

The Real Story Behind the Standard Planning and Zoning Acts of the 1920s

By Ruth Knack, Stuart Meck, AICP,
and Israel Stollman, AICP

When we recall Herbert Hoover today, we think of the president who did not do enough, fast enough, to head off the Great Depression. But Hoover cut a far different figure as Secretary of Commerce under Presidents Warren G. Harding and Calvin Coolidge in the 1920s. He was, in many respects, a progressive who hoped to reform society by reforming the operations of government. To some extent, in fact, the Commerce Department under Hoover could be said to be the first activist federal agency—presaging the New Deal vigor of the administration of President Franklin D. Roosevelt. Of particular importance to land-use planners is the fact that Hoover took an active role in shaping the statutes that govern American city planning.

Hoover came to Commerce with a distinguished resume, first as a mining engineer and then as director of the post-World War I European relief effort. At Commerce, he said, his aim was nothing short of total reorganization of the department to “make it a significant factor in the governmental process,” in the words of historian Robert K. Murray.¹

There was, of course, a dual motive to Hoover’s activities at Commerce. He was equally interested in helping business as in helping the less well off. One arena that he saw as particularly fruitful for advancing both causes was housing. See H. Hoover, *The Memoirs of Herbert Hoover: The Cabinet and the Presidency, 1920-1933*, at 92 (1952).

To that end, he created the Division of Building and Housing within the National Bureau of Standards and appointed the able John Gries, a housing specialist at the Harvard University business school, to head it. Hoover instructed Gries to consult with others in the housing field and come up with ways to increase the numbers of homeowners, improve

the mortgage financing system, standardize building materials, and—most significant for us today—encourage zoning to protect homeowners from commercial and industrial intrusions.

Hoover himself started—and took a personal interest in—the Better Homes in America movement. This was a volunteer effort, through some 5,000 local committees, to spread the gospel of homeownership by, among other things, sponsoring competitions for good small houses.

Planning was one of Hoover’s early interests. “The enormous losses in human happiness and in money, which have resulted from lack of city plans which take into account the conditions of modern life, need little proof,” he wrote early in his administration. “The lack of adequate open spaces, of playgrounds and parks, the congestion of streets, the misery of tenement life and its repercussions upon each new generation, are an untold charge against our American life. Our cities do not produce their full contribution to the sinews of American life and national character. The moral and social issues can only be solved by a new conception of city building,” Hoover said.²

To arrive at that conception, he appointed one committee to write a standard building code and another to draft model planning and zoning statutes that could be adopted by the states. This latter group was known formally as the Advisory Committee on City Planning and Zoning (ACCPZ).³

COMMITTEE MEMBERS

Gries took charge of appointments to the committee. He was under considerable pressure to make the group representative of the various interests that had a stake in the outcome. They included the U.S. Chamber of Commerce, the National Association of Real Estate Boards, the American Civic Association, the National Municipal League, the National Housing Association, and the National Conference on City Planning.

Letters seeking prospective members went out under Hoover’s name. For instance, on July 28, 1921, Hoover wrote to Joseph H. Defrees, the president of the U.S. Chamber of Commerce, asking him to appoint a representative to the committee “to consider the question of zones. I believe,” he wrote, “that such a committee could have considerable influence by outlining some definite ideas as to principles upon which municipalities should take action on this important point.”

One of the committee’s big names was Frederick Law Olmsted, the landscape architect who had just stepped down as chair of the National Conference on City Planning. Olmsted is “probably the most eminent city planner in the country and is said to work very well on committees,” wrote Gries

Ruth Knack is the executive editor of *Planning*, the American Planning Association’s monthly magazine; Stuart Meck, AICP, is the principal investigator of APA’s GROWING SMARTSM project; Israel Stollman, AICP, is the executive director emeritus of APA.

This article is a version of a paper originally presented at the conference of the Society for American City and Regional Planning History in Knoxville, Tennessee, in October 1995.

1. Robert K. Murray, *Herbert Hoover and the Harding Cabinet*, in HERBERT HOOVER AS SECRETARY OF COMMERCE: STUDIES IN NEW ERA THOUGHT AND PRACTICE, 21 (E. Hawley ed. 1974). The book is a collection of papers presented in 1974 as part of the Herbert Hoover Centennial Seminars at the Herbert Hoover Presidential Library in West Branch, Iowa. The library is the repository of Hoover’s papers, including those from his tenure as Secretary of Commerce from 1921 to 1928. The authors thank senior archivist Dwight Miller for his help in securing documents relating to the advisory committee. The memos cited in the text from John Gries to Herbert Hoover are from the library.

