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GROWTH MANAGEMENT UPDATE: AN ASSESSMENT AND STATUS REPORT

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INTRODUCTION

Growth management may be defined as a conscious governmental effort to influence the rate, amount, type, location, and/or quality of future development within the territorial jurisdiction of a municipality.[1] Many communities have engaged in some variety of growth management since the early 1900's[2] and *Village of Euclid v. Ambler Realty Co.*,[3] but the concept has undergone major changes and has gained growing support during the past decade.[4] State courts have been developing new tests for evaluating the ways localities use their powers to guide growth,[5] and Congress[6] and state legislatures[7] are

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1. *See* D. GODSCHALK, D. BROWER, L. McBENNETT, & B. VESTAL, CONSTITUTIONAL ISSUES OF GROWTH MANAGEMENT 8 (1977) [hereinafter cited as CONSTITUTIONAL ISSUES].

2. The early efforts made exclusive use of Euclidean zoning techniques, which divided a jurisdiction into districts or zones, with different regulations for each district.

3. 272 U.S. 365 (1926). In this case the Supreme Court upheld zoning as a valid exercise of the police power. Moreover, it held that such restrictions can be invalidated only if they clearly do not promote the health, safety, morals, or general welfare of the community.

4. A catalog of growth management tools and techniques is provided in R. SCOTT, D. BROWER & D. MINER, II MANAGEMENT AND CONTROL OF GROWTH (1975). Most of today's growth control systems rely heavily on variations of traditional zoning techniques, but communities are often innovative in the way they combine tools and adapt them to achieve local goals. *See generally* D. GODSCHALK, D. BROWER, D. HERR, & B. VESTAL, RESPONSIBLE GROWTH MANAGEMENT: CASES AND MATERIALS (1977). *See also* D. BROWER & C. CARRAWAY, TOOLS AND TECHNIQUES OF GROWTH MANAGEMENT (1978).

5. *See* text accompanying notes 22-101, *infra*.

6. In 1964 only six federal programs imposed areawide planning requirements. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, REGIONAL DECISION MAKING: NEW STRATEGIES FOR SUBSTATE DISTRICTS 169 (1973). By 1976 this number had increased to 32. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, REGIONALISM REVISITED: RECENT AREAWIDE AND LOCAL RESPONSES 11-19 (1977). For examples of these programs, *see* HUD's Section 701 planning program, 40 U.S.C. §461 (Supp. V 1975) and 24 C.F.R. §600 (1977); EPA's Section 208 Water Quality Management Planning Program, 33 U.S.C. §1251 (Supp. V 1975) and 40 C.F.R. §131 (1976).

7. *See* notes 102-23, *infra*, and accompanying text.

now frequently mandating that comprehensive plans be adopted and followed at local and regional levels.

A variety of challenges can be raised by persons affected by growth management efforts. The classic challenge argues that a growth management policy violates the "taking" clause of the Fifth Amendment or the due process clause of the Fourteenth Amendment of the U.S. Constitution, or similar clauses of state constitutions.[8] A second constitutional challenge is based on federal and state equal protection clauses and may be brought by a landowner or other affected party who believes he has been treated more harshly than others similarly situated.[9]

This article focuses upon two additional, but closely related, challenges. The first—the regional general welfare challenge—is based upon the due process clause found in most state constitutions, and its requirement that local regulatory action further health, safety, morals, and general welfare.[10] The second is grounded on a claim that a particular zoning requirement does not faithfully implement the community's adopted master or comprehensive plan[11] and is therefore invalid.

8. *See, e.g.,* Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). For a readable discussion of due process and taking challenges *see* CONSTITUTIONAL ISSUES, *supra* note 1, chs. 3 & 4. *And see* Wengert, *Due Process, Equal Protection and Land Use Planning and Regulation,* 19 NAT. RES. J. 1 (1978).

9. *See* Constitutional Issues, *supra* note 1, ch. 6; Wengert, *supra* note 8, at 1. Equal protection challenges may also be brought against land use schemes that are alleged to be exclusionary (e.g., ordinances that prohibit the construction of low-cost housing). Plaintiffs will generally have to rely on state law in challenging such policies because the Federal courts not only exercise a traditional restraint in entertaining such actions, but require proof of discriminatory intent or purpose to show a violation of the Equal Protection Clause. Metropolitan Housing Dev. Corp. v. Village of Arlington Heights, 429 U.S. 252 (1977). The requisite intent was found in United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975). Discriminatory intent was found lacking in Mahaley v. Cuyohoga Metropolitan Housing Auth., 500 F.2d 1087 (6th Cir. 1974); Acevedo v. Nassau County, 500 F.2d 1078 (2d Cir. 1974); Lawrence v. Oakes, 361 F. Supp. 432 (D. Vt. 1973). Nevertheless, exclusionary zoning policies may violate Federal statutes, e.g., the Fair Housing Act. Metropolitan Housing Dev. Corp. v. Village of Arlington Heights, *on remand,* 558 F.2d 1283 (7th Cir. 1977); City of Hartford v. Town of Glastonbury, 561 F.2d 1032 (2d Cir. 1977).

10. *See, e.g.,* Nectow v. City of Cambridge, 277 U.S. 183 (1928).

11. *See* text accompanying notes 62-101, *infra.*

Another constitutional challenge has been raised. Plaintiffs have argued that growth management policies illegally restrict the constitutional right to travel. The specific source of this right is unclear. *Compare* Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1868) and Ward v. Maryland, 79 U.S. (12 Wall.) 418 (1871) (Privileges and Immunities Clause, U.S. CONST. Art. IV, § 2); Twining v. New Jersey, 211 U.S. 78 (1908) (Privileges and Immunities Clause, U.S. CONST. Amend. XIV); Passenger Cases, 48 U.S. (7 How.) 284 (1849) and Edwards v. California, 314 U.S. 160 (1941) (the Commerce Clause); Aptheker v. Secretary of State, 378 U.S. 500 (1964) (Due Process Clause, U.S. CONST. Amend. XIV); Shapiro v. Thompson, 394 U.S. 618 (1969) (Court applied Equal Protection analysis); United States v.

It is ordinarily difficult to prevail using any of these challenges, because judicial review of local legislative action has been traditionally governed by a standard formulated by the United States Supreme Court in *Village of Euclid.*[12] This standard, which is used by a majority of the states, begins with a presumption that all local legislative acts are valid, and thus the municipality need not defend any legislative act until the challenger at least arguably demonstrates that the act is invalid.[13] Rebuttal of this "presumption of validity," as it is often called, is particularly burdensome for those challenging growth management systems because land use regulations are usually considered legislative in character and are thus upheld unless shown to be clearly arbitrary or unreasonable.[14]

If the challenger is able to convince the court that reasonable persons could find the regulation arbitrary or unreasonable, the presumption of validity is overcome and the court then proceeds to examine the ordinance itself. The municipality, however, in order to prevail needs only to present evidence sufficient to demonstrate that the legislators, in adopting the act, had a rational basis for their action.[15] A local government can satisfy this by showing: (1) that the regulation was adopted in pursuit of a legitimate objective of the police power; (2) that the regulation is reasonably necessary to accomplish the objective; and (3) that the regulation is not unduly oppressive.[16]

Guest, 383 U.S. 745 (1966) (U.S. CONST. generally). In Construction Indus. Ass'n v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974), a United States District Court viewed Petaluma's growth control measures as penalties on the exercise of the right to travel and therefore employed the compelling interest standard of review to invalidate them. The Ninth Circuit Court of Appeals reversed, finding that the plaintiffs lacked standing to raise the right to travel claim. 522 F.2d 897 (9th Cir. 1975), *cert. denied,* 424 U.S. 934 (1976).

