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Robert M. Rogers

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LAND USE PLANNING—A PREREQUISITE TO EFFECTIVE ZONING

ROBERT M. ROGERS

The opinion has been expressed in recent years that zoning has failed to provide effectively for urban growth.¹ Zoning plans are sometimes said to be static and therefore incapable of dealing with the problems generated by the dynamic growth of cities.² Inadequate controls on development have resulted in inefficiency and waste in the provision of community services,³ and inappropriate land use has caused environmental degradation.⁴ Some persons advocate abandonment of zoning as a regulatory device and adoption of other schemes of land use control.⁵ The difficulty, however, is not necessarily zoning itself, but a lack of land use planning that should be the foundation of a zoning ordinance.⁶

Failure to recognize the relationship between land use planning and land use regulation is a primary cause of urban development problems.⁷ Zoning has been unsuccessful because local governments have failed to prepare and adopt land use plans to serve as guides for local zoning actions.⁸ Even when adopted, land use plans have not been given legally binding effect by most courts.⁹ Some courts have begun to realize that many of the

1. See Booth, *A Realistic Reexamination of Rezoning Procedure: The Complementary Requirements of Due Process and Judicial Review*, 10 GA. L. REV. 753, 753 (1976); Note, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CAL. L. REV. 335, 347-48 (1972); Comment, *Land Use and Due Process—An Examination of Current Federal and State Procedures*, 9 ST. MARY'S L.J. 846, 846-47 (1978).

2. Booth, *A Realistic Reexamination of Rezoning Procedure: The Complementary Requirements of Due Process and Judicial Review*, 10 GA. L. REV. 753, 753 (1976).

3. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 124 (1973).

4. Udall, *Land Use: Why We Need Federal Legislation*, 1975 B.Y.U.L. REV. 1, 1 (1975).

5. See generally Siegan, *Non-Zoning in Houston*, 13 J. LAW & ECON. 71, 142 (1970); Note, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CAL. L. REV. 335, 359-64 (1972).

6. NATIONAL COMM'N ON URBAN PROBLEMS, FRAGMENTATION IN LANDUSE PLANNING AND CONTROL 9-10 (1969). See F. CHAPIN, URBAN LAND USE PLANNING 356 (1976); T. KENT, THE URBAN GENERAL PLAN 39 (1964); Leary, *Zoning*, in PRINCIPLES AND PRACTICE OF URBAN PLANNING 404 (1968); Haar, "In Accordance With A Comprehensive Plan," 68 HARV. L. REV. 1154, 1156 (1955). See also *Fasano v. Board of County Comm'rs*, 507 P.2d 23, 27 (Or. 1973) (en banc) (purpose of zoning is implementation of plan).

7. See NATIONAL COMM'N ON URBAN PROBLEMS, FRAGMENTATION IN LANDUSE PLANNING AND CONTROL 9-10 (1969).

8. ABA ADVISORY COMM'N ON HOUSING AND URBAN GROWTH, HOUSING FOR ALL UNDER LAW 49 (1978).

9. *Id.* at 46; see, e.g., *Dooley v. Town Planning & Zoning Comm'n*, 226 A.2d 509, 511 (Conn. 1967) (adopted plan merely advisory); *Mott's Realty Corp. v. Town Planning & Zoning Comm'n*, 209 A.2d 179, 181 (Conn. 1965) (adopted plan not controlling); *Darnall v.*

problems of zoning can be avoided or minimized by requiring local zoning regulations to be consistent with the goals and policies of an adopted land use plan.¹⁰

HISTORICAL DEVELOPMENT

The power of a state to zone is derived from its police power to protect the citizens of the state and promote health, safety, and general welfare.¹¹ To effectuate zoning, many states enacted enabling statutes based upon a model enabling act promulgated by the Department of Commerce.¹² These enabling statutes were means of delegating the police power to local governments for the regulation of land use and height, bulk, and density of structures on the land.¹³ Zoning regulations enacted without regard to requirements in an enabling statute were invalid.¹⁴ One requirement of the model enabling act was that zoning "be made in accordance with a comprehensive plan," however, the act failed to define "comprehensive plan."¹⁵ As a result of this failure, cities enacted zoning ordinances without

City of Austin, 451 S.W.2d 275, 276 (Tex. Civ. App.—Austin 1970, writ ref'd n.r.e.) (adopted master plan not controlling).

10. See, e.g., Dalton v. City & County of Honolulu, 462 P.2d 199, 208-09 (Hawaii 1969) (plan prevents environmental deterioration); Hines v. Pinchback-Halloran Volkswagen, Inc., 513 S.W.2d 492, 494 (Ky. 1974) (consistency between zoning and plans prevents ad hoc zoning); Fasano v. Board of County Comm'rs, 507 P.2d 23, 29 (Or. 1973) (en banc) (county must prove public need by showing conformance with plan). See generally Sullivan & Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 URB. L. ANN. 33, 33-34 (1975); Haar, "In Accordance With A Comprehensive Plan," 68 HARV. L. REV. 1154, 1174 (1955).

11. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926) (zoning must find justification in police power); La Salle Nat'l Bank v. City of Chicago, 125 N.E.2d 609, 612 (Ill. 1955) (zoning is delegation of police power of state); Lombardo v. City of Dallas, 124 Tex. 1, 15, 73 S.W.2d 475, 481 (1934) (zoning is exercise of police power).

12. See ADVISORY COMM'N ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT (1926), reprinted in 4 R. ANDERSON, AMERICAN LAW OF ZONING § 30.01, at 398 (2d ed. 1977); 1 R. ANDERSON, AMERICAN LAW OF ZONING § 2.21, at 62 (2d ed. 1977). Forty-seven states adopted statutes based on the Standard State Zoning Enabling Act. 1 N. WILLIAMS, AMERICAN LAND PLANNING LAW 355 (1974). See TEX. REV. CIV. STAT. ANN. arts. 1011a-m (Vernon 1963 & Supp. 1978-1979) (Texas statute).

13. See ADVISORY COMM'N ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT § 2 (1926), reprinted in 4 R. ANDERSON, AMERICAN LAW OF ZONING § 30.01, at 399 (2d ed. 1977).

