

Center for Government Services

The Zoning Hearing Examiner Examined

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Order of Presentation

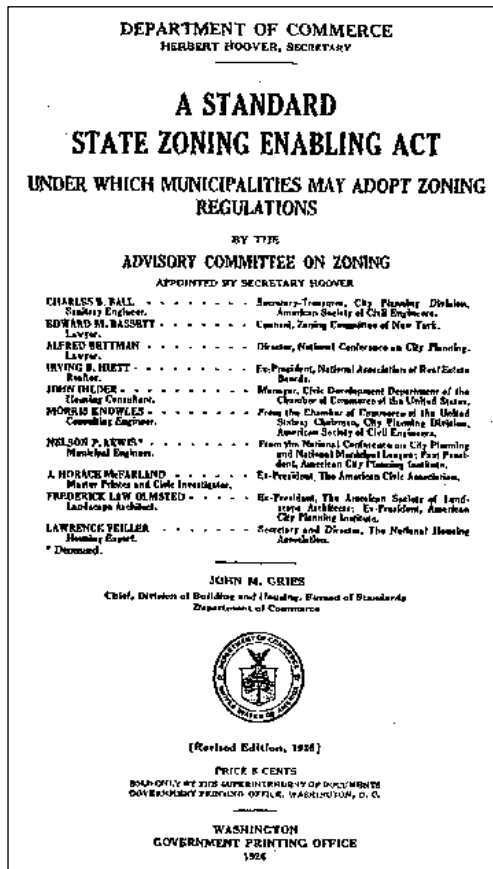
Meck

- Problems with the board of adjustment
- What a hearing examiner does
- The emergence of the hearing examiner
- Statutes/ordinances
- Pros and cons

LeFaivre

- The hearing examiner in practice in Maryland
- Lessons learned

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”

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 for both planning commission and zoning board
- 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

The emergence of the hearing examiner

- Anne Arundel, County, MD (1965)
- Montgomery County, MD (1967)
- Prince Georges County, MD (1971)
- Harford County, MD (1973)
- Other states—Tucson, AZ (1975), Xenia, OH (1975), King County, WA (1970)

Hyson v. Montgomery County Council, 217 A.2d 578 (MD 1966)

- Protestors had right to cross examine witnesses presented by rezoning petitioners
- Council was acting in a quasi-judicial capacity in rezoning

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

Which states authorize zoning hearing examiners?

- Alaska, AL Stat. 29.40.050(a)
- Arizona, A.R.S. 9-462-08A

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 Law Institute, *Model Land Development Code* (1976)
- 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

Example: *Chapman v. Montgomery County Council*, 271 A.2d 156 (MD 1970)

- Shows how hearing examiner functions as a fact finder in a complex, highly contested proceeding
- (But court majority overturns hearing examiner recommendation)

Questions for Michele LeFaivre

- Why did Havre de Grace establish a zoning hearing officer position?
- What kind of issues come up before the hearing examiner?

Questions for Michele LeFaivre

- Describe what you do in Havre de Grace and Howard County
- Describe how you conduct a hearing

Questions for Michele LeFaivre

- How do you reach a decision?
- What is the most difficult case you have had?

Questions for Michele LeFaivre

- How has Havre de Grace reacted to having a hearing examiner?
- Have you changed how you hear cases as a result of your experience?

Questions for Michele LeFaivre

- What advice can you give to a local government thinking about establishing a hearing examiner position?

Recommended reading

Stuart Meck and Rebecca Retzlaff, “The Zoning Hearing Examiner: Origins, Evolution, and Status in Statutes and Case Law,” *Planning & Environmental Law*, 59(7) (July 2007): 3-10

_____, “The Zoning Hearing Examiner and its Use in Idaho Cities and Counties: Improving the Efficiency of the Land Use Permitting Process,” *Idaho L.R.* 49(2)(2007): 409-443.

Daniel Lauber, *The Hearing Examiner in Zoning Administration*, Planning Advisory Service Report No. 312. Chicago: American Society of Planning Officials, 1975.