12. 272 U.S. 365 (1926).

13. *See* 272 U.S. at 388.

14. *Id.* at 387. The showing that must be made by the challenger varies from one jurisdiction to another. *See, e.g.,* text accompanying notes 68-101, *infra.*

Several courts do not treat all land use regulations identically; they draw a distinction between legislative and quasi-judicial actions. *See* text accompanying notes 77-98, *infra.* The distinction is generally based on the parties affected by a regulation. If a large group of landowners is affected and the action can be viewed as expressive of general policy, a regulation is legislative. If, on the other hand, a zoning action focuses on a specific property, it is likely to be characterized as quasi-judicial. *See, e.g.,* Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975); Forman v. Eagle Thrifty Drugs & Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973); Fleming v. Tacoma, 81 Wash. 2d, 502 P.2d 327 (1972); R. DAVIS, ADMINISTRATIVE LAW TEXT 123-25 (4th ed. 1972). When a court draws this distinction, quasi-judicial actions must be supported by reasoned decisionmaking and affected parties must be granted certain due process protections; *i.e.,* the presumption of validity is no longer applicable. *See* notes 77-98, *infra,* and accompanying text.

15. *See* 272 U.S. at 389-90.

16. *See, e.g.,* Lawton v. Steele, 152 U.S. 133, 137 (1894).

Recent decisions have weakened the traditional presumption of validity[17] and have modified accepted notions of what are legitimate objectives of the police power.[18] Although these decisions have not been accepted by a majority of state courts, they are very important because they have been decided by courts that have traditionally been in the forefront in the evolution of planning law.[19] Moreover, the cases make sense and are responsive to a rich literature espousing the principle that localities cannot plan in a vacuum.[20]

THE DEVELOPMENT OF THE "REGIONAL GENERAL WELFARE" CHALLENGE

A series of cases has adopted an enlarged definition of the "general welfare" concept. Courts traditionally have held that due process requires a local government to exercise its regulatory powers in furtherance of the health, safety, morals, or general welfare of its own community.[21] Recent attempts by localities to influence the rate, location, and type of growth, however, have demonstrated the dangers inherent in a self-centered interpretation of general welfare. For example, local growth controls often divert potential residents to second or third choice living environments, or force localities in the region to absorb a disproportionate share of the public service and facility costs incurred in accommodating new residents. A number of recent decisions recognize the shortcomings of the traditional definition of general welfare and impose a responsibility on local governments to consider the regional impacts of local decisions.

"Open Doors"

The Pennsylvania Supreme Court wrote the first page of the regional general welfare chapter in the history of growth manage-

17. *See* notes 77-98, *infra*, and accompanying text.

18. *See* text accompanying notes 22-58, *infra*.

19. *See* N. WILLIAMS, AMERICAN PLANNING LAW 81, 91-92 (1974); Scott, *An Impressionistic Hypothesis: Twenty Land Use Hypotheses for the Late 1970s*, Envt'l Com. 12 (1977).

20. *E.g.*, ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, REGIONALISM REVISITED: RECENT AREAWIDE AND LOCAL RESPONSES 35 (1977); CALIFORNIA OFFICE OF PLANNING AND RESEARCH, AN URBAN DEVELOPMENT STRATEGY 27 (review draft 1977); MASSACHUSETTS OFFICE OF STATE PLANNING, CITIES AND TOWN CENTERS: A PROGRAM FOR GROWTH 81 (1977); B. MacKAYE, THE NEW EXPLORATION (1928); ALI, MODEL LAND DEVELOPMENT CODE Art. 7 (1976).

See Intergovernmental Coordination Act of 1977: S. 892, 95th Cong., 1st Sess. (1977) (sponsored by Sen. Magnuson and others); H.R. 4406, 95th Cong., 1st Sess. (1977) (sponsored by Rep. Ashley and others).

21. *E.g.*, Nectow v. City of Cambridge, 277 U.S. 183 (1928); Lawton v. Steele, 152 U.S. 133, 136-37 (1894).

ment litigation. In *National Land & Investment Co. v. Kohn,*[22] the court invalidated a zoning ordinance that established a four-acre minimum lot size. Although the court did not expressly mention regional welfare, it articulated a concern for the regional implications of self-centered local regulation:

> It is not difficult to envision the tremendous hardship, as well as the chaotic conditions, which would result if all the townships in this area decided to deny to a growing population sites for residential development within the means of at least a significant segment of the people.[23]

The court reiterated this concern in *Appeal of Kit-Mar Builders, Inc.,*[24] a case that struck down ordinances requiring lot sizes of at least two and three acres, and held that a locality may not disregard the interests of the larger area of which it is a part.

In 1971, a Michigan appellate court expressed a similar concern when it expanded the state's "preferred use" doctrine, a doctrine that reversed the presumption of validity when applied to an ordinance that excludes certain preferred land uses.[25] According to the expanded doctrine, a land use was a preferred use if it substantially advanced the regional public interest. However, this definition was subsequently overruled and replaced by a test of whether the use was totally excluded from the community.[26]

The case of *Golden v. Planning Board of the Town of Ramapo*[27] signaled New York State's appearance on the regional welfare scene. In the late 1960's, the Town of Ramapo adopted a comprehensive plan, a capital improvements program and a zoning ordinance to implement the plan. The ordinance made the existence of adequate public facilities a prerequisite to the issuance of a development permit. The program was challenged on the ground that it enhanced local values to the detriment of surrounding communities. New York's highest court upheld the plan, finding that it showed sufficient concern for regional growth pressures:

> [Ramapo's regulations] seek, not to freeze population at present levels but to maximize growth by the efficient use of land, and in so

22. 419 Pa. 504, 215 A.2d 597 (1965).

23. *Id.* at 527-28, 215 A.2d at 610.

24. 439 Pa. 466, 268 A.2d 765 (1970). The Court continued this line of thought in Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970). *But see* notes 48-51, *infra* and accompanying text.

25. Green v. Township of Lima, 40 Mich. App. 655, 199 N.W.2d 243 (Ct. App. 1972); Bristow v. City of Woodhaven, 35 Mich. App. 205, 192 N.W.2d 322 (Ct. App. 1971).

26. Kropf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179 (1974).

27. 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), *appeal dismissed,* 409 U.S. 1003 (1972).