14. See Nectow v. City of Cambridge, 277 U.S. 183, 188 (1928) (zoning invalid); Golden v. Planning Bd., 285 N.E.2d 291, 296, 334 N.Y.S.2d 138, 145 (1972) (zoning outside power granted in statute void); Swain v. Board of Adjustment, 433 S.W.2d 727, 731 (Tex. Civ. App.—Dallas, 1968, writ ref'd n.r.e.) (city may not go beyond authority granted in statute), cert. denied, 396 U.S. 277 (1970).

15. See ADVISORY COMM'N ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT § 3 (1926), reprinted in 4 R. ANDERSON, AMERICAN LAW OF ZONING § 30.01, at 399 (2d ed. 1977); cf. TEX. REV. CIV. STAT. ANN. art. 1011c (Vernon 1963) (zoning required to be in accordance with comprehensive plan).

doing any planning.¹⁶ In 1928 the Department of Commerce published a model planning act for the states to use in authorizing local governments to prepare and adopt municipal plans to guide physical development.¹⁷ Whether this municipal plan was the "comprehensive plan" referred to in the model zoning enabling act was unclear.¹⁸

City planners have generally agreed that the "in accordance with a comprehensive plan" requirement meant that zoning should be consistent with a separately adopted plan for development of an urban area.¹⁹ This plan was known as a comprehensive plan because it related to all areas of the community and to all functional elements that affected physical development, such as population, economic activity, transportation, public services, housing, land use, and the environment.²⁰ A comprehensive plan was the documentary product of a planning process,²¹ and was adopted by local government as a policy guide for physical development decisions.²² To the planner, zoning was a legal device by which this comprehensive plan was to be implemented; thus, a plan was considered a prerequisite to

16. See Cunningham, *Land-Use Control—The State and Local Programs*, 50 IOWA L. REV. 367, 383 (1965).

17. ADVISORY COMM'N ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD CITY PLANNING ENABLING ACT § 2 (1928). Texas did not adopt a statute based upon the model planning act. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: ROLE OF PLANNING 6 (1973).

18. 1 R. ANDERSON, AMERICAN LAW OF ZONING § 5.03, at 265 (1976). It was recommended that zoning be operated as an essential part of the city plan. See ADVISORY COMM'N ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT § 6, n.22 (1926), reprinted in 1 R. ANDERSON, AMERICAN LAW OF ZONING § 5.03, at 265 (2d ed. 1977).

19. See generally Black, *The Comprehensive Plan*, in PRINCIPLES AND PRACTICE OF URBAN PLANNING 349 (1968).

20. See *id.* at 349.

21. The planning process consists of 1) an inventory of existing conditions and important trends in the urban area; 2) determination of problems and needs based upon the difference between existing conditions and community goals; 3) generation of alternative plans to solve problems and provide for community needs; 4) adoption of the most effective plan; 5) implementation of the chosen plan through various land use controls; 6) periodic review of the adopted plan in light of changing conditions and goals. See generally F. CHAPIN, URBAN LAND USE PLANNING 349-54 (1976).

22. Black, *The Comprehensive Plan*, in PRINCIPLES AND PRACTICES OF URBAN PLANNING 349 (1968). Among planners the term "comprehensive plan" is often used interchangeably with "general plan," "master plan," and "city plan." See T. KENT, THE URBAN GENERAL PLAN 18 (1964). This has not been the case with some courts that have found that the comprehensive plan in the zoning statute is not the same as a master plan. See *Mott's Realty Corp. v. Town Plan. & Zoning Comm'n*, 209 A.2d 179, 181 (Conn. 1965) (comprehensive plan is plan of existing zoning, master plan is plan of development); *Kozesnik v. Township of Montgomery*, 131 A.2d 1, 7 (N.J. 1957) (comprehensive plan in zoning statute not identical with master plan in planning statute). Other courts use the phrase comprehensive plan synonymously with master plan. See *Baker v. City of Milwaukie*, 533 P.2d 772, 774 (Or. 1975); *Fasano v. Board of County Comm'rs*, 507 P.2d 23, 27 (Or. 1973) (en banc). The term general plan has also been used by at least one court in the context of a master plan. See *O'Loane v. O'Rourke*, 42 Cal. Rptr. 283, 288 (Ct. App. 1965).

zoning.²³ Courts have had much more difficulty in deciding exactly what was meant by "in accordance with a comprehensive plan."²⁴

JUDICIAL INTERPRETATION

Court decisions interpreting the comprehensive plan requirement can be placed in three categories.²⁵ The first category includes cases holding that compliance with the "in accordance with a comprehensive plan" requirement does not necessitate a separately adopted plan.²⁶ A zoning ordinance that was related to a substantial area of a community and indicated some plan or intent has been held sufficient.²⁷ Since enactment of zoning enabling statutes had preceded enactment of planning statutes, these courts have concluded that the adoption of a plan is not necessary for the enactment of zoning ordinances.²⁸ This view, that the comprehensive plan can be found in the zoning ordinance itself, has been termed the "unitary" view²⁹ and is followed by a majority of courts in the United States.³⁰

The unitary view developed because many local governments had prepared zoning ordinances without requiring preparation of plans before the ordinances were enacted.³¹ To have held that "in accordance with a

23. F. CHAPIN, *URBAN LAND USE PLANNING* 356 (1976); T. KENT, *THE URBAN GENERAL PLAN* 39 (1964); Leary, *Zoning*, in *PRINCIPLES AND PRACTICE OF URBAN PLANNING* 403, 405 (1968); Haar, "In Accordance With A Comprehensive Plan," 68 *HARV. L. REV.* 1154, 1156 (1955); see *Fasano v. Board of County Comm'rs*, 507 P.2d 23, 27 (Or. 1973) (en banc) (purpose of zoning is implementation of plan).

24. See, e.g., *Mott's Realty Corp. v. Town Planning & Zoning Comm'n*, 209 A.2d 179, 181 (Conn. 1965) (the word comprehensive causes confusion); *Kozesnik v. Township of Montgomery*, 131 A.2d 1, 7 (N.J. 1957) (court reluctant to define comprehensive plan); *Udell v. Haas*, 235 N.E.2d 897, 902, 288 N.Y.S.2d 888, 895 (1968) (definition of comprehensive plan never made clear).

