

Modernizing State Planning Statutes

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Model Planning and Zoning Enabling Legislation: A Short History

Stuart Meck, AICP

This working paper traces the development of model planning and zoning enabling legislation and studies of national significance on land-use reform from 1913 to the present. It also digests federal reports that have proposed state statutory revision.¹

ENABLING LEGISLATION, GENERALLY

Enabling legislation is a mechanism by which a state delegates its inherent police power authority, which includes the power to plan and to zone, to local government. It permits the local governments to do something, but in a certain way and through certain mechanisms. Sometimes, the local government will already have this power delegated directly to it through the state constitution (as in a municipal home rule provision) or through a statutory grant of power by the state legislature (this also known as statutory or legislative home rule).

All of the states have planning and zoning enabling legislation. Such legislation will include definitions, a grant of authority, an organizational framework, a set of procedures, and, often, a set of duties that accompanies the delegation. Municipal charters, which may have different procedures and institutional structures than state legislation, and are adopted under home rule authority or by action of the state legislature, will generally govern in lieu of state legislation. Other charters may simply require the municipality to follow the state statutes. In some states, municipal corporations began to plan and zone before the state legislature adopted enabling statutes because of their home rule powers.

Early Efforts

Interest in planning and zoning enabling legislation in the U.S. began in the 1910s. The proceedings of the Fifth National Conference on City Planning in 1913 in Chicago contained a report of the Conference's Committee on Legislation. The committee report, which was adopted by the conference and published as part of its proceedings, included several model acts:

1. establishing a city planning department and giving it extraterritorial (three-mile) planning jurisdiction and authority to regulate plans of lots;
2. authorizing the taking of remnants of land in certain cases by eminent domain;

3. authorizing cities to acquire land either inside or outside their limits for public parks, parkways, and playground;
4. authorizing the creation of metropolitan districts of first- and second-class cities and providing for the creation of metropolitan planning commissions for such districts, with planning authority for the area;
5. empowering cities to create from one to four districts within their limits and to regulate the heights of buildings thereafter constructed in each district;
6. authorizing the platting of civic centers;
7. authorizing the platting of reservations for public use without specifying the specific public use; and
8. authorizing the establishment of building lines on any street or highway.²

During this period, many states adopted enabling acts, freely borrowing from one another. For example, in 1915, Ohio adopted legislation authorizing the creation of municipal planning commission.³ The act was drafted by Cincinnati attorney Alfred Bettman, who was later that city's law director and planning commission chair. Language from the Ohio planning legislation appeared later in the *Standard City Planning Enabling Act* (see below), in which Bettman was involved.

By 1919, at least 10 states had authorized all or certain classes of cities to adopt zoning. That same year, Congress instructed the commissioners of the District of Columbia to prepare comprehensive zoning regulations. The Texas legislature approved an amendment to the city charter of Dallas in 1920 to permit overall zoning. The next year it sanctioned zoning for all cities in the state. In 1921, Connecticut, Indiana, Kansas, Michigan, Missouri, Nebraska, Rhode Island, South Carolina, and Tennessee all granted cities the privilege of invoking the police power to regulate the use of land as well as the height and area of buildings.⁴

The Standard Acts

Two standard state enabling acts published by the U.S. Department of Commerce in the 1920s laid the basic foundation for zoning and for planning in the U.S. For many of the states, the Standard Acts still supply the institutional structure, although some procedural and substantive components may have changed.

The first, *A Standard State Zoning Enabling Act* (SZEa), was developed by an advisory committee on zoning appointed by Secretary of Commerce, Herbert Hoover, in 1921. New York City Attorney Edward Bassett, who had developed that city's pioneering zoning code in 1916, was the SZEa's chief drafter.⁵ The committee produced a draft, printed in mimeo form, in August 1922. After several revisions, the Government Printing Office published the

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first printed edition in May 1924 and a second edition in 1926.⁶ In March 1927, a preliminary edition of the second model, *A Standard City Planning Enabling Act* (SCPEA), was released, and, in 1928, the act was published in final form.⁷

Motivation for drafting the Standard Acts. U.S. Department of Commerce Secretary (and later President) Herbert Hoover's interest in land-use control and planning prompted the development of the Standard Acts. Noting the "rapid movement" of the adoption of zoning in the U.S. in the early 1920s, Hoover wrote in the forward to the SZE, "the fundamental legal basis on which zoning rests cannot be overlooked. . . . This standard act endeavors to provide, so far as it is practicable to foresee, that proper zoning can be undertaken under it without injustice and without violating property rights."⁸

Another motivation was to devise a uniform national framework that could survive a challenge on state and federal constitutional grounds. "An enabling act is advisable in all cases," the SZE's commentary observed. "[W]hile the power to zone may, in some [s]tates, be derived from constitutional as distinguished from statutory home rule," it pointed out, "still it is seldom that the home-rule powers will cover all the necessary provisions for successful zoning."⁹ If all or most of the states used the Standard Acts as a uniform approach, courts might be reluctant to invalidate the state statutes based on them. A note to the SZE was an indicator of this concern. It cautioned users to "[m]odify. . . this standard act as little as possible," emphasizing that the act "was prepared with a full knowledge of the decisions of the courts in every case in which zoning acts have been under review, and has been carefully checked with reference to subsequent decisions."¹⁰

When the work on the Standard Acts began, zoning had not yet been challenged in the U.S. Supreme Court, but its validity had been upheld in several state courts. Indeed, Edward Bassett was to underscore the need for and the impact of the Standard Acts when he told the National Conference on City Planning in New York City in 1928:

Reserve powers of legislatures which would lie dormant and useless unless brought to life by enabling acts initiated by our Conference are now invoked throughout the United States. We have helped to prove that these slumbering powers of legislatures can be used for the benefit of growing cities. The courts fell into line because they saw that the new powers were needed on account of new conditions that exist in great modern cities.¹¹

Structure of the Standard Acts. The SZE had nine sections.¹² 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 the zoning regulations. The legislative body was required to establish a zoning commission to advise it as to the initial development of the zoning regulations. The zoning commission was a temporary body and was to go out of existence after the regulations were adopted. It was not necessary to continue a zoning commission beyond the adoption of the original ordinance under the act. "Amendments to the original ordinance do not as a rule require such comprehensive study" that a zoning commission provides, according to an SZE note, "and may be passed upon by the legislative body, provided that proper notice and opportunity for the public to express its

views have been given."¹³ The planning commission, where there was one, could serve as the zoning commission. The SZE expressly encouraged this.¹⁴

Daniel R. Mandelker has remarked in his treatise, *Land Use Law*, that drafters of the SZE

built carefully on the nuisance concept as applied in land use conflict cases. They noted that the courts draw lines to determine the established residential districts which are protected from invading offensive uses. The Zoning Act adopted this concept as the basis for the zoning ordinance. The Act authorized municipalities to designate zoning districts in which only compatible uses are allowed and incompatible uses are excluded. As implemented at the local level, the zoning ordinance establishes a land use hierarchy with residential districts at the top of the land use pyramid.¹⁵

The act's longest section described the powers of the board of adjustment, a quasi-judicial body with the ability to authorize hardship variances and special exceptions to the terms of the zoning ordinance. The SZE concluded with authorization for the adoption of enforcement mechanisms and language resolving conflict with other laws.

The SCPEA covered six subjects:

1. The organization and power of the planning commission, which was directed to prepare and adopt a "master plan"
2. The content of the master plan for the physical development of the territory governed by one of the class of local governments authorized to plan
3. Provision for adoption by the governing body of a master street plan and subsequent control of private building in the bed of mapped but unopened streets and of public building in unofficial or unapproved streets
4. Provision for approval by the planning commission, before approval by the legislative body, of all public improvements (the act permitted a legislative override of commission vetoes)
5. Control of private subdivision of land into building parcels and accompanying streets and other open spaces
6. Provision for the establishment of a region and regional planning commission, for the making of a regional plan, and for the adoption of that plan by any municipality in the region that desired to do so.¹⁶

The SCPEA was intended to complement its predecessor and could be adopted in whole or in titles covering the various subjects.¹⁷ Commentary to the act frankly admitted that "the three subjects of subdivision control, mapped streets, and regional planning may be said to be in the trial and error stage."¹⁸ The drafters were particularly concerned about the constitutionality of the mapped streets provision, which gave the city the right to keep the location of the mapped street free of buildings for a specified period. As a consequence, the SCPEA contained a carefully worded provision that allowed compensation by the local government for lands reserved for the period of time shown on the adopted official map, subject to a recommendation by an appointed board of appraisers.

The U.S. Department of Commerce tracked the SZE's progress. By 1930, the department could report that 35 states had adopted legislation based on it.¹⁹

Critique of the Standard Acts. As noted, the SZEAs were adopted by all 50 states and is still in effect, in modified form, in 47 states.²⁰ The SCPEA was not as popular, perhaps because there was less pressure to authorize planning institutions and more to allow zoning.

The two acts were drafted for a nation that was a far different place than the nation of the 1990s. In the 1920s, land use was viewed as a local, and more particularly, an urban problem. As Mandelker implied (see above), the land-use system was directed at correcting or preventing conflicts of an urban nature, especially those involving industrial uses with noxious external characteristics, apartment buildings whose scale dwarfed their lower-density neighbors, and billboards, to name a few. There was not an interstate highway system that would 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.