2. See Hoover, *supra*, at 94. See also R. WILBUR AND A. HYDE, THE HOOVER POLICIES 82-87 (1937), and THE STATE PAPERS AND OTHER PUBLIC WRITINGS OF HERBERT HOOVER, (W. Myers ed. 1934) (volume one covers March 4, 1929-Oct.1, 1931).

3. For the purposes of this article, we are referring to the committee that produced the model acts as the ACCPZ. When the committee was first formed, however, it was called Advisory Committee on Zoning. As the committee went on, it was renamed the Advisory Committee on City Planning and Zoning. It is unclear from our research whether a subcommittee of the ACCPZ drafted the Standard City Planning Enabling Act prior to its consideration by the whole ACCPZ.

in a memo to Hoover dated September 11, 1921—in the process telling us something about how Olmsted was perceived. Other committee members were sanitary engineer Charles B. Ball; real estate expert Irving B. Hiatt; housing consultant John Ihlder; consulting engineer Morris Knowles; Nelson P. Lewis, chief engineer of the New York Board of Estimate; conservationist J. Horace McFarland; and housing expert Lawrence Veiller. Two notable lawyers on the committee were Edward M. Bassett of New York, and later, after work on the model zoning act was mostly completed, Alfred Bettman of Cincinnati.

Mr. Zoning

Bassett was already Mr. Zoning. Gries wrote of him in a memo to Hoover, “he is thoroughly familiar with the legal and political aspects of zoning” and “should be a great help in giving practical form to the work of the Committee.” An attorney in private practice and former one-term congressman, Bassett was extremely active in civic affairs in New York City.

In his autobiography, Bassett described how he became hooked on planning on a trip to Germany in 1908. In Dusseldorf, he visited a town planning exhibition arranged by Werner Hegemann. There he saw models and illustrations of improved streets and buildings—the products of city planners. “I was taken off my feet,” he said, “by the impressions given me by these new fields of work.”⁴

Back in New York, he joined the National Conference on City Planning. “I realized that I had found the kind of work that interested me,” he wrote, “and I foresaw that the whole subject was almost unexplored in this country and that it offered a vast field of progressive legislation.” See *Autobiography of Edward Bassett*, at 116.

In the years that followed, Bassett served on the New York City Public Service Commission and helped form the first planning commission in Brooklyn, where he lived.

His big concern, he wrote in his autobiography, was the congestion that would be caused by the new subways that were being planned. He was also concerned about the skyscrapers that were going up in Manhattan with no regulations in place to control them. “They could be built to any height, cover the entire lot and no space had to be left for light and air,” he wrote. When the Board of Estimate and Apportionment, the city’s governing body, appointed a commission to propose regulations for limiting the height and size of buildings in 1913, Bassett was asked to chair it. The report produced by the commission marked the beginning of comprehensive zoning in the U.S., he said later with no little modesty. “For 30 years,” Bassett wrote in his autobiography, “my work outside of my regular law practice has been the prevention of congestion. My aim has been the distribution of light and air—openness—whether in residences, stores, offices or industries.” *Id.* at 133.

After New York City adopted its zoning plan in 1916, Bassett was hired as counsel to the Zoning Committee of the City of New York, the follow-up group created to implement the plan. Part of his job was to spread the word—which he

did by traveling to every state in the country between 1917 and 1927.⁵

THE STANDARD ZONING ACT

Several states had already adopted zoning enabling acts, and decisions concerning them were beginning to surface in state courts. In addition, some municipalities had gone ahead and adopted their own zoning codes, without benefit of enabling statutes. These activities gave a sense of urgency to drafting the model zoning act, perhaps as a way of creating a national framework that could survive scrutiny when the constitutionality of zoning came before state and federal courts. That was already beginning to occur as the ACCPZ began its work.

The ACCPZ formed a subcommittee on “laws and ordinances” to draft the zoning enabling act. This group included Bassett; Morris Knowles of the U.S. Chamber of Commerce; Nelson Lewis of the National Municipal League; and Lawrence Veiller, the representative of the National Housing Association.⁶

It was up to Bassett to consolidate the different viewpoints of the larger ACCPZ, particularly those who wanted all zoning changes to be referred to the city planning commission for an advisory opinion. Bassett resisted that. On the whole, in fact, he tended to resist any changes that would compromise a local government’s authority to establish its own procedures. He really didn’t want to check local discretion in any way.