> doing testify to this community's continuing role in population assimilation . . .
>
> We only require that communities confront the challenge of population growth with open doors.[28]

Fair Share: The Formulaic Approach

The "open doors" approach did not satisfy the New Jersey Supreme Court, however. In *Southern Burlington County NAACP v. Township of Mount Laurel,*[29] the court held that local regulatory actions must meet the need for adequate housing of all income groups residing within the region:

> [E]very [developing] municipality[30] must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's *fair share* of the present and prospective regional need therefor.[31]

The newly created presumption could only be overcome by demonstrating particular circumstances which dictate to the contrary; for example, severe environmental constraints.[32]

The Court's remedy was cautious and conservative, based upon a conviction that the community "should first have full opportunity to itself act without judicial supervision."[33] Accordingly, the Township was given ninety days in which to adopt appropriate zoning amendments and take any necessary additional action. The Court expected

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28. 30 N.Y.2d at 379-80, 285 N.E.2d at 302, 334 N.Y.S.2d at 152-53.

29. 67 N.J. 151, 336 A.2d 713 (1975), *appeal dismissed,* 423 U.S. 808 (1975). The *Mount Laurel* case has been a frequent subject of commentary. *See, e.g.,* Ackerman, *The Mount Laurel Decision: Expanding the Boundaries of Zoning Reform,* 1976 U. ILL. L.F. 1; Symposium, 27 LAND USE L. & ZONING DIGEST No. 6 (1975); Note, *Exclusionary Zoning: The View from Mount Laurel,* 40 ALBANY L. REV. 646 (1976); Williams & Doughty, *Studies in Legal Realism: Mount Laurel, Belle Terre, and Berman,* 29 RUTGERS L. REV. 73 (1975).

30. The "developing" municipality exception to *Mount Laurel* has been explored in later New Jersey cases. *E.g.,* Nigito v. Borough of Closter, 142 N.J. Super. 1, 359 A.2d 521 (Supr. Ct. App. Div. 1976), *pet. for certification denied,* 74 N.J. 265, 377 A.2d 670 (N.J. 1977); Pascack Ass'n Ltd. v. Mayor & Council of the Township of Washington, Bergen County, 131 N.J. Super. 195, 329 A.2d 89 (Super. Ct. L. Div. 1974), *modified,* 74 N.J. 470, 379 A.2d 6 (1977); Segal Constr. Co. v. Zoning Bd. of Adjustment, 134 N.J. Super. 421, 341 A.2d 667 (1975) (Super. Ct. App. Div.), *petition for certification denied,* 68 N.J. 496, 348 A.2d 536 (1975).

31. 67 N.J. at 174, 336 A.2d at 724 (emphasis added).

32. *Id.* at 186-87, 336 A.2d at 731.

33. *Id.* at 192, 336 A.2d at 734.

Mount Laurel, in exercising these responsibilities, to derive a reasonable fair share housing figure from information "concerning the housing needs of persons of low and moderate income now or formerly residing in the township in substandard dwellings and those presently employed or reasonably expected to be employed therein . . ."[34]

Fair Share: Least-Cost Housing

A 1977 decision, *Oakwood at Madison, Inc. v. Township of Madison,*[35] both modified and expanded the *Mount Laurel opinion. Be*cause successive New Jersey laws required local communities to provide additional and increasingly expensive public services, Madison Township found itself in need of increased real estate tax revenues. It also discovered that multifamily units appeared to be yielding less than their pro rata share of real estate taxes. Thus, in 1970 Madison adopted a new ordinance, rezoning most of its vacant land for one or two-acre single family dwellings. As a result of pressure from developers, a 1973 amendment reduced these minimum lot sizes, but even so, only 2.37 percent of the Township's developable land remained zoned for multifamily housing.

Several low-income nonresidents and a group of large scale developers who had planned to build a four hundred-acre project of which twenty percent of the housing units were to be for low income families, challenges the ordinance. A New Jersey superior court invalidated the regulation because it failed to promote the general welfare of the region.[36] The court held that the Township's obligation "to provide its fair share of the housing needs of its region [was] not met unless its zoning ordinance approximate[d] in additional housing unit capacity the same proportion of low-income housing as its present low-income population. . . ."[37]

The New Jersey Supreme Court agreed with the lower court's basic premises and found that the zoning ordinance did not make adequate provision for the Township's fair share of the regional need for low and moderate income housing, a responsibility inherent in

34. *Id.* at 190, 336 A.2d at 733. Fair share housing formulae have been used elsewhere to determine housing requirements. *E.g.,* METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, THE WASHINGTON METROPOLITAN AREA'S AREAWIDE HOUSING OPPORTUNITY PLAN (1976); D. LISTOKIN, FAIR SHARE HOUSING ALLOCATION (1976).

35. 72 N.J. 481, 371 A.2d 1192 (1977).

36. 117 N.J. Super. 11, 283 A.2d 353 (Super. Ct. L. Div. 1971), *on rem'd,* 128 N.J. Super. 438, 320 A.2d 223 (Super. Ct. L. Div. 1974).

37. 128 N.J. Super. at 447, 320 A.2d at 227.

the Township's obligation to zone for the general welfare. The Court, however, introduced a new concept: "least-cost housing."[38] Giving the township ninety days to submit a revised zoning ordinance, the Court warned that the revisions must: (1) designate substantial areas for small lot single family housing; (2) increase the amount of land available for dwellings on moderately sized lots; (3) enlarge existing or create other multifamily zones; (4) modify the PUD and multifamily zoning restrictions that discourage developers from building dwellings with more than two bedrooms; and (5) take any other steps necessary to eliminate undue cost-generating regulations in the lower-income housing zones.[39] Satisfaction of these criteria was expected to enable the construction of "least-cost housing," which might not provide newly constructed housing for low-income persons but would eventually augment the supply of cheaper housing through the "trickle down" effect.[40]

The New Jersey Supreme Court did not agree with the trial court's formulaic approach to the provision of Madison's fair share of regional housing:

> We are convinced . . . that attention by those concerned, whether courts or local governing bodies, to the *substance* of a zoning ordinance under challenge and to *bona fide* efforts toward the elimination or minimization of undue cost-generating requirements in respect of reasonable areas of a developing municipality represents the best promise for adequate productiveness without resort to formulaic estimates of specific unit "fair shares" of lower cost housing by any of the complex and controversial allocation "models" now coming into vogue.[41]

The Court refused to require affirmative action beyond that of eliminating the exclusionary zoning, but it reiterated sentiment it had expressed in *Mount Laurel:* that communities do, under certain circumstances, have a modal obligation to sponsor public housing projects.