Norman Williams, Jr., has noted that the SZEAs' resilience is all the more remarkable because its language "has served to authorize so many of the new control devices which have become popular in recent years—density zoning, the use of bonuses, the amortization of nonconforming uses [which the SZEAs does not specifically address], off-street parking and loading requirements, and cluster zoning—all of these have been found to have been authorized in the 1920s." Williams attributes this to the fact that the act "dealt with many of the basics of the situation."²¹ Nonetheless, the Standard Acts have been the subject of much criticism in planning literature.²² These criticisms may be summarized as follows:

A process orientation. Both acts had a process orientation as opposed to one that asked that local governments address certain substantive planning policies. Regarding the SCPEA, Mandelker comments that this decision 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 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 policies are an example.²³

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. Nor were there sanctions imposed for failure to plan. Plans could be adopted on a piecemeal basis. The SCPEA did not describe "fundamental or indispensable elements" of a master plan. Indeed, it avoided an express definition, giving only examples of the subject matter to be included in a plan. 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."²⁴

Exclusion of elected officials from plan making. A feature of the SCPEA was a lay appointed planning commission. Only the planning commission had the authority to develop and adopt the master plan and employ a planning staff. With the exception of its power to adopt the official map or plat of land to be reserved for future acquisition for public streets, the legislative body was largely shut out of the plan-making process. Elected officials were to refer planning matters to the commission for clear-headed, nonpartisan advice. Indeed, the planning commission could limit legislative options. For example, commission disapproval of the location, character, and extent of a proposed public improvement could be overridden only by a two-thirds vote of the council. These exclusions and limitations reflected the philosophy of the municipal reform movement in the U.S. in the 1920s. In the view of one historian, "The planning commission was... the guardian of the plan and the nonpolitical champion of the people's interest, from time to time putting thoughtless or rascally politicians on the spot."²⁵

Confusion of land-use element with zoning plan. The SZEAs required that zoning regulations be "in accordance with a comprehensive plan." It 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."²⁶ Both acts used the term, "zoning plan," to describe a map of zoning districts developed as part of the proposed regulatory scheme. The SCPEA, in Section 6, included a "zoning plan" as an element of the "master plan." It did not describe or list a land-use element—the guiding policy framework for land-use regulations—as a component of the master plan. As a result, the SZEAs language "thus encouraged overall zoning unsupported by a thoughtfully prepared general plan for the future development of the city."²⁷ Mandelker has speculated that "[p]erhaps the zoning plan requirement reflected the decision to publish the zoning act before the planning act. Modern planning legislation does not usually require a zoning plan but does require a land use element."²⁸

Another view is that the practice in the 1920s was to prepare a detailed zoning plan as part of the comprehensive plan, as opposed to a land-use element that was conceptual in nature. City planning consultant Harland Bartholomew, in a paper to the National Conference on City Planning in New York in 1928, "What Is Comprehensive Zoning?," describes the underlying qualitative and quantitative study

and analysis of city growth that should proceed the preparation of a zoning plan.²⁹ Referring to the "in accordance with a comprehensive plan" and related language in the SZE, Bartholomew catalogs a series of considerations and issues stemming from the act's language that could well be a work program for a contemporary comprehensive plan.³⁰ Bartholomew's paper supports the notion that the zoning plan was to have been grounded in technical reports that documented its rationale.

In a 1929 text, *Our Cities To-Day and To-Morrow: A Survey of Planning and Zoning Progress in the United States*, Theodora Kimball Hubbard and Henry Vincent Hubbard, honorary librarian of the American City Planning Institute and Norton Professor of Regional Planning at Harvard University, respectively, confirm the approach described by Bartholomew. The Hubbards listed zoning as one of the six main elements of a comprehensive city plan.³¹

Model Laws for Planning Cities, Counties, and States

Harvard University Press published *Model Laws for Planning Cities, Counties and States, Including Zoning, Subdivision Regulation, and Protection of Official Map* in 1935. Its authors were attorneys Edward M. Bassett, Frank B. Williams, and Alfred Bettman, and planner Robert Whitten. Bassett and Bettman were, of course, on the committee that devised the Standard Acts. As the title implies, the book includes legislative forms for zoning, subdivision, and the official map as well as municipal, county, regional, and state planning. Commentary by the authors illustrated the sharp divergence in approach. The introduction by Theodora Kimball Hubbard and Henry Vincent Hubbard tactfully distinguished their philosophies:

On the one hand there is the belief that in translating the theories and techniques of planning into actual legislation and administration, our progress should be by cautious and moderate steps, in order to take full advantage of advances already made, not to endanger present gains by risking adverse decisions, and to submit to our legislatures something already understood in principle and essentially familiar in use. On the other hand there is the belief that the concepts of planning are sufficiently valid and the possibilities of its benefits sufficiently great and realizable to justify giving its techniques and procedures a more emphatic place in the structure and methods of legislation and of administration in local government.³²

Bassett and Williams drafted a series of legislative models that tended to be narrow in focus and procedural in nature. They avoided legislation that had substantive content that dictated how planning was to be accomplished. "The law cannot to any considerable extent compel the doing of good work in the field, or prevent the doing of bad work in it," was their explanation. Because of that, "we do not insert in these laws rules for the guidance of planners who are to use them, nor statements of their purpose for the education of the general public." According to Bassett and Williams, "[s]uch statements. . . belong in textbooks, primers, and instructions by superiors to

subordinates; but they render legislation diffuse, ambiguous, and therefore less effective."³³

In contrast was the outlook of Alfred Bettman. Bettman's models tended to have more substantive content. For example, Bettman's definition of the master plan, in comparison with the Bassett and Williams model, was broad and comprehensive. This approach was necessary, wrote Bettman, to ensure that the scope of the master plan was "so comprehensive as to permit the inclusion of any functional type of development."³⁴ Bettman saw the master plan's policy implications for the proposed construction of public works or the acquisition of land; his model addresses the legal effect of the master plan as a device for reviewing such proposals. As he described it, the legislation "should include provision for the preparation or making of the master plan and the procedure of applying it."³⁵ Bassett and Williams described the master plan simply, and provided for its adoption as a document "solely to aid the planning board in the performance of its duties."³⁶ Beyond that, their model did not define the relationship between most planning devices and public regulation and expenditures (the exception being the official map).

Similarly, Bettman parted company with Bassett and Williams over the existence and functions of the planning commission. Bettman felt that all municipal legislation describing the governmental structure, the legislative organ, the chief executive, and the administrative departments ought to contain provision for a planning organ as well. The planning organ should be institutionalized in the legislation or the charter, so that the legislative body could not refuse to create it or abolish it. Thus, Bettman's model municipal planning act mandated a planning commission. Further, Bettman contended that the planning commission should be charged with the preparation of the zone plan and should be responsible for reviewing any proposed map or text amendments prior to action by the council.³⁷

Bassett and Williams did not believe the legislation should compel the establishment of a planning organ in local government. "Experience shows that, in a matter like planning, little but harm is accomplished by attempts at compulsion," they observed.³⁸ Thus, the legislative body was authorized but not required to create a planning commission. Under their model, there was also a zoning commission, which formulated the original zone plan and regulations, and a separate planning commission. Bassett and Williams allowed the planning commission or board to serve as the zoning commission. But when that occurred, it had to be "in a separate meeting and with separate minutes kept."³⁹ They saw a distinction between the zoning and planning functions. They cited "[m]any legal and practical difficulties [that] have arisen because a planning commission, empowered to act also as a zoning commission, has failed to realize at times in which of the two capacities it was acting."⁴⁰ (However, they offered no examples.)

The Bassett and Williams model zoning enabling act included broad standards to guide the board of appeals (the term was used in preference to board of adjustment, which appears in the SZE) in authorizing variances and exceptions and procedures for appeal to the courts. The language is virtually identical to the Standard State Zoning Enabling Act. The pair recognized but downplayed the

problem of boards overstepping their authority and, through use variances, in effect, rezoning property, a function of the legislative body. Ability to appeal to the courts, they believed, "would tend to keep the actions of these boards within reasonable limits."⁴¹

Bettman conceded the seriousness of the problem often caused by the boards. Many boards, he wrote, took advantage of the indefiniteness of the "hardship clause" in the language of the SZEa for granting variances and exceptions. The cumulative effect of these changes "represents a far more serious impairment of the integrity of the zone plan than results from court decisions or councilmanic spot zoning."⁴² Bettman's model did not establish standards themselves. Instead, it empowered the legislative body to define and presumably limit the scope of the appeals board's authority, based on "the product of actual experience."⁴³ Thus, the legislative body could rein in the board if it had been abusing its powers. Bettman did not provide a special procedure for court review, however, contending that conventional court procedures were adequate for this purpose.

Whitten himself did not draft complete model forms but offered language that could be inserted in proposed statutes. For example, he felt that, before a local government could exercise broader planning powers, a planning commission must first be created to give the complex and specialized function a degree of independence. Moreover, Whitten saw no distinction between the planning and zoning powers, and suggested that the planning and zoning enabling acts should be combined. In some cases—particularly in small communities—the planning commission should be authorized to act as the board of appeals, but in no case should the city council be given the board's authority, he warned.⁴⁴

There are several different versions of county, regional, and state planning legislation. Whitten questioned the need for regional planning, however, believing that municipal, county, and state planning authorities could adequately meet planning needs. He also doubted whether metropolitan planning could function efficiently until a metropolitan governing organization was established. All authors proposed a state planning commission with authority to prepare a master plan and some form of official map. Bettman's proposal required one governmental appointee to be a member of the faculty of the state university. It also permitted the state planning commission to provide local planning assistance. Whitten's proposals would have given the state planning commission a natural resources focus. He favored authorizing the commission to recommend regulatory measures to control, for example, tree cutting, roadside development, the reservation of public right of access to streams and waters and of a public easement for trails and roads, and premature subdivision in rural areas.