25. See Sullivan & Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 *URB. L. ANN.* 33, 41 (1975).

26. See, e.g., *Citizens Ass'n of Georgetown, Inc. v. Zoning Comm'n*, 477 F.2d 402, 407 (D.C. Cir. 1973); *Furtney v. Simsbury Zoning Comm'n*, 271 A.2d 319, 325 (Conn. 1970); *Sweetman v. Town of Cumberland*, 364 A.2d 1277, 1287 (R.I. 1976).

27. See *Fairlawns Cemetery Ass'n v. Zoning Comm'n*, 86 A.2d 74, 77 (Conn. 1952) (zoning ordinance excluding cemetery satisfied plan requirement).

28. See *Ward v. Township of Montgomery*, 147 A.2d 248, 252 (N.J. 1959) (no plan required outside of zoning ordinance); *Kozesnik v. Township of Montgomery*, 131 A.2d 1, 6 (N.J. 1957) (legislative intent that no separate plan necessary).

29. Sullivan & Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 *URB. L. ANN.* 33, 41 (1975).

30. *Id.* at 41; see, e.g., *Jablon v. Town Planning & Zoning Comm'n*, 254 A.2d 914, 916 (Conn. 1969) (comprehensive plan is in zoning ordinance itself); *Higginbotham v. City of the Village*, 361 P.2d 191, 194 (Okla. 1961) (zoning map and ordinance together constitute required plan); *Hadley v. Harold Realty Co.*, 198 A.2d 149, 152 (R.I. 1964) (comprehensive plan is scheme of existing zoning). See generally 12 *SYRACUSE L. REV.* 342 (1961).

31. See *Raffia v. Zoning Bd.*, 199 A.2d 333, 335 (Conn. 1964) (absent adopted plan, comprehensive plan is scheme of existing zoning); *Pressman v. City of Baltimore*, 160 A.2d

comprehensive plan" mandated a separately adopted plan would have required courts to hold many ordinances invalid.³² By finding that the zoning ordinance itself was the plan, an ordinance could be upheld;³³ but at the same time, the requirement of a comprehensive plan was made almost meaningless.

A fundamental rule of statutory interpretation is that every word contained in a statute is presumed to be used for a purpose and should be given effect if possible.³⁴ The zoning enabling statutes required that zoning ordinances be in accordance with a comprehensive plan, not that the ordinance be in accordance with itself.³⁵ The language in the statutes suggested that some planning activity should have occurred before the enactment of a zoning ordinance.³⁶ The courts could have interpreted the requirement for a comprehensive plan to mean a separate plan without the risk of invalidating zoning ordinances had they allowed existing zoning to continue until cities had prepared land use plans.³⁷ The majority view, that an adopted plan is not a prerequisite to zoning, contributes to the failure of local governments to recognize the relationship between planning and zoning³⁸ and allows them to zone without the forethought necessary for effective zoning.³⁹

379, 382 (Md. 1960) (when zoning ordinance preceded master plan, zoning map is comprehensive plan). See generally Haar, "In Accordance With a Comprehensive Plan," 68 HARV. L. REV. 1154, 1157 (1955).

32. 1 R. ANDERSON, AMERICAN LAW OF ZONING 266 (1976); 1 N. WILLIAMS, AMERICAN LAND PLANNING LAW 446 (1974).

33. See, e.g., *Capital Properties, Inc. v. Zoning Comm'n*, 229 F. Supp. 255, 258 (D.D.C. 1964) (adopted plan not required to enact zoning); *Allin v. Zoning Comm'n*, 186 A.2d 802, 803 (Conn. 1962) (comprehensive plan revealed in pattern of development when town had no plan); *Camara v. City of Warwick*, 358 A.2d 23, 30 (R.I. 1976) (for statutory purposes scheme of zoning is comprehensive plan, absent document plan).

34. See *Eddins-Walcher Butane Co. v. Calvert*, 156 Tex. 587, 591, 298 S.W.2d 93, 96 (1957); 2A J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 46.06, at 63 (4th ed. 1973).

35. See Hear, "In Accordance With A Comprehensive Plan," 68 HARV. L. REV. 1154, 1173 (1955).

36. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 169 (1973).

37. 1 N. WILLIAMS, AMERICAN LAND PLANNING LAW 446-47 (1974); see, e.g., *Miller v. Board of Pub. Works*, 234 P. 381, 388 (Cal. 1925) (temporary zoning ordinance preserves status quo until plan completed); *Silvera v. City of South Lake Tahoe*, 83 Cal. Rptr. 698, 699 (Ct. App. 1970) (interim zoning ordinance improperly used to avoid existing zoning); *Metro Realty v. County of El Dorado*, 35 Cal. Rptr. 480, 483-84 (Ct. App. 1963) (temporary zoning ordinance adopted pending preparation of plan).

38. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: THE ROLE OF PLANNING 23 (1973); NATIONAL COMM'N ON URBAN PROBLEMS, FRAGMENTATION IN LAND-USE PLANNING CONTROL 73-74 (1969).

39. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 169 (1973) (zoning often an immediate reaction to prevent undesirable land development).

The second category consists of a small number of cases representing judicial recognition of land use planning activity outside of the zoning ordinance itself.⁴⁰ Although these courts have not required consistency with adopted land use plans, they have looked to plans to determine the reasoning of local legislative bodies that led to the enactment of zoning ordinances.⁴¹ This procedure has been important in the review of zoning regulations that would have seemed arbitrary in the absence of a plan.⁴² Since an adopted plan has been viewed as a statement of community goals and policies for land use regulations,⁴³ zoning ordinances enacted to achieve those objectives have been viewed as more reasonably related to the general welfare of the community than ordinances enacted without reference to a plan.⁴⁴ When confronted with land use control programs, courts in this second category have exhibited a willingness to investigate the policy behind and objectives of land use regulations.⁴⁵ Zoning is justified only if enacted for the public welfare,⁴⁶ which includes spiritual, physical, and aesthetic values.⁴⁷ The adoption of a plan serves to illustrate the intent of the zoning ordinance and facilitates substantive review to determine whether the ordinance seeks to further the public welfare.⁴⁸

40. See *O'Loane v. O'Rourke*, 42 Cal. Rptr. 283, 288 (Ct. App. 1965) (plan is constitution for future city development); *Biske v. City of Troy*, 166 N.W.2d 453, 456-57 (Mich. 1969) (adopted plan may be evidence of reasonableness); *Cleaver v. Board of Adjustment*, 200 A.2d 408, 414-15 (Pa. 1964) (policies in plan considered in review of zoning ordinance).