Fair Share: Affirmative Remedy

The New York Court of Appeals, in *Berenson v. Town of New Castle,*[42] followed the lead of the New Jersey Supreme Court, hold-

38. 72 N.J. at 510-14, 547, 553, 371 A.2d at 1206-08, 1225, 1228.
39. *Id.* at 553, 371 A.2d at 1228.
40. *Id.* at 512, 371 A.2d at 1207.
41. *Id.* at 499, 371 A.2d at 1200 (footnote omitted).
42. 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S. 2d 672 (1975). In response to this case, two New York Assemblymen have introduced legislation to combat exclusionary zoning. *News,* 29 LAND USE L. & ZONING DIGEST 3 (Nov. 8, 1977).

ing that localities must consider regional housing needs. Under New York's formulation of a regional welfare standard, a municipality may prohibit multifamily housing only if regional and local housing needs are supplied by the community or by other accessible areas within the region.[43]

On remand, the Westchester Supreme Court found that the New Castle zoning failed to satisfy the test promulgated by the New York Court of Appeals.[44] The Court then went on to fashion an innovative affirmative remedy, a step beyond that taken by the New Jersey courts. First, the trial court granted site-specific relief, ordering New Castle to rezone the plaintiffs' land for multifamily use "subject only to such standards as are reasonably related to protecting the health and safety of the community and the occupants of the plaintiffs' development."[45]

Second, the Court addressed the issue of more comprehensive relief and devised a two stage remedy. During the first stage, the presumption of validity ordinarily granted local government actions was reversed: "a party desiring to construct [multifamily] housing need only show that the proposed development will contribute to meeting [the judicially established regional fair share] goals and that the Town has frustrated that objective for less than compelling reasons."[46] The second stage of the remedy was to begin after New Castle had adopted a satisfactory plan and comprehensive zoning ordinance. At that time the ordinary presumption was to be reinstated.[47]

The Pennsylvania Supreme Court has also accepted the regional fair share housing approach and countenanced affirmative remedial action. *Surrick v. Zoning Hearing Board of the Township of Upper Providence*[48] reviewed a challenge to an ordinance that zoned only 1.14 per cent of Upper Providence Township's total acreage for multifamily housing. In analyzing the effect of the ordinance to determine whether it satisfied the fair share standard, the Court looked at the percentage of land available for multifamily housing, current local and regional growth pressures, and the amount of de-

43. The court espoused a two-part test: (1) whether the town has adopted a properly balanced and well ordered plan for its community, and (2) whether, in enacting an ordinance, consideration has been given to regional needs and requirements. 38 N.Y.2d at 110, 341 N.E.2d at 242, 378 N.Y.S.2d at 680-81.

44. 5 Housing Dev. Rep. 722 (Dec. 6, 1977).

45. *Id.*

46. *Id.*

47. *Id.*

48. 476 Pa. 182, 382 A.2d 105 (1977). In delivering its opinion, the Court relied heavily on its earlier holding in Township of Willistown v. Chesterdale Farms, Inc., 462 Pa. 445, 341 A.2d 466 (1975).

velopable land in the community. The Court invalidated the ordinance after concluding that the Township was a "logical place for development to take place"[49] and that the actual area in which multifamily uses were allowed was too small.[50] Although stopping short of the comprehensive remedy devised by the Berenson court, Surrick also directed site-specific relief: it ordered that Plaintiff's land be rezoned and that a building permit be issued, conditional upon compliance with administrative requirements and reasonable controls and regulations.[51]

The California Approach

Between World War II and 1970, the City of Livermore in California experienced an eightfold increase in population. Because of the resulting environmental problems and strain on public facilities, the City passed an ordinance by initiative that prohibited further residential growth until specified school, water, and sewer facility standards had been satisfied. In *Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore,*[52] a superior court granted an injunction against enforcement of the ordinance. The Court of Appeals affirmed, but the California Supreme Court remanded the case because it found the record inadequate.[53] In remanding, it offered guidance to the lower court:

> [T]he land use restriction withstands constitutional attack if it is fairly debatable that the restriction in fact bears a reasonable relation to the general welfare. For the guidance of the trial court we point out that if a restriction significantly affects residents of surrounding communities, the constitutionality of the restriction must be measured by its impact not only upon the welfare of the enacting community, but upon the welfare of the surrounding region.[54]

This standard is more deferential than the one employed by the New Jersey courts, a fact recognized by the Court:

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49. 476 Pa. at 851, 382 A.2d at 108. This phrase was drawn from the Court's earlier decision in Appeal of Girsh, 437 Pa. 237, 245, 263 A.2d 395, 398-99 (1970).

50. The Court looked at the percentage of land available for multifamily dwellings to determine whether the zoning exclusion was "partial" or "total." If it were total, *Appeal of Girsh* would clearly invalidate it. On the other hand, if it were partial, the question becomes more difficult, Although Upper Providence did not totally exclude multifamily housing, it nevertheless permitted such a small amount that it clearly failed to satisfy its fair share, making its situation identical to that in *Township of Willistown* (in that case the township had permitted apartments in only 80 of 11,589 acres). 476 Pa. at 382 A.2d at 111-12.

51. *Id.* at 382 A.2d at 112. Unlike the New Jersey court, the Pennsylvania Supreme Court has not rejected the *Mount Laurel* formulaic approach. *Id.* at 382 A.2d at 109.

52. 41 Cal. App. 3d 677 116 Cal. Rptr. 326 (1974).

53. 18 Cal.3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976).

54. *Id.* at 601, 557 P.2d at 483, 135 Cal. Rptr. at 51.

> Not only do [the New Jersey and Pennsylvania] decisions rest, for the most part, upon principles of state law inapplicable in California, but, unlike the present case, all involve ordinances which impede the ability of low and moderate income persons to immigrate to a community but permit largely unimpeded entry by wealthier persons.[55]

In summary, although the California Supreme Court adopted a regional general welfare standard, it approved a standard of review that was midway between the traditional standard of legislative deference and that of strict judicial scrutiny as established by *Mount Laurel* and its progeny.[56]

Regional General Welfare in Perspective

As we have demonstrated, a series of cases decided within the past decade have redefined the general welfare limitation on local exercise of the police power. The Pennsylvania courts were the first to measure growth management policies against a regional general welfare standard recognizing the chaos that might result if localities were permitted to ignore the regional impact of locally adopted exclusionary land use policies. New York and Michigan lower courts joined Pennsylvania in adopting an "open doors" requirement forbidding the total exclusion of certain residential uses. This approach, however, proved to be too conservative for the New Jersey Supreme Court. Taking a "broadened impact" approach, the New Jersey court imposed upon localities an affirmative responsibility to provide all income groups with an opportunity to obtain housing within their means. California recently joined the regional general welfare states, while Pennsylvania and New York have refined their earlier recognition of the regional welfare standard.

Although a majority of states have not yet accepted a regional general welfare standard, they may do so in the future. California, New York, Pennsylvania, and New Jersey are generally acknowledged to be harbingers of land use law development, therefore other states may well follow their lead.[57] Local governments in states that have not adopted a regional general welfare standard should nevertheless keep three things in mind. First, if a state court does eventually adopt the standard, all growth management systems (whether already existing or adopted after the court decision) will be judged according

55. *Id.* at 606, 557 P.2d at 487, 135 Cal. Rptr. at 55.

56. *E.g.*, in Surrick, the Pennsylvania Court agreed with appellees that a presumption of validity attaches to all zoning ordinances. Where, however, the "facts show a dearth of land zoned as available for multi-family dwellings," the presumption is rebutted. 476 Pa. 182 n. 13, 382 A.2d at 112 n. 13. Thus, the real difference among the three approaches is the quantum of evidence necessary to rebut the ordinary presumption of validity.

57. *See* note 19, *supra.*

to the same standard. Second, the state may enact land use legislation that requires local planning to consider regional impacts.[58] Finally, it is simply more socially responsible to consider the regional welfare in local planning than to focus exclusively on community welfare, and it may be possible to simultaneously maximize both local and regional welfare. Thus, it may be wise for local governments to consider regional needs from the outset.