USDA Rural Zoning Enabling Legislation

In 1936, the U.S. Department of Agriculture's Resettlement Administration published an illustrative rural zoning enabling act accompanied by an extensive, very sophisticated commentary.⁴⁵ The act was a series of changes to the basic structure of the SZEa in order to adapt it to serve rural zoning interests in unincorporated areas. The publication also contained examples of alternative language

that would give the state some control in rural zoning and the inclusion of these provisions seems prescient for their time, since they anticipate a state interest in controlling land use and supervising local actions. For example, it proposed giving the state planning board or some similar agency authority to approve or appoint the membership of the zoning commission and limiting the ability of the commission to adopt zoning regulations only after they had been approved by the board. It also proposed providing for state aid and direct technical assistance to the county zoning commission through the planning board in formulating the zoning regulations. In addition, it recommended that the county zoning commission be required to prepare an annual report to the state planning board, the governor, or some other state agency.⁴⁶ This act and its corresponding narrative suggested the "granting of zoning powers to serve both urban areas and the open county," according to a USDA analysis of rural zoning enabling legislation published in 1972.⁴⁷

The New Mexico Report

In 1962, Harvard University Planning Professor William A. Doebele completed an extensive enabling statute study for the State of New Mexico Planning Office. Doebele submitted discussion drafts of some 16 acts which, together with existing statutes, were intended to be a comprehensive updating of New Mexico's legislation. While a number of the proposals were specific to New Mexico, several were of wider interest, and Doebele discussed them in a journal article.⁴⁸

Of that group, two are of particular contemporary relevance, the adoption of general plans and presumption shifting in the presence or absence of a plan. Doebele focused, for the first time in enabling statutes, on the *process* by which plans were prepared and adopted. The preparation, adoption, and periodic revision of a comprehensive, long-range, general plan for physical development, he maintained, should be "the primary function and duty of every county or municipal planning commission."⁴⁹

A two-step process for general plan preparation and adoption. Doebele's proposal split the preparation of the general plan into two distinct steps in order that the planning commission and governing body could reach agreement on the plan. The first step involved the formulation of a "Preliminary General Plan Report." This report would be a broad-brush presentation of problems, opportunities, and major choices of directions of development. Once this report has been finished, the proposed enabling legislation required that the planning commission announce its completion in a newspaper, make copies available for the public, and set a date for a public hearing. According to Doebele:

The hearing itself is to be attended by members of the governing body, and presided over by the chief executive or legislative official. The chairman or other representative of the planning commission is to present the substance of the report, and adequate time is to be permitted for questions and discussion in the usual manner of a public hearing. At the conclusion of the hearing, the governing body must vote: (a) to adopt the report, (b) to adopt it with specified amendments, or (c) to reject it and submit it to the planning commission for further study and preparation of a revised report to be considered according to the same procedures used for the first.

Thus, at a defined moment, the legislative body, the public, and the commission will presumably have reached fundamental agreement as to what the essential facts of the community situation are and the general direction in which further development should proceed. Once this step is taken, a sound foundation is present for all future planning.⁵⁰

In the second step, a "Final General Plan Report" is prepared. This is a correlated but more detailed study of past, present, and future development, and a presentation of how the future pattern may be improved by the plan. The report must cover certain elements, including land use, population and building intensity, circulation and transportation, economic and fiscal matters, and a variety of optional components. The same procedure for public announcement of the report's completion is followed. Then the planning commission holds a hearing on the final report, restudies the plan if it feels public reaction dictates it, or adopts it, without restudy. Once adopted, it certifies the plan to the governing body.

The governing body holds a second public hearing at which the planning commission and members of the public present their views. After the hearing, the governing body may adopt the plan, do nothing (in which case the plan is considered to be adopted within 30 days), or return the plan to the commission for revision with a written statement of why such a revision is necessary. If revision is necessary, the planning commission repeats the hearing and certification process until the commission and the governing body agree on a single plan for the jurisdiction. "When agreement exists," Doebele wrote, the preliminary and final reports "are to be considered together as one document (the General Plan of the area concerned) and as the official statement of objectives, principles, policies and standards for its growth and improvement."⁵¹

The General Plan and the shifting burden of proof. The study also proposed an imaginative presumption-shifting approach to relate the general plan to implementing ordinances such as zoning and subdivision. In any litigation or dispute involving zoning or subdivision control, the adoption of the plan could be introduced as evidence supporting the reasonableness of the ordinance. When this occurred, the party seeking to invalidate the ordinance assumed a "correspondingly greater burden of proof of unreasonableness."⁵²

Doebele argued that, "[t]he more restrictive the community's regulations, the more need it has for a general plan which will buttress its ordinances in a court test. Thus, the shifting burden of proof offers a reasonable and self-adjusting method of relating the restriction of private rights with a well-thought-out community policy as to why such restrictions are imperative for the public good."⁵³

Wisconsin Department of Resource Development Report

A circa 1965 report for the Wisconsin Department of Resource Development by University of Wisconsin Law Professor Jacob Beuscher and Attorney Orlando Delogu, like the New Mexico study, analyzed the Wisconsin legislation, calling for a comprehensive revision, consolidation, and reorganization. Among its recommendations:

- Modernization of the legislative description of comprehensive planning
- A clear, comprehensive grant of powers to Wisconsin

counties to plan land uses

- A grant of authority to the state highway commission to preserve highway interchange corridors, save highway interchanges from misdevelopment, and protect scenic amenities along the highway
- A grant of authority to the state to impose adequate controls on shorelands and floodplains to protect health, improve water quality, spawning grounds, natural cover, and waterside amenities⁵⁴

The report also proposed the creation of a state interagency land-use council. One of its functions would be to develop state-level land-use controls for highway, wetland, shoreland, floodplain, and open space protection, and promulgate them by administrative rule. Under their proposal, day-to-day administration of the controls would be left to line agencies most directly concerned with the state interest protected by the control.⁵⁵

The Wisconsin report is significant because of its early emphasis on state supervision of critical areas and special protection of lands where major infrastructure investment was proposed. The report includes, in an appendix, a model act for the protection of future highway rights-of-way.⁵⁶

ASPO Connecticut Report

In 1966, the American Society of Planning Officials (ASPO), a predecessor of APA, assisted by the Chicago law firm of Ross, Hardies, O'Keefe, Babcock, McDugald, and Parsons, produced *New Directions in Connecticut Planning Legislation*. The report, prepared for the Connecticut Development Commission, recommended major changes in the Connecticut statutes. It was intended to propose changes that would strengthen the relationship of zoning to planning, authorize new techniques and organizations, guide and direct community development, and correct inconsistencies and ambiguous provisions, including definitions, in the statutes.

The study recommended, among other things:

- The adoption by municipalities of a community development program containing three elements: (1) a statement of development policy; (2) a capital improvement program; and (3) adequate professional assistance. Upon satisfactory establishment of such a program, the community would receive additional authorization to exercise several new (at that time) land-use control techniques, chief among which are planned unit development regulations, holding zones, official map powers, and conditional zoning.
- A single planning and development agency. This single agency would replace the separate commissions for "planning" and "zoning," a legacy of the SZA. A single administrative agency, either a planning and development commission or a executive department, would be established by the governing body of a municipality.
- Local appeals and variances. Quasi-judicial functions performed by zoning boards of appeals would, for the most part, be performed by the planning and development agency. A local government would also be given the option of delegating to its development administrator (the enforcement officer) certain functions

now performed by a zoning board of appeals and zoning commission, such as conducting public hearings.

- **Regional planning functions.** The major recommendation with respect to regional planning agencies was an extension of their jurisdiction to review matters that may have regional significance, such as decisions involving property within specified distances from state highways, and development affecting the region such as water, sewerage, and utility projects. The regional agency would still not be given veto power over local decisions. If a local or state agency takes action contrary to a regional planning agency's recommendation pursuant to a referral, that agency would be required to state in writing the reasons which led it to a different conclusion. But, if the regional agency chose not to comment on a proposal, such action would be neutral rather than constitute a project endorsement.
- **State agency and functions.** The report recommended the establishment of a state-level agency to replace the courts of common pleas as the body to which appeals from local land-use control decisions would be taken. The state agency would also review, at its discretion, local and regional development plans, policies, and land-use regulations, as well as local community development programs, described above. It would set standards and review proposals for certain types of activities that have statewide significance, such as airports, major highway interchanges, floodplains, and certain conservation lands. In general, the state agency would establish minimum standards for those areas and authorize local government regulation as long as those standards were met.⁵⁷

The Use of Land

The Use of Land, a 1973 study sponsored by the Rockefeller Brothers Fund, described a "new mood in America. . . that questions traditional assumptions about the desirability of urban development. The motivation is not exclusively economic. It appears to be part of a rising emphasis on human values, on the preservation of natural and cultural characteristics that make for a humanly satisfying living environment."⁵⁸ The report's focus, however, was more on environmental than social issues arising from land development, although it conceded that "[t]he most serious charge against the new attitudes is that public policies developed in response to them would necessarily impose their heaviest burdens on the least advantaged members of society."⁵⁹ It did not propose specific changes to enabling legislation. However, it favored more use of discretionary reviews in approving local development proposals, among them environmental impact statements, which it said required development agencies "to publicly evaluate opportunities within a broad spectrum of public objectives."⁶⁰

The Use of Land cited the need for state and local laws that would disqualify local and state officials from voting or otherwise participating in any regulatory decision whose outcome could confer financial benefit to themselves, their families, or their business or professional associates. It advocated citizen suits to appeal local regulatory decisions and to enforce ordinance requirements (note: these are typically permitted) and supported civil rights litigation to

invalidate exclusionary zoning.⁶¹

To reduce "exclusionary incentives" by local governments to minimize costs or keep out the poor, according to the study, states should enact measures to reduce the impact of new development on local tax rates (although it did not present specifics).⁶² The report called for state legislation to deprive local governments of the power to establish minimum floor-area requirements for dwellings in excess of a statewide minimum established by statute.⁶³ In addition, it encouraged incentives, such as density bonuses, to stimulate large-scale developments, which it championed.⁶⁴ The report contained an extensive discussion of open space preservation techniques, such as mandatory parkland dedication and fees-in-lieu, cluster zoning, acquisition of easements along beaches, and revision of federal tax laws to encourage donations.⁶⁵

A Model Land Development Code

The American Law Institute's (ALI) *A Model Land Development Code*, published in 1976 after 11 years of work, represented a critical rethinking of American planning and zoning law.⁶⁶ The code, however, was not intended as a unified document to be adopted in its entirety by states to replace the Standard Acts, but instead as a source of various statutory models to address specific development concerns. Each state could select the provisions it needed from the 12 articles in the code.⁶⁷

The ALI Code allocates responsibility for planning and land-use decision making between the state and local governments. The local government retains control over its planning and development regulation, subject to state supervision and policy guidance. The code does not use the term "planning commission," preferring instead "land development agency" to describe the local body responsible for development regulation, which could be a planning commission or some other board or department. It creates a State Land Adjudicatory Board, with authority to hear appeals of development decisions and orders.

