aesthetics in the development of our communities. The standards remain inadequately defined.

Assuming, therefore, that most citizens would welcome imaginative, attractive, and well-planned structures and other improvements, aesthetic sanctions are needed to effect this goal. Aesthetic zoning is not the complete answer. In fact, since it has never really been tried on a large scale without reliance on other aspects of the police power, it may not be the answer at all. Aesthetic control, and especially site plan reviews by a board of architects and other qualified persons, is a fine alternative and one worth experimentation. It will not make all shopping centers works of art or all subdivisions architectural marvels, but it might go a long way toward eliminating the real eyesores.

THE EVOLUTION OF AESTHETIC CONTROLS

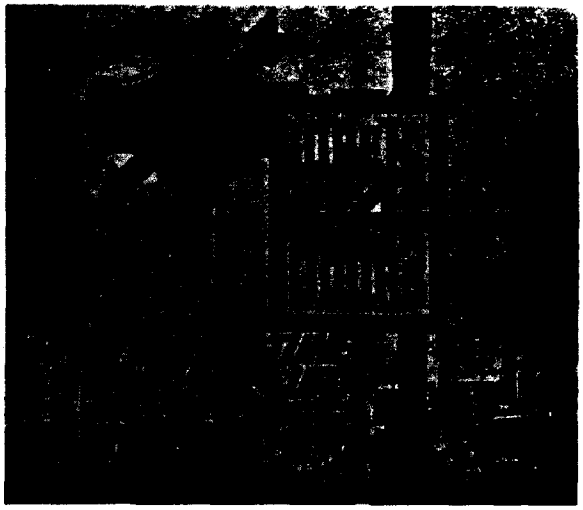
Zoning has its roots in the common law action of nuisance. Our professor Anderson has given the short hand definition of nuisance as "a pig in a parlor instead of the barnyard." The development of this area of the law allowed the later conclusion that the rights of property owners were not absolute and could be limited if found to be in contravention of the public health, safety or welfare. Out of this concept grew the proposal that the police power of the community could be utilized to affect orderly development. The proponents of this concept brought their efforts to a head in 1926 with the carefully chosen test case of ***Village of Euclid*** v. ***Ambler Realty Co.***, 272 U.S. 365. The success of this effort is attested to by the naming of that system of comprehensive planning Euclidian zoning. The concept soon achieved widespread use. By the end of 1930 zoning ordiances were effective in 67% of the urban population. Today just about every city or county has same type of comprehensive zoning plan.

Zoning has had reasonable success in accomplishing its original goals, despite some chequered areas such as zoning baards on the take and the over-generous allowance of variances and exceptions. The drastic effects which are possible where the zoning board is irresponsible are demonstrated by Fairfax County where the board was found guilty of accepting bribes.

The other branch of the development of aesthetic control originated in the billboard battle which started in the 1890's. The first judicial reaction to the efforts to curb or control billboards was a firm rebuff. In ***City of Passaic*** v. ***Patterson*** the court reasoned that "aesthetic considerations are a matter of luxury and indulgence rather than of necessity and it is necessity alone which justifies the exercise of the police power." This type of decision was reversed as early as 1911 when a Missouri court held a billboard regulation valid. The grounds given were not aesthetics, which was the true reason, but rather a string of arguments grounded in the police power. The signs were found to "endanger the public health, promote immorality, constitute hiding places and retreats for criminals and all classes of miscreants ....they are constantly used as privies and for the lowest forms of prostitution." Gratuitously and with a certain caution, the court also mentioned that billboards are inartistic and unsightly.

BEAUTIFUL AS WELL AS HEALTHY

There have been many later decisions which have credited aesthetic values, but never as the sole basis for regulation. An economic basis invariably was found. Important examples of the beauty which could be preserved and developed even with this requirement are the carefully regulated areas in Williamsburg, Santa Fe, New Orleans and Nantucket. But the next big impetus in the progress toward pure aesthetic regulation came in an eminent



domain case, ***Berman v. Parker,*** 348 U.S. 26 (1954). This case involved the constitutionality of a District of Columbia renewal program. The statement may have been dictum, but it has been cited so widely that it has had considerably more weight than mere dictum. The Supreme Court, speaking through Mr. Justice Douglas, stated that "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." This language has been quoted, almost without exception, in all succeeding efforts to use state or municipal police power to affectuate control of the beauty of a community.

Since ***Berman*** a few isolated cases have validated ordinances based almost exclusively on aesthetics, but there has been no stampede. In ***State ex rel. Saveland Park Holding Corp. v. Wieland,*** 69 N.W.2d 217 (1955), the Wisconsin Supreme Court upheld an ordinance requiring approval by a Building Board before any structure could be built. The exterior architectural appeal could not be at great variance with other structures in the area. Once again aesthetic values were coupled with property values. The important and familiar case of ***People v. Stover,*** 191 N. E. 2d 272 came in 1963. Here protesting taxpayers had hung rags, old uniforms and underwear in their front yard. The City of Rye, New York passed an ordinance prohibiting the erection of clotheslines which blocked driver vision—a conventional police power function. The court went beyond this standard on its own initiative and approved the statute on an aesthetic basis. However, it still threw in the protection of real estate values to support its holding. In 1965 ***Oregon City v. Hartke,*** 400 P.2d 255 cited ***Stover*** in sustaining a total ban on wrecking yards from the city. In so holding they stated that "We join the view that aesthetic considerations alone may warrant an exercise of the police power." With these and other cases the trend has come very close to an allowance of police power based on the sense of sight.

Virginia law is not in this vanguard. ***Kenyon Peck Inc. v. Kennedy,*** 168 S.E.2d 117 (1969), reiterated that a municipality or county cannot limit or restrict the use which a person may make of his property under the guise of its police power where ... justified solely on aesthetic considerations. There was, however, an unreported case in Fairfax County where prohibition of high rise apartments was allowed because a scenic view would have been blocked from already existing houses.

DEFINING AESTHETIC CONTROLS

- THE ARGUMENTS PRO AND CON

In his hornbook on Urban Planning in § 48, Hagman states that aesthetic control is one which attempts to preserve or improve the beauty of an area as perceived by the sense of sight. To this he immediately adds the caveat that no one has to look, but odors and sounds are difficult not to notice. In that phrase is capsulized the history of aesthetic zoning. Because it has always been rationalized that one can avoid looking at ugliness, it has invariably been left out of the potent forces of police power.

The other major stumbling block which has traditionally been laid in front of controls for beauty sake is that of vagueness. Public health, safety and morals submit to reasonable definition, it is said, but aesthetic considerations vary greatly with the wide variations of taste and culture. Since no precise definition can be given, all such ordinances are doomed to be vague and incapable of enforcement without arbitrariness. However, when you examine the other branches of the police power, which have been legitimized, you find imprecision which is far greater than that in aesthetic controls. For example, what is obscene? What can a government ban as offensive to public sensibilities? A movie like ***Deep Throat*** may be temporarily cut from the screens of New York and Williamsburg, but how long will the courts allow such a ban to continue? How long will ***Roth*** remain the obscenity standard? There are a great number of imprecise areas in the law. When the courts agree that conditions have changed, and that aesthetics should assume their rightful place in the police power, we will probably be able to live with the imprecision involved.