THE RELATIONSHIP BETWEEN PLANNING AND ZONING: INCREASED IMPORTANCE OF PLANNING

Judicial Approaches

In another group of cases the courts have emphasized the role of the comprehensive plan in local land use regulation. The Oregon courts took the lead in this direction, viewing the separately prepared and enacted plan as the controlling land use instrument for a locality.[59] Although other courts have refused to go as far as Oregon, they have begun to recognize a more important role for planning in effective growth management. This recognition is manifested by judicial willingness to cite the policies of adopted plans as the courts wrestle with the presumption of validity traditionally accorded local regulatory actions.[60] This increased emphasis on land use planning and locally adopted comprehensive plans is particularly appropriate at a time when localities frequently employ flexible zoning techniques and, in so doing, reject the earlier conception of zoning ordinances and maps as projections of future land use patterns. The zoning ordinance, at least in these states, can no longer be viewed as a "plan."[61]

This was not the situation in the 1920s when the Standard State Zoning Enabling Act (SZEA)[62] and the Standard City Planning

58. *Cf.* Hawaii Rev. Stat. §225-21(c) (1976) ("All state agencies, and the respective counties, shall comply with and implement the state plan..."); Minn. Stat. Ann. §473.865(2) (West 1977) ("A [Twin Cities] local governmental unit shall not adopt any official control or fiscal device which is in conflict with its comprehensive plan or which permits activities in conflict with metropolitan system plans."); Ore. Rev. Stat. §197.175(2)(b) (1977) ("Each city and county shall enact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans [which, in turn, must be consistent with statewide planning goals]."); Wyo. Stat. Ann. §9-19-301 (1977) (Local governments within each county are required to develop land use plans, which are later collected by the county and submitted as part of the county plan for approval by the state).

59. *See* notes 77-94, *infra*, and accompanying text.

60. *See* notes 68-70, 99-101, *infra*, and accompanying text.

61. *See* Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 Mich. L. Rev. 900, 910 (1976) [hereinafter cited as Mandelker].

62. U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT (rev. ed. 1926), *reprinted in* H. RATHKOPF, THE LAW OF ZONING AND PLANNING 765-770 (4th ed. 1975).

Enabling Act (SPEA),[63] the documents that spawned much of the existing zoning and planning legislation, were promulgated. The SZEA assumed that land uses would be assigned to mapped districts before development occurred. It therefore seemed appropriate to read the Act's requirement that "[zoning] regulations shall be made in accordance with a comprehensive plan"[64] as requiring only an examination of the comprehensiveness of the zoning ordinance itself rather than a comparison of the ordinance with an independently prepared and adopted master plan.[65] This interpretation was supported by the fact that the SPEA and its master plan provisions appeared several years after the SZEA and by the failure of the SPEA to give the master plan a solid and definitive role in the zoning process. Early decisions accepted this construction of the model acts[66] and a majority of today's courts apparently still agree with this "unitary" view.[67]

Nevertheless, a number of courts perceive a connection between comprehensive planning and local land use legislation. One group of cases has at least partially relied upon the policies of locally adopted plans in rejecting claims by landowners that land use regulations were arbitrarily and unconstitutionally applied to their properties.[68] *Golden v. Planning Board of the Town of Ramapo*[69] is one of these

63. U.S. DEP'T OF COMMERCE, A STANDARD CITY PLANNING ENABLING ACT (rev. ed. 1928), *reprinted in* E. ROBERTS, LAND USE PLANNING 3-15 (1971).

64. SZEA §3.

65. *See* Mandelker, *supra* note 61, at 910.

66. *See* Sullivan & Kressel, *Twenty Years After–Renewed Significance of the Comprehensive Plan Requirement,* 9 Urb. L. Ann. 33 (1975); Haar, *In Accordance with a Comprehensive Plan,* 68 Harv. L. Rev. 1154 (1955).

67. *E.g.,* Come v. Chancy, 289 Ala. 555, 269 So.2d 88 (1972); Weigel v. Planning & Zoning Comm'n of the Town of Westport, 160 Conn. 239, 278 A.2d 766 (1971); Dawson Enterprises v. Blaine County, 98 Idaho 506, 567 P.2d 1257 (1977); Nottingham Village, Inc. v. Baltimore County, 266 Md. 339, 292 A.2d 680 (1972); Sabo v. Township of Monroe, 394 Mich. 531, 232 N.W.2d 584 (1975); Kozesnik v. Montgomery Township, 24 N.J. 154, 131 A.2d 1 (1957); Tulsa Rock Co. v. Board of County Comm'ns of Rodgers County, 531 P.2d 351 (Okla. Ct. App. 1975); Cleaver v. Board of Adjustment of Tredyffrim Township, 414 Pa. 367, 200 A.2d 408 (1964); Sweetman v. Town of Cumberland, 364 A.2d 1277 (R.I. 1976). *Cf.* Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 309 N.E.2d 763 (1974); Raabe v. City of Walker, 383 Mich. 165, 174 N.W.2d 789 (1970); Holmgren v. City of Lincoln, 199 Nev. 178, 256 N.W.2d 686 (1977); Udell v. Haas, 21 N.Y.2d 463, 235 N.E.2d 897, 288 N.Y.S.2d 888 (1968); Shelton v. City of Bellevue, 73 Wash. 2d 28, 435 P.2d 949 (1968). *See* Mandelker, *supra* note 61, at 904.

68. *E.g.,* Montgomery County Council v. Leizman, 268 Md. 621, 303 A.2d 374 (1973); Norbeck Village Joint Venture v. Montgomery County Council, 254 Md. 59, 254 A.2d 700 (1969); Biske v. City of Troy, 6 Mich. App. 546, 149 N.W.2d 899 (1967), *rev'd in part on other grounds,* 381 Mich. 611, 166 N.W.2d 453 (1969); Padover v. Township of Farmington, 374 Mich. 622, 132 N.W.2d 687 (1965); Golden v. Planning Bd. of the Town of Ramapo, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972); (appeal dismissed 409 U.S. 1003 (1972)); State *ex rel.* Standard Mining & Dev. Corp. v. City of Auburn, 82 Wash. 2d 321, 510 P.2d 647 (1973). *Cf.* Eves v. Zoning Bd. of Adjustment, 401 Pa. 211, 164 A.2d 7 (1960).

69. 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972).

decisions. In *Golden,* the court stated: "The restrictions conform to the community's considered land use policies as expressed in its comprehensive plan and represent a bona fide effort to maximize population density consistent with orderly growth."[70] For this and other reasons, the court found it impossible to conclude that the restrictions were unreasonable and arbitrary.

Making decisions such as *Golden* look like mere verbiage, the state courts of Oregon have jumped far ahead of other jurisdictions and have found a close nexus between local planning and zoning activities. Unlike most states, Oregon's zoning enabling legislation was passed prior to the publication of the standard enabling acts,[71] and it required that city zoning regulations be "in accordance with a well-considered plan."[72] Counties were later given the power to zone if they had a "development pattern,"[73] the wording of which was subsequently changed to "comprehensive plan."[74] In 1969, a new bill was passed that mandated the preparation of local comprehensive land use plans and zoning ordinances.[75]

After years of little discussion of the comprehensive plan requirement,[76] the Oregon Supreme Court broke its silence in *Fasano v. Board of County Commissioners.*[77] Plaintiffs, a group of homeowners, challenged a zoning change that would have allowed mobile homes in an area previously zoned for conventional single family dwellings. The court characterized the zoning change as a quasi-judicial rather than a legislative action[78] and consequently it did not apply the traditional presumption of validity of local legislative acts.[79] Because the state legislature "has conditioned the county's power to zone upon the prerequisite that the zoning attempt to further the general welfare of the community through consciousness, in a prospective sense, of the [considerations entering into the

70. *Id.* at 378, 285 N.E.2d at 302, 334 N.Y.S.2d at 152.

