

SOME LESSONS FOR GROWTH MANAGERS

Summary of remarks of John McClaughry before Governor's Commission on Growth Management, Lyndon State College, October 21, 1987

Lesson #1. LEARN THE LESSON OF THE LAND USE BATTLE OF 1973-75.

Vermonters then saw the Salmon Land Use Plan as an assault on the right of freehold property ownership, dishonestly disguised in other clothing. Progressively weaker versions of the Plan were defeated in the Legislature three times. One by one, some of the Plan's leading promoters (Jonathan Brownell, Arthur Gibb, Richard Snelling) turned against the whole idea. The requirement that there be a state land use plan was quietly repealed by the legislature in 1986.

Citation: J. McClaughry, "The New Feudalism", 5 Environmental Law 675 (1975).

Lesson #2. THERE IS A GOOD REASON WHY THE HUMAN RIGHT OF PRIVATE PROPERTY OWNERSHIP IS GUARANTEED BY THE VERMONT AND U.S. CONSTITUTIONS.

The drafters of those documents well understood that without freehold property, widely distributed, neither a free economic system nor a republican form of government could be assured.

Citation: Vermont Constitution, Ch. 1, Articles 1-2. F. Coker, ed., DEMOCRACY, LIBERTY AND PROPERTY (NY: Macmillan, 1942).

Lesson #3. THE RIGHT OF PROPERTY IS LIMITED BY THE ANCIENT MAXIM, NO ONE MAY USE HIS OR HER PROPERTY SO AS TO INJURE THE RIGHTS OF ANOTHER. This ancient Anglo Saxon principle justifies governmental action to prevent pollution or preempt future nuisance actions, even if the use right of property is diminished.

Lesson #4. BEYOND IMPLEMENTATION OF THAT MAXIM, THE IDEA OF FREEHOLD PROPERTY BEGINS TO SHADE INTO "SOCIAL PROPERTY".

At some point, government regulation and control of the rights to use, bequeath and exchange privately-owned land becomes a regulatory taking, and the property becomes "social property" instead of freehold property.

Citation: J. McClaughry, "Farmers, Freedom and Feudalism: How to Avoid the Coming Serfdom". 21 S.D. Law Rev. 486 (1976).

Lesson #5. WHEN THE PUBLIC TAKES, IT MUST IN FAIRNESS PAY.

When the public, through the government, decides that land should be used differently, the economic cost of that decision should be visited upon the public, not upon the hapless landowner. In its simplest form, the government should buy such parcels, attach suitable covenants restricting use, and auction the restricted parcels back into the private market, absorbing the loss. Government purchase of development rights is an attractive alternative. (Cf. Suffolk County, L.I.)

Citation: L. Berger, "A Policy Analysis of the Taking Problem", 49 NYU Law Rev. 165 (1974); R. Ellickson, "Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls", 40 U. of Chicago Law Rev. 681 (1973). J. McClaughry, "Rural Land Banking: The Canadian Experience" 7 N.C. Central Law J. 73 (1975).

Lesson #6. PUBLIC INVESTMENT IS A KEY INGREDIENT OF GROWTH.

Where the public chooses to locate and extend its water and sewer lines, electric and telephone lines, schools, highways, and fire and police services, has enormous influence on the form of growth. Vermont state government has never been able to exert effective influence through coordinated state-local public investment planning.

Lesson #7. PEOPLE NEED SOMEPLACE TO LIVE.

In particular, young Vermont working people need a place to live and raise their families. State government has very little direct influence on this demand for housing. Government can, however, drastically restrict the supply of housing by making it difficult for builders to build. This means that housing will be priced beyond the reach of many income groups, and older housing will not become available to young working families. Then the cry goes up for "affordable housing", rent control, and other government techniques for subsidizing housing costs or penalizing rental housing owners. Unfortunately, new entrants into the housing market have no political voice. Political power is held by those who have good housing and do not want any more of it built.

Lesson #8. REGIONAL LAND USE CONTROLS OFFER FEW ADVANTAGES TO CENTRALIZED STATE CONTROLS.

Local people will view regional controls, however meritorious they may be in dealing with an effective environmental or market areas, as no different from state controls because they will have no effective way of influencing the controls or controllers.

Lesson #9. PEOPLE DON'T LIKE UNACCOUNTABLE BUREAUCRATS.

If there are to be land use controls beyond the local government level, the persons enforcing such controls ought to be accountable directly to the voters through election.

Lesson #10. THERE ARE MANY SOPHISTICATED WAYS IN WHICH GOVERNMENT CAN GUIDE GROWTH WITHOUT REPLACING FREEHOLD PROPERTY WITH SOCIAL PROPERTY. See the above citations, particularly McClaughry, "Farmers, Freedom and Federalism." Any new scheme which threatens freehold property will meet the same buzzsaw of opposition as the Salmon Land Use Plan. By contrast, a plan which respects freehold ownership could command broad support.