ALI-ABA Course of Study
Land Use Institute:
Planning, Regulation, Litigation,
Eminent Domain, and Compensation

August 25 - 28, 2010
Santa Fe, New Mexico

Legacy Presentation:
"The Genesis of The Zoning Game" by Richard F. Babcock

Submitted by

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By Richard F. Babcock

As a result of registrants’ suggestions, an annual feature of the LUI is now a video of a significant presentation of a now-deceased land use “superstar.” This year's presentation is in response to specific inquiries by registrants and faculty alike to show the presentation by Richard Babcock on the early 1960s correspondence, meetings, discussions, and financial support that led to the preparation of The Zoning Game (1966).

Richard F. Babcock, widely regarded as the dean of American planning lawyers, passed away on September 13, 1993 at the age of 76. He was born November 3, 1917. A prolific author and lecturer, he is perhaps best remembered for his analysis of local land-use practice, The Zoning Game.

However, for forty years, the name Richard Babcock was synonymous with national land-use projects, from the American Law Institute’s A Model Land Development Code whose advisory committee he chaired, to the path-breaking HUD report on American cities issued by Secretary George Romney. Zoning in dozens of cities and counties throughout the United States is better for his deft drafting touch. Dozens of lawyer/planners left his tutelage in the firm that for many years bore his name to make their own marks in government service, private practice, and teaching. Babcock was a graduate of Dartmouth College (A.B. magna cum laude, Phi Beta Kappa, 1940), the University of Chicago Law School (J.D., cum laude, Order of Coif, 1946), and the University of Chicago School of Business (M.B.A., 1950). He was a member of the Illinois Bar and the American Institute of Certified Planners.

The 2010 Legacy presentation was given on June 13, 1984 in Cambridge, Massachusetts at the seminar, “The Zoning Game—Revisited.” This seminar was sponsored by the Lincoln Institute of Land Policy and the Massachusetts Institute of Technology Center for Real Estate Development, and was the first public discussion of the results of more that two years of research and analysis that would result in the 1985 book, The Zoning Game—Revisited. Babcock opened the seminar with a review of how the first book came to be written, and it is those remarks 26 years ago that is this year’s Legacy Presentation.

Introduction and Commentary by Frank Schnidman
Commentary

Richard F. Babcock, widely regarded as the dean of American planning lawyers, passed away September 13, 1993. A prolific author and lecturer, Dick Babcock is perhaps best remembered for his quintessential analysis of local land use practice, The Zoning Game (1966), upon which a generation of planners and land use lawyers cut their teeth. He followed with many other important works, including The Zoning Game Revisited (1985). For 40 years, the name Richard Babcock was synonymous with national land use projects, from the American Law Institute’s “A Model Land Development Code,” whose advisory committee he chaired, to the pathbreaking HUD report on American cities issued by Secretary George Romney. Dozens of lawyer-planners left his tutelage in the firm that bore his name and made their own marks in government service, private practice, and teaching.

Dick Babcock was a graduate of Dartmouth College (A.B. magna cum laude, Phi Beta Kappa, 1940); the University of Chicago Law School (J.D., cum laude, Order of the Coif, 1946); and the University of Chicago School of Business (M.B.A., 1950). He was a member of the Illinois Bar and the American Institute of Certified Planners, and president of the American Planning Association from 1971 to 1972. While defending the usefulness of zoning, he criticized its inept administration and mindless enforcement. Babcock wrote: “I believe that public regulation of private use of land is worth reforming—saving, if you please. There is little evidence in the history of land development in America that the private decision-maker, left to his own devices, can be trusted to act in the public interest.” Babcock ranks among the rarified leaders of the 20th century whose imprint on the field of planning and land use law is undisputed. We have asked three of his former colleagues and friends to reminisce about Babcock and his contributions to the planners and land use lawyers of the 21st century.

Richard F. Babcock: The Zoning Game’s Troubadour

The Early Years

Fred Bosselman, FAICP

Dick Babcock’s interest in planning and zoning was first exhibited during his University of Chicago law school years in the early 1940s. The optimism triggered by the Euclid decision had given way to sharp declines in land values, producing a decade of minimal building activity. Local governments’ big plans of the 1920s were replaced by a hope that someone would build something somewhere—anywhere.

Even as a law student, he knew that to discover how zoning really worked he would need to dig under the plans and ordinances and find out what was actually happening in the field. Empirical research of this type was not yet common in law schools, but was encouraged by the growing interest in “legal realism.” His law review note, “Amortization of Property Uses Not Conforming to Zoning Regulations,” was the result of extensive interviews and examination of local records.

This insistence on digging out the real facts became a hallmark of Babcock’s work throughout his career. Although he carefully read and analyzed the legal materials, he was never satisfied until he was sure he knew what was happening on the ground. It was this careful reporting of actual events that helped give wide appeal to his later writing.

Another characteristic manifested in his first writing was an ability to analyze issues from a broad perspective. The title of his note sounded like it was a narrow analysis of a particular legal issue—the kind of topic that law students were usually encouraged to undertake. But in fact, the note undertook a comprehensive analysis of the reasons why zoning was not working the way its proponents had anticipated. He criticized “overzoning a city for commercial and industrial uses,” “numerous [amendments] that affect a few small lots,” and the rampant grant of “use variances,” and he backed up the criticism with careful documentation.

Fred Bosselman teaches at Chicago-Kent College of Law. He was an associate and partner of Richard Babcock from 1959 to 1983 and is a reporter for Planning & Environmental Law.