After the initially hostile reaction to aesthetic controls, the court system softened it position to the point where beauty could be a consideration, as long as controls were mainly based on other areas of the police power. Except in the few recent cases,

this remains the basic policy of the law today. The policy was summed up by Roscoe Pound: "Beauty may not be queen, but she is not an outcast beyond the pale of protection or respect. She may at least shelter herself under the wing of safety, morality or decency."

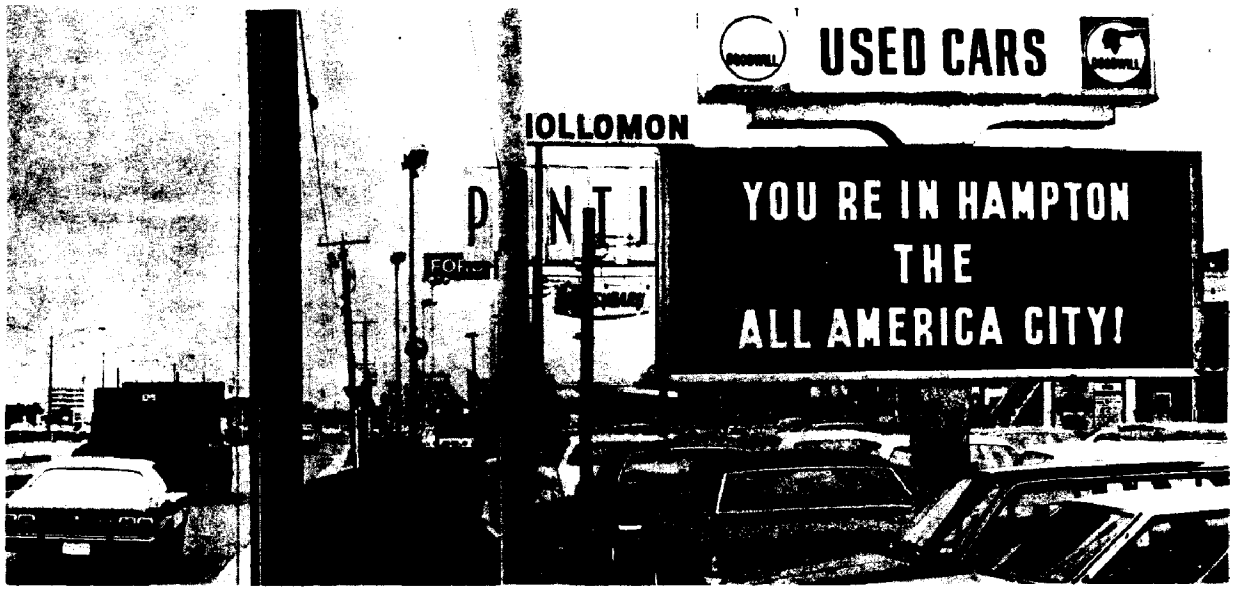
Are we not in a position finally to give beauty a rightful place? Aren't we wealthy enough that every dollar doesn't have to pay its own way. Can't the desire to maximize profits be tempered by the need to have structures approved before they are built. This is not to say that the tastes of a few should be imposed on the rest. But with model legislation, and legislative guidelines, a board of knowledgeable people reviewing site plans could constitute just enough coercion to make builders build with the public in mind. Edmund Burke once wrote: "To make us love our country, our country ought to be made lovely." Perhaps he didn't refer to aesthetic zoning, but he does give the gist of the need for such standards. Our surroundings have a profound effect on our daily productivity and the fulfillment of our potentials. Perhaps court resistance to aesthetic control is a factor in urban blight, high crime rates and the ugliness in much of the present development. To have a respect and love for his community, a person must be able to appreciate the beauty of his surroundings as well as its profit potential. If there is no pride in the community, then the scruples about harming it are lessened. In the classic article ***Zoning For Aesthetic Objectives: A Reappraisal,*** 20 Law and Contemporary Problems 218 (1955), J.J. Dukeminier, Jr. put it this way, "Our communities need to achieve an environment that is emotionally satisfactory, that effects a reduction in purposeless nervous and physical tensions of the inhabitants. When the inner life of an individual is out of balance, anxiety occurs, expressing itself in a number of socially destructive ways."

RECENT DEVELOPMENTS, TECHNIQUES, AND THE OUTLOOK

Zoning is under attack. The newest front of the civil rights movement is fighting the effects of exclusionary. Euclidian zoning, with its separate areas for more desirable residences, has had the effect of stratifying communities along economic lines. Urban sprawl can be traced at least in part to the present concepts of zoning. In California zoning is being used to exclude commune from suburbia. Areas are reserved for single family dwellings and the term family is being redefined to exclude the communal family. In another article in this issue, the use and constitutionality of cluster zoning is examined. This concept rejects the traditional method of blocking off entire developments in lots without provision for common areas. With cluster zoning houses and apartments are being placed closer together, with large areas of undeveloped land reserved as commons for recreation and natural maintenance. The idea of allowing families to isolate themselves on the biggest lot they can afford is losing favor. Instead of sideyards that are good only for mowing, high priced land is now being preserved for the type of mental expansion that is impossible in the typical subdivision.

Historical areas are being preserved under various systems. Williamsburg represents the most

(Continued on page 19)



LAND DEVELOPMENT *(from page 7)*

primarily by a desire to increase immediate solability."[14]

From a legal standpoint, the situation is in a state of flux. Obviously, there will be some recognition of environmental consequences in future planning decisions. This is precisely what is required by the new Virginia Constitution. However it remains to be seen how far toward the courts will allow the pendulum to swing toward total state control over all land use.

Land-use planning has been called "the base of the pyramid for environmental control." Indeed, a new awareness shared by an increasing number of environmentalists makes increased government control over land-use inevitable. There is little doubt that the consensus of expert opinion favors state-wide planning controls and views such measures as the trend.[5]

In this context Virginia's Land Use Task Force has said: "The existing policies of land use in the Commonwealth are grossly inadequate to fulfill the State's constitutional mandate for assuring a quality environment. The Task Force has concluded that the Commonwealth needs an explicit state-wide land use policy with appropriate instruments to execute that policy."[16]

The Council of State Governments lists numerous problems which are factors in generating a need for an increased state role in land resource management. Such problems include rapid, uncoordinated, piecemeal and excessive land development; lack of adequate provision for future land-use needs of agriculture, forestry, and industry; inadequate protection of water supplies, wildlife, and unique or historical areas; the need for "new town" development; and inadequate local planning and zoning.[17]

The problem with this approach, besides the opposition of land speculators with vested economic interests, is that the states have traditionally viewed "land-use control as an urban problem". However, it is becoming apparent that "local zoning is inadequate to cope with problems that are state-wide or region-wide in scope, [and this] has fueled the quiet revolution in land-use control."[18]