41. See *Aspen Hill Venture v. Montgomery County Council*, 289 A.2d 303, 309 (Md. 1972) (designation in plan significant in rezoning request); *Montgomery v. Board of County Comm'rs*, 280 A.2d 901, 905 (Md. 1971) (recommendations in adopted plan to be considered in rezoning request).

42. See *Construction Indus. Ass'n. v. City of Petaluma*, 522 F.2d 897, 908 (9th Cir. 1975) (growth control plan held valid exercise of police power), *cert. denied*, 424 U.S. 934 (1976); *Golden v. Planning Bd.*, 285 N.E.2d 291, 300-01, 334 N.Y.S.2d 138, 150 (1972) (phased growth ordinance held valid).

43. See *Udell v. Haas*, 235 N.E.2d 897, 905, 288 N.Y.S.2d 888, 899 (1968) (comprehensive plan is statement of land use policies); *Eves v. Zoning Bd.*, 164 A.2d 7, 10 (Pa. 1960) (formulation of plan containing land use policies should precede zoning).

44. *Raabe v. City of Walker*, 174 N.W.2d 789, 796 (Mich. 1970) (absence of plan weakens presumption of validity of zoning ordinance); see *Biske v. City of Troy*, 166 N.W.2d 453, 459 (Mich. 1969) (reasonableness of ordinance considered in light of plan); *Udell v. Haas*, 235 N.E.2d 897, 901, 288 N.Y.S.2d 888, 894-95 (1968) (presumption that zoning ordinance serves public interest if land use policy adopted).

45. See, e.g., *Construction Indus. Ass'n v. City of Petaluma*, 522 F.2d 897, 901-02 (9th Cir. 1975) (growth control plan held valid exercise of police power), *cert. denied*, 424 U.S. 934 (1976); *Golden v. Planning Bd.*, 285 N.E.2d 291, 300-01, 334 N.Y.S.2d 138, 150 (1972) (timed development regulations upheld given policies in plan); *Cleaver v. Board of Adjustment*, 200 A.2d 408, 414 (Pa. 1964) (land use plan adopted for guidance of zoning policy).

46. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926) (zoning must find its justification in police power asserted for public welfare).

47. *Berman v. Parker*, 348 U.S. 26, 33 (1954) (within power of legislature to make community beautiful, healthy, and balanced through zoning).

48. See *Aspen Hill Venture v. Montgomery County Council*, 289 A.2d 303, 309 (Md. 1972) (existence of plans shows relationship between exercise of police power and public

The third category consists of cases that hold that the "in accordance with a comprehensive plan" requirement means that zoning must be consistent with a separately adopted plan.⁴⁹ Judicial insistence that land use regulations be consistent with plans resulted from the enactment of zoning enabling legislation that specifically required adoption of a plan to which zoning had to conform.⁵⁰ The most significant statutes were enacted in Kentucky, California, and Florida.⁵¹ Each mandated that local governments adopt plans and conform local zoning to the plans.⁵² The contents of local plans were also prescribed.⁵³ These statutes have generally been successful. For example, before California adopted its mandatory planning

interest); *Fasano v. Board of County Comm'rs*, 507 P.2d 23, 27 (Or. 1973) (en banc) (plan embodies guiding principles of zoning ordinance); Haar, "In Accordance With a Comprehensive Plan," 68 HARV. L. REV. 1154, 1158 (1955); Peterson, *Developing a Zoning Ordinance That Can Actually Achieve a Community's Objectives*, 1977 INST. ON PLAN., ZONING, & EMINENT DOMAIN 119, 139.

49. See *Dalton v. City & County of Honolulu*, 462 P.2d 199, 207 (Hawaii 1969) (city has no power to adopt ordinance not conforming to plan); *Sabo v. Township of Monroe*, 232 N.W.2d 584, 600 (Mich. 1975) (concurring opinion) (ordinance invalid absent adopted plan); *Roseta v. County of Washington*, 458 P.2d 405, 408 (Or. 1969) (burden on county to prove zoning ordinance conformed to adopted plan); Sullivan & Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 URB. L. ANN. 33, 41, 48 (1975).

50. See *Hines v. Pinchback-Halloran Volkswagen, Inc.*, 513 S.W.2d 492, 494 (Ky. 1974) (change of zoning invalid unless in agreement with plan); *City of Louisville v. Kavanaugh*, 495 S.W.2d 502, 505 (Ky. 1973) (council's refusal of zoning in conformance with master plan held arbitrary), *Baker v. City of Milwaukie*, 533 P.2d 772, 779 (Or. 1975) (city has statutory duty to prepare, adopt plan and conform zoning thereto); *Fasano v. Board of County Comm'rs*, 507 P.2d 23, 27 (Or. 1973) (en banc) (statute requires county to adopt plan and implement it through zoning); ALASKA STAT. §§ 29.33.085, .090 (1978) (requires zoning in conformance with adopted comprehensive plan); DEL. CODE ANN. tit. 9, § 6904 (a) (1975) (requires zoning in accordance with adopted plan); HAW. REV. STAT. tit. 6, § 46-4 (1976) (zoning must be in accordance with county plans); IDAHO CODE §§ 67-6508, 6511 (Supp. 1978) (zoning must be in accordance with adopted plan); ME. REV. STAT. tit. 30, § 4962 (1) (A) (1978) (zoning must be consistent with adopted plan); OR. REV. STAT. § 215.050 (1977) (county shall adopt comprehensive plan and implement through zoning).