Bassett’s papers contain what looks to be the two-and-a-half-page first draft of the standard zoning enabling act, dated December 15, 1921. It was titled “An act to provide for the establishment in cities and incorporated villages of districts within which the use of land and structures; the height, area, bulk and location of buildings, the sizes of courts and yards, the portions of lot to be built upon and the density of population may be regulated by ordinance, and to provide for the administering of the act.”

This draft had three sections—a grant of authority section, a procedures for adoption section, and a third section left incomplete except for a notation that “provision should be made for a board of adjustment.”

In January 1922, the subcommittee produced a more detailed second draft, apparently the work of Lawrence Veiller.

5. Both Bassett and Bettman served as president of the National Conference on City Planning. In his autobiography, at 128-29, Bassett also notes that he was at the first meeting of the group convened by the Russell Sage Foundation in 1922 to produce a Regional Plan of New York and Its Environs. It was about then, he wrote, that “the entire subject of community land planning began to arrange itself in my mind.” For more on Bettman, see L.C. Gerckens’s essay, *Bettman of Cincinnati*, in *THE AMERICAN PLANNER: BIOGRAPHIES AND RECOLLECTIONS*, 120-148 (D. Krueckeberg ed. 1983). The same volume includes a biographical essay on Bassett, by Krueckeberg at 100-103. The papers of Alfred Bettman are in the archives of the Blegen Library at the University of Cincinnati.

6. The committee’s work began with a survey of existing laws. On November 19, 1921, for instance, Gries wrote to the city clerk of Berkeley, California, asking for a copy of its zoning ordinance. It “may interest you to know,” Gries wrote to Hoover on December 10, “we have on hand photostat copies of the present acts in twenty-two states.” He added, “We understand this is the most complete collection of the kind in assembled form although there are probably a number of law libraries from which the material could be dug out.”

4. See *AUTOBIOGRAPHY OF EDWARD M. BASSETT* 116 (1939). The Bassett papers are in the Division of Rare and Manuscript Collections of the Cornell University Library in Ithaca, New York. The authors thank librarian Herbert Finch for his help in obtaining relevant materials.

It had eight sections: grant of power; administrative organization; methods of procedure; adoption of the scheme; changes in the scheme; remedies; exceptions; miscellaneous provisions.

In a third draft, dated February 10, 1922, the organization changed once more. This time the sections were titled: grant of power; districts; purposes in view; method of procedure; changes; zoning commission; remedies.

"In Accordance With a Comprehensive Plan"

It was in the third draft—by now, the document had grown to 21 pages and 47 footnotes—that important language appeared for the first time. That was that "such [zoning] regulations shall be made in accordance with a well-considered plan." This was also the first appearance of the term "zoning commission" to describe the advisory body appointed to recommend the initial zoning ordinance and map to the legislative body.

Planning consultant Harland Bartholomew, one of the draft's reviewers, recommended at this point that the phrase "well-considered plan" be changed to "comprehensive city plan." Bassett responded by scratching out the more innocuous term and penciling in "comprehensive"—leaving out "city." This modification should be familiar to all planners used to obeying the rule that zoning should be done "in accordance with a comprehensive plan."

Bartholomew also objected to the line that read, "Where a city plan commission already exists, it may be appointed as the Zoning Commission." He urged that it be changed to read "shall be appointed." "Zoning is an essential part of the city plan," he explained, "and ought never to be considered separately."⁷

The semifinal version, down to 17 pages, was released by the Commerce Department on September 15, 1922. It was called *A Standard State Zoning Enabling Act Under Which Municipalities Can Adopt Zoning Regulations* (SZA). Several thousand copies were sent out. "A considerable demand for the standard act," Gries wrote Hoover on September 23, "has come from Iowa, Kansas, South Carolina and Connecticut, where zoning enabling acts are in preparation, and probably will be introduced in the coming legislature."⁸

The new enabling act had nine sections. It included a grant of power, a provision that the legislative body could divide the local government's territory into districts, a statement of purpose for the zoning regulations, and procedures for establishing and amending those regulations. The temporary zoning commission was authorized to recommend district boundaries along with appropriate regu-

7. Harland Bartholomew's comments appear in an undated memorandum ("Comments by Zoners Arranged by Sections") in the Cornell University collection. The memo appears to have been assembled by Commerce Department staff, sometime in 1922, as a consolidation of comments on the initial drafts of the zoning enabling act. Some committee members wanted to change section 5 of the draft act to require all zoning changes to be referred to a city plan commission, if such a commission existed. The change was not made, however.