Russell Train, Chairman of the Council on Environmental Quality writes: "[A]s our society has become more complex it has become clear that some land use determinations of one locality often have important consequences for citizens in other areas. It is in these issues of greater than local significance in which state and regional involvement seems appropriate, even necessary, if the broader community affected by such decisions is to have some influence over them."[19]

The popular press reflects the same attitude; a recent article in the Wall Street Journal noted that states are beginning to take back some of the land use regulating authority from local bodies:

> Fragmented control simply can't cope with todoy's problems of protecting the environment, minimizing the choos of urban sprawl and providing adequote spoce for housing and industry that increasingly sweep across city and county boundaries. It's clear that states are beginning to rethink their policies for the first time in nearly half a century. And, as a result, a growing number of planners, land use experts, and government officials agree: The ero for total local domination in the field is over....The problems of providing enough land for housing, recreation, conservation, and industrial and commercial development con no longer be solved by individual municipalities....[Property taxes ore] a major stumbling block to state wide land controls....If they compel communities to shore tox burdens, the court decisions would go a lang way toward relieving the pressure on municipalities to compete for new development, thus making statewide lond-use laws eosier. State officials are far more willing to consider environmentol values and the impact that o project may have...than are municipal officials.[20]

A state-wide plan of land-use control would alleviate many complaints about local myopia caused by greed and economic discrimination. Any such plan would necessarily be orbitrary in nature but it would be far less vulnerable to criticism of being discriminotory against particular landowners. In the numerous rural counties of Virginia where land values are more consistent county-wide, and long range development controls would have less immediate drastic economic impact, this is particularly true. A more difficult situation is presented in the highly urbanized areas where undeveloped real estate is a rare "commodity". Here, treating such land as a "resource" worthy of protection by the state would subject the state to claims of "taking without just compensation" and eventual state purchase would probably be necessary.

The Virginia Constitution creates no obligation for the General Assembly to act, in contrast to the Revision Commission's proposal and the environmental provisions of a number of state constitutions.[21] Thus any such legislation that the Assembly might pass would probably be the result of pressure from environmentalists, The State Division of Planning and Community Affairs, and the federal government. In the latter case the impetus would be consideroble if proposed land-use legislation is possed by Congress. Propased legislation would create economic sanctions for those states which do not have a conforming state-wide land-use plan and regulatory authority. The passage of federal legislation which will require states to implement state-wide land-use planning controls seems virtually inevitable, particularly considering the suppart the Administration-Jackson Bill received in the 92nd. Congress.[22]

The existence of Virginia's Constitution, Article XI, and the establishment of the environmental necessity of planning does not in itself assure Virginians of ecologically sound land-use planning any more than would the creation of a state-wide planning authority. The problem of implementation remains. Justice Musmanno of the Pennsylvania Supreme Court has written: —"[O]ne's bread is more important than landscape or than clear skies. Without smoke, Pittsburgh would have remained a very pretty village."[23] Likewise, many people of similar persuasion, who honestly feel that they harbor a justifiable concern for the economy of their own locale and who candidly harbor a deep concern for their own economic welfare, have managed to neutralize some of the best efforts of environmentally conscious lawyers to see that the spirit of legislation such as the Virginia Wetlands Act and the proposed state-wide planning ordinances is respected, and that the policy enunciated in article XI is observed in the daily operations of government.

"[Land use] law is often politically enunciated and politically enforced. The substance of the statute is enacted in response to political pressures, enforcement is placed in the hands of executive branch officials whose main concern is the political impact of their actions, and it is all too infrequent that political desires coincide with technologically and socially effective solutions."[24] One glaring example of how strong, well motivated, environmentally conscious legislation can be rendered toothless and environmentally destructive can be found in the Tahoe Regional Planning Compact, a multi-state planning agreement that was hailed as the savior of the ecologically critical, and only marginally stable, Lake Tahoe Region. The compact is a shambles now that its implementation has begun and this is largely due to the fact that the members of the Regional Planning Agency, who were supposed to take a longer and broader view than the existing local planning entitles, are in large majority the same tunnel-visioned local business representatives that had endangered the ecological balance of the region in the first instance. The citizens of the area, led by the League to Save Lake Tahoe, are now desperately seeking a way to halt the planning authority, which they hailed only 14 months before, because it appears destined to perpetuate and guarantee the ruination of a beautiful wilderness area.[25]

Over one hundred years ago Federick Law Olmstead, who was America's first landscape architect and city planner, as well as the designer of New York's Central Park, foresaw the urban blight indigenous to unrestricted metropolitan sprawl and fought to have the city not only reflect the needs of commerce but of "humanity, religion, art, science and scholarship. Long before the end of the Nineteenth Century he foresaw the choked, crowded Manhattan we now see, the need for green, grassy suburbs, the interdependence of adjoining urban regions, and the threat to the air itself. When asked to build Prospect Park in Brooklyn--his finest park--he tried to lift the eyes of the politicians to a regional system of parks and roads running from the Atlantic Ocean to the Hudson Valley. But they kept their eyes to the ground; 'Practicality' triumphed, and we are left today with the debris of that practicality.[26]

It is Olmstead's sort of approach to land use that has now been universally accepted by scientists, scholars, and even lawyers as not only environmentally attractive but as critical to the future of the world. It remains, however, for the legislature and the courts to adapt the legal system to reflect this same recognition. §

FOOTNOTES

1. Potomac Sand & Gravel Co. v. Mandel, no. 20, 430 Circuit Court, Anne Arundel County, Md. (1972), at 19.
2. Corsa v. Tawes, 149 F. Supp. 771, 774 (1957).
3. ***Report of the National Conservation Commission,*** S. Doc. No. 676 60th. Cong., 2d. Sess. 109 (1909).
4. R. F. Kingham, Wetlands Protection Laws and Flood Plain Regulation: The Question of Taking Without Just Compensation, (1972)(Unpublished paper, Unniversity of Virginia).
5. ***Division of State Planning and Community Affairs, Preliminary Report on Critical Environmental Areas,*** (Sept. 1972).
6. Caldwell, ***The Ecosystem as a Criterion for Public Land Policy,*** 10 ***Natural Resources Journal*** 203, 205-206 (1970).
7. ***The Council of State Governments, The State's Role in Land Resource Management*** (1972), at 2-3.
8. Cohen, ***The Constitution, The Public Trust Doctrine, and The Environment,*** Vol. 1970 (No. 3) ***Utah L. Rev.*** 388, 389 (1970).
9. Rockwell, ***The Expanding City, Environmental Geology Notes*** No. 46, at 28-29 (May 1971) (Illinois State Geologic Survey).
10. A. Smith, ***Supermoney*** (1972), ***reviewed,*** W. Schott, ***Life,*** Oct. 20, 1972, at 24, (Vol. 73, No. 16).
11. Pryde, ***New Strategies For Open Space,*** 57 (2) ***Sierra Club Bulletin*** 9, 18 (Feb. 1972).
12. Adams, ***Environmental Law Tackles 3 American Institutions,*** 8 (4) ***Industrial Water Engineering*** 24, 25 (April, 1971).
13. Pryde, note 11 ***supra,*** at 10-11.
14. ***E. Bosselman, The Quiet Revolution in Land Use Control*** at 25, (Council on Environmental quality, U.S. Government Printing Office, 1971).
15. ***C. O. S. G.*** , note 7 ***supra.***
16. ***Virginia Governor's Council on The Environment, Land Use Task Force Report,*** 57 (1971).
17. Note 7 ***supra,*** at 6-7.