51. See CAL. GOV'T CODE §§ 65300-65303, 65860 (Deering 1974 & Supp. 1978 & 1978 Cal. Adv. Legis. Serv.); FLA. STAT. ANN. §§ 163.3177-.3194 (West Supp. 1979); KY. REV. STAT. §§ 100.183-.213 (1971 & Supp. 1978); cf. ABA ADVISORY COMM'N ON HOUSING AND URBAN GROWTH, HOUSING FOR ALL UNDER LAW 388 (1978) (labeled innovative).

52. See CAL. GOV'T CODE §§ 65300, 65860 (Deering 1974 & 1978 Cal. Adv. Legis. Serv.); FLA. STAT. ANN. §§ 163.3167, .3194 (West Supp. 1979); KY. REV. STAT. §§ 100.183, .213 (1971).

53. See CAL. GOV'T CODE § 65302 (Deering Supp. 1978); FLA. STAT. ANN. § 163.3177 (1)-(6) (West Supp. 1979); KY. REV. STAT. § 100.187 (1)-(4) (1971). These statutes require that a plan contain a statement of goals, policies, and elements relating to physical development, including land use, transportation, community facilities, housing, and conservation or environment. Each statute allows for additional elements. See CAL. GOV'T CODE § 65303 (Deering Supp. 1978); FLA. STAT. ANN. § 163.3177 (7) (West Supp. 1979); KY. REV. STAT. § 100.187 (5) (1971). The Kentucky statute requires only the land use element as a minimum prerequisite for zoning. See *id.* § 100.201.

statute a general disregard existed for adopted plans,⁵⁴ but after the enactment of the statute the influence of land use planning on local land use decisions increased.⁵⁵ Florida communities, however, have been slow to adopt local plans because the state has not provided adequate funding to assist them in formulating local plans.⁵⁶

The growing number of states requiring the adoption of local plans to guide zoning activity indicates a belief that the problems of zoning can be ameliorated by this requirement.⁵⁷ The favoritism and political manipulation said to be pervasive in local zoning administration⁵⁸ can be avoided if a plan is adopted to serve as a reminder to local zoning officials of community goals and priorities for land development.⁵⁹ As a standard for judicial review, the plan can be used to determine whether zoning board decisions are in accordance with the plan.⁶⁰ A plan that identifies environmentally sensitive areas can help local officials make informed zoning decisions to protect resources.⁶¹ A conscientiously prepared plan can also assist local government in providing a variety of housing opportunities for all income groups by making officials aware of the quality of existing housing and the extent of future housing demand.⁶²

54. See Hall, "The Right of Control Over the City Plan: Local Planner Versus the State Legislature and the Court," 3 PEPPERDINE L. REV. S106, S110 (1976).

55. See Catalano & DiMento, *Mandating Consistency Between General Plans and Zoning Ordinances: The California Experience*, 8 NAT. RESOURCES LAW. 455, 465 (1975).

56. See Lewis, *Florida's cities bite the planning bullet*, PLANNING, February 1979, at 25, 26.

57. *Roseta v. County of Washington*, 458 P.2d 405, 408-09 (Or. 1969); see *Dalton v. City & County of Honolulu*, 462 P.2d 199, 208-09 (Hawaii 1969) (plan forces city to establish long range goals); *Hines v. Pinchback-Halloran Volkswagen, Inc.*, 513 S.W.2d 492, 494 (Ky. 1974) (requirement prohibits ad hoc zoning changes).

58. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, GOVERNMENT FUNCTIONS AND PROCESSES: LOCAL AND AREAWIDE 63 (1974), quoted in Sussna, *Bridging a Wide Chasm: or Dealing with the Environmental-Developmental Gap*, 4 REAL EST. L.J. 284, 289 (1976); see Booth, *A Realistic Reexamination of Rezoning Procedures: The Complementary Requirements of Due Process and Judicial Review*, 10 GA. L. REV. 753, 762 (1976); Note, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CAL. L. REV. 335, 342 (1972).

59. ABA ADVISORY COMM'N ON HOUSING & URBAN GROWTH, HOUSING FOR ALL UNDER LAW 404 (1978); NATIONAL ADVISORY COMM'N ON URBAN PROBLEMS, FRAGMENTATION IN LAND-USE PLANNING AND CONTROL 73-74 (1969).

60. See ABA ADVISORY COMM'N ON HOUSING & URBAN GROWTH, HOUSING FOR ALL UNDER LAW 408 (1978); Haar, "In Accordance With A Comprehensive Plan," 68 HARV. L. REV. 1154, 1174 (1955); Tarlock, *Kentucky Planning and Land Use Control Enabling Legislation: An Analysis of the 1966 Revision of K.R.S. Chapter 100*, 56 KY. L.J. 556, 593 (1968).

61. See *Dalton v. City & County of Honolulu*, 462 P.2d 199, 208 (Hawaii 1969) (purpose of plan is to prevent environmental deterioration); Sussna, *Bridging a Wide Chasm: or Dealing with the Environmental-Developmental Gap*, 4 REAL EST. L.J. 284, 300 (1976).

62. See *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713, 724 (N.J. 1975) (duty of municipality to provide a variety of housing by its land use regulations); ABA ADVISORY COMM'N ON HOUSING & URBAN GROWTH, HOUSING FOR ALL UNDER LAW 479 (1978) (housing should be essential element in plan).

Prior to the enactment of the California statute the comprehensive plan requirement was criticized because some felt that local governments would achieve compliance by amending plans to conform to zoning ordinances, thereby subordinating planning to zoning.⁶³ A survey after enactment of the statute showed that a majority of the counties amended both existing plans and zoning ordinances, with the plans emerging as dominant.⁶⁴ Another argument against mandatory planning was that adoption of plans would result in inverse condemnation⁶⁵ of property by the advanced designation in the plan of the future use of land.⁶⁶ This problem can be avoided by plans that are not overly detailed. The plan should contain policies that form the basis of more detailed future decisions by local legislative bodies,⁶⁷ not detailed maps of future communities.⁶⁸

THE COMPREHENSIVE PLAN REQUIREMENT IN TEXAS

The validity of the Texas zoning enabling statute, article 1011c, was upheld by the Texas Supreme Court in *Lombardo v. City of Dallas*.⁶⁹ The "in accordance with a comprehensive plan" requirement in the enabling statute was not interpreted to mean that a separate plan was necessary. A Dallas ordinance was held to be in compliance with article 1011c,⁷⁰ which was interpreted as requiring "some" comprehensive plan to achieve zoning purposes,⁷¹ because the zoning ordinance applied to all areas of the city.⁷² Later opinions by the courts of civil appeals have followed *Lombardo* by holding that the zoning must simply relate to the city as a whole.⁷³

63. See Catalano & DiMento, *Mandating Consistency between General Plans and Zoning Ordinance: The California Experience*, 8 NAT. RESOURCES LAW. 455, 461 (1975).