8. The department sent out 1,000 copies to its mailing list. The Illinois Municipal League requested 1,000 copies, and Donald D. Goss, acting executive secretary of the National Association of Real Estate Boards, asked for 500 copies to distribute to local boards. On September 28, Gries informed Hoover that an additional 2,000 copies were being mimeographed to respond to requests for large quantities of the act.

lations. It was to go out of existence after the initial ordinance was created.

Board of Adjustment Controversy

It was the act's provision concerning the board of adjustment and the scope of its powers that proved to be the stickiest point for the committee's members. Specifically, the board of adjustment was authorized to "hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official" charged with enforcement of the act.

During the fine tuning that followed the initial draft, several of the ACCPZ members voiced their strong feelings about the board of adjustment. Olmsted, for instance, said he feared the ambiguous language of the provision authorizing the board could lead to backdoor amendments and similar abuses.⁹

Lawrence Veiller wanted to restrict the board to making slight adjustments only in "cases of particular hardship." He made his point clear later: "Instead of having a board that will grant special privileges in particular cases, let us stick to the good American principle of government by law and not a government by men."¹⁰

Veiller, Knowles, and Lewis followed up with a "Memorandum for Mr. Bassett" on December 4, 1922, redrafting the section of the enabling act dealing with the board of adjustment.

The subcommittee's redrafted version seemed to limit the board of adjustment to correcting only "manifest error" on the part of enforcing officials. And it authorized only a "slight departure" from the terms of the ordinance. The draft also required four members of a five-member board to agree to any decisions that departed from the terms of the ordinance. These changes did not sit well with Bassett. He wrote "bad" in pencil on the subcommittee's draft no less than four times.

Bassett's papers also contain two more drafts of this section, dated December 12 and 13, 1922, again with his penciled revisions. The following month, the Department of Commerce published another semiofficial version, this time with the section on the board of adjustment substantially revised. For the first time in this draft, the term "variance" appears.

This version is clearly a compromise. It allows the board of adjustment to authorize variances from the terms of the ordinance if strict enforcement would cause a hardship, and

9. John Gries wrote Bassett on November 2, 1922, noting that Frederick Law Olmsted was concerned that the language in the August 1922 version was ambiguous as to the board's authority "to vary or modify the regulations" included in a zoning ordinance. To the layman, said Gries, that wording might be interpreted as giving the Board of Adjustment authority to change the content of the regulations themselves—which was not what was meant—as opposed to varying and modifying their applications. Bassett agreed, it appears, because he wrote "good" in the margin next to the comment.

10. In a November 24, 1924, letter to members of the zoning subcommittee, written during the internal debate over the board's authority, Veiller said, "Personally, I think the powers of such a Board should be strictly limited to the power of adjustment and that it should not be given the power to vary, modify, or set aside the zoning ordinance. That is a legislative function and I, for one, can see no reason why, with a local legislative body in session practically every week in the year . . . that the proper orderly and democratic procedure is not to have a zoning ordinance amendment whenever an individual case indicates the zoning ordinance is wrong."

so long as the spirit of the ordinance is observed. It does, however, more clearly circumscribe the board's powers than earlier drafts.

The U.S. Government Printing Office published the final version in May 1924, and a revised edition in 1926.

But even publication did not stop the debate about the board of adjustment. Lawrence Veiller, for one, continued to believe that the boards were abusing their power. In 1930, speaking as well for the other members of the ACCPZ, he wrote the new Commerce Secretary, Robert Lamont, to ask for a fact-finding inquiry as to the types of decisions made by the boards and their effects on local zoning.¹¹ There is no record of Lamont following up on the committee's request.

STANDARD CITY PLANNING ENABLING ACT

After completing the model zoning law, the ACCPZ decided to move on to a city planning enabling act.¹² It was at this point (although the exact date is unclear) that Cincinnati attorney Alfred Bettman joined the ACCPZ. Bettman, who is today widely known for his amicus curiae brief defending zoning before the U.S. Supreme Court in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), had drafted the 1915 Ohio law authorizing the creation of municipal planning commissions. He later became Cincinnati's law director and planning commission chairman. Unfortunately, the available files have turned up little on the drafting of the model planning act. However, Bettman's influence is clear. There are many resemblances to the 1915 Ohio law.¹³

A *Standard City Planning Enabling Act* (SCPEA), published in 1928, covered six subjects: the organization and power of the planning commission, which was directed to prepare and adopt a "master plan"; the content of the master plan for the physical development of the territory; provision for adoption of a master street plan by the governing body; provision for approval of all public improvements by the planning commission; control of private subdivision of land; and provision for the establishment of a regional planning commission and a regional plan.