71. Padrow, Sharpe, & Sullivan, *The Renaissance of Comprehensive Planning: The Oregon Case,* 27 Land Use L. & Zoning Digest 7, 7 (No. 5, 1975).

72. Ore. Rev. Stat. §227.240(1) (1973), repealed by Laws of 1975, ch. 767, §10.

73. Law of April 19, 1947, ch. 537, [1947] Ore. L. 948.

74. Law of June 24, 1963, ch. 619, §3, [1963] Ore. L. 1297. The section now reads: "Zoning [ordinances] shall be designed to implement the adopted county comprehensive plan." Ore. Rev. Stat. §215.050 (1977).

75. Law of June 3, 1969, ch. 324, [1969] Ore. L. 578. This bill was replaced by S.B. 100. *See* notes 84-92 and accompanying text.

76. *See* Sullivan & Kressel, *supra* note 66, at 49.

77. 264 Ore. 574, 507 P.2d 23 (1973).

78. *Id.* at 580-86, 507 P.2d at 26-29.

79. *Id.* at 578-79, 586, 507 P.2d at 27, 29. Under the deferential standard of review, a legislative action is upheld unless shown to be arbitrary and capricious. Under the *Fasano* standard for quasi-judicial actions, the persons seeking change (the county) shoulders the initial burden. *Id.*

formulation of a comprehensive plan],"[80] the appropriate standard places a heavy burden on the county board to show that zoning changes were made in accordance with the comprehensive plan.[81] This burden could only be met by demonstrating that there is a public need for the change, and that the proposed change will best serve the public need.[82]

The Court also rejected the traditional judicial view of planning and zoning:

> Although we are aware of the analytical distinction between zoning and planning, it is clear that under our statutes the plan adopted by the planning commission and the zoning ordinances enacted by the county governing body are closely related; both are intended to be parts of a single integrated procedure for land use control. The plan embodies policy determinations and guiding principles; the zoning ordinances provide the detailed means of giving effect to those principles.[83]

After *Fasano* was decided, Oregon adopted S.B. 100, the Oregon Land Conservation and Development Act of 1973.[84] The Act created a new Department of Land Conservation and Development,[85] in which is located the Land Conservation and Development Commission (LCDC).[86] The duties of the LCDC include: (1) establishing state-wide planning goals and guidelines; (2) reviewing city, county, and regional plans[87] for conformance with state-wide planning goals; (3) coordinating the planning efforts of state agencies with local comprehensive plans; (4) recommending the designation of areas of critical state concern; and (5) issuing permits for activities of state-wide significance.[88] The Act requires that zoning regulations implement local plans[89] and that local planning and zoning activities conform to the state-wide planning goals and guidelines.[90] In 1977, the LCDC was given the authority to enforce these requirements through compliance orders.[91]

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80. *Id.* at 583, 507 P.2d at 28.
81. *Id.* at 586, 507 P.2d at 29.
82. *Id.* at 584, 507 P.2d at 28.
83. *Id.* at 582, 507 P.2d at 27.
84. OR. REV. STAT. §197.005 (1977). *See* MacPherson, *Senate Bill 100: The Oregon Land Conservation and Development Act*, 10 WILLAMETTE L.J. 414 (1974).
85. OR. REV. STAT. §197.075 (1977).
86. *Id.* §§197.030, .075.
87. *Id.* §197.140(2) (counties are made responsible for coordinating all land use planning activities within the county and are authorized to undertake joint planning efforts with other counties).
88. *Id.* §197.040.
89. *Id.* §197.175(2)(b).
90. *E.g., id.* §§197.175(1), .175(2)(a), .251.
91. *Id.* §197.320 (Supp. 1977).

Even in the face of this new Act, the Oregon Court of Appeals held that *Fasano* does not apply to the zoning activities of *city* governments.[92] The Oregon Supreme Court, however, reversed, holding that once a city has adopted a plan it cannot frustrate implementation of the plan by failing to zone accordingly.[93] Citing *Fasano,* the court further held that the comprehensive plan is the controlling land use planning instrument for a city; i.e., that zoning is necessarily subservient to planning.[94]

Although other state courts have been reluctant to accept Oregon's view of planning and zoning, a number of them have followed in its distinction between legislative and quasi-judicial zoning activities.[95] There is, therefore, a trend toward closer judicial scrutiny of local regulatory actions. The characterization of such actions as quasi-judicial triggers the due process rights of affected individuals to appear and be heard, and it necessitates preparation by the local zoning tribunal of a record that includes reasons for zoning decisions.[96] The purposes of these procedural requirements are to protect substantive rights and, when a record has been prepared, the judiciary has traditionally found itself in a good position to examine the reasoning of earlier decision makers to determine whether substantive rights have been given appropriate respect.[97] In those states that do not distinguish legislative from quasi-judicial zoning actions, courts lack such an opportunity and planning policies generally remain unmentioned and unexamined.[98]

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92. Baker v. City of Milwaukee, 17 Or. App. 89, 95-96, 520 P.2d 479, 483 (1974).

93. 271 Or. 500, 533 P.2d 772 (1975). *See also* Peterson v. Mayor & Council, 279 Or. 249, 566 P.2d 1193 (1977); Bienz v. City of Dayton, 29 Or. App. 761, 566 P.2d 904 (1977).

94. *Id.* at 506, 533 P.2d at 776. This holding accepts the argument espoused by Professor Haar in his 1955 article—that the master plan should be viewed as a sort of "impermanent constitution." Haar, *The Master Plan: An Impermanent Constitution,* 20 L. & CONTEMP. PROB. 353 (1955).

95. *E.g.,* Snyder v. City of Lakewood, ___ Colo. ___, 542 P.2d 371 (1975); McKinstry v. Wells, 548 S.W.2d 169 (Ky. Ct. App. 1977); City of Louisville v. McDonald, 470 S.W.2d 173 (Ky. 1971); Forman v. Eagle Thrifty Drugs & Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973); West v. City of Portage, 392 Mich. 458, 221 N.W.2d 303 (1974); Fleming v. Tacoma, 81 Wash. 2d 292, 502 P.2d 327 (1972). *Cf.* Hyson v. Montgomery County, 242 Md. 55, 217 A.2d 578 (1966); Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 376 A.2d 483 (Mdt. Ct. App. 1977); Kropf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179, 190 (1974) (Levin, J., concurring); Humble Oil & Ref. Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974). *See* Cunningham, *Rezoning by Amendment as an Administrative or Quasi-Judicial Act: The "New Look" in Michigan Zoning,"* 73 MICH. L. REV. 1341 (1975).