64. *Id.* at 464.

65. Inverse condemnation results when property is taken in fact by governmental activity, though no formal eminent domain proceedings have been exercised. See generally 5 N. WILLIAMS, AMERICAN LAND PLANNING LAW § 159.18, at 386 (1974).

66. See Comment, "Zoning Shall Be Consistent with the General Plan"—A Help or a Hindrance to Planning?, 10 SAN DIEGO L. REV. 901, 908 (1973).

67. See Beal, *Defining Development Objectives*, in PRINCIPLES AND PRACTICE OF URBAN PLANNING 327, 331 (1968).

68. See Peterson, *Developing A Zoning Ordinance That Can Actually Achieve A Community's Objectives*, 1977 INST. ON PLAN., ZONING, & EMINENT DOMAIN 119, 124-25 (1977).

69. 124 Tex. 1, 73 S.W.2d 475 (1934).

70. TEX. REV. CIV. STAT. ANN. art. 1011c (Vernon 1963). The language of this statute was adopted verbatim from the model zoning enabling act. See ADVISORY COMM'N ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT § 3 (1926), reprinted in 4 R. ANDERSON, AMERICAN LAW OF ZONING § 30.01, at 399 (2d ed. 1977).

71. *Lombardo v. City of Dallas*, 124 Tex. 1, 5, 73 S.W.2d 475, 476 (1934).

72. *Id.* at 6-9, 73 S.W.2d at 477-78.

73. See, e.g., *Niday v. City of Bellaire*, 251 S.W.2d 747, 750 (Tex. Civ. App.—Galveston 1952, no writ); *City of Dallas v. Meserole*, 155 S.W.2d 1019, 1022 (Tex. Civ. App.—Dallas 1941, writ ref'd w.o.m.); *City of Corpus Christi v. Jones*, 144 S.W.2d 388, 398 (Tex. Civ. App.—San Antonio 1940, writ dism'd judgment cor.).

The *Lombardo* view was followed by the court of civil appeals in *City of Waxahachie v. Watkins*.⁷⁴ The court considered an amendment to an original zoning ordinance, which changed the zoning of a small lot from residential to retail.⁷⁵ The change was held to be invalid as spot zoning⁷⁶ because the zoning amendment was not passed in accordance with a plan or uniform intent to rezone the entire city.⁷⁷ On appeal *Watkins* was reversed by the Texas Supreme Court which held that the zoning change was valid because reasonable minds could have differed on whether the zoning ordinance had a substantial relationship to the health, safety, and general welfare of the community.⁷⁸ The original zoning ordinance was found to have been passed pursuant to a comprehensive plan for rezoning the entire city.⁷⁹ Rezoning of the single lot did not conflict with the adjacent parcels of land as they were zoned in the original ordinance.⁸⁰ The court did not specifically indicate whether the rezoning was in conflict with a comprehensive plan.⁸¹

The court in *Watkins* indicated a modification of *Lombardo* which had required that the zoning ordinance apply to the entire municipality.⁸² The *Watkins* decision implied that the requirement of conformance to a plan could be satisfied if the new zone did not conflict with adjacent existing zoning, thus, the original zoning ordinance was the comprehensive plan.⁸³ In *Hunt v. City of San Antonio*⁸⁴ the Texas Supreme Court followed this interpretation of the comprehensive plan requirement by holding invalid the rezoning of two lots from single family dwelling to apartment use.⁸⁵ The original zoning ordinance was repeatedly referred to as the comprehensive plan required by the Texas zoning enabling statute.⁸⁶ These are the only

74. 265 S.W.2d 843 (Tex. Civ. App.—Waco 1954), *rev'd*, 154 Tex. 206, 275 S.W.2d 477 (1955).

75. *Id.* at 843.

76. Spot zoning occurs when a small "island" of land, usually a single lot, is rezoned to a use inconsistent with surrounding uses, or for the benefit of the landowner instead of the general public. See 1 N. WILLIAMS, AMERICAN LAND PLANNING LAW 563 (1974). Spot zoning is invalid in Texas. See *Weaver v. Ham*, 149 Tex. 309, 318, 232 S.W.2d 704, 709 (1950).

77. *City of Waxahachie v. Watkins*, 265 S.W.2d 843, 846 (Tex. Civ. App.—Waco 1954), *rev'd*, 154 Tex. 206, 275 S.W.2d 477 (1955).

78. *City of Waxahachie v. Watkins*, 154 Tex. 206, 212-14, 275 S.W.2d 477, 481-82 (1955).

79. *Id.* at 209, 275 S.W.2d at 479.

80. *Id.* at 213, 275 S.W.2d at 481.

81. *Id.* at 213, 275 S.W.2d at 481.

82. See *Lombardo v. City of Dallas*, 124 Tex. 1, 6-9, 73 S.W.2d 475, 477-78 (1934).

83. See *City of Waxahachie v. Watkins*, 154 Tex. 206, 213-14, 275 S.W.2d 477, 481-82 (1955).

84. 462 S.W.2d 536 (Tex. 1971).

85. *Id.* at 540.