The city planning act—and the state acts based on it—came in for their share of criticism, some of it very familiar today. In 1929, for instance, the introduction of a planning enabling act in the Ohio legislature drew charges of Communism from a General P. Lincoln Mitchell.¹⁴ This was Bettman's comment in a February 22 letter to the *Cincinnati Enquirer*:

11. In his December 23, 1929, letter to Bettman, Veiller said that he had always been opposed to giving broad powers to zoning boards of adjustment. But as a member of the zoning subcommittee, he said, "I waived my personal views on this aspect of the question . . . for the sake of harmony in the committee and because it was quite evident that the majority of the committee at that time did not share those views." He said he now thought the act should be revised.

12. On December 11, 1924, Morris Knowles wrote Gries that he, Bassett, and Veiller were recommending that the advisory committee begin to study city plan enabling acts. For this purpose, he was requesting the staff to begin collecting relevant statutes and other information.

13. For similarities between the Ohio law and the national model code, see Gerckens, *supra* note 5, at 135-36.

14. The bill had been prepared by the Ohio State Conference on City Planning. Alfred Bettman was chairman of its legislative committee.

"General Mitchell said something to the effect that the bill embodies Russian principles. Probably Gen. Mitchell has seen Russian city planning legislation, though he has never produced any copy of any such legislation. However, I can assure him that none of the members of Mr. Hoover's committee or of any committee that has anything to do with the . . . bill has ever seen any Russian legislation or knows anything about same."

The committee continued its activities through 1934 when the Roosevelt administration phased it out. Bettman made a personal—but unsuccessful—appeal to President Franklin D. Roosevelt and Assistant Secretary of Commerce John Dickinson to continue the committee's work and maintain its small staff in the Department of Commerce.¹⁵

OTHER COMMITTEE ACTIVITIES

As the subcommittee was rewriting the draft of the Standard Zoning Act, the ACCPZ as a whole, was selling the public on the virtues of its product. While the drafting of the zoning enabling act was under way, other committee members worked on related projects. On April 10, 1922, the Commerce Department released a preliminary edition of *Zoning: A Selected Bibliography*. The 12-page bibliography was compiled by Theodora Kimball, the librarian at the Harvard University School of Landscape Architecture. The bibliography cited books and articles on the arguments for and against zoning, its legal aspects, and a variety of technical issues, including the relationship of city planning to zoning and the formulation of districts.

In 1922, the ACCPZ also produced the *Zoning Primer*.¹⁶ It explained what zoning was and how to start a zoning program. It also advised against adopting boilerplate codes—something that today's communities would do well to listen to. "There is no short-cut to good zoning in any community through blindly accepting what has been done for another community," said the *Primer*.

The *Primer* turned out to be a popular publication. It appeared first in installments in real estate sections of newspapers all over the country. Then it was released by the Department of Commerce. In less than a month and a half, Gries told Hoover, the Commerce Department had distributed over 25,000 copies.

15. The Bettman papers include a letter from Bettman to Franklin D. Roosevelt, dated March 13, 1933. Bettman, a lifelong Democrat, was pleading for the continuation of the advisory committee. For an interesting wrap-up of the committee's work, see E. BASSETT, F. WILLIAMS, A. BETTMAN, AND R. WHITTEN, *MODEL LAWS FOR PLANNING CITIES, COUNTIES, AND STATES* (1935). In it, Bassett and Williams note that they don't agree with the provision of the Standard City Planning Enabling Act that allows parts of the master plan to be used as an official map. See also E. BASSETT, *ZONING: THE LAWS, ADMINISTRATION, AND COURT DECISIONS DURING THE FIRST TWENTY YEARS* (1940); and Bassett's 1938 book, *THE MASTER PLAN*. For an example of Bassett's ongoing involvement in zoning issues in New York, see *ZONING PRACTICE IN THE NEW YORK REGION*, published in 1925 by the Regional Plan of New York and Its Environs (No. 9 in the Bulletin Series).

16. The *Zoning Primer* was released in mimeographed form June 18, 1922, and shortly afterward in a printed version. "A zoning ordinance," it said, "needs to be based on a comprehensive and detailed study of the precise local conditions, both present and prospective." In a July 6, 1922, memo to Hoover, Gries said, "From present indications the call for the 'Zoning Primer' will probably be between 50,000 and 100,000 by September 1st."

