

April 1980

## Juergensmeyer and Wadley: Zoning Attacks and Defenses: The Law in Florida

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### Recommended Citation

Robert W. Martin, *Juergensmeyer and Wadley: Zoning Attacks and Defenses: The Law in Florida*, 32 Fla. L. Rev. 600 (1980).

Available at: <https://scholarship.law.ufl.edu/flr/vol32/iss3/9>

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ZONING: THE LAW IN FLORIDA. By Julian Conrad Juergensmeyer\* & James Bryce Wadley.\*\* Norcross, Georgia: The Harrison Company. 1980. Pp. xxiii, 402, index; 3 vol. \$59.85.

*Reviewed by Robert W. Martin, Jr.\*\*\**

In the preface to their very ambitious three volume treatise on zoning, authors Julian C. Juergensmeyer and James B. Wadley state "[b]oth reading and writing a zoning book requires considerable courage."<sup>1</sup> If courage on the part of the authors is a necessary ingredient of a first-rate book on zoning, Juergensmeyer and Wadley have no need to visit the Wizard of Oz. Their work is destined to become a standard reference tool in the law libraries of all Florida lawyers who work in the areas of zoning or land use planning.<sup>2</sup>

As for the courage required of the readers of these volumes, it requires more courage to practice zoning law in Florida and not read portions of the treatise than to do so. After reviewing these three volumes, it does not seem hyperbolic to compare them with Professor Kenneth Culp Davis' multi-volume work on administrative law<sup>3</sup> in terms of coverage and readability. The analogy is also very appropriate because an attorney doing research in administrative law or zoning and land use planning law, would not want to consult only Davis or only Juergensmeyer and Wadley, as the case may be. Administrative law and zoning and land use planning law change too rapidly for that to be a comfortable choice. However, the Juergensmeyer and Wadley treatise shares that same quality of timelessness possessed by the Davis treatise.

In effect, Juergensmeyer and Wadley have combined the best of both worlds. The extensive footnotes to current cases and secondary material provide a currency not easily achieved in a book on zoning. If Juergensmeyer and Wadley follow the lead of their other works,<sup>4</sup> they will continuously update their sources and thereby insure the continued currency of their treatise. At the same time, no matter how many new cases are decided and no matter what

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1. Preface to 1 J. JUERGENSMEYER & J. WADLEY, ZONING: THE LAW IN FLORIDA (1980) [hereinafter cited as ZONING: THE LAW IN FLORIDA].

2. The authors state that "'zoning' and 'land use control' are not synonymous. . . . Nonetheless, the terms zoning and land use control are sometimes used interchangeably—especially in those Florida jurisdictions whose only or principal land use control device is zoning. Even though it must be granted that the definitional boundaries between zoning and other land use planning and control devices are becoming less fixed in Florida, the separation is essential since on many important points 'zoning' in Florida is governed by different judicial case law principles and attitudes and by different Florida statutory law than other land use devices." ZONING: THE LAW IN FLORIDA, *supra* note 1, §1.1. (footnotes omitted).

3. K. DAVIS, ADMINISTRATIVE LAW TREATISE (2d ed. 1978).

4. J. JUERGENSMEYER & J. WADLEY, FLORIDA LAND USE RESTRICTIONS (1976) [hereinafter cited as FLORIDA LAND USE RESTRICTIONS].

new approaches are taken to various zoning and land use issues, Juergensmeyer and Wadley provide an in-depth discussion of the basic issues and problems that one must understand in order to practice in that area of the law.

A brief review of its contents will illustrate the comprehensive coverage achieved by the Juergensmeyer and Wadley treatise. Volume 1 is entitled *Zoning: Attacks and Defenses* and contains chapters on such topics as "Defending Zoning Ordinances," "The Fairly Debatable Rule," "Attacking Zoning Ordinances," "Unlawful Delegation of Legislative Authority," and "Non-conformity to Comprehensive Plans." The latter two topics are of great interest in Florida<sup>5</sup> and the authors do a superb job explaining that material.