86. *Id.* at 539. A vigorous dissent in the court of civil appeals decision describes the comprehensive plan as the zoning ordinance existing at the time of the amending ordinance. *City of San Antonio v. Hunt*, 458 S.W.2d 952, 958-59 (Tex. Civ. App.—San Antonio 1970) (dissenting opinion), *rev'd*, 462 S.W.2d 536 (Tex. 1971); see *Thompson v. City of Palestine*,

Texas cases interpreting the "in accordance with a comprehensive plan" requirement, and indicate that Texas follows the unitary view.⁸⁷

The judicial interpretation that a city's original zoning ordinance is the comprehensive plan required by article 1011c necessarily leads to the conclusion that a rezoning departing from the plan is invalid.⁸⁸ This view of the comprehensive plan requirement results in a zoning pattern that is static and unable to adjust to problems that were unforeseen when the original ordinance was enacted.⁸⁹ The *Hunt* court held that a rezoning that departed from the original zoning ordinance was spot zoning if the city could not show that a change of conditions had occurred since the enactment of the original ordinance.⁹⁰ This holding has left local officials uncertain about attempting to update original zoning.⁹¹

It is not surprising that Texas courts have followed the unitary view since few adopted plans have been considered by the courts.⁹² Texas did not enact a municipal planning statute based upon the model city planning act.⁹³ The legislature authorized cities to expend public funds for conducting studies and formulating plans for development,⁹⁴ but did not

510 S.W.2d 579, 581-82 (Tex. 1974) (statutory comprehensive plan is city's original zoning ordinance).

87. See generally Sullivan & Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement*, 9 URB. L. ANN. 33, 42 (1975).

88. See *Thompson v. City of Palestine*, 510 S.W.2d 579, 582 (Tex. 1974); *City of Dallas v. Meserole*, 155 S.W.2d 1019, 1022 (Tex. Civ. App.—Dallas 1941, writ ref'd w.o.m.).

89. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 170 (1973); Leary, *Zoning*, in PRINCIPLES AND PRACTICE OF URBAN PLANNING 403, 405 (1968).

90. *Hunt v. City of San Antonio*, 462 S.W.2d 536, 540 (Tex. 1971).

91. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 172 (1973).

92. Only two cases have dealt with adopted plans; however, neither equated the adopted plan with the required comprehensive plan in article 1011c. See *Darnall v. City of Austin*, 451 S.W.2d 275, 276 (Tex. Civ. App.—Austin 1970, writ ref'd n.r.e.) (although zoning consistent with adopted plan, court relied upon presumption of validity); *Burford v. City of Austin*, 379 S.W.2d 671, 677-78 (Tex. Civ. App.—Austin 1964, writ ref'd n.r.e.) (master plan merely evidence to support lower court's ruling). In *Lawton v. City of Austin*, 404 S.W.2d 648 (Tex. Civ. App.—Austin 1966, writ ref'd n.r.e.) the court found that a street plan for a proposed subdivision satisfied the article 1011c comprehensive plan requirement. *Id.* at 654. This type of plan, however, relates only to the subdivision area and is formulated by a developer, unlike a master plan that relates to the entire community and is adopted by a local legislative body. See generally Green, *Land Subdivision*, in PRINCIPLES AND PRACTICE OF URBAN PLANNING 443, 455 (1968).

93. See DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: THE ROLE OF PLANNING 6 (1973); Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROB. 353, 384 n.4 (1955).

94. See TEX. REV. CIV. STAT. ANN. art. 1011 I, § 1 (Vernon 1963). The statute also authorizes certain municipalities to engage in joint planning with contiguous cities, and prepare master plans. *Id.* §§ 2, 4 (b). The plans must be approved by the municipalities, but no requirement exists that they be adopted, or that they relate to zoning regulations. *Id.* § 4 (b).

state whether these plans were the referent of the "in accordance with a comprehensive plan" requirement in article 1011c.

In 1965 the Texas Legislature enacted a statute enabling local governments voluntarily to form regional planning commissions to promote inter-governmental cooperation in the solution of problems that transcended jurisdictional boundaries.⁹⁵ Member governments were authorized to adopt all or part of the plans of the commission.⁹⁶ The commissions were allowed to assist member governments in local planning efforts.⁹⁷ Twenty-four regional planning commissions exist in Texas, with 238 of the state's 254 counties included as members.⁹⁸ Any member may withdraw at any time⁹⁹ or disregard regional plans adopted by other members.¹⁰⁰

The existing Texas planning statutes are inadequate for effective zoning. The regional planning commissions have no power to enforce their plans.¹⁰¹ Even if member counties adopted the plans, they could not implement them because counties have not been authorized to zone.¹⁰² Under present statutes, cities and towns may zone, but are not required to engage in any planning. Plans that are formulated can be ignored with impunity because they are merely advisory and have no binding effect.¹⁰³ Because of this tenuous relationship between planning and zoning, planning is in danger of becoming simply an academic exercise in Texas.¹⁰⁴

RECOMMENDATIONS

To plan effectively for growth, protect environmental quality, and facilitate efficient use of public and private resources, the legislature should enact a statute that requires planning as a prerequisite to zoning. In adopting this statute the legislature should consider several criteria. Each local government or municipality engaging in zoning or other forms of land use regulation should be required to prepare and adopt a plan as a prerequisite

95. 1965 Tex. Gen. Laws, ch. 570, at 1248.

96. TEX. REV. CIV. STAT. ANN. art. 1011m, § 4 (b) (Vernon Supp. 1978-1979).

97. *Id.* § 4 (b).

98. DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, REGIONAL COUNCILS IN TEXAS 8, 13 (1975).

99. TEX. REV. CIV. STAT. ANN. art. 1011m, § 9 (Vernon Supp. 1978-1979).

100. *See* DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, REGIONAL COUNCILS IN TEXAS 14 (1975).

101. *Id.* at 14; *see* DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 111 (1973); Comment, *Environmental Problems in Rural Development*, 8 ST. MARY'S L.J. 99, 104 (1976).

102. *See* DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, TEXAS LAND USE: EXISTING MECHANISMS 116 (1973).

103. *See* TEX. REV. CIV. STAT. ANN. arts. 1011a-m (Vernon 1963 & Supp. 1978-1979) (municipalities not required to formulate plans or consider adopted plans in zoning actions).

