Do State Planning Laws Matter
Or
Must We Lower Our Expectations?

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Introduction

• Kevin Lynch: “Planning should get involved with danger instead of trivialities.”
Overview of Presentation

• Three periods of planning statute reform in the U.S.
• Assessing the literature on reform’s impact
• Guideposts for the road ahead:
  – What we shouldn’t count on
  – What our direction should be
The Standard Acts

- Commerce Secretary Herbert Hoover creates advisory committee in 1921 to draft model state zoning, planning enabling acts
Origins: The Standard Acts

Edward M. Bassett

DEPARTMENT OF COMMERCE
Secretary of Commerce

A STANDARD
STATE ZONING ENABLING ACT
UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS

BY THE
ADVISORY COMMITTEE ON ZONING

[Partial list of members]

[Text of the Standard Zoning Enabling Act]

[Signature of John N. Dyer, Secretary of Commerce]
Origins: The Standard Acts

Alfred Bettman
The Standard Acts

• The Standard State Zoning Enabling Act
  – Delegated power to zone
  – Established procedures for amendments, special exceptions, variances
  – Created the board of zoning appeals
  – Enigmatic language “in accordance with a comprehensive plan”
The Standard Acts

• Standard City Planning Enabling Act
  – Established municipal planning commission
  – Authorized preparation of master plan
  – Required review of proposed public improvements by planning commission
  – Authorized subdivision regulation
  – Authorized the preparation of the “official map” showing precise location of proposed improvements
  – Created regional planning commissions
The Standard Acts

• Assumptions
  – Built on nuisance concept
  – Concern about congestion
  – Land use was local issue
The Standard Acts

• Motivations
  – Response to post-WWI growth
  – Protection of value of land as commodity
  – Delegation of authority to avoid invalidation
  – Authority to exclude, backdrop of immigration, racism, especially in the South
The Standard Acts—
The Transition Begins

• William Doebele—New Mexico study (1960):
  – Enhanced role of comprehensive plan
  – Gave plan more binding power
The Standard Acts—The Transition Begins

- Jacob Beuscher/Orlando Delogu—Wisconsin Study (1965):
  - Critical area protection
  - Special protection of lands near major state infrastructure investments
The Standard Acts—
The Transition Begins

• American Society of Planning Officials—Connecticut Study (1966):
  – Strengthened relationship of zoning to planning
  – Authorized new techniques and structural changes
  – Corrected inconsistencies, ambiguous provisions
The Quiet Revolution in Land Use Control (1971)

• Fred Bosselman

• David Callies
The Quiet Revolution in Land Use Control

- Chronicled emerging state role in land use
- States asserting dormant interests
  - Mainly environmental—e.g., Hackensack Meadowlands
  - Some organizational issues
  - Affordable housing (only in Massachusetts)
- Land seen as commodity and resource
The Quiet Revolution in Land Use Control

• Example: Wisconsin Shoreland Protection Program
  – State supervision of local regulation of land use adjoining shoreland resources
  – State model ordinance
The Quiet Revolution in Land Use Control--Transition

• Callies: Assessment 25 years later
  – Environmental regulation continued into 1980s
  – “Precious little permit simplification”
  – Local zoning had not withered away
  – Emergence of growth management
Growth Management

• Impact of Ramapo (NY-1972), Petaluma (CA/Fed 9th Cir. 1975)

• Movement attempts to affect timing as well as location and characteristics of growth
Growth Management

• Assumptions
  – New development should be supported by adequate public facilities
  – Urban development should be matched by urban services
  – Recognition that public investment affects pace of development
Growth Management

• Some objectives
  – Reduce consumption of land, make development more compact
  – Establish minimum standards of competence for local planning and land use control
  – Vertical and horizontal integration
The Growth Management States

- Florida
- Maine
- Maryland
- New Jersey
- Oregon
- Rhode Island
- Tennessee
- Vermont
- Washington
- Wisconsin
Literature: What Has Planning Statute Reform Accomplished?
Quality of plans and their implementation