18. ***Bosselman,*** note 14 ***supra,*** at 3.
19. ***Bosselman,*** note 14 ***supra,*** at ii.
20. "State Land Use Control", ***Wall Street Journal,*** June 28, 1972, at 1, col. .6.
21. A. E. Howard, ***State Constitutions and The Environment,*** 58 ***Va. L. Rev.*** 193, 207 (1972).
22. The Land and Water Resources Planning Act, S. 632. This bill proposes that federal aid be given to state governments in order to assist them in developing comprehensive land use programs.
23. Waschak v. Moffatt, 379 Pa. 411, 109 A. 2d 310, 316 (1954).
24. D. J. Brion, A Short Study of The Common & Statutory Water Law of Maryland and Virginia, 18, (Working Document No. 32, Planning and Evaluation Office, Federal Water Pollution Control Administration, Middle Atlantic Region, 1969).
25. S. Brandt, ***What's Going Wrong at Tahoe,*** 56 (10) ***Sierra Club Bulletin*** 8 (Dec. 1971).
26. ***Newsweek,*** Nov. 6, 1972, at 77 (Vol. 80, No. 19).

LAND GRAB *(from page 9)*

PRACTICAL EFFECT OF LAND DEDICATIONS

Generally speaking, the public shifts the burden of the needed improvements upon the purchaser. But to consider the effect upon the homeowner there must be a distinction drawn between the different types of improvements charged to the purchaser. The on-site improvements such as streets, curbs, sidewalks, gutters, etc. have caused few problems. These improvements benefit ***solely*** the property within the subdivision and the need is caused directly by the subdivider's activity. The cost when passed on to the home buyer is not unreasonable because expenses for these improvements could be directly charged to the property owner by a special assessment. But, serious questions are presented where municipalities predicate plat approval upon the meeting of conditions which require the developer to construct facilities which exceed the needs of his development (which constitute a windfall to other property owners) or require him to dedicate land for general municipal facilities such as schools.

Municipalities justify such requirements by rationalizing that the population increase which is responsible for these needed facilities is attributable to the builder's activity and, therefore, he should be made to bear the burden of his own profit-making venture. There are two fallacies in this rationalization. The first is that the builder is responsible for the community's growth. Population expansion is due to (1) the geometric growth of population and (2) the location and desirability of the community itself. The builder merely seeks to meet an already existing demand. Thus, realizing that the demand is directly reloted to the normal growth of the community itself, it is difficult to justify exactions which benefit the public at large when the subdivision residents constitute only a portion of the population influx into the community and only a portion of the public benefiting from such improvement. When the subdivider is forced to subsidize the public, one of two results occur, both of which result in increased consumer costs. First, if the developer is forced to absorb the additional burden, he will have little incentive to engage in this high risk activity again. As the supply of lots decreases, newcomers will be forced to pay higher prices for available lots and homes or seek older housing elsewhere. Second, if the developer shifts the costs to the purchaser, the new owner will be forced to pay a higher price for his land. In either case, the effect of land exactions is to stem the tide of population migration by indirectly slowing growth by closing off the supply of housing or by increasing costs. Either way, the municipalities can effectively place the cost of single family dwelling beyond the reach of many Americans. Thus, in reality, exactions require new persons to pay the price of admission into an existing community by way of public improvement fees. This practice has an exclusionary effect upon those who can not afford the price. In ***Appeal of Kitmar Builders,*** 268 A. 2d 765 (1970), the court held that municipalities may not refuse to confront population growth by adopting regulations which effectively restrict population. The court admonished the town to provide the services which traditionally had been the municipality's responsibility to furnish. Where many land dedication ordinances are deliberately made unreasonably severe in order to discourage residential development [5], this decision is equally applicable.

> ***"... overzealous officials try to exact as much as possible without regard to the developers' rights or the effect upon new residents."***

Query: Are new homeowners really paying their own way or more? While new residents pay for their share of the municipal facilities in their neighborhoods, they are not relieved from property taxes used to meet the obligation of previous municipal bonds which pay for the facilities in the existing parts of town. Secondly, other new residents who do not live in subdivisions, such as buyers of existing village lots, townhouses, and condominiums and apartment dwellers all utilize and burden public facilities, but pay no like fee. Therefore subdivision

homeowners carry a disproportionate burden of municipal expenses. To quote New York Supreme Court Justice Van Voorhis in his dissent to Jenad, Inc. v. City of Scarsdale 218 N.E. 2d 673, 677, (1966), "There must be apportionment of tax burdens either among all property owners of the state, or the local division, or the property owners specifically benefited by the improvements...If one is required to pay more than his share and he receives no corresponding benefit from the excess, ... that may properly be styled extortion or confiscation. A tax or assessment upon property arbitrarily imposed without reference to some systems of just apportionment can not be upheld." Thus, to burden only subdivision homeowners with indirect exactions for provide community facilities is discriminatory and in contravention of equal protection which requires fair and equal treatment among those similarly situated, ***Ronda Realty Co.*** v. ***Lawton,*** 111 N.E. 2d 310 (1953).

PRACTICAL NEED TO COMPLY

Unfortunately, discrimination against outsiders is far from academic because many fast growing suburbs seek to prevent migration by making it economically onerous to enter a community. The problem remains as to what is being done, and the answer to that question is basically: nothing! The reason for this inaction is that exoctions are seldom challenged because of the practical need to comply with the municipality's requirements. The average builder is under considerable pressure to move as quickly as possible to get his job done. Consequently, if the city conditions the approval of his plat with an exaction costing him $12,000 plus lost profits, he has 3 alternatives: (1) to hold the land until the city buys or condemns it, (2) "voluntarily" dedicate the land and lose $12,000 in plus profits, or (3) litigate the issue of the city's power to impose the condition or the reasonableness of the condition. Typically, the subdivider chooses the second alternative because he depends upon rapid turnover of his capital to survive. No builder can (profitably) afford the two or three years necessary to litigate the constitutionality of the condition(s). Subdividers who are faced with the fiscal problems of paying both taxes and interest on borrowed capital on unimproved prime development land plus meeting overhead expenses and contract obligations with general contractors, subcontractors and materialmen, can not afford to wait for justice to take its course. In addition subdividers fear incurring the ill-will of the city which could result in the use of harassment techniques such as rezoning or difficulties in securing building or occupancy permits. If the builder wants to subdivide in the city again he must submit to the exactions.[7]

The high cost of litigation is not only due to the stiff price of waiting but also includes the high cost of assembling the comprehensive proof necessary to prove the unreasonableness of the exactions. The strong presumption of constitutionality afforded the state, as well as the traditional judicial deference given to government, makes the burden of proof difficult to meet.