The code's major contribution is in Article 7, which deals with state land development regulation. Under the code, a State Land Planning Agency could designate specific areas within the state as Areas of Critical State Concern. An Area of Critical State Concern could be designated for:

(a) an area significantly affected by, or having a significant effect upon, an existing or proposed major public facility or other area of major public investment;

(b) an area containing or having significant impact upon historical, natural, or environmental resources of regional or statewide importance;

(c) a proposed site of a new community designated in a State Land Development Plan [a plan in map, text, and/or illustrations setting forth objectives, policies and standards to guide public and private development within the state], together with a reasonable amount of surrounding land; or

(d) any land within the jurisdiction of a local government that, at any time more than [3 years] after the effective date of [the] Code, has no development ordinance in effect.⁶⁸

For example, the code described as a potential Area of Critical State Concern a major highway interchange adjoining a state hospital and near a wildlife preserve. This area would deserve special regulatory attention to:

insure that land near the interchange is not developed with industrial or commercial uses in a manner that would intrude upon the privacy of the hospital patients or contribute to the pollution of the waters in the wildlife preserve, and these goals might be achieved by restricting the types of development that would be permitted within various segments of the land surrounding the highway interchange.⁶⁹

In such an area, the local jurisdiction could continue to regulate development but only under development regulations reviewed and approved by the State Land Planning Agency. If the local government failed to submit regulations complying with state standards for the area, the agency could adopt its own regulations applicable to that government's portion of the area.

Regardless of whether the local government or the State Land Planning Agency adopts the regulations, the administration of the regulations is undertaken by the local government's planning agency in the same manner as if the regulations were part of the local development ordinance. In addition, the code provides a mechanism by which the State Land Planning Agency may appeal any local development decision in an Area of Critical State Concern to a State Land Adjudicatory Board.⁷⁰

The code also authorizes regulation of Developments of Regional Impact (DRI), categories of development that, because of their magnitude, nature, or effect on the surrounding environment, are likely to present issues of state or regional impact. Factors justifying inclusion as a DRI include the creation or alleviation of environmental problems, such as water pollution or noise, the amount of pedestrian or vehicular traffic likely to be generated, the number of persons likely to be residents, the size of the site to be occupied, the likelihood that additional or subsidiary development will be generated, and the unique qualities of particular areas of the state.⁷¹ A subset of a DRI is a development of regional benefit, those that "typically provide benefits to an area beyond the boundaries of a single local government but that may be thought to cause some problems within the local area."⁷² It includes:

- (a) development by a governmental agency, other than the local government that created the Land Development Agency or other agency created solely by that local government;
- (b) development that will be used for charitable purposes, including religious or educational facilities, and that serves or is intended to serve a substantial number of persons who do not reside within the boundaries of the local government creating the Land Development Agency;
- (c) development by a public utility if the development is or will be employed to a substantial degree to provide services in an area beyond the territorial jurisdiction of the local government creating the Land Development Agency; and
- (d) development of housing for persons of low and moderate income.⁷³

The developer, at the time of application for a development permit, may elect to treat the project as a development of regional benefit, even if it is not otherwise included within the DRI category, and then follow the specialized DRI procedures. The local land development agency continues to regulate DRIs, but, in considering whether to approve or reject the development, must determine whether the "probable net benefit from proposed development will exceed the probable net

detriment."⁷⁴ This balancing analysis is made against certain criteria in the code, which include factors that are relevant not just to the local jurisdiction, but to the surrounding areas. The intent is to ensure that extralocal interests receive consideration in the development review process. The local land development agency must make its decision in writing, and the decision may be appealed to the State Land Adjudicatory Board.

The code does not require that there be a State Land Development Plan in order for the state to engage in regulating Areas of Critical State Concern and DRIs. However, Article 8 does provide for the establishment of a State Land Planning Agency to undertake statewide and regional planning studies, including the preparation of the plan, and to engage in rule making. The agency may create Regional Planning Divisions for substate planning. State and Regional Advisory Committees, appointed by the governor, advise the director of the State Land Planning Agency. The code provides alternative mechanisms for the adoption of the State Land Development Plan, including certification of the governor by executive order.

In Article 3, the code authorizes local land development planning and describes the studies that must be undertaken in order to underpin the Local Land Development Plan. One of the most hotly debated issues in the formulation of the code was its refusal to mandate preparation of the Local Land Development Plan as a prerequisite to development regulations.⁷⁵ Instead, it grants to the local government that adopts the plan certain supplementary discretionary powers not otherwise available to governments without a plan, such as the ability to adopt planned unit development regulations, reserving land for future acquisition by public agencies, and acquiring broader powers to discontinue existing land uses.⁷⁶

Perhaps the most overlooked innovation of the ALI Code has been Article 9, which provided for judicial review of orders, rules, and ordinances. In essence, this article creates an exclusive standardized review procedure for the principal actions that could occur under the code and is intended to eliminate confusion and conflict over various forms of judicial relief. Another innovative section, Article 10, focused on public records of development regulations. The intention was to provide for central storage of information concerning the rules that control land development so that a land owner or prospective purchaser could easily determine the rules applicable to the use of his or her land.⁷⁷

ACIR State Legislative Program on Environment, Land Use, Growth Policy, and Housing

The U.S. Advisory Commission on Intergovernmental Relations (ACIR), a body created by Congress to study the relationships among local, state, and national levels of government, published a series of model state statutes in 1975. The statutes fall into several categories: state growth policy; land-use and environmental planning and regulation; and fair-share housing allocation.

The growth policy legislation includes:

- 1) a state planning and growth policy act, based on Oregon and Florida legislation and a draft of the ALI Model Land Development Code;
- 2) a draft legislative resolution charging a joint committee or separate standing committees of the

state legislature with jurisdiction and responsibility over state planning and growth policy and activities;

- 3) establishment of state and local land development corporations to undertake large-scale urban and new community land purchase, assembly, and improvement;
- 4) state loans to promote urban growth policies;
- 5) local industrial development bonds;
- 6) preferential procurement practices to further state development policies; and
- 7) urban employment tax incentives for businesses that establish commercial or industrial facilities in poverty areas.⁷⁸

The land-use and environmental planning and regulation legislation includes:

- 1) control of urban water supply and sewerage systems;
- 2) local planning, zoning, and subdivision legislation drawn from Florida county enabling legislation;
- 3) state highway interchange planning districts;
- 4) official map;
- 5) planned unit development;
- 6) mandatory dedication of park and school sites and fees-in-lieu; and
- 7) legislative jurisdiction over federal lands within the states.⁷⁹

In addition, the ACIR has proposed a model regional fair-share housing allocation statute.⁸⁰ The statute mandates regional agencies to prepare and submit to an appropriate state administering agency a regional low- and moderate-income housing plan. The plan should reflect the region's required need for such housing. Based on the regional estimate, each city and county within the region is allocated a fair share of the regional total pursuant to several statutory criteria. The regional plan and the allocations must be reviewed annually and revised as necessary. Local governments and residents must be notified of the proposed plan and allocations, and be allowed to be present and heard at a public hearing prior to adoption by the agency.

The model statute permits local governments to grant density bonuses to developers in exchange for making substantial provision for low- and moderate-income housing. It provides that a low- and moderate-income housing project proposal be filed with the locality having jurisdiction. The local government must hold a hearing on the application and render a decision within a fixed period. If the local government's regional fair-share allocation is not satisfied or reasonably provided for at the time of the hearing, it must approve the application, with or without conditions.

If a project is denied or approved with conditions that would render it uneconomic to build or operate, the statute permits the applicant to appeal the local decision to a state planning agency. The issues that may be appealed to the state are limited to: (1) whether the local government has satisfied or provided for the attainment of its regional fair share; and (2) whether conditions attached to the local

approval would render the building or operation of the project uneconomic. After a formal hearing, the state agency may vacate the local denial or modify the conditions appropriately. In making its determination, the state agency must also consider the state development plan and relevant local plans and programs. State agency orders may be enforced by the petitioner, regional agency, or the state agency.

The American Bar Association's Housing For All Under Law

The American Bar Association (ABA) Advisory Commission on Housing and Urban Growth published a far-reaching report in 1978, *Housing for All Under Law: New Directions for Housing, Land Use and Planning Law*. The report examined some of the major legal relationships among land-use controls, planning, and housing.

Funded by a grant from the U.S. Department of Housing and Urban Development, the study proposed a series of measures to increase housing opportunity and choice and to promote a more rational urban growth process. The report contained a series of summary "black letter" statements, distilling positions that had been advanced by commission members and developed in detailed background research papers prepared by the staff and consultants.

