

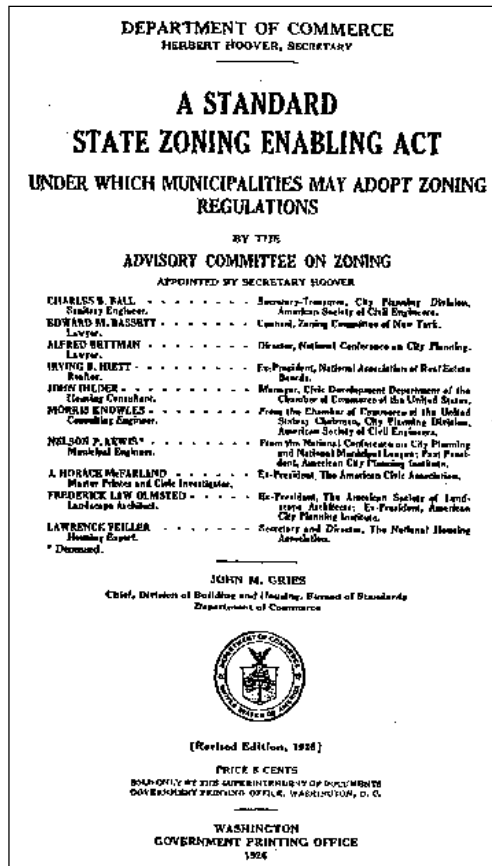
Center for Government Services

Zoning Hearing Examiners: A Modest Proposal for Statutory Change in New Jersey

Stuart Meck, FAICP/PP
Director, CGS

*New Jersey Institute for Continuing Legal Education
2006 Land Use Institute
May 2, 2006, Hyatt Hotel, New Brunswick*

The dispute over the BZA 1922-1930



- Edward Murray Bassett v. Lawrence Veiller and Frederick Law Olmstead, Jr. in the debate over the *Standard State Zoning Enabling Act* (1922-1926)

Veiller calls for federal “inquiry” into BZAs

- Reports “wide divergence” of views with regard to BZAs and their powers.
- “Some of the committee still think that such powers should be circumscribed.”
- A study is needed

--Lawrence Veiller to U.S. Commerce Secretary
Robert Lamont, June 2, 1930

Veiller calls for federal “inquiry” into BZAs

- Study should “avoid even the slightest appearance of being directed to the uncovering of possible instances of corruption or malfeasance by the local officials of the municipalities concerned”

Some New Jersey case law

- *New York SMSA (Verizon) v. BZA of Weehawken*, 851 A.2d 110 (N.J. Superior 2004)
- *Krain Associates v. Twp of Maple Shade*, 448 A.2d 522 (N.J. Superior 1982)
- *Amato v. Randolph Twp Planning Board*, 457 A.2d 118 (N.J. Superior 1982)

Problems with boards of zoning adjustment

- Lay people functioning as judges
- Neighbors
- Objectivity
- Political aspirants
- *Ex parte* communications
- The problem of land use complexity
- Lack of training (soon to be corrected, but will it be enough?)
- Efficiency
- Cost of lawsuits

What is a zoning hearing examiner?

- Land use expert—attorney or professional planner
- Conducts adjudicatory hearings
- Makes findings of fact
- Applies relevant law
- Creates reviewable record

What is a zoning hearing examiner?

- Alternatives
 - ZHE completely replaces BZA and, in certain situations, planning board
 - ZHE makes recommendations to BZA and planning board
 - ZHE simply conducts hearing, with board attending

Which states authorize zoning hearing examiners?

- Maryland, M.C. Art. 66B, 4.06
- Illinois, 55 ILCS 5/5-12015
- Idaho, I.S. 67-6520
- Indiana, I.C.A. 36-7-4-923
- Washington, W.R.C.A. 35A.63.170
- Arizona, A.R.S. 9-462.08
- Tennessee, T.C. 7-7-101 to 105

What do zoning hearing officers do?

- Conduct hearings on discretionary land use decisions, including variances, conditional uses, subdivisions, shoreland permits
- Hear appeals and requests for interpretations
- Make recommendations, including rezonings

Advantages of zoning hearing officers

- Accountability
- Training/objectivity
- Neutrality
- Rendering of written decision
- Creation of record
- Efficiency (no quorum), fewer remands
- Cost reduction potential
- Easier to terminate than BZA member

Disadvantages of zoning hearing examiner

- Perception that examiner doesn't understand local situation
- Loss of appointive positions
- Potential cost increases
- Shock of the new

Endorsement of hearing examiner concept

- American Bar Association
Advisory Commission on Housing
and Urban Growth, *Housing for All
Under Law* (1978)
- American Planning Association
(APA) *Growing Smart Legislative
Guidebook* (2002)

Example: Pierce County, Washington

- Hearing examiner code
- Procedures for quasi-judicial hearing