Because builders are reluctant to take municipalities to court to test the reasonableness of conditions imposed, it appears that the latter are in an extremely powerful position. Knowing that developers rely upon speed to keep operating and that any attempt on their part to resist fees or dedication results in lengthly and costly delays, overzealous officials try to exact as much as possible without regard to the developers' rights or the effect upon new residents. Surprisingly, some officials negotiate dedications even if they are not given this power by statute or ordinance.[8] In addition, many existing ordinances which purportedly give certain powers in this area are not even constitutional.[9] Concessions can vary from contributing $100,000 for a new school to requiring deeds that restrict the size of the homes to a size larger than required by ordinance.[10] Thus the door is wide open to arbitrary discrimination and abuse. This danger is even more likely where officials are members of the local population who would rather make new residents bear more than their fair share than to have to bear the cost themselves. Therefore, statutory standards and enabling legislation which would require municipalities to comply with statutory mandates would be one step towards restraining the unlimited coercive power presently at the finger tips of local authorities. Policing of these communities should be done by the state as well as making challenge by the private sector more feasible. Statutes should allow the developer to reserve the land required for dedication, but allow him to proceed with his development until the reasonableness of such exaction is judicially determined. Thirdly, the states should secure planning on regional levels to insure the co-operation and co-ordination of communities and to insure orderly area growth rather than permitting innumerable groups, each seeking to serve only its own interest, to adversely affect area development by disregarding the general welfare of the region. Lastly, on the local level, cities should develop overall plaans for the location of municipal facilities. They should budget funds and secure passage of bonds for the purchase of undeveloped land before it becomes prime development land purchased by the developer, for orderly planning will secure orderly growth without having to resort to unconstitutional means of financing it. §

1 Hauser, ***Implications of Changing Metropolitan Areas***, Planning (1958).
2 ***Subdivision Exactions: Where Is The Limit?***, 42 Notre Dame Lawyer 400, 403 (1967).
3 Nichols, ***Eminent Domain***, 87 (1964).
4 Id. at 90-91.
5 Heyman and Gilhool, ***The Constitutionality of Imposing Increased Community Costs on New Suburban Residents Through Subdivision Exactions***, 73 Yale L.J. 1119 (1964).
6 Fagin, ***Regulating the Timing of Urban Development***, 20 Law and Contemporary Problems 298, (1955).
7 Hanna, ***Subdivisions: Conditions Imposed by Local Government***, 6 ***Santa Clara Lawyer*** 172, 191 (1966).
8 Cutler, ***Legal and Illegal Methods for Controlling Community Growth On the Urban Fringe***, 1961 ***Wis. L. Rev.*** 370, 386.
9 Id. at 389.
10 Id. at 392.

REASSESSMENT ***(from page 3)***

structures. The well planned community, under this approach, is not necessarily one in which like uses are first aggregated and then separated from different uses, but is instead one in which the uses permitted are so arranged and ordered that the dynamics of the urban system can function at the highest level consistent with the public welfare. The key to effectiveness under this approach is not symmetry and division, but performance and unity. Utilizing this key, it may well be possible for the planner, who sees the urban system as a dynamic interrelated process fed by change rather than as a static order, to envision a workable, non-Euclidian plan for a particular community. He may develop a practical design for a partially developed area predicated upon uniqueness, not uniformity, in which "non-conforming uses" may be enlarged and blended into the whole, and in which additional uses of a qualitatively different nature which afford needed amenities aesthetically compatible. But the legal climate in which most planners must function, heated by a Euclidian sun and made humid by uniformity, is too stifling for this kind of productive endeavor.

A number of studies have concluded that Euclidian zoning, with its static concepts, just does not work in areas where development pressures are strong. Increasingly, development occurs not under zoning, but by amendments to zoning ordinances and maps. Non-Euclidian planners-zoners, recognizing the need for flexible response capability in implementation oordinances in recent years, have introduced the concepts of "planned unit development", "residential planned communities", the listing of multitudes of uses permitted only by administrative discretion governed by a standard such as "hold zoning" "contract zoning", the "floating zone", and "performance zoning". While these more flexible implementation techniques afford advantages lacking in a purely Euclidian approach, they are, in the minds of many, incompatible with the assumption that zoning should be in accordance with a comprehensive plan with map appended. Although judicial acceptance of these techniques is increasing, it remains nonetheless true that their legal underpinnings are insecure.

In summary on the point, I do not suggest that the Euclidian be outlawed, only that the non-Euclidian be more effectively accommodated by the legal system. This can be accomplished by eliminating from zoning enabling legislation requirements that regulations be uniform and expressly authorizing the use of performance standards and flexible techniques to guide, encourage and control land development and use.

The second premise underlying current land use planning enabling legislation is that the formulation and implementation of land use policies belongs entirely at the local level of government. With few exceptions, states have delegated the police power over land use to the localities without retaining or reserving power or procedural tools to protect the state interest from adverse local planning and implementation activity. Just as local planning and implementation proceeds from an awareness that the common weal can be served by subjecting individual tracts to land use controls, it would seem that state planning would assume that the interests of the state as a whole may require the developmental patterns of localities to be subjected to state influence and involvement. In England and several European countries, local planning is required to serve not only local needs, but broader needs as well. This is not so in the United States, with the possible emerging exceptions of Vermont, California and Florida.

Does a state need a ready capability to direct, influence and control local planning activity and the development undertaken pursuant thereto? Several examples, which I hope will constitute a sufficient answer, follow:

1. When all of the suitable farm and grazing land in a state is already put to agricultural uses, and the state's population is rapidly expanding, can it wisely permit to localities the determination of whether such land is to remain as part of the agricultural economy or be developed into subdivisions?

2. When a substantial segment of a state's population can afford housing no better than mobile homes, can a state wisely leave to localities the determination of whether mobile home parks are a permitted use in a community?

3. When there is a substantial unemployment in a region of the state that could be significantly ameliorated by the location of a prospective major industry in a particular locality, can the state wisely leave to the locality the determination of whether or not the industry is welcome?

4. In a region of the state where water resources for human consumption and industrial use are scarce, may the state wisely permit individual localities, through their land use plans, to determine the allocation which actual development under such plans will assure?

The list could be expanded. The point is that local land use plans reflect local values and perceptions of self-interest and may not reflect the broader needs of the state and regian.

In a number of states a beginning awareness of the state interest in local land use practices is evident, as witnessed by the various wetlands statutes, coastal plains land use control codes, and, in Virginia, the undertaking of studies to identify "area of critical enviranmental concern". What is needed, however, is a candid acknowledgement to the effect that on a broader scale, land use practices in the localities are of sufficient patential significance to the general welfare of the state as to justify direct state involvement at the local level of planning and implementation.