In addition, *A City Planning Primer* was published in 1928 as a companion piece to the city planning enabling act. Hoover wrote in the forward, "The eminent members of the advisory committee on city planning and zoning of the Department of Commerce tell briefly why some 400 American cities and towns" chose to establish "a permanent public planning body with a well-devised master plan, which they all use as a picture of how the whole city is developing." Hoover also noted that the *Primer* demonstrates "how a city's physical development is bound up with that of a larger region about it, and why regional planning is fast earning a place in American life."

Before it disbanded, the ACCPZ produced one last work—model subdivision regulations. The first draft of the regulations appeared in 1932 but it was not until December 1936 that the final version was published and distributed by the Interior Department's National Resources Committee, which took over some of the work of the Building and Housing Division.

The Roosevelt administration's decision to distribute the subdivision regulations was in part due to the persistence of Bettman, who was their principal author. Here again, there was some disagreement between Bassett and Bettman, in this case over language concerning the planning commission's role in approving plats. Bassett favored permitting the commission to formulate different plat requirements according to the circumstances of each case. Bettman was opposed to this, supporting instead the establishment of general rules with the force of law that the planning commission could apply. "This reduction of discretion and enlargement of the general field of rule or law [sic] is a basic justification for the whole system of subdivision regulation," he wrote.¹⁷

Obviously related to the ACCPZ's work was a county zoning act. Bassett's papers contain an undated draft of a "Proposed County Zoning Law Based Upon a Standard

17. See letter from Bassett to James Taylor, chief of the Division of Building and Housing, on May 10, 1934, regarding model subdivision regulations, and letter from Bettman to Taylor on May 26, 1934. Bassett and Bettman did agree in these two letters on one issue: that subdivision plats approved by the planning commission should not include building lines and other private contractual restrictions that could cloud titles. Despite his disagreement with Bettman, Bassett was still gracious, adding in his letter to Taylor: "We are all deeply obligated to Mr. Bettman for preparing this paper [on subdivision regulations]." It was noted that "the Standard Act makes the city planning commission the organ for the exercise of subdivision regulation" and that the regulations proposed were based on that model." See *Model Subdivision Regulations: A Guide for Local Planning Commissions in the Preparation of Local Regulations Governing the Subdivision of Land* at iii (distributed by the National Resources Committee in mimeographed form in December 1936).

The differences between Bassett and Bettman had surfaced more sharply when Bettman's amicus brief in the *Euclid* case was about to be filed. As Laurence Gerckens has pointed out in a paper on an exchange of letters between the two, Bassett resisted lending the name of the National Conference on City Planning to the brief in the expectation that the case would be lost and the damage limited to Ohio. Both men thought the village's zoning ordinance was weak: Bassett because it arbitrarily limited industry, Bettman because there was inadequate planning study. Veiller's strong support was decisive on getting the national planning conference's name on the brief. See L.C. Gerckens, *Alfred Bettman on Euclid: Letters from the Bettman Files, 15 September 1924–22 May 1925* in PROCEEDINGS FROM THE FIRST NATIONAL CONFERENCE ON AMERICAN CITY PLANNING HISTORY, 5-28 (March 1986).

State Zoning Enabling Act." This model, which was never released, was intended to apply to unincorporated areas.

THE COMMITTEE AND ACTS IN RETROSPECT

The Committee

In the end, Hoover's ACCPZ turned out to be a microcosm of the emerging city planning profession. Its members represented the diversely hyphenated careers that we recognize as involving the various phases of city planning.

Bettman made the point in defending the work of the committee that it was "representative in its make-up." Its members came from the professions of city planning, the law, and real estate, and from industry, he wrote in a February 22, 1929, letter to the editor of the *Cincinnati Enquirer*.

Several committee members were among the 52 people who founded the American City Planning Institute in 1917. Indeed, in its operation, the committee functioned practically as an internal committee of the planning institute, although its members represented a wide spectrum of organizations. Ihlder was from the National Housing Association, and Knowles was from the U.S. Chamber of Commerce. Lewis was a member of the National Municipal League and the National Conference on City Planning.

McFarland, a conservationist who had been instrumental in organizing the National Park Service, represented the American Civic Association. Olmsted was a member of the American Society of Landscape Architects. Bassett, who had assigned himself the role of zoning missionary to the nation, represented the Zoning Committee of New York on the committee. Later, Charles Ball was added to the group, representing the American Society of Civil Engineers. He replaced Lewis, who died in 1924.

Another member was Irving Hiett, a home builder from Toledo, Ohio, who had served as president of the National Association of Real Estate Boards. He strongly supported the spread of zoning, as did his association.

How did the discussions go? How did the committee members line up? Unfortunately, the full story of the committee's inner workings is limited by the absence of complete committee files in the National Archives. As a committee, rather than a commission attached to the Department of Commerce, its records and minutes were not retained.

