

# Center for Government Services

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

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*(En)Light(e)ning Lunch, E.J. Bloustein School  
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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

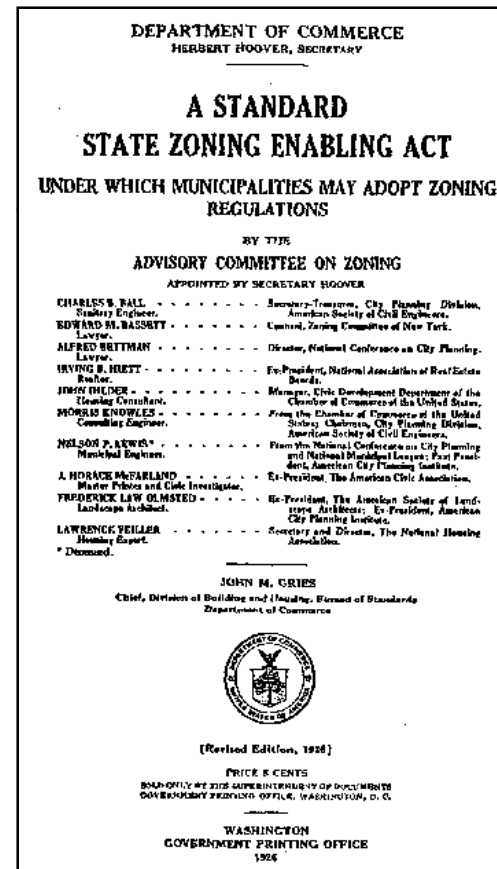
- Commerce Secretary Herbert Hoover creates advisory committee in 1921 to draft model state zoning, planning enabling acts



# Origins: The Standard Acts



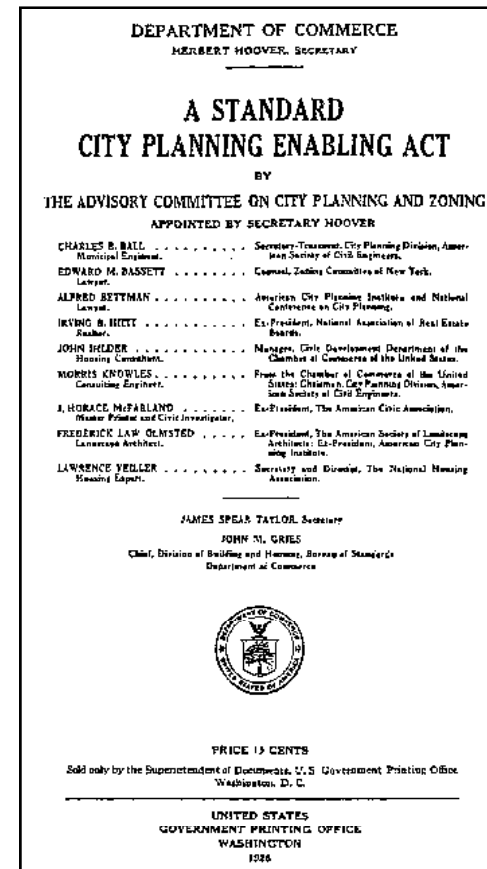
Edward M. Bassett



# 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 9<sup>th</sup> Cir.1975)
- Movement attempts to affect timing as well as location and characteristics of growth