Housing for All advocated a strong judicial role in entertaining challenges to exclusionary land-use regulations. It analyzed remedies available to a court for restructuring all or portions of a zoning ordinance that had been invalidated because the ordinance precludes access to all housing by any or a "fair share" of lower-income households. It explored the use of a special master or consultant to assist the court in assembling data and designing a regional fair-share housing plan for lower-income housing, in examining the adequacy of plans produced by the parties in a suit, or in monitoring local compliance. The report discussed various options available to the court in enforcing its order when dealing with "a recalcitrant municipality," such as suspension of state and federal grants or local laws that obstruct compliance, invalidation of all zoning, and contempt.⁸¹

The ABA study endorsed the then-new trend of treating zoning amendments that affect only individual parcels of property, as opposed to the community at large, as "adjudicatory" acts instead of legislative decisions. Such a characterization would subject zone changes to a higher level of judicial scrutiny. "If zoning changes are treated as adjudicatory," the report concluded, "they will be subject to the essentials of procedural due process that are traditionally expected of administrative bodies—adequate notice, an opportunity to present and rebut evidence, a record, a statement of findings, and will not be subject to voter referendum."⁸² To correct unevenness in the administration of land-use controls, the report discussed limitations on *ex parte* contacts between the parties to an action and the public officials involved, formal participation by neighborhood groups in land-use decisions that substantially affect their interests, and consolidation of administrative reviews and development permits. The report backed the use of hearing examiners in lieu of zoning boards to ensure a more efficient and professional land-use appeals process at the local level.⁸³

The report contained an extensive analysis of local

comprehensive plans and planning capabilities. In contrast with the ALI Code, it concluded that "state enabling legislation, traditionally permissive in its approach to local planning, should be amended to require local comprehensive planning and to require that local land-use controls be consistent with local comprehensive plans."⁸⁴ Further, the report endorsed requiring a housing plan as part of the local comprehensive plan. Such a plan "should consider housing for all economic segments of the community, particularly low- and moderate-income households, as well as regional housing circumstances."⁸⁵ The report contained detailed specifications for the content of such a plan.

Kmiec's Model State Land Use Enabling Statute

In 1986, as part of his *Zoning and Planning Deskbook*, Douglas W. Kmiec proposed a "Model State Land Use Enabling Statute." The model statute was intended to carry out recommendations of President Ronald Reagan's 1982 Commission on Housing (see discussion below).

The two-page statute limited local land-use authority to "vital and pressing governmental interests."⁸⁶ Kmiec's proposal defined these interests as those "dealing primarily with collective public goods and infrastructure, and not primarily with the design or location of private improvements."⁸⁷ Under it, the burden of proof or justification for the regulation or development or user fee, dedication requirement, assessment, or other restriction is placed on the regulatory body. Regulated landowners and neighbors within 300 feet of the regulated property are given an expedited mechanism for challenging regulations enacted under the statute. When a "court of last resort" fully or partially invalidates a disputed regulation, the statute calls for the landowner to be compensated by the political subdivision for the full loss of market value suffered by the land owner during the period the regulation was in effect, plus costs.⁸⁸

Kmiec's proposal, in his own words, is intended to return zoning and other land-use controls to "their true purpose: the prevention of harms."⁸⁹ Strictly speaking, it is simply a delegation statute; it delegates police power from the state to the local government and does not go much beyond that. It does not prescribe a specific structure for planning and land-use controls nor does it deal with issues such as intergovernmental coordination. It is silent, for example, on organization and procedure, and it does not propose bodies like planning commissions or boards of zoning appeals. Kmiec assumes that states will continue the existence of such bodies to perform planning and related administrative activities.

Council of State Governments Model Legislation

The Council of State Governments, a joint research and information service supported by all the states, publishes annually a compendium of suggested model legislation. These models are typically based on exemplary or prototypical work in one or more states and appear in a standardized format. They have included planning, zoning, and related environmental and growth management legislation (see list in endnote).⁹⁰

Model Impact Fee Statutes

As part of a 1988 symposium issue on impact fees, the *Journal of the American Planning Association* published two

model impact fee enabling acts. These model statutes were later reprinted in a collection of articles from that issue.⁹¹ The first, *A Standard State Development Impact Fee Enabling Statute*, restricts the use of impact fees to certain specified public improvements owned or operated by the local government.⁹² It requires that, before the local government can require the payment of impact fees, it must first prepare a comprehensive land-use plan, including a capital improvement program. The statute provides standards for determining the "proportionate share of the cost of providing capital improvements for which the need is reasonably attributed to those developments that pay the fees."⁹³ It establishes mechanisms for earmarking impact fee revenues in special funds. It also authorizes the refund of unexpended impact fees if the local government has failed to expend them on capital improvements intended to benefit the development that paid the fees.

The second, *A Model Impact Fee Authorization Statute*, is more flexible than the first.⁹⁴ It allows impact fees "to be used for almost any facility included in a capital improvements program" specifically identified or covered by a local government comprehensive plan.⁹⁵ Under the statute, such a plan "shall specify level of service standards for each type of facility that is to be the subject of an impact fee, and such standards shall apply equally to existing and new development."⁹⁶ Like the first act, it describes how impact fees are to be calculated, collected, expended, and refunded.

NAHB Model Land Development Standards and Model State Enabling Legislation

The National Association of HomeBuilders (NAHB) Research Center in 1993 published *Proposed Model Land Development Standards and Accompanying Model State Enabling Legislation*. The report, funded by the U.S. Department of Housing and Urban Development, contains minimum design and construction standards for residential land development. It is intended to "promote quality residential development while striking a reasonable balance between excessive requirements that add unnecessary costs to a home and permissive requirements that may threaten public health and safety."⁹⁷ The standards address streets, stormwater, sediment and erosion control, site utilities, sanitary sewer, water supply, and miscellaneous standards for open space and landscaping. They are accompanied by model legislation to facilitate adoption of the standards through both a state preemptive statute (i.e., a statute that would allow the uniform standards to supersede local standards in case of a conflict) and a state voluntary statute, which encouraged adoption by local governments. Both model statutes created a state-level advisory board to develop, promulgate, and update the standards.

FEDERAL STUDIES, GENERALLY

Beginning with the Douglas Commission in 1968, numerous federal commissions and federally sponsored study groups have recommended, in varying degrees, an overhaul of state planning and zoning legislation. The major studies are discussed in the following sections.

National Commission on Urban Problems (Douglas Commission)

In 1968, the National Commission on Urban Problems,

also known as the Douglas Commission after its Chair, Senator Paul Douglas, issued its report, *Building the American City*. The commission's charge, among other things, was to examine "state and local zoning and land use laws, codes, and regulations to find ways by which States and localities may improve and utilize them in order to obtain further growth and development."⁹⁸ The report is one of the most comprehensive and thorough studies of codes and standards ever published. Its recommendations were wide ranging (addressing housing and building codes, urban services, government structure, urban financing, and taxation and environment as they affected the cities), and a number of the commission's suggestions addressed changes to state enabling legislation and the exclusionary side effects of local land-use practices.⁹⁹

In terms of overall planning authority, the report called for:

1. Enactment of legislation by states granting counties (or regional governments of general jurisdiction, where such governments exists) exclusive authority to exercise land-use control powers within small municipalities (generally, those of less than 25,000 in population or less than four square miles in area).
2. A state requirement for a local development guidance program. This was defined as a locally approved compendium of development policies, a locally approved capital improvement program, and evidence of the availability of trained professional employees, or consultants available on a continuing basis, to assist in formulating and administering local regulations (Note: This recommendation was identical to a key proposal in the ASPO Connecticut report, discussed above).
3. Restructuring local planning and development responsibilities. The report proposed abolishing local planning commissions as constituted in many communities. Under the commission's proposal, planning commissions would retain their authority as citizen advisory commissions and advocates for comprehensive planning. However, administration of land-use regulations—review of subdivision plats, site plans, approving or making recommendations on special exceptions, variances and rezonings—and plan making itself would be the job of paid professionals under the general direction of elected officials or a chief executive officer.
4. State recognition of local development controls. States should enact legislation granting to large units of government the same regulatory power over the actions of state and other public agencies that they have over private developers. This would ensure complete control over all land within their jurisdiction.
5. Establishment of a state agency for development planning and review. The report favored the establishment of a state agency with authority to provide research and technical assistance to localities in land-use planning and control, to prepare state and regional land-use plans and policies, and to adjudicate and supervise decisions by state and local agencies affecting land use.

To broaden choice in the location of housing, the report proposed:

1. Amendment of state planning and zoning acts to include, as one of the purposes of the zoning power, the provision of adequate sites for housing persons of all income levels. The amendments would also require that governments exercising the zoning power prepare plans showing how the community proposes to carry out such objectives in accordance with county or regional housing plans. This would ensure that, within the region as a whole, adequate provision is made for sites for all income levels.
2. Enactment of state legislation requiring multicounty or regional planning agencies to prepare and maintain housing plans. These plans would ensure that sites are available for development of new housing of all kinds and at all price levels. Legislation should also direct the state or regional agencies to prepare and maintain, on a periodic basis, data on the general availability of housing and housing sites for persons of various income levels.
3. Establishment of a state policy on housing near employment centers. The report proposed state action to ensure state review of any local zoning decision or building permit for the construction of any private place of employment that will employ a substantial number of employees. The purpose is to determine whether adequate housing and housing sites are available in or near the locality for persons of all income levels to be employed by the installation.¹⁰⁰

To more carefully plan undeveloped and built-up areas, the report recommended:

1. Restriction of development through holding zones. State governments, said the report, should enable local governments to establish holding zones in order to postpone urban development in areas that are inappropriate for development within the next three to five years. In such areas, local governments should be authorized to limit development to houses on very large lots (10 to 20 acres), agriculture, and open space uses. The state legislation should require that localities review such holding zone designations at least once every five years.¹⁰¹
2. Enactment of planned unit development and development district legislation. The report urged state legislation authorizing planned unit developments in both undeveloped and built-up areas. In addition, it proposed state statutes that enabled local governments to classify undeveloped land in planned development districts. In such districts, development would be allowed to occur only at a specified minimum scale, one that was sufficiently large to allow only development that created its own environment.
3. Enactment of state legislation establishing clear policies as to the allocation of various costs between developers and local governments. This legislation, said the report, should specify the kinds of improvements and facilities for which private

developers may be required to bear the costs and the manner in which such obligations may be satisfied. At a minimum, the legislation was to require that developers provide local streets and utilities and dedicate land (or make payments in lieu of dedication) for rights-of-way, utilities, open space, recreation, parks, and schools, provided that "such facilities will directly benefit the development and be readily accessible to it."¹⁰² Under this legislation, local governments would not be permitted to deviate from state policies.