However, by piecing together information from scattered collections and other sources, we have been able to form an image of the interplay among committee members. It turned out that there were some fundamental disagreements over the planning philosophy that would govern the model statutes. Bassett, for instance, favored statutes that would merely set forth or authorize procedures, while several others wanted more direction as to content. The legislation that emerged represented a compromise between the two philosophies.

Lawrence Veiller, who had earlier written a model housing law, was a key participant in drafting the zoning act, and we have an excellent portrait of him in Roy Lubove's 1962 book on the Progressive movement. In it, he is described as a tough-minded reformer who insisted on detailed standards and rigorous enforcement. Veiller was a member of the New York City commission that produced the 1916 zoning ordinance, but refused to sign the final report because he consid-

ered its recommendations too favorable to financial and commercial interests.¹⁸

John Ihlder had been Veiller's field secretary at the National Housing Association. He was a strong advocate of comprehensive planning of urban development as a basis for all housing programs. Together with Olmsted, Veiller and Ihlder formed a committee core that favored a more expansive view of the scope of planning and a tougher approach to follow-through and enforcement.

Nelson Lewis's view of comprehensive planning is not entirely clear. In a comment to John Gries on a draft of the zoning act, he said he wanted to define the word "comprehensive" as meaning simply "prepared carefully." But Lewis later wrote a textbook that took a very broad view of planning as a framework for more detailed land-use regulation.¹⁹

When Bettman joined the committee, he reinforced the views of Olmsted, Veiller, and Ihlder. Meanwhile, Bassett continued to focus on establishing the acceptability of zoning. In particular, he tried to show how zoning met the needs of business and industry.

Veiller had compromised with Bassett in accepting the general language defining the authority of the board of adjustment. As noted above, however, he sought to reopen the question in 1930 when he asked the Commerce Department to initiate a survey to determine whether the zoning act's provisions on the board's powers should be limited.

Bassett, in contrast, downplayed the possibility of abuse by a board overstepping its powers. He believed that the courts were evolving adequate standards to deal with the problem on a case-by-case basis. Bettman agreed with Veiller, maintaining that the problem of abuse required that the board's discretionary powers be delineated more exactly.

The Acts in Retrospect

Both acts were unquestionably influential. By 1930, the Commerce Department reported that 35 states had adopted legislation based on the SZE, while the SCPEA had been used by 10 states in the preparation of 14 different acts. A total of 31 states had planning, as opposed to zoning, laws. See L. Chase, *Survey of City Planning and Related Laws in 1929*, 2,8 (Division of Building and Housing, U.S. Department of Commerce, April 1931).

An Urban and Local Orientation. When the advisory committee drafted the standard acts, the nation was a far different place than it is today. In the 1920s, land use was viewed as a local, and more particularly, an urban problem. See F. Bosselman and D. Callies, *The Quiet Revolution in Land-Use Control*, 2

(1971). As Professor Daniel R. Mandelker has observed, the drafters of the SZE "built carefully on the nuisance concept as applied in land use conflict cases . . . [noting] that the courts draw lines to determine the established residential districts which are protected from invading offensive uses." See D. Mandelker, *Land Use Law*, 113 (1993, 3d ed.).

Thus, the land-use system was directed at correcting conflicts of an urban nature, especially those involving industrial uses with noxious external characteristics—apartment buildings whose scale dwarfed their lower density neighbors or billboards, for example. There was not yet an interstate highway system, which would greatly accelerate development outside cities. When development occurred, it did not generally sprawl into the unincorporated countryside, but instead took place within cities or immediately adjacent to them. Moreover, the era of an activist state government—one that would oversee state and regional interests in the local development process—had not yet arrived; the voluntary creation of a regional planning commission was the drafters' only acknowledgment of those interests.

A Process Orientation. Both acts had a process orientation. That means that they did not ask local governments to address certain substantive planning policies, such as controlling urban sprawl or protecting freshwater wetlands. Regarding the SCPEA, Professor Mandelker comments that this orientation was "probably wise, because the variety of settings in which planning occurs may make the inclusion of substantive planning policies in state planning legislation undesirable." An exception, notes Mandelker, is in the area of lower-income housing: Critics of the SCPEA "claim that the Act's process orientation allows communities to adopt regressive social policies," of which exclusionary land use controls are an example. See Mandelker, at 80.