The chapter on "The Fairly Debatable Rule" is especially well written. The authors explain with much clarity the relationship between the "fairly debatable rule" and allocation of the burden of proof when the validity of a zoning ordinance is challenged. That is not an especially easy task given the language in some judicial decisions of various Florida courts, especially the Florida supreme court in *Burritt v. Harris*.<sup>6</sup>

Volume 2 is entitled *Zoning: Execution of Powers; Relief and Appeals* and contains chapters on such practical topics as "Zoning Ordinance Administration and Flexibility" and "Appeals Procedures and Tactics." There is also some material on "Zoning Trends" that includes a brief discussion of the very important concepts of "Planned Unit Developments" and "Transferable Development Rights" [TDRs].

Although the use of TDRs has attracted much attention in places like New York City,<sup>7</sup> they have not received much attention or use in Florida. Therefore, the authors' decision that extensive discussion of TDRs was beyond the scope of this treatise on zoning is understandable. In addition, the authors correctly point out that they have discussed the concept in their other work that was not limited to zoning.<sup>8</sup> However, the relationship between zoning and the use of TDRs can only come closer together. For example, TDRs can often be used in conjunction with zoning when such zoning has as its aim the preservation of farmland or environmentally sensitive areas. A more extensive discussion of TDRs would therefore be well placed in future supplements to the treatise.

Finally, volume 3 entitled *Zoning: Specific Uses* contains a comprehensive review of sixty different specific uses ranging from "Adult Entertainment" to "Marinas" to "Water Supply Facilities." Each of the sixty sections that discusses a specific use contains extensive footnotes to appropriate judicial decisions and other secondary authority that will prove very helpful to the researcher. It is in these sixty sections that the scope of the research done by Juergensmeyer and Wadley is most apparent. For example, in the section that discusses hotels and motels, the authors even discuss the situation where one hotel sought to prevent the construction of another hotel "which would have the effect of

5. See *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978) (unlawful delegation of legislative authority); FLA. STAT. §§163.3161-.3211 (1977) (nonconformity to comprehensive plans).

6. 172 So. 2d 820 (Fla. 1965).

7. See generally *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

8. See 2 FLORIDA LAND USE RESTRICTIONS, *supra* note 3, at §§18.01-.09.

shading the swimming pool, cabana and sunbathing area of the former hotel for much of the afternoon during winter months.”<sup>9</sup> The authors provide extensive citations and the very appropriate and timely suggestion that the case “has significance in the area of solar energy.”<sup>10</sup>

The only criticism of the work that this reviewer would offer is that the proofreading leaves a lot to be desired. For example, at the bottom of page 38 in volume 1, the remaining part of the sentence that should appear at the top of page 39 does not appear until line 4 on page 39. There are other similar typographical errors.<sup>11</sup> A certain number of such errors are to be expected and tolerated, but the acceptable number is exceeded in this treatise. It is a shame that it is so because the typographical errors detract from an otherwise superb work. Given the level of research and writing and the great effort expended by the authors to be comprehensive in their coverage, it is difficult to understand why a little more effort was not expended by the authors and/or the publisher to correct these annoyances. It should be noted, however, that the typographical errors do not interfere with the substantive correctness of the work and because the typographical errors are generally apparent on their face, they pose no real substantive problem to the researcher. They are merely an annoyance that should not and need not exist. Nevertheless, Juergensmeyer and Wadley have already achieved a high level of recognition for their other work in the zoning and land use planning areas<sup>12</sup> and this treatise will certainly enhance their reputations.

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9. 3 ZONING: THE LAW IN FLORIDA, *supra* note 1, at §3.28.

10. *Id.*

11. *See, e.g.*, vol. 1, p. 6 (Second District Court of Appeal is referred to as the “Second Circuit Court of Appeals”); vol. 1, p. 7 n.2 (reference should be to the Florida Constitution and not to the Florida Statutes); vol. 1, p. 7 n.18 (citation to the article should be 53 Fla. B. J. 173 (1979)).

12. *See* FLORIDA LAND USE RESTRICTIONS, *supra* note 3.