4. Enactment of legislation containing stricter procedural and substantive requirements for variances, rezonings, and nonconforming uses. The report advocated state legislation authorizing local governments to impose substantive limitations on the power of boards of appeal to grant variances, provide effective procedures and aids for the elimination of deleterious nonconforming uses that adversely affect the environment, and establish formal rezoning policies to guide decisions on individual rezonings.

An interesting set of commission recommendations dealt with land purchase and compensation. The report favored state legislation by which property owners could compel the purchase of property rights by regulation governments when regulations (or certain types of regulations specified by the statute) would constitute an unconstitutional taking of property without just compensation. Land so purchased would then be placed in a public reserve of urban land for present and future disposal and use in accordance with approved plans. The report also called for state legislation authorizing land banking, the acquisition by the state or local governments of land in advance of development. A land banking statute would, according to the report, ensure the continued availability of sites needed for development, control the timing, location, type, and scale of development, prevent urban sprawl, and reserve to the public gains in land values resulting from government action in promoting and servicing development (e.g., land around freeway interchanges).¹⁰³

President's Committee on Urban Housing (Kaiser Committee)

The year 1968 saw the publication of another federal study, *A Decent Home*, the report of the President's Committee on Urban Housing (also known as the Kaiser report, after its chair, Edgar Kaiser, chairman of Kaiser Development). The report was directed at examining the production and rehabilitation of decent housing for the poor. One section of the report analyzed the effect of public policies on the cost of land, including zoning, subdivision controls, and development standards. The report made no specific recommendation affecting state enabling legislation. However, it did urge federal legislation that would permit the Secretary of the Department of Housing and Urban Development, unless vetoed by the governor of a state, to preempt federally subsidized low- and moderate-income housing from local zoning codes. This recommendation was aimed at local governments who use their zoning codes to bar such projects.¹⁰⁴

President's Commission on Housing

In 1982, the President's Commission on Housing, appointed by President Ronald Reagan, issued a lengthy report on the provision, financing, and regulation of housing. The report was critical of overregulation by state and local government through zoning. The report called for the president to direct the attorney general to determine whether a "vital and pressing interests" standard—one creating a higher level of judicial scrutiny—for evaluating the constitutionality validity of zoning restrictions should be sought to replace the constitutional standard in *Village of Euclid v Ambler Realty Co.*,¹⁰⁵ the 1926 U.S. Supreme Court case that established the constitutionality of zoning. The report urged the more formidable "vital and pressing interest" standard against which the use development controls should be gauged. For example, the report recommended the following:

- Leaving the density of development to the conditions of the market except where a lesser density is necessary to achieve a vital and pressing governmental interest
- Requiring states and local governments to remove from their zoning laws all forms of discrimination against manufactured housing, provided the housing conforms to nationally recognized model codes
- Eliminating minimum or maximum limits on the size of individual dwelling units
- Calling on local governments to avoid the use of growth controls that limit the production of housing except where justified by a vital and pressing interest
- Ensuring that builders and developers should only be obligated for such fees, dedications, servitudes, parking requirements, or other exactions as are specifically attributable to the development
- Streamlining local permit processing by eliminating or consolidating multiple public hearings, establishing central permit authority and joint review committees whenever several departments are involved in a project approval, and employing a hearing officer to conduct quasi-judicial hearings on applications for parcel rezonings, special use permits, variances, and other such devices¹⁰⁶

The report urged states and local governments to implement the report's recommendations. It especially favored state initiatives to inform the public about housing cost issues and provide technical assistance to localities to speed deregulation.¹⁰⁷

Advisory Commission on Regulatory Barriers to Affordable Housing

The most recent federal study was the 1991 report of the Advisory Commission on Regulatory Barriers to Affordable Housing, *"Not in My Back Yard": Removing Barriers to Affordable Housing*. The commission was appointed by U.S. Department of Housing and Urban Development Secretary Jack Kemp.

The report contained 31 separate recommendations addressing government regulations that drive up housing costs. A number of them were directed at states and some of these echoed recommendations of previous federal commissions. They included:¹⁰⁸

1. State barrier removal plans. Under this recommendation, states would undertake a comprehensive assessment of state and local regulations and administration procedures as well as state constitutional authority and enabling legislation. From this analysis, states would propose a program of state enabling reform and direct state action, as well as provide for model codes, standards, and technical assistance to local governments.

2. State zoning reform. The commission urged that states review and reform their zoning and land planning systems to remove all institutional barriers to affordability. The report recommended that states should consider: a requirement that each locality have a housing element subject to state review and approval; effective comprehensive planning requirements; modification of zoning-enabling authority to include affordability and housing opportunity as primary objectives; state authority to override local barriers to affordable housing; state-established housing targets and fair-share mechanisms; and requirements for a variety of housing types and densities.

3. State-sponsored conflict resolution and mediation. States should establish or sponsor neutral third-party conflict resolution and mediation procedures to resolve conflicts between developers and local governments and to remove barriers to affordable housing.

4. Restructuring of regulatory procedures and standards. The report pointed to the need to consolidate and streamline multiple regulatory responsibilities, advocating state legislation to centralize authority in a single agency to shorten and improve state and local approval processes. States should also enact legislation that establishes time limits on building code, zoning, and other approvals and review. Moreover, states should either enact a statewide subdivision ordinance and mandatory development standards or, alternatively, formulate a model land development code for use by localities.¹⁰⁹

5. Enactment of state impact fee standards. States, said the report, should enact legislation establishing mandatory standards and uniform procedures for impact fees. These fees, in the commission's words, "should be used to fund only facilities that directly serve or are directly connected to the house or development which these fees are levied."¹¹⁰

6. Removal of regulatory barriers to certain types of affordable housing options. States should amend enabling acts that authorize manufactured housing, under appropriate conditions and standards, as a permitted dwelling unit and bar local governments from prohibiting them. Localities should be directed to permit accessory apartments as of right, not as a conditional use, in any single-family district, subject to appropriate design, density, and other occupancy standards set forth by the state. Finally, the state should require localities to include a range of residential-use categories that permit, as of right, duplex, two-family, and triplex housing and

adequate land within their jurisdictions for such use.

Another advisory commission proposal provided the impetus for the APA's Growing SmartSM initiative. The commission urged HUD to assume a leadership role and work with government and private-industry groups to develop "consensus-based model codes and statutes for use by local government. . . . The Commission sees a need for a new model [s]tate zoning enabling act with a fair-share component, model impact fee standards, and a model land-development and subdivision control ordinance."¹¹¹

CONCLUSION

The development of model state planning and zoning statutes and the reform studies about them have gone through a clear transition since 1913. The early models were concerned simply with delegating the state's police power to local units of government to give them clear authority to plan public and private land use and public facilities, regulate subdivisions, and control land use. Having model legislation would protect against state and federal constitutional challenges to planning and regulatory authority. However, in the development of such legislation, there were competing philosophies at work. One, represented by attorneys Edward Bassett and Frank B. Williams, favored legislation of a procedural nature with little preregulatory substantive planning required of local government. The other, represented by attorney Alfred Bettman, was more substantive, anticipating problems that might conceivably be faced by local governments in the future and giving them the broad statutory power to plan for it. Bettman's view also endorsed the creation of the planning commission as a condition of land-use regulation.

By the 1960s, the nation had enough experience with the planning system to be critical of its flaws and abuses, and to recognize broader societal interests needing protection. The 1962 New Mexico study elevated the importance of the comprehensive or general plan. It provided a special procedure for the general plan's adoption and, once the plan was adopted, ensured that it played a significant role in sustaining the validity of zoning and subdivision regulation. The 1965 Wisconsin study acknowledged the state's interest in protecting its natural resources through state agency action and creating a state administrative structure. The 1966 ASPO Connecticut report emphasized the importance that extrajudicial considerations play in local land-use decisions.

The ALI's 1976 *Model Land Development Code* introduced new concepts and a new vocabulary into planning and land-use regulation, such as "Development of Regional Impact" and "Area of Critical State Concern." Through new planning devices, it attempted to balance statewide and regional interests while retaining local administrative control over development decisions. Still, it permitted these decisions to be appealed through a special purpose adjudicatory system and, when taken to the courts, subject to exclusive court procedures.

Other model statutes developed in the postwar period emphasized the increasing procedural and substantive complexity of state, regional, and local planning and regulation, a complexity that would have been unthinkable

in the 1920s when the Standard Acts were drafted. Local governments were now dealing with such topics as infrastructure banks, state environmental policy acts, regional fair-share housing plans, wetlands regulation, development impact fees, and the transfer of development rights.

