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Foreword: 40th Anniversary of The Quiet Revolution in Zoning and Land Use Regulation, 45 J. Marshall L. Rev. iii (2012)

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12TH KRATOVIL CONFERENCE ON REAL ESTATE LAW AND PRACTICE

FOREWORD: 40TH ANNIVERSARY OF THE QUIET REVOLUTION IN ZONING AND LAND USE REGULATION

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In this Real Estate Law and Practice symposium issue, the John Marshall Law Review publishes articles by speakers at the 12th Kratovil Conference on Real Estate Law and Practice. The Center for Real Estate Law chose to focus on those important public policy proposals made forty years ago. The Center expected to examine what they were, how they have been implemented, and what they mean for the future of real estate ownership and development. The 40th Anniversary of The Quiet Revolution in Zoning and Land Use Regulation celebrates the work of two scholars at the beginning of their long and well-respected careers in Land Use. In 1971, Fred Bosselman¹ and David Callies² were young associates at the Ross & Hardies law firm in Chicago when they took on the charge of the President's Council on Environmental Quality to author a book that reviewed national developments whereby the control of land use was returned to a state or regional level, largely at the expense of local zoning. In *THE QUIET REVOLUTION IN LAND USE CONTROL*³ Bosselman and Callies reviewed in great detail the innovative land use laws in nine states that reflected a rejection of the ancient regime and that were the first examples of the Quiet Revolution. Immensely influential (several thousand copies were purchased and distributed) in stimulating creative thinking by planners, lawyers, and public officials to solve difficult land use planning issues, the

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1. Fred Bosselman is Professor of Law Emeritus at IIT Chicago-Kent College of Law and Distinguished Adjunct Professor at John Marshall Law School.

2. David Callies is Kudo Professor of Law, University of Hawaii at Manoa, William S. Richardson School of Law.

3. FRED BOSSELMAN & DAVID CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (President's Council on Environmental Quality, 1971).

book also quickly became a fixture of courses of study in many university planning and law programs, as well as a handbook and sourcebook for state and local officials. Dozens of articles have been written about it, some recently. It remains a reading source in many courses taught today.

The Center for Real Estate Law presented an extraordinary conference. The Kratovil Conferences on Real Estate Law and Practice regularly bring together academics, nationally known practitioners, and industry professionals to reflect on significant issues that the real estate community faces and will continue to consider. As in past years, the 12th Kratovil Conference responded to the importance of commercial real estate as an industry and to the significance of the law in shaping aspects of it which may have an impact on individuals as well as on business players. The conference reexamined the national debate and the legislation it produced. In particular, the conference examined the likely challenges for those involved in the real estate industry.

The Conference began with comments by David Callies who set the stage for Panel I on “Quiet Revolution Country: A Selective Retrospective.” Panelists who have contributed articles to this symposium issue include John Banta, counsel, NYS Adirondack Park Agency, who reviewed the “The Adirondack Park Land Use and Development Plan and Vermont’s Act 250 After Forty Years”; Nancy Stroud, partner at the Florida firm of Lewis Stroud & Deutsch, P.L., who traced “A History and New Turns in Florida’s Growth Management Reform” and Edward J. Sullivan of Garvey Schubert Barer in Portland, Oregon, whose article “The Quiet Revolution Goes West: The Oregon Planning Program 1961-2011” provides a historical report of developments there. Robert Einsweiler, former director of planning of the Metropolitan Planning Commission who reviewed the work of the Metropolitan Council of Minneapolis-Saint Paul, also served on this panel.

Susan Connor, professor at The John Marshall Law School, served as moderator for Panel II that reflected on the influence of THE QUIET REVOLUTION on Chicago and the Midwest Region. Jon DeVries, director of the Marshall Bennett Institute of Real Estate at Roosevelt University, William Anaya, partner at Arnstein & Lehr, LLP, and Steven Elrod, partner and chair of the National Land Use team of Holland & Knight LLP, reviewed the Chicago Region as a case study with THE QUIET REVOLUTION as background. They concluded that Chicago has had only limited success, a conclusion that undercuts the promise of THE QUIET REVOLUTION forty years ago.

Fred Bosselman provided closing remarks and served as moderator of Panel III: Looking Forward: The Quiet Revolution – Lessons and Progeny. Christopher J. Duerksen, managing director, Clarion Associates LLC (Denver), considered the impact

of THE QUIET REVOLUTION on sustainable development regulations. Dwight Merriman, partner Robinson & Cole LLP (Hartford Connecticut), evaluated the significance of the tremendous increase in homeowner associations on THE QUIET REVOLUTION goals. Sara Bronin, associate professor and co-director, Center for Energy and Environmental Law, University of Connecticut School of Law, analyzed interjurisdictional issues in siting energy infrastructure in response to THE QUIET REVOLUTION. Daniel Mandelker, Howard A. Stamper Professor of Law, Washington University School of Law, provided recommendations for implementing Growth Management Programs in his presentation and his symposium article, "Implementing State Growth Management Programs: Alternatives and Recommendations." Finally, Patricia E. Salkin, Raymond and Ella Smith Distinguished Professor of Law and associate dean, director of the Government Law Center at Albany Law School, shares her thoughts in both her presentation and her symposium article, "The Quiet Revolution and Federalism: Into the Future."

No group of presenters of this prominence can be gathered to a conference without exceptional funding support. The 12th Kratovil Conference benefitted from significant donations: Clarion New Media provided professional video graphing of the entire conference; Lambda Alpha International Land Economics Foundation also provided funding at the platinum level. Gold sponsors include Alvin H. Baum Family Fund, Chicago Title Insurance Company and Holland & Knight LLP. Silver sponsors include Clarion Associates, LLC, and Hoogendoorn & Talbot LLP. Bronze sponsors include Firstgate Insurance Management, Victoria and Robert Berghel, Margaret Gallagher, and William K. Reilly. Other sponsors include Janet Johnson, partner at Schiff Hardin LLP, and Gregory Spitzer, partner at Paul Hastings. These donors have provided support for the conference day, the travel expenses of speakers, and the dissemination of this symposium issue. The Center is grateful for such focused generosity.

Finally, and fittingly, the articles by David Callies and Fred Bosselman demonstrate their continuing interest and scholarship on the precepts of THE QUIET REVOLUTION. Callies, who reminds us that the first chapter of the 1971 book dealt with Hawaii, where "it all began," provides us with a very detailed and thorough report of land use regulation as it developed to the present in "It All Began in Hawai'i." His article is both historical and organized around the policy objectives that this state's land use regulation supports. Although he concludes that "Hawai's's system of broadly deciding what land should be developed and what should not has been effective in preserving open land," Callies also recognizes that there have been problems in implementation of the nation's

only true state land use plan.

Fred Bosselman, affected by his own scholarly focus on energy law over the past forty years, concludes in his article that globalization may have been the reason that no national land use policy ever developed. He provides a detailed glimpse at the two versions of the National Land Use Policy Act proposed by President Nixon and Senator Henry Jackson in the first years of the 1970s. By 1973, when Nixon withdrew his support for such legislation (in the hope he would get support from conservative senators to ward off impeachment), the Organization of Petroleum Exporting Countries ("OPEC") "sets American Land Use Policy" according to Bosselman. Oil, and energy more broadly, became the focus of American public policy. It continues even today in the efforts to develop energy security with a reliable, self-sufficient domestic source. Because of the tensions "all levels of American government" have in coping with "foreign governments' policies," Bosselman does not sound as hopeful as he and Callies had been forty years ago that a national land use policy would be successful in the modern world.