Such involvement could take a number of forms, one of which might be expressly affording the state standing to enjain developmental activity believed to be injurious to state or regional interests. The proposed oil refinery and industrial complex praposed for Nansemand, Virginia, of cancern to the people of Norfalk, Newport News, Virginia Beach and Partsmouth, is an example of a situatian to which a state respanse would probably be appropriate. Other approaches could involve requiring local land use plans and implementation ardinances to be submitted to an appropriate state agency for review and comment before adoption and amendment, requiring that they be in canformity with a state-wide land use plan, which would in effect be implemented through cantral and coardination of lacal plans.

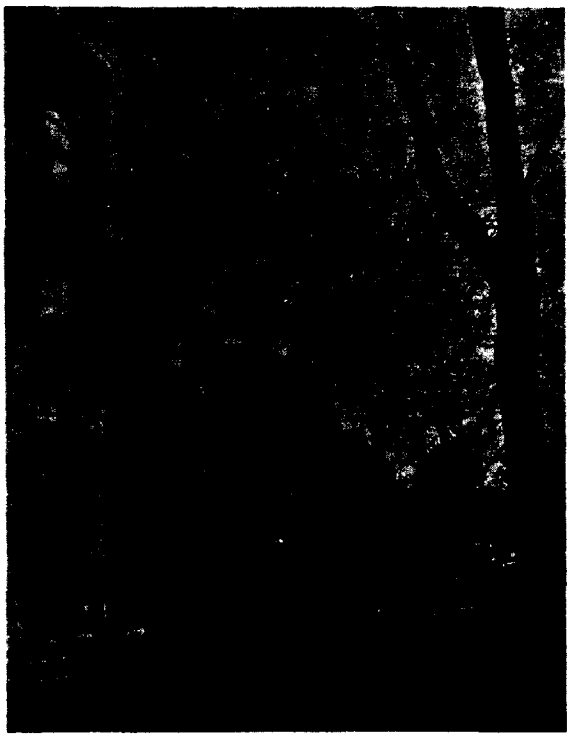
In the context of this problem, one must keep in mind that any question involving relationships between the state and its localities, or their respective areas of jurisdiction, is essentially a political questian which must find its resolution in the palitical arena. When the issue is state control over land use, the political question is highly controversial, if not explosive. Nanetheless, it needs to be resalved in the interest af the whole, not the parts.

The third principle which I wauld questian is the principle that land is the target towards which land use planning enabling legislation is aimed, and that as a consequence, traditianal concepts of praperty rights, real property rights, limit the regulation and control of land uses. The emphasis on land has clouded the vision of the public, the courts, and the practioners in the planning field with unnecessary distortion and impairment. I submit that the true subject of regulation in land use planning and implementation is not land, but ***activity***, and that a zone which permits a specific land use is, in reality, conferring s license to engage in that activity. If the orientation of the legal basis of land use planning related to the issue of the reasonableness of the licensing requirements and pracedures applicable ta the acitvities beinng regulated, rather than to the reasonableness af the "land controls", the air would be clearer and planning could occur in a better legal climate, with the requirement of "reasonableness" still being maintained. In substance, I believe land use planning ta be primarily a process which attempts to allocate and coordinate, within a spatial context, the activities that are ta be carried on in the community, and to promote physical harmony by the imposition of design criteria related to height, bulk, and open space. Land is entirely secondary. It is activity with which the planner and the community are primarily concerned.

Two statements illustrate the point I wish to make. Both statements are credible and have a wide fallowing. The first is: ***A man should not be deprived of his property without compensation.*** The secand is: ***A contemplated activity genuinely and materially affecting the public interest is a proper subject of regulation.*** Suppose that the legal issue is whether the developer of a praposed shopping center adjacent to a majar artery can be legally required to construct and maintain a parallel artery to accommodate the traffic prablem which his development would create. The Courts are divided in their response to the issue, some regarding the question as essentially a praperty matter, to be resolved in the context of traditional notions of property rights, while others recognize the question as essentially one in which the issue is the reasanableness of a conditian attached ta the licensing af an activity. I subscribe to the latter view, and believe that government may properly regard development as an activity, which, in a spatial as well as a broader context, can be subjected to reasonable licensing requirements.

In summary and conclusian, I believe that the fundamental legal underpinnings of state land use planning enabling legislation require examination and modification if land use planning and implementation is to be effective. The shortcomings af the Euclidian concept, the negligence of state noninvolvement, and the limitations of the misplaced emphasis an land, as opposed to activity, as the critical subject of concern must be remedied. Attention ta these problems has not been lacking. Responsible critiques and suggestions for improvement of the state of the art and practice of

lond use plonning ond control techniques obound in current literature in the field. Perhops the most noteworthy attock on the inodequocy of state enobling legislotion is the undertoking of the American Law Institute ta develop a model oct, which in tentative droft is known os "A Model Lond Development Code". The project, begun in 1963, may produce a final draft in 1974. Although the language of the tentotive droft is just thot, tentotive, I would note thot the droft obondons Euclidion terminology, recognizes a broader state role in the formulotion ond implementotion of locol lond use plons, ond regords developmentol octivity, rother than land as the subject of plonning and implementotion. Among other things, the draft seeks to improve odministration, outhorizes localities to offer development incentives, permits condemnation for purposes of encouroging development, expressly outhorizes the imposition of lond dedicotion requirements ond of fees to defroy public expenses thot moy need to be incurred in response to development, ond provides a system for moking public land use decisions offecting individual porcels public records thot moy reodily be examined in o "title" search. The Code, when odopted and published in finol form by the Americon Law Institute, is certain to hove a mojor impoct on the reformation of enobling legislotion across the county—certainly o delightful prospect. §



BEAUTY *(from page 12)*

extensive and probably the most successful effort. The National Trust and other societies are working to catalogue important structures so they won't be demolished. New York City has an innovative program which lists landmarks and prohibits their destruction or changes without prior approval. This has been suggested to be an unjustified interference with property rights. An alternative could be the purchase of negative easements against the destruction of historic areas. Robert L Montague III in an article at 51 Va. L. Rev. 1214 (1965) suggests a system of tax incentives to be used in Virginia for the preservation of its many antiquities. Even with these efforts to catalogue and preserve, the loss of important landmarks continues. Under a program inaugurated in the 1930's the Historic American Buildings Survey listed more than 10,000 buildings worthy of preservation. It was estimated in 1963 that 50% of these buildings, significant in America's history and culture had already been destroyed.

Another unfortunate development is demonstrated by ***Seagram & Sons v. Tax Commission,*** 200 N.E.2d 447 (1964). The Seagram building in New York City had been built with unusual care and the result was a beautiful structure that promoted the economic interests of the owner and enhanced the beauty of the city. The Tax Commission chose to adopt a different appraisal system which increased the owners tax bill. This was an obviously self-defeating and short-sighted action, but it was affirmed.