96. *Id.* at 1356-57.

97. *See* K. DAVIS, ADMINISTRATIVE LAW TEXT 46-51, 91 (1972). *Cf.* VERKUIL, JUDICIAL REVIEW OF INFORMAL RULEMAKING, 60 VA. L. REV. 185, 205-10 (1974).

98. *See, e.g.,* cases cited in note 67, *supra.*

Several cases have achieved a similar result without recognizing local regulatory actions as being quasi-judicial in nature. Instead, they treat the absence of planning or the consistency of a decision with stated planning policies as factors that affect judicial application of the presumption of legislative validity. They may consider the presumption "weakened" by the absence of a locally adopted plan,[99] or they may view, as the New York Court did in *Golden*,[100] a decision's consistency or inconsistency with a plan's policies as unsupportive or supportive of a plaintiff's attempt to rebut the presumption of validity.[101] The two approaches (the weakened presumption or recognition of the plan's relevance to a plaintiff's rebuttal of the presumption) have a substantially identical effect and give the plan a role that it has traditionally been denied.

State Legislative Actions

The reluctance of state courts to recognize the interrelationship of planning and zoning has not discouraged the state legislatures from doing so. Following years of discretionary zoning and planning (the standard enabling acts permitted planning and zoning but did not require them), many states have adopted statutes that mandate local comprehensive planning[102] and discard the "in accordance with a

99. *E.g.*, Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 244-46, 309 N.E.2d 763, 772-73 (1974); Raabe v. City of Walker, 383 Mich. 165, 174 N.W.2d 789 (1970).

100. 30 N.Y.2d 359, 378, 285 N.E.2d 291, 302, 334 N.Y.S.2d 138, 152 (1972).

101. *E.g.*, Fontaine v. Board of County Comm'rs, 493 P.2d 670 (Colo. Ct. App. 1972) (inconsistency); Green v. County Planning & Zoning Comm'n, 340 A.2d 852 (Del. Ch. 1974), *aff'd*, 344 A.2d 386 (Del. 1975) (inconsistency); City of Louisville v. Kavanaugh, 495 S.W.2d 502 (Ky. 1973) (inconsistency); Montgomery County Council v. Leizman, 268 Md. 621, 303 A.2d 374 (1973) (consistency); Schilling v. City of Midland, 38 Mich. App. 568, 196 N.W.2d 846 (1972); Holmgren v. City of Lincoln, 199 Nev. 178, 256 N.W.2d 686 (1977) (consistency); Udell v. Haas, 21 N.Y.2d 463, 235 N.E.2d 897, 288 N.Y.S. 2d 888 (1968) (inconsistency); Board of Supervisors v. Allman, 215 Va. 434, 211 S.E.2d 48, *cert. denied*, 423 U.S. 940 (1975) (inconsistency).

102. *E.g.*, ALASKA STAT. §29.33.070 (1977) (first and second class boroughs); ARIZ. REV. STAT. §11-802 (1977) (counties); CAL. GOV'T CODE §§65100, 65101 (West 1966 and Supp. 1977) (counties and cities); D.C. CODE §1-1004 (Supp. V 1978); DEL. CODE tit. 9, §6807 (1975) (Sussex County); FLA. STAT. ANN. §163.3174 (Harrison 1978) (local governments); IDAHO CODE §67-6503 (Supp. 1977) (cities and counties); ILL. ANN. STAT. ch. 85, §§1128, 1178 (Smith-Hurd Supp. 1978) (Northeastern Illinois Planning Comm'n & Southeastern Illinois Planning Comm'n); IND. CODE ANN. §§18-7-2-4, 18-7-2-31 (Burns 1974) (counties containing first class cities); KY. REV. STAT. ANN. §§100.201, 100.137 (Baldwin 1971) (counties with population above 300,000); MINN. STAT. ANN. §§473.858, 462.385, 462.39 (West Supp. 1977) (local governments within the Twin Cities region and regions designated by governor pursuant to Regional Development Act of 1969); NEV. REV. STAT. §§278.030, 278.150 (1977) (cities with population above 15,000); N.C. GEN. STAT. §113A-109 (1978) (coastal counties); OR. REV. STAT. §197.175(2) (1977) (cities and counties); S.D. COMP. LAWS ANN. §11-6-2 (Supp. 1978) (municipalities); VA. CODE §§15.1-427.1, -446.1 (Supp. 1978) (counties); WYO. STAT. §9-19-301 (1977) (local governments and counties).

comprehensive plan" language of the SZEA in favor of language that more precisely prescribes the relationship between planning and zoning.[103]

Alaska, for example, requires its boroughs to plan on an areawide basis[104] and, "in accordance with the comprehensive plan," to regulate and restrict the use of land.[105] The California Government Code is more explicit. It requires each city and county to establish a planning agency and to adopt a general plan,[106] and that county or city ordinances must be "consistent" with that plan.[107] A zoning ordinance is consistent with the general plan only if: (i) the city or council has officially adopted such a plan; and (ii) the various land uses authorized by the ordinance are compatible with the objectives, policies general land uses and programs specified in such a plan.[108]

Florida also recently adopted a mandatory planning statute. The Local Government Comprehensive Planning Act of 1975[109] requires

103. *E.g.*, ARIZ. REV. STAT. §9-462.01 (1977) (municipalities: "[zoning] shall be consistent with the adopted general and specific plans of the municipality..."); DEL. CODE tit. 9, §6904(a) (1975) (Sussex County: "Regulations ... shall be in accordance with the approved comprehensive development plan..."); D.C. CODE ANN. §5-414 (Supp. V 1978) ("[Zoning] shall not be inconsistent with the comprehensive plan for the National Capital..."); FLA. STAT. ANN. §163.3194(1) (Harrison 1978) ("All land development regulations ... shall be consistent with the adopted comprehensive plan..."); HAW. REV. STAT. §225-21(c) (1976) ("All state agencies, and the respective counties, shall comply with and implement the state plan..."); IDAHO CODE §67-6511 (Supp. 1977) ("The zoning districts shall be in accordance with the adopted plan."); KY. REV. STAT. ANN. §§100.183, 100.213 (Baldwin 1971) ("[the adopted comprehensive plan] shall serve as a guide for public and private actions..."; "Before any map amendment is granted, [it must be found to be] in agreement with the community's comprehensive plan [or (1) the original zoning must be found inappropriate, (2) major changes must be found to have occurred]"); ME. REV. STAT. tit. 30, §4962 (1978) ("[Zoning] shall be pursuant to and consistent with a comprehensive plan adopted by [the] legislative body."); MICH. COMP. LAWS ANN. §125.273 (West 1976) (Township rural zoning: "The provisions of the zoning ordinance shall be based upon a plan..."); MINN. STAT. ANN. §473.865(2) (West 1977) (for language *see* note 58 *supra*); NEB. REV. STAT. §19-903 (1977) (first and second class cities: "[Zoning] shall be made in accordance with a comprehensive development plan which shall consist of..."); NEV. REV. STAT. §278.250 (1977) ("zoning regulations shall be adopted in accordance with the master plan for land use..."); OR. REV. STAT. §197.175(2)(b) (1977) ("each city and county in this state shall... [e]nact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans"). *See* A.L.I. MODEL LAND DEVELOPMENT CODE §2-209 through 212 (1976).