• Burby and May (1997):
  – State statutory mandates make a difference in plan quality
  – Higher-quality plans more likely to be implemented than lower quality plans
Quality of plans and their implementation

- Deyle and Smith (1998):
  - Compliance in Florida with state mandates was “selectively enforced” and storm hazard planning requirements were “not rigorously enforced”
  - Attitude of state monitors makes a difference in plan implementation
Quality of plans and their implementation

• Norton (2005):
  – Evaluated state-mandated coastal planning in North Carolina during mid 1990s
  – Found that plans were weak analytically and substantively, providing limited guidance for growth management, especially regional coastal protection
Impact on urban sprawl and urban form

• Carruthers (2002):
  – Conducted comparative analysis of 14 state growth management programs from 1982-1997—only cross-sectional study
  – Strong consistency requirements and enforcement mechanisms hold much promise for reducing urban sprawl
  – Oregon’s program alone has produced more compact urban areas
Impact on urban sprawl and urban form

• Moore and Weitz (1998):
  – Looked at recent development in three communities in Oregon
  – Found that recent development inside UGBs tended to be contiguous to the urban core rather than dispersed
Impact on urban sprawl and urban form

• Downs (2002):
  – Examined question of whether housing prices have risen faster in Portland than elsewhere
  – Housing prices only rose rapidly during first half of 1990s, but not at other times
  – Erroneous to conclude that UGBs cause housing prices to rise more rapidly than in areas that do not have them
Impact on housing affordability and production of affordable housing

• Anthony (2002):
  – Looked at impact of Florida Growth Management Act on housing affordability
  – Found that act had decreased affordability of single-family housing
  – Problem lay in more specificity on housing requirements, better enforcement, and funding for affordable housing
Impact on housing affordability & production of affordable housing

• Meck, Schwab, and Retzlaff (2003):
  – Looked at impact of regional approaches to affordable housing, including fair-share planning and housing appeals boards
  – Found highly mixed results, with comparatively good production in New Jersey, less so in New England
  – Could not evaluate California because no production data are collected
Efficiency of permit processes, judicial review


- Looked at efficiency of permitting and judicial review procedures for land-use decisionmaking
- Permits: Oregon—120 days; Georgia—up to 2 years
- Judicial review: Less than one year in Oregon, 2-7 years in Georgia, 2-6 years in Florida and New Jersey
Literature: What Has Planning Statute Reform Accomplished?

• Good comprehensive planning makes a difference in implementation

• Impact of state monitoring depends on diligence and competence of monitor

• It is hard to stop sprawl, and only Oregon seems to have made a dent
Literature: What Has Planning Statute Reform Accomplished?

• Producing affordable housing is not easy; there must be a system that monitors compliance against numerical goals

• We don’t know too much about internal workings of permit processes, but a little more about process of judicial review—the question of regulatory streamlining
Some fearless, but bleak predictions

- We are unlikely to stop sprawl without a lot of effort (*but* see J. Hughes and J. Seneca)
Some fearless, but bleak predictions

- Hard to change other factors affecting land use, notably local government reliance on property and sales tax
- Regional planning will not save us (although hope springs eternal)
- Unlikely that states will be activists—the impact of *Kelo* and compensation bills
Some guideposts for the road ahead

• Stick to the fundamentals
  – Comprehensive plan definition
  – Consistent relationship of plan to regulations, etc.
  – Opennesss of decisionmaking process
  – Land use decision documentation
  – Processes of permitting, and admin/judicial review
Some guideposts for the road ahead

• New statutes must be detailed and precise
  – Can’t assume competent state agency to offer guidance
  – Can’t assume role of the courts

• System should be self-executing if critical issues must be addressed, less “flexibility”
  – Example: Illinois Affordable Housing Planning and Appeal Act specifying procedures and plan contents
Some guideposts for the road ahead

• Establish deadlines for permit decisions
• Replace planning and zoning boards with hearing examiners for permitting
• Set broad standing requirements in absence of state supervision to keep system consistent, honest, and competent
• Train public officials (like NJ)
Some guideposts for the road ahead

• Dedicate systems to produce affordable housing (and get involved with danger)
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