Starting in 1968, a series of federally funded and private studies called for significant reforms of the planning and land-use control system. Often, the recommendations of these reports overlapped. Clearly, the reports indicated that local governments in many places

were abusing their power, particularly with respect to the development of low- and moderate-income housing. The 1982 report of the President's Commission on Housing favored a constitutional taking standard that would make regulation and exactions by local government more difficult. A more recent study by the Advisory Commission on Regulatory Barriers to Affordable Housing recapped what many other studies had concluded: the entire system of planning and land-use controls in many states is in need of a hard look and a major overhaul.

NOTES

1. Generally, this paper does not discuss state-specific reforms, the exceptions being early efforts in New Mexico, Wisconsin, Illinois, and Connecticut. Another Growing SmartSM working paper by David Callies, "The Quiet Revolution Revisited: A Quarter Century of Progress," which appears in this report, covers state legislative changes.

2. *Proceedings of the Fifth National Conference on City Planning*, Chicago, Illinois (Boston: University Press, 1913), 247-59.

3. 106 *Laws of Ohio* 455 (HB 660, eff. 1-1-16). See L.C. Gerckens, "Bettman of Cincinnati," in *The American Planner: Biographies and Recollections*, edited by D.A. Krueckeberg, (New York: Methuen, 1983), 120-48, which discusses lobbying for and enactment of municipal planning legislation. Bettman also was the drafter of the Ohio municipal zoning legislation (1920), and county and regional planning commission and municipal extraterritorial regulation of subdivisions statutes (1923).

4. M. Scott, *American City Planning Since 1890* (Berkeley: University of California Press, 1971), 193.

5. Others on the advisory committee included: Charles B. Ball, sanitary engineer; Alfred Bettman, attorney; Irving B. Hiatt, Realtor; John Ihlder, housing consultant; Morris Knowles, consulting engineer; Nelson P. Lewis, municipal engineer; J. Horace McFarland, master printer and civic investigator; Frederick Law Olmstead, landscape architect; and Lawrence Veiller, housing expert. The committee was staffed by John M. Gries, chief, Division of Building and Housing, Bureau of Standards, U.S. Department of Commerce. For a discussion of the interaction and differences of opinion among members of the advisory committee in the formulation of the acts, see, R. Knack, S. Meck, and I. Stollman, "The Real Story Behind the Standard Planning and Zoning Acts of the 1920s," *Land Use Law and Zoning Digest* 48, No. 2 (February 1996): 3-9.

6. Advisory Committee on Zoning, U.S. Department of Commerce, *A Standard State Zoning Enabling Act* (SZEa), revised ed. (Washington, D.C.: U.S. GPO, 1926). [Hereinafter SZEa].

7. Advisory Committee on Planning and Zoning, U.S. Department of Commerce, *A Standard City Planning Enabling Act* (SCPEa) (Washington, D.C.: U.S. GPO, 1928). [Hereinafter SCPEa].

8. SZEa, iii.

9. *Ibid.*, 1.

10. *Ibid.*

11. E.M. Bassett, President's Address, in National Conference on City Planning, *Planning Problems of Town, City and Region: Papers and Discussions* (Philadelphia, Pa.: William F. Fell, 1928), 2.

12. For a discussion of the SZEa's structure, see N.F. Baker, "Zoning Legislation," *Cornell Law Quarterly* 11 (1926): 164-78.

13. SZEa, note 43.

14. *Ibid.*, Sec. 6.

15. D.R. Mandelker, *Land Use Law*, 3d ed (Charlottesville, Va.: Michie, 1993), Sec. 4.15, 113-14.

16. This summary of the SCPEa is taken from American Law Institute (ALI), *A Model Land Development Code*, Tentative Draft No. 1, Reporters' Introductory Memorandum (Philadelphia, Pa.: ALI, 1968), xvii-xviii.

17. Several contemporary articles in the 1920s critiqued the SCPEa, generally praising it. See P. Nichols, "Review of Standard City Planning Enabling Act," *City Planning* 3, no. 3, (July 1927), 216-19; F. B. Williams, "Comment and Notes," *City Planning* 3, no. 3 (July 1927), 219-20; H.P. Chandler, "Notes on the Standard City Planning Enabling Act," *ABA Journal* 13 (August 1927): 435-39.

18. SCPEa, 1.

19. N. Knauss, Division of Building and Housing, U.S. Bureau of Standards, U.S. Department of Commerce, *Zoning Progress in the United States: Zoning Legislation in the United States* (Washington, D.C.: The Division, April 1930), 2.

20. Norman Williams, *American Land Planning Law*, (Deerfield, Ill.: Clark Boardman Callaghan, 1988), Sec. 18.01, 461. Professor Williams notes that the states no longer using the SZEa are: "Kentucky, Vermont, Pennsylvania (which thus repealed the Standard Act) and Washington, where an optional municipal code was adopted (while the Standard Act was also retained)," 462.

21. *Ibid.*

22. See, for example, T.J. Kent, Jr., *The Urban General Plan*, reprint of 1964 edition (Chicago: Planners Press, 1990), 31-64, which contains an extensive critique of the SCPEa; Scott, *American City Planning*, 193-5, 242-8, which discusses the SZEa and SCPEa; ALI, *A Model Land Development Code*, viii-xxi; C.W. Forrest, "An Alternative for Illinois Land Use Legislation," *Northern Illinois University Law Review* 12, no. 3 (Summer 1992): 741-7, which discusses SZEa weaknesses; and the paper in this report, C.W. Forrest, "Interfaces for Model Planning and Zoning Legislation."

23. Mandelker, *Land Use Law*, Sec. 3.06.

24. M. Scott, *American City Planning*, 244.

25. *Ibid.*, 245.

26. SZEa, Sec. 3, n. 22.

27. M. Scott, *American City Planning*, 195.
28. Mandelker, *Land Use Law*, Sec. 3.07.
29. Harland Bartholomew, "What Is Comprehensive Zoning?," in National Conference on City Planning, New York, *Planning Problems of Town, City and Region: Papers and Discussions* (Philadelphia, Pa.: Wm. F. Fell, 1928), 47-71.
30. *Ibid.* Bartholomew listed the following in "Studies to Be Made in Advance of the Preparation of a Zoning Ordinance": existing uses of land and buildings; new buildings erected by five-year periods; building heights; lot widths; front yards; population density; population distribution; topography; computation of areas for difference land uses (p. 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 but one element of a comprehensive city plan. It can neither be completely comprehensive nor permanently effective unless undertaken as part of a comprehensive plan" (p. 50). "Two fundamental considerations," Bartholomew said, would also need evaluation: "1. How much area is needed for each broad type of use and how shall it be arranged or balanced in any given community? 2. What regulations are needed in the several use districts to afford good relations between the individual structures?" (p. 51).
31. See 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* (Cambridge, Mass.: Harvard University Press, 1929), 109-10, which discusses what comprehensive plans should include.
32. E.M. Bassett, F.B. Williams, A. Bettman, and R. Whitten, *Model Laws for Planning Cities, Counties, and States, Including Zoning, Subdivision Regulation, and Protection of Official Map* (Cambridge, Mass.: Harvard University Press, 1935), vi.
33. *Ibid.*, 5.
34. *Ibid.*, 61.
35. *Ibid.*, 58.
36. *Ibid.*, 40.
37. *Ibid.*, 63.
38. *Ibid.*, 7.
39. *Ibid.*, 33, n. 18.
40. *Ibid.*, 13-14. Bassett and Williams commented: "Usually these boards are honest, but often, left wholly to themselves, they do not fully know the nature and extent of their powers, and are inclined to grant relief in the interest of the applicant which is contrary to the public interest" (p. 14).
41. *Ibid.*, 15.
42. *Ibid.*, 64.
43. *Ibid.*, 65.
44. *Ibid.*, 127.
45. H. Walker, Jr., *Problems and Suggestions in the Drafting of Rural Zoning Enabling Legislation*, Resettlement Administration, U.S. Department of Agriculture, Land Use Planning Pub. No. 10 (Washington, D.C.: USDA, 1936), 24-46.
46. *Ibid.*, 47-50.
47. Economic Research Service, U.S. Department of Agriculture, *Rural Zoning in the United States: An Analysis of Enabling Legislation*, Misc. Pub. 1232, 131 (Washington, D.C.: U.S. GPO, 1972).
48. W.A. Doebele, Jr., "Improved State Enabling Legislation for the Nineteen-Sixties: New Proposals for the State of New Mexico," *Natural Resources Journal* 2 (1962): 321.
49. *Ibid.*, 323, n. 29, citing Proposed New Mexico Act Defining The Content And Preparation Of The General Plan, Sec. 3.
50. *Ibid.*, 330-1.
51. *Ibid.*, 334.
52. *Ibid.*, 336, n. 56, citing Proposed New Mexico Act Defining The Content And Preparation of The General Plan. For a discussion of this language and its implications, see W. Doebele, Jr., "Horse Sense about Zoning and the Master Plan," *Zoning Digest* 13 (1961): 209, 212-14.
53. Doebele, "Improved State Enabling Legislation," 337.
54. J. Beuscher and O. Delogu, *Land Use Controls*, Wisconsin Development Series, prepared for the Wisconsin Department of Resource Development, I-4, I-5 (1965?, n.d.). Like New Mexico and Wisconsin, other states prepared comprehensive legislative reform studies. For example, see, Zoning Laws Study Commission, *Report to the Illinois 77th Gen. Assembly* (March 1971); Land Resources Management Study Commission, *Report to the Illinois Gen. Assembly* (June 1981). Both reports were directed by University of Illinois Planning Professor Clyde Forrest. The Illinois studies were directed at problems arising from the adoption of the Standard Acts in that state. A summary of problems identified in the 1971 report appears in Forrest, "An Alternative for Illinois Land Use Legislation," 741, 748, Table 1, and in the Growing SmartSM working paper by Forrest, "Interfaces for Model Planning and Zoning Legislation," which appears in this report.
55. Beuscher and Delogu, *Land Use Controls*, I-50.
56. *Ibid.*, appendix D.
57. American Society of Planning Officials, *New Directions in Connecticut Planning Legislation: A Study of Connecticut Planning, Zoning and Related Statutes* (Chicago, Ill.: ASPO, February 1966), chapter 4. The ASPO Connecticut report, the ALI *Model Land Development Code* (see discussion in this paper), the report of the National Commission on Urban Problems (see discussion in this paper), and several other studies are analyzed at length in D. Heeter, *Toward a More Effective Land-Use Guidance System: A Summary and Analysis of Five Major Reports*, Planning Advisory Service Report No. 250 (Chicago: ASPO, 1969).
58. W. Reilly, ed., *The Use of Land: A Citizens' Policy Guide to Urban Growth*, Task Force on Land Use and Urban Growth, (New York: Thomas Y. Crowell, 1973), 17.
59. *Ibid.*, 18.
60. *Ibid.*, 25.
61. *Ibid.*, 26-27, 243.
62. *Ibid.*, 236.
63. *Ibid.*, 27.
64. *Ibid.*, 28.
65. *Ibid.*, 19-22.