104. ALASKA STAT. §29.33.070 (1972).

105. ALASKA STAT. §29.33.090 (1972).

106. CAL. GOV'T CODE §65100 (1977) and §65101 (1966).

107. CAL. GOV'T CODE §65860 (Supp. 1977).

108. *Id.* In 1977, a California court interpreted these sections to mean that the general plan is "a constitution for all future developments" and that they mean exactly what they say: zoning ordinances must be amended within a reasonable time to conform with any change in the plan. Youngblood v. Board of Supervisors, 71 Cal. App. 3d 655, ____, 139 Cal. Rptr. 741, 748 (1977).

109. FLA. STAT. ANN. §163.3161 (Harrison 1978). The Act has not received any funding for implementation. A two million dollar request was submitted in 1977. 5 Land Use Planning Rep't 45 (1977).

each municipality, county, special district, or local government entity to prepare and adopt a comprehensive plan.[110] If a lower level governmental unit fails to adopt a plan, its development will be governed by the comprehensive plan of the county in which it is situated. If the county has no plan, the state land planning agency is required to prepare one and submit it to the state's Administration Commission, which has the authority to adopt it. After a plan has been adopted, land development regulations cannot be approved unless they are "based on, related to, and a means of implementation for an adopted comprehensive plan"[111] and until they have been subjected to review by the local planning agency.[112]

In addition to requiring local planning and zoning, a number of states are requiring regional or state-wide zoning and planning activities.[113] One of the first to take this step was Hawaii. The Hawaiian Land Use Law of 1961[114] established a State Land Use Commission and gave it the responsibility to divide the state into four land use categories: urban, rural, agricultural, and conservation. Counties are responsible for land use controls within the urban districts, while the Land Use Commission prescribes land use within the other districts.

The Colorado Land Use Act of 1974[115] gave local governments the authority to designate certain areas and activities of state interest. These included mineral resource areas, natural hazard areas, areas of historical, natural, or archaeological significance, and areas around key facilities in which development may have a major effect on the facility or on the surrounding community.[116] Before designating the areas of state interest, local governments were required to develop guidelines for the administration of the designated areas.[117] The content of these guidelines was required to further criteria of state-wide interest as listed in the Act.[118] Finally, localities were

110. FLA. STAT. ANN. §163.3167 (Harrison 1978).

111. *Id.* §163.3201.

112. *Id.* §163.3194(2)(a).

113. *E.g.*, Florida Environmental Land & Water Management Act of 1972, FLA. STAT. ANN. §380.012 (Harrison 1975 and Supp. 1977) (held unconstitutionally vague, City of Key West v. Askew, 351 So.2d 1062 (Fla. App. 1977); OR. REV. STAT. §§197.005 to .430 (1977); VT. STAT. ANN. tit. 10, §§6001-91 (1973 and Cum. Supp. 1977); Maine Site Location Law, ME. REV. STAT. tit. 38, §§481-88 (Supp. 1973 and Supp. 1978); Massachusetts Anti-Snob Zoning Law, MASS. GEN. LAWS. ANN. ch. 40B, §§20-23 (West Supp. 1978); Adirondack Park Agency Act, N.Y. EXEC. LAW §§800-819 (McKinney Supp. 1977) (The Act has been challenged several times both judicially and legislatively in the past two years) 5 Land Use Planning Rep't 118, 132 (1977). The Park's master plan was upheld by the New York Court of Appeals in Wambat Realty Corp. v. State, 41 N.Y.2d 490, 362 N.E.2d 581, 393 N.Y.S.2d 949 (Ct. App. 1977).

114. HAW. REV. STAT. §205-1 to -37 (1976 and Supp. 1977).

115. COLO. REV. STAT. §24-65-101 to 24-65.1-502 (1974 and Cum. Supp. 1976).

116. *Id.* §24-65.1-201.

117. *Id.* §24-65.1-402(1).

118. *Id.* §§24-65.1-202, -204.

authorized to adopt regulations interpreting and applying their adopted guidelines to specific development projects.[119] There is, therefore, a built-in consistency requirement: regulations must be based on guidelines which, in turn, must be formulated on the basis of legislatively prescribed policies.

The California Coastal Act of 1976[120] provides a third example of state/local planning coordination. Each local government lying, in whole or in part, within the coastal zone is required to prepare a coastal "program" for its coastal zone lands.[121] The coastal program is submitted to the California Coastal Commission,[122] while the land use plan portion of the program must be certified either by the appropriate regional commission or by the Coastal Commission on appeal from an adverse decision by the regional commissions.[123] A land use plan is certified if it "meets the requirements of, and is in conformity with, the policies [specified in the Act]."[124] Regional commissions also review zoning regulations and other implementing actions, which may be rejected on the grounds that they do not conform to, or are inadequate to carry out, the provisions of the certified land use plan.[125]

The Increased Importance of Planning in Perspective

The early reading of "in accordance with a comprehensive plan" language of the SZEA was at least in part justified by the then prevailing view of a zoning ordinance as a prescription for the future development of land. Today, however, it is recognized that the zoning ordinance is only one of many growth management tools and techniques that guide land development in a community at the same time. Thus, a zoning ordinance can no longer be viewed as a plan in and of itself; the "in accordance with a comprehensive plan" language must be either replaced or redefined.

Although some courts have made preliminary steps in this direction, state legislatures have played the leading role. At least twenty states have enacted legislation that mandates local planning and/or

119. *Id.* §24-65.1-402(2).
120. CAL. PUB. RES. CODE §30000-30900 (West 1977 and Supp. 1978).
121. *Id.* §30500.
122. *Id.* §30511.
123. *Id.* §30512. Six regional commissions were established by the California Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE §27000-27650 (West 1973), and authorized to continue by the repealing 1976 Act. CAL. PUB. RES. CODE §30300 (West 1977). *See generally* Peterson & Walker, *Saving the Coast: The California Coastal Zone Conservation Act of 1972*, 4 Golden Gate L. Rev. 307 (1973-1974).
124. CAL. PUB. RES. CODE §30512(e) (West 1977).
125. *Id.* §30513(a).

gives the plan a more important if not dominant role. Most state courts have not yet had an opportunity to construe the newly adopted provisions, but Oregon had its chance and took advantage of it. Other states can be expected to follow suit.[126]

CONCLUSION

Growth management, although not a new concept, is a changing one. The changes have been of greater magnitude and in greater number in the last decade than ever before. We have discussed just two changes; but these two, we believe, are among the most important, and will be of increasing importance in the future.

126. The Idaho Supreme Court, in dicta, has noted that the state's Local Planning Act of 1975 made the adoption of a separate comprehensive plan a condition precedent to zoning ordinance validity. Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 567 P.2d 1257 (1977). A similar statement was made by concurring judges in Sabo v. Township of Monroe, 394 Mich. 531, 232 N.W.2d 584 (1975) (Williams, J., concurring).

A state court recently construed the "consistency" requirement of California's land use statute in a manner analogous to the Oregon decisions. Youngblood v. Board of Supervisors, 71 Cal. App. 3d 655, 139 Cal. Rptr. 741 (1977).