CONCLUSION

The most attractive method for enhancing the appearance of our communities is the adoption of architectural boards of review. These have been rejected in several cases, but the time is ripe for their acceptance. Whatever the method adopted, aesthetic control is a vital field and one worth the efforts of the legal profession. The wealth and know-how are available. The question remains whether the courts and the legislatures will provide the legal framework for protecting the beauty of our communities. The alternative is for our generation to be remembered only as the innovators of "shopping center row." §

NEWS *(from cover)*

made available from endowment as an impetus to the drive on the assumption that an equal amount will be raised from fifty percent of the membership of the Law School Association.

Wayne O'Bryan of Richmond, President of the Law School Association, is chairman of this the School's first annual alumni fund drive. Over ninety volunteers are contributing time and energy to the effort. Professional guidance and staffing is being provided by William and Mary's Office of College Development.

Contributions should be made payable to "William and Mary - Law School" and mailed to Marshall-Wythe School of Law Fund, Box EH, Williamsburg, Virginia 23185.

. . . . . .

Third-year law students of Marshall-Wythe have initiated a fund-raising effort among members of that class.

Each graduating student is being asked by class volunteers to pledge his financial support of the School for three years following completion of his degree.

According to Tom Wright, who is coordinating the effort among students, his twelve volunteer workers pledged over $1,000 during their one-hour organizational meeting.

The effort among students was formally kicked-off at a cocktail party hosted by the Law School Association for third-year students, spouses, and fiancees. Wright reports that as of May 1 $6,530 had been pledged, topping the class goal of $5,000. §

Alumni News

CLASS OF 1929

JUDGE AND MRS. WALTER E. HOFFMAN have moved to a new residence. The address is 5737 Shenandoah Avenue, Norfolk, Va. 23509. Judge Hoffman was elected to the Federal Judicial Center Board last year for a four year term.

CLASS OF 1938

The town of Colonial Beach, Va. recently honored GEORGE MASON, JR. with a plaque commemorating thirty-four years of faithful service as Town Attorney.

CLASS OF 1948

W. GARLAND CLARKE, of the firm of Clarke & Johnston in Lively, Va., is presently serving as Chairman of Lancaster County Board of Public Welfare and President of Region II of the Episcopal Diocese of Virginia.

CLASS OF 1950

STANLEY H. MERVIS is presently Associate Patent Counsel for the Polaroid Corporation. His address is 11 Nod Hill Road, Newton Highlands, Mass. 02161.

Fort Worth, Texas claims the residence of JOSEPH P. PARKER, a member of the firm of Sears, Parker, Quisenberry and Spurlock. Mr. Parker is active in the labor law section of the Texas State Bar and his family lives at 3608 Wayland Drive in Fort Worth, zip code 76133.

CLASS OF 1951

While looking forward to an upcoming business and pleasure trip to Spain, RICHARD W. WITHINGTON is serving his community as Attorney for the Point Pleasant, N.J., Board of Health. The Ocean County Bar Association recently honored him with a plaque in recognition of dedicated service to the Bar.

CLASS OF 1956

FLORIAN BARTOSIC, Professor of Law at Wayne State University, was a Visiting Professor of Law at the University of Michigan for the summer of 1972. Mr. Bartosic authored articles dealing with labor law which were published by the ***University of Chicago Law Review*** and the ***Cornell Law Review*** during 1972.

CLASS OF 1957

JOSEPH M. MAURIZI attended the National Health and Welfare Conference in San Francisco this past November. He is a member of the firm of Balzarini, Walsh, Conway, and Maurizi in Pittsburgh. Mr. Maurizi is also active in the Academy of Trial Lawyers of Pennsylvania, and attended the Academy's convention in Rome, Italy in 1971.

CLASS OF 1960

Attorney General Richard G. Kliendienst, who is also President of the Federal Bar Association, has appointed HARMON D. MAXSON as Chairman of the FBA's Indian Law Committee. While on vacation recently, Mr. and Mrs. Maxson visited thirty-five Indian Reservations and attended such festivities as tribal dances and a rooster pull.

CLASS OF 1962

SHANNON T. MASON, JR. has recently formed a partnership with William Ferguson under the firm name of Ferguson and Mason. The address is 225 28th Street, Newport News, Va. Mr. Mason was appointed Substitute Judge of the Courts Not of Record for the City of Newport News early in 1972.

CLASS OF 1963

THOMAS O'C. MOYLES has recently moved to 515 S. England St., Williamsburg, Va. 23185.

WILLIAM M. WHITTEN, III's new address is 2748 Black Forest Drive, St. Louis, Missouri 63129.

CLASS OF 1964

E. KENDALL STOCK of the firm of Schantz, Stock, Marshall and Walmo of McLean and Leesburg, Va. is serving as Chairman of the Virginia State Bar Insurance Committee.

CLASS OF 1965

C. LACEY COMPTON, JR. Woodbridge, Va. is presently Chairman of the Prince William Board of Directors of the Bank of Virginia - Potomac, and is also Vice President of Potomac Hospital.

STANLEY C. SHERWOOD and his wife, the former Lynn Halsey of Williamsburg, have moved to their new address: Suite 225, 4700 Biscayne Blvd., Miami, Florida 33137. Mr. Sherwood is Vice President and Counsel, Greater Miami Title Services, Inc. He attended the Florida Land Title Association's Convention in Nassau last fall.

NICHOLAS J. ST. GEORGE is presently Vice President in Charge of Investment Banking for Legg Mason & Co.

CLASS OF 1966

GUS J. JAMES, III became a partner in the firm of Kaufman, Oberndorfer, and Spainhour of Norfolk, Va. in early 1972. He is presently President-Elect of the Young Lawyers' Section of the Norfolk-Portsmouth Bar Association

CLASS OF 1967

ROGER L. AMOLE's address has been changed to 201 N. Washington Street, P.O. Box 1138, Alexandria, Va. 22313. Mr. Amole is a member of the Executive Committee of the Alexandria Bar Association, a member of the Board of Directors of Alexandria's YMCA, and a member of the Board of Directors of the Little River Village Community Council.

In December of 1972 BURKE MARGULIES accepted a position with the Virginia National Bank as its Trust Officer. Mr. Margulies lives in Norfolk.

CLASS OF 1968

JOSEPH T. BUXTON, III was appointed in November of 1972 Associate, General Counsel, Newport News Ship

Building and Dry Dock, Co. He has also been elected Secretary of the Nuclear Service and Construction Co., Inc., a subsidiary of NNSBDDC.

JAMES A. EVANS and his wife, the former Jeanne S. Felhofer, have moved to their new home ot 521 Turtle Cove Road, Virginia Beach, Va. Mr. Evans is with the firm of Underwood, Byrd, Dinsmore, and Evans, ltd. In October of 1972 he attended the Internationol Conference of Shopping Centers in Tompo, Fla.