Optional Plan-Making. Under the SCPEA, planning was permissive, rather than mandatory. The act did not require the preparation of master plans or the updating of those plans with any frequency. No sanctions were imposed for failure to plan. Plans could be adopted on a piecemeal basis. The SCPEA did not describe mandatory elements of a master plan. Indeed, it avoided an express definition, giving only examples of subject matter to be included in a plan. See, e.g., T.J. Kent, Jr., *The Urban General Plan*, 31-64 (1990) (critiquing the SCPEA). Consequently, according to one historian, "[c]ountless cities produced lopsided plans omitting some of the essential community facilities and almost none included the full complement of utilities." M. Scott, *American City Planning Since 1890*, 244 (1971).

The enigmatic "in accordance with a comprehensive plan" language in the SZE led to a long debate over whether a separate plan or some type of systematic study was required before zoning could be enacted.²⁰ See e.g., C. Haar, "In Accordance with a Comprehensive Plan," 68 Harv. L. Rev. 1154 (1955). Evidence from the 1920s suggests that the practice was to prepare a detailed zoning plan as part of the comprehensive city plan. However, according to planning consult-

18. R. LUBOVE, *THE PROGRESSIVES AND THE SLUMS: TENEMENT HOUSE REFORM IN NEW YORK CITY, 1890-1917* (1962).

19. Letter to John M. Gries, June 26, 1922. Lewis was the author of *THE PLANNING OF THE MODERN CITY* (1922). In it, he wrote, "Zoning is not a substitute for a city plan; it is an essential part of a comprehensive plan and, while the first thing to be done is to determine the general framework or structure of the city, the details cannot be intelligently worked out except in connection with the zoning plan or after the use districts, at least, shall have been determined." *Id.* at 283 (emphasis added). In his book, Nelson said the advisory committee was created "in connection with the effort of the Secretary of Commerce to relieve the shortage of housing facilities by encouraging the adoption of zoning plans which will protect residential districts in the belief that, with such protection assured, real estate owners would be more likely to resume the building of houses." *Id.* at 294.

20. The SZE did not define what a "comprehensive plan" was but in a footnote attempted to clarify the phrase with the explanation: "This will prevent haphazard or piecemeal zoning. No zoning should be done without such a comprehensive study." Advisory Committee on Zoning, U.S. Department of Commerce, *A Standard State Zoning Enabling Act*, § 3. n. 22 (1926, rev'd ed.).

ant Harland Bartholomew, who reviewed the advisory committee work, a series of quantitative and qualitative studies and technical reports that documented the rationale behind the districting scheme was clearly to precede the zoning plan's development.²¹

21. Harland Bartholomew, *What is Comprehensive Zoning?*, in National Conference on City Planning, New York, *PLANNING PROBLEMS OF TOWN, CITY, AND REGION: PAPERS AND DISCUSSIONS*, 47-71 (1928). Bartholomew, who with Edward Bassett was one of the drafters of the "in accordance" language, provided an extensive list of "studies to be made in advance of the preparation of a zoning ordinance" that could well be a work program for a modern comprehensive plan. *Id.*, at 50. He added: "In addition to these studies there should be available a major street plan, a transit plan, a rail and water transportation plan: in other words a comprehensive city plan. Without such a comprehensive city plan, the framers of the zoning plan must make numerous assumptions regarding the future of the city in respect to all of these matters without the benefit of detailed information and study. Zoning is one element of a comprehensive city plan. It can neither be completely comprehensive nor permanently effective unless undertaken as part of a comprehensive plan." *Id.* See also, T.K. HUBBARD AND H.V. HUBBARD, *OUR CITIES TO-DAY AND TO-MORROW: A SURVEY OF PLANNING AND ZONING PROGRESS IN THE UNITED STATES*, 109-110 (1929) for a discussion of what comprehensive plans include.

The SCPEA minimized the role of elected officials in the planning process, reflecting the distrust of the political process that was characteristic of the municipal reform movement of the 1920s. Only the nonpartisan appointed lay planning commission had the authority to develop and adopt the master plan and employ a planning staff.

Today, some 70 years after Hoover's committee drafted the standard acts, another, similar effort is taking place: the American Planning Association's GROWING SMARTSM project.²² It is an effort to come up with the next generation of model enabling legislation, picking up where the Standard Acts left off. Rather than focusing on cities alone, it will provide a legal framework for land-use controls affecting rapidly growing suburban and exurban areas, identify substantive state- and regional-level roles and policies as well as new procedures, and address the type and degree of planning required to support a revamped statutory system.

22. The first phase of the project is supported by APA, the Henry M. Jackson Foundation, and the U.S. Department of Housing and Urban Development.