

# Kings and Pawns on the Zoning Board

by P. R. HUDSON

"The resident is more concerned about whom rather than what he wishes to see next to his home"



THERE is an old Swiss proverb that proclaims: "Love your neighbour but don't pull down the fence." That just about sums up the attitude of many American residential communities to the intrusion into their traditional middle-class single-family housing reserves by would-be apartment builders and other noxious users.

In his book *The Zoning Game* Richard F. Babcock sets out the history, faults and limitations of U.S. zoning experience with wit and insight. From a field of local law which he claims is the least susceptible to academic scrutiny, the author has extracted a hidden wealth of anecdotes and case histories that will fascinate even those who are left completely cold at the mention of land use planning.

Most of the fun in the zoning game in America is to be found in the outlying residential suburbs. In 1926 the U.S. Supreme Court upheld a landmark zoning case by siding with a municipality in the reasoning that the intrusion of industry and apartments into a single-family home area constituted a nuisance. The Court said: "A nuisance may merely be the right thing in the wrong place, like a pig in the parlour instead of the barnyard." For forty years this judgment has had tremendous influence on municipal thinking, and the established principle is only now just beginning to be worn away by the cumulative pressure of land speculators, large-scale developers and cavalier entrepreneurs. In 1931 William Munro, Vice-President of the National Municipal League saw the chaotic nature of land use regulation. "Whenever a question of zoning comes up," he said, "the issue is not usually approached from the standpoint of what the city needs but of what the private owners desire and what their immediate neighbours feel disinclined to let them have." The resident of suburbia, it would appear, is more concerned about whom, rather than what, he wishes to see permitted next to his home.

An example of the suburbanite pressure to keep the single family area pure, not only from the vicious encroachment of scores of "townies" in their modest flats, but also from the harsher sins of the cities, is to be found in separate classification of motels in zoning ordinances as a specialised use. According to Mr. Babcock, illicit sex is just as rampant in hotels and "probably more detectable at inns than in motels," yet in zoning terms suburbs are unlikely to be faced with applications for hotels, may succumb to the sweet sound of "inn" with

its connotation of respectability, but will resist motels to the last ditch. Applicants now tend to apply for a "motor inn" permission, in the hope of persuading residents that the provision of accommodation for transient people will not lead to a complete moral collapse among teenagers. In cases such as this where the local residents might press for the land to be left undeveloped as an open space, lawyer Babcock has been tempted to ask at public hearings: "Well, would you prefer your daughter to run off with a picnicker?"

In *The Zoning Game* the vicissitudes of local planning boards, residents, town planners and lawyers are clearly brought out. Mr. Babcock himself is an advocate of some forms of public land use control, which he considers to be a necessary compromise between private pursuit of profit and the general welfare of the community, but he would like to see the rules of the game improved. In the introduction to his book he says that he does not wish to examine more closely the influence of taxation upon land development. He does, however, point out the considerable benefit accruing to the fortunate developer who buys early at relatively cheap prices as the result of a community decision that releases the potential value in the land. It is relevant to point out that where public land use control is tight the need for a sound land taxation policy is greatest.

There is a strong contrast between British and American administration of land use planning legislation, but the discerning and knowledgeable reader will not find it difficult to recognise similarities of situation and parallels of conflict in both countries. In America, as one lawyer put it, "the indictment in zoning, at the local level, is that it is approached with hysteria, not reason." While we in Britain may lack the hysteria, we would probably agree with one American judge who said in a planning case: "There is a lot of hanky panky that we suspect but cannot find in the record."

We might also remember with benefit the following quotation from another judge: "As a silk purse cannot be made out of a sow's ear, so also a noisy dust-laden restless community does not become a residential tree shaded quiet haven through the instrumentality of a zoning ordinance. A community is not like a petrified forest indifferent to time, climate and world events. It is in the hands of the architects who shape it . . ."

With a soundly constructed tax system something better can be achieved.