66. University of Chicago Law Professor Allison G. Dunham was the Chief Reporter for the Code; Fred Bosselman, a Chicago attorney (and now a Professor of Law at ITT Chicago-Kent School of Law, as well as a former APA President) was Associate Reporter; Law Professors Ira Michael Heyman (University of California School of Law, Berkeley), Jan Z. Krasnowiecki (University of Pennsylvania School of Law) and Terrance Sandalow (University of Michigan Law School) were Assistant Reporters. They were assisted by an advisory committee chaired by attorney Richard F. Babcock of Chicago.
67. American Law Institute (ALI), *A Model Land Development Code* (Philadelphia, Pa.: American Law Institute, 1976). The 12 articles are as follows: (1) general provisions (including definitions and a grant of powers to local government) and definitions; (2) local land development regulation; (3) local land development planning; (4) discontinuance of existing land use; (5) acquisition and disposition of land; (6) land banking; (7) state land development regulation (including regulation of areas of critical state concern and developments of regional impact); (8) state land development planning; (9) judicial review of orders, rules, and ordinances; (10) enforcement of local land development regulation; (11) public records of development regulation; and (12) financing and coordination of governmental development. The initial draft of the ALI Code was the subject of an intensive critique by various authors in American Society of Planning Officials, 1971 *Land Use Controls Annual* (1971), 1-116.
68. ALI, *A Model Land Development Code*, Sec. 7-201(3).
69. *Ibid.*, 260.
70. *Ibid.*, Sec. 7-207, 267-8.
71. *Ibid.*, Sec. 7-301.
72. *Ibid.*, Sec. 7-301, 272.
73. *Ibid.*, Sec. 7-301(4).
74. *Ibid.*, Sec. 7-401.
75. For a critical discussion of the decision not to mandate planning in the ALI Code, see G. Raymond, "New? Yes. . . More Effective? No," in American Society of Planning Officials, 1971 *Land Use Controls Annual* 47 (1971). Responding to this criticism, the code's authors unrepentantly wrote: "[W]e remain convinced that no state would adopt a statute which forbade local governments from regulating land until they had adopted a comprehensive plan. Moreover, as we increasingly realized how many issues can only be dealt with at the state or regional level, it hardly seems worth the effort." A. Dunham and F. Bosselman, "The Reporters' Reply," 1971 *Land Use Controls Annual* (1971), 113, 114-5.
76. ALI, *A Model Land Development Code*, Sec. 3-301, 124.
77. *Ibid.*, Article 11, Commentary on Article 11, 458.
78. U.S. Advisory Commission on Intergovernmental Relations (ACIR), *State Legislative Program. No. 5, Environment, Land Use and Growth Policy* (Washington, D.C.: U.S. GPO, November 1975), 13-65.
79. *Ibid.*, 66-146. For another example of a model planned unit development statute, see R.F. Babcock, J.Z. Krasnowiecki, and D.N. McBride, "The Model State Statute," *University of Pennsylvania Law Review* (1965): 140-70.
80. U.S. Advisory Commission on Intergovernmental Relations (ACIR), *State Legislative Program. No. 6, Housing and Community Development* (Washington, D.C., December 1975), 137-144. The description of the ACIR legislation is taken from the statute's summary, page 138.
81. American Bar Association, Advisory Commission on Housing and Urban Growth, R. Fishman, ed., *Housing for All Under Law: New Directions in Housing, Land Use and Planning Law* (Cambridge, Mass.: Ballinger, 1978), xx.
82. *Ibid.*, xxi.
83. *Ibid.*
84. *Ibid.*, xxii.
85. *Ibid.*
86. D.W. Kmiec, *Zoning and Planning Deskbook* (Deerfield, Ill.: Clark, Boardman, Callaghan, 1976), Sec. 207[4][a], 2-33.
87. *Ibid.*, Sec. 2.07[4], 2-32.
88. *Ibid.*, Sec. 2.07[4][a], 2-34.
89. *Ibid.*, Sec. 2.07[4], 2-32.
90. Council of State Governments, *Suggested State Legislation* (Lexington, Ky.: The Council) (volumes for various years). By year, the legislation included: "County Powers in Relation to Local Planning and Zoning Actions Act," in Vol. 35 (1976), 70-74; "County Planning, Zoning, and Subdivision Control in Unincorporated Areas Act," in Vol. 35 (1976), 75-85; "State Land Resources Study Commission Act," in Vol. 35 (1976), 86-93; "Freshwater Wetlands Act," in Vol. 38 (1979), 32-49; "State Environmental Policy Act," in Vol. 38 (1979), 114-5; "Infrastructure Bank Act," in Vol. 43 (1984), 34-47; "Enterprise Zone Act," in Vol. 43 (1984), 132-45; "Wetland Regulation Act," in Vol. 44 (1985), 4-12; "Small Airport Zoning Regulation and Restrictions Act," in Vol. 44 (1985), 28-30; "State Flood Hazard Area Regulations Act," in Vol. 47 (1988), 1-21; "Freshwater Wetland Protection Act (Summary Statement)," in Vol. 48 (1989), 1-5; "Comprehensive Planning and Land Use Regulation Act," in Vol. 49 (1990), 9-28; "Stormwater Management and Sediment Reduction Act," in Vol. 52 (1993), 87-97; "Development Impact Fee Act," in Vol. 52 (1993), 115-23; "Private Property Protection Act," in Vol. 54 (1995), 123-26 (1995); and "State Housing Initiatives Partnership," in Vol. 54 (1995), 127-41.
91. A.C. Nelson, ed., *Development Impact Fees: Policy Rationale, Practice, Theory and Issues* (Chicago: Planners Press, 1988).
92. J. Bachrach et al., "A Standard Development Impact Fee Enabling Statute," in Nelson, *Development Impact Fees*, 135-41.
93. *Ibid.*, 137.
94. J.C. Juergensmeyer and J.C. Nicholas, "A Model Impact Fee Authorization Statute," in Nelson, *Development Impact Fees*, 156-61.
95. *Ibid.*, 156.
96. *Ibid.*, 157.
97. U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Proposed Model Land Development Standards and Accompanying Model State Enabling Legislation, 1993 Edition*, prepared by NAHB Research Center (Washington, D.C., June 1993), 1.

98. National Commission on Urban Problems, *Building the American City: Report of the National Commission on Urban Problems to the Congress and to the President of the United States* (Washington, D.C.: U.S. GPO, 1968), vii.

99. The recommendations discussed below are summarized from National Commission on Urban Problems, *Building the American City*, 242-52.

100. The ALI *Model Land Development Code* had Development of Regional Impact (DRI), procedures that contain model statutory language intended to address this issue. See ALI, *A Model Land Development Code*, Sec. 7-305, "Additional Standards Applicable to Development of Regional Impact Substantially Increasing Employment."

101. This is similar to the urban growth boundaries required in states like Oregon. See G. Knapp and A.C. Nelson, *The Regulated Landscape: Lessons on State Land Use Planning from Oregon*, (Cambridge, Mass.: Lincoln Institute of Land Policy, 1992), chapter 2; Oregon Land Conservation and Development Commission, *Statewide Planning Goals and Guidelines* (Salem, Ore.: The Commission, 1990).

102. National Commission on Urban Problems, *Building the American City*, 247.

103. See ALI, *A Model Land Development Code*, Article 6 (Landbanking), and Sec. 9-112(3) (stay in certain cases). This latter section addresses the question of court-awarded compensation when an order, rule, or ordinance constitutes a taking without just compensation.

104. The President's Committee on Urban Housing, *A Decent Home: The Report of the President's Committee on Urban Housing* (Washington, D.C.: U.S. GPO, 1968), 142-4.

105. 272 US 365 (1926). In *Euclid*, the Supreme Court articulated the following standard: "[B]efore a [zoning] ordinance can be declared unconstitutional [it must be shown to be] clearly arbitrary and unreasonable, having no substantial relationship to the public health, safety, morals or general welfare," (386-7). The decision qualified this standard by noting that there might be cases "where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way" (395).

106. President's Commission on Housing, *The Report of the President's Commission on Housing* (Washington, D.C.: U.S. GPO, 1982), 202-9.

107. *Ibid.*, 232-3.

108. Advisory Commission on Regulatory Barriers to Affordable Housing, *"Not in My Back Yard": Removing Barriers to Affordable Housing* (Washington, D.C.: U.S. GPO, 1991). The summary of recommendations that follows appears on pages 14-16 of the report.

109. See the discussion of the NAHB model land development standards and model state enabling legislation above.

110. Advisory Commission, *"Not in My Back Yard,"* 15-16.

111. *Ibid.*, 13.