# Growth Management

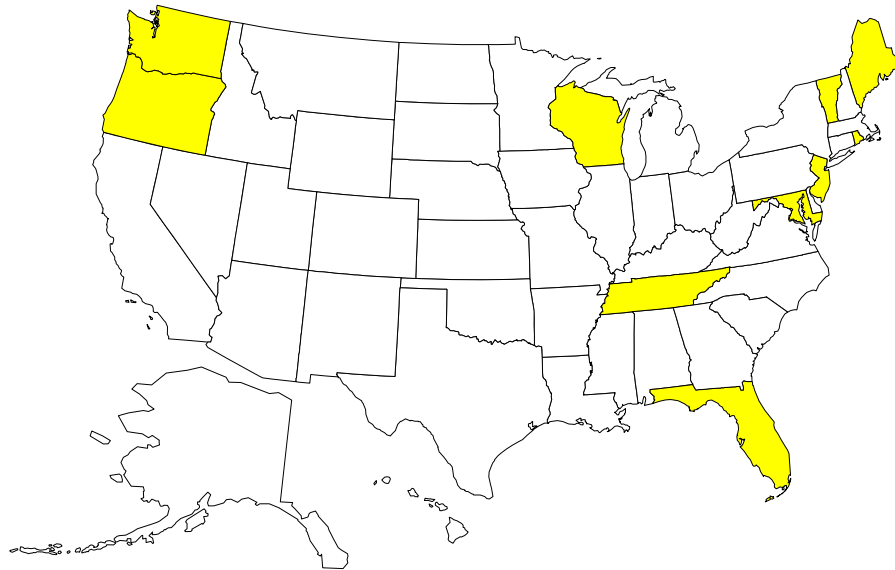
- Assumptions
  - New development should be supported by adequate public facilities
  - Urban development should be matched by urban services
  - Recognition that public investment affects pace of development

# 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

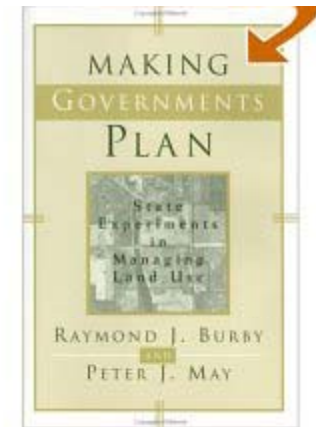
- Florida
- Maine
- Maryland
- New Jersey
- Oregon
- Rhode Island
- Tennessee
- Vermont
- Washington
- Wisconsin



# 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 liked 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

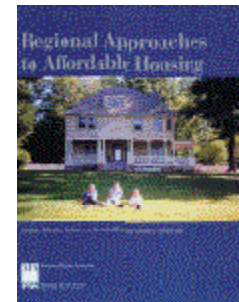
- Downs (2002):
  - Examined question of whether housing prices have risen faster in Portland than elsewhere
  - Housing prices only rose rapidly during first half of 1990s, but not at other times
  - Erroneous to conclude that UGBs cause housing prices to rise more rapidly than in areas that do not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

Nelson (1995):

- 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?

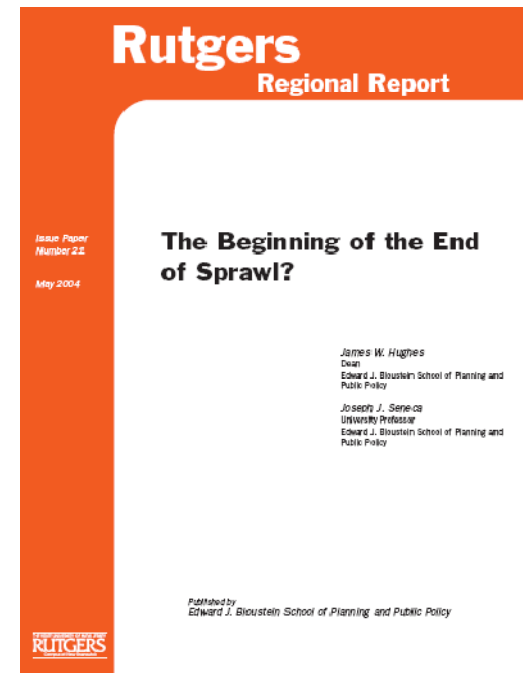
- Good comprehensive planning makes a difference in implementation
- Impact of state monitoring depends on diligence and competence of monitor
- It is hard to stop sprawl, and only Oregon seems to have made a dent

# 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.
  - Openness 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)

**FINIS**