JAMES C. PATTESON's new address is 4608 Bromley Lane, Richmond, Vo. 23226. He is now Virginia Sales Representotive for Matthew Bender & Co., Inc., a legal and tox book publisher. Mr. Potteson is presently on the Presidential Search Committee for Richard Blond College of the College of William and Mary.

THE WALTER A. SMITH's had their second son, Michoel Ingram, in May of last year. Mr. Smith will continue clerking for Wolter H. Moormon, Judge of the Circuit Court of Montgomery County, Maryland until September 1973, when he then plans on entering private practice. He passed the Maryland State Bar exam and was admitted to practice last December. He already is a member of both the Virginia and the D.C. Bars.

CLASS OF 1969

The new office address for GRAYSON G. FENTRISS is Suite 606, 700 Building, Richmond, Virginia 23219.

GLENN J. SEDAM, JR.'s new address is 907 Leigh Mill Road, Great Falls, Virginia 22066.

JOHN D. SOURS will join the firm of Smith, Corrie and Hancock in Atlanta, Georgia upon his separotion from the Office of the Judge Advocate Generol (Army) in Washington this June. He was selected for inclusion in the 1972 edition of ***Outstanding Young Men of America.***

1 Surfway No. 204, Monterey Californio 93940 is DAVID A. STEWART's new and pleasont sounding oddress.

CLASS OF 1970

The marriage of DENNIS HENSLEY and Adrienne Andriani of New York took place December 30, 1972. Their Address is 950 25th Street, NW, Washington, D.C. 20037. Mr. Hensley wos recently named Assistant General Counsel of the Notionol Association of Securities Dealers, Washington.

JOHN L. NORMAN, JR. is now living ot 924 25th Street, NW, Washington, D.C. 20037. As of 1972 he hos been a Certified Public Accountant in Maryland. He is also executive secretory of the Washington Alumni Chapter of Phi Alpha Delta Law Fraternity.

JAMES L. MCLEMORE, III has joined the firm of Thomas L. Woodward (Sr. & Jr.) in Suffolk, Virginia. The McLemores new oddress is 122 Franklin Street, Suffolk. The newly married couple honeymooned in England, Scotlond and Fronce last October.

WILLIAM R. REGISTER has recently moved from Juneau, Alaska to 1900 Jomestown Road, Alexandria, Va. 22308.

Recently assigned ta the U.S. Army Agency for Aviation Safety, JOHN J. SABOURIN, JR. is now residing at 37 Kirby St., Fort Rucker, Alabama 36360. The Sanbourins had a son, Nicholas John, born to them in October 1972.

Matthew Jordon Zwerdling was born to the JEFFREY M. ZWERDLINGS on December 5, 1972. Mr. Zwerdling has incorporated his proctice, the address of which is 4615 W. Broad Street, Suite 311, Richmond, Va. 23230

CLASS OF 1971

Since finishing his federal clerkship last June, NICHOLAS J. DEROMA has been employed as counsel with the IBM Corporation. His new oddress is Consul C-318 2400 Virginia Ave. NW, Washington, D.C.

STANLEY M. HIRSCH has become Assistant Commanweoth's Attorney in Chesapeake, Virginia.

FRED K. MORRISON has been promoted to Major in the U.S. Army. His new address is Quarters 2437-A, Fort Lewis, Washington 98433. He was selected for inclusion in the 1972 edition of ***Outstanding Young Men of America.***

Having completed his clerkship with Judge Robert R. Merhige, Jr. of the U.S. District Court for the Eastern District of Vo., MICHAEL E. KRIS has become an associate with the D.C. law firm of Danzansky, Dickey, Tydings, Quint and Gordon. His new address is 6669 McLean Drive, McLeon, Va. 22101.

FREDERICK L. SHREVES, II has recently joined the staff of the Office of General Counsel -- Federal Maritime Commission in Washington, D.C. His new address is 11906 Duke of Bedford Court, Reston, Va. 22091.

THOMAS S. REAVELY is presently a law clerk far Justice David Harris of the Iowa Supreme Court, having already served a stint as legal counsel for the Iowa State Senate during the 1972 legislature. His new address is 404 S. Chestnut, Jefferson, Iowa 50129.

LOUIS S. SHUNTICH, presently a member of the New Jersey Bar, has been accepted ta the Graduate Division of New York University School of Law to complete an LL.M. in taxation.

CLASS OF 1972

CHARLES R. ASHMAN has become a partner in what is now the firm of Duffy, Dengenhardt and Ashman in Savannah, Georgia. He has olso been appointed Assistant District Attorney for the Eastern Judicial Circuit of Georgia, Chatham County, Recording Court, Criminal Division. His address is 130 E. 52nd Street, Savannah, Ga. 31405.

Admitted to the California Bar in December 1972, DENNIS BECK is presently Deputy District Attorney in Fresno. The Becks had o boby boy, Craig, lost November. Their address is 3222 E. Dakota No. 144, Fresno, California 93726.

WILLARD (BILL) BERGMAN of Morristown, N.J., and the former Jennifer Leigh were married on August 26, 1972. Bill was admitted to the N.J. Bar last November and is naw an associate with the firm of Schenck, Price, Smith and King in Morristown.

PETE DESLER is presently a Captain in the Judge Advocate General's Corps (Army) and is working in the Litigotion Division at the Pentagon. His address is Na. 609 Seminary Towers East, 4701 Kenmore Avenue, Alexandria, Va.

Employed with the Public Defender Association of Philadelphia, Pa. is EARLES D. LEES, JR. The Lees became the parents of Earle David Lees, III on August 25, 1972. Their new address is 601 E. Wishart St., Philadelphia, Pa. 19134.

Elsie M. POWELL'S new oddress is 7358 Shenandoah Ave., Annandale, Va. 22003. She is currently employed as Assistont Commonwealth's Attorney in Alexandria, Va.

ROBERT R. KAPLAN is now an associate of the Richmond firm of Heischler and Fleischler. His address is 11721 Wiesinger Lane, Midlothian, Va. 23113.

Admitted to the Pennsylvania Bar last fall, ROBERT L. MARKS has been appointed Law Clerk to Judge Jay W. Myers, Judge of the 26th Judiciol District, Columbio-Montour County. Bob is olso associated with the firm af Wagner and Marks and his oddress is 132 West Morket Street, Danville, Pa. 17821.

MR. AND MRS. WILLIAM M. MUSSER, III became the parents of William M. Musser, IV on July 27, 1972.

JOHN A. SCANELLI'S new address is 795 Hampshire Lane, Apt. 201, Va. Beach, Va. 23462. He is associated with the firm of Kaufman, Oberndorfer and Spainhour in Norfolk.

WILSON F. SKINNER, JR. is now associated with the Williamsburg firm of Carneal, Smith and Athey. He has moved to 409 Filmore Drive in Williamsburg.

§

THE COLONIAL LAWYER
MARSHALL-WYTHE SCHOOL OF LAW
COLLEGE OF WILLIAM AND MARY
WILLIAMSBURG, VIRGINIA 23185