104. *See* DIVISION OF PLANNING COORDINATION, OFFICE OF THE GOVERNOR, THE ROLE OF PLANNING 12 (1973).

to the enactment of zoning ordinances or other land use controls.¹⁰⁵ Existing zoning ordinances should continue in effect and not be permitted to be amended until a plan is adopted. After adoption, all zoning ordinances and land use controls would have to be consistent with the plan. The intent of the statute should be the implementation by each municipality of an adopted plan; therefore, all zoning ordinances should be based upon, related to, and compatible with, a means of implementing that plan.¹⁰⁶

The statute should prescribe the contents of a plan, and the general process by which it should be formulated. The contents of the plan should include statements of goals, objectives, and policies to serve as guides to physical development.¹⁰⁷ These statements should be grouped in sections of the plan relating to functional elements that affect development; specifically, land use, community facilities, transportation, housing, and environmental constraints.¹⁰⁸ Additional elements might be added, such as population, economic activity, recreation, and open space. In the formulation and adoption of a plan, the local government should identify and analyze problems, determine community needs and goals, establish priorities, formulate alternative plans and policies to achieve those priorities, and select the plan that most effectively achieves the goals of the community.¹⁰⁹ Public participation in all stages of the planning process should be required by dissemination of proposals and alternatives and by public surveys, meetings, and hearings to insure an opportunity for comment.¹¹⁰ Formulation of a plan should be the responsibility of professional staff in the local city planning department or planning commission. Cities not having the resources to hire planning staff should be given professional assistance from regional planning commissions.¹¹¹

105. See generally ALASKA STAT. § 29.33.080(b) (1972); CAL. GOV'T CODE § 65300 (Deering 1974); IDAHO CODE § 67-6508 (Supp. 1978); KY. REV. STAT. § 100.183 (1971).

106. See generally ALASKA STAT. § 29.33.090 (Supp. 1978); CAL. GOV'T CODE § 65860a (1978 Cal. Adv. Legis. Serv.); FLA. STAT. ANN. § 163.3194 (1) (West Supp. 1979); HAW. REV. STAT. tit. 6, § 46-4 (1976); IDAHO CODE § 67-6511 (Supp. 1978); IND. CODE ANN. § 18-7-2-38 (Burns 1974); KY. REV. STAT. § 100.213 (1971); NEV. REV. STAT. § 278.250 (2) (1975); cf. VA. CODE § 15.1-490 (Supp. 1978) (zoning shall consider the plan).

107. See generally ALASKA STAT. § 29.33.085(a) (1972); DEL. CODE ANN. tit. 9, § 6904 (1975); IDAHO CODE § 67.6508 (Supp. 1978).

108. See generally CAL. GOV'T CODE § 65302 (Deering Supp. 1978); FLA. STAT. ANN. § 163.3177 (West Supp. 1979); KY. REV. STAT. § 100.187 (1971); NEV. REV. STAT. § 278.160 (1975); VA. CODE § 15.1-446.1 (Supp. 1978).

109. See generally KY. REV. STAT. § 100.191 (1971) (research requirements for adopting plan); TEX. REV. CIV. STAT. ANN. art. 1011m, § 1 (e) (Vernon Supp. 1978-1979) (comprehensive planning process for regional planning commissions); VA. CODE § 15.1-447 (Supp. 1978) (survey and studies to be made for plans); F. CHAPIN, URBAN LAND USE PLANNING 349-53 (1976).

110. See generally FLA. STAT. ANN. § 163.3181 (West Supp. 1979); IDAHO CODE § 67-6507 (Supp. 1978); MICH. STAT. ANN. § 5.3001 (1976).

111. Existing statutes authorize regional planning commissions to assist local government in the preparation of plans. See TEX. REV. CIV. STAT. ANN. art. 1011m, §§ 4 (b), 4 (d)

A plan must be current to guide land use decisions effectively; therefore, the local planning body should be required periodically to assess and evaluate goals and objectives in consideration of previously unforeseen problems or changes in the community.¹¹² The procedure for amending the adopted plan to reflect changed policies and priorities should be the same procedure as that required for the plan's adoption.¹¹³ Appropriate studies should be conducted, alternatives proposed, and public participation required before the plan could be amended by the local legislative body. In this way, compromise of the community's planning goals by hastily considered plan amendments would be avoided.¹¹⁴

In order to facilitate the preparation of plans, the state government should provide a one-time grant of funds to local governments to help pay the cost of preparation.¹¹⁵ A manual containing general guidelines and procedures for plan formulation should be promulgated by the state to help ensure that plans are properly and fairly produced.¹¹⁶ The same state office that publishes the manual should also be given responsibility for reviewing local plans for procedural and substantive compliance with statutory requirements.¹¹⁷ Municipalities should be required to submit drafts of their proposed plans to the state for review. The state reviewing agency should comment upon any deficiencies in local plans, and suggest methods by which these deficiencies can be remedied.¹¹⁸ Local plans should not be adopted until state comments have been considered. State approval of a local plan should not be a prerequisite to adoption, however, because the plan should ultimately be a product of community goals and values, not those of the state.¹¹⁹

CONCLUSION

In the absence of state enabling legislation that emphasizes the nexus between land use planning and land use controls, the majority of the courts

(Vernon Supp. 1978-1979).

112. See generally ALASKA STAT. § 29.33.085 (1972) (every two years); VA. CODE § 15.1-454 (Supp. 1978) (every five years).

113. See *Dalton v. City & County of Honolulu*, 462 P.2d 199, 209 (Hawaii 1969); *Hines v. Pinchback-Halloran Volkswagen, Inc.*, 513 S.W.2d 492, 493 (Ky. 1974). Because much of the base data required to justify an amendment will have been gathered during the proceedings for the original plan's adoption, the cost of amending a plan should not be so great that outside funding would be required.

114. See *Dalton v. City & County of Honolulu*, 462 P.2d 199, 209 (Hawaii 1969).

115. See generally Catalano & DiMento, *Mandating Consistency Between General Plans and Zoning Ordinances: The California Experience*, 8 NAT. RESOURCES LAW. 455, 466 (1975).

116. See Lewis, *Florida's cities bite the planning bullet*, PLANNING, February 1979, at 27.

117. *Id.* at 27.

118. *Id.* at 26.

119. See Haar, "In Accordance With A Comprehensive Plan," 68 HARV. L. REV. 1154, 1155 (1955).

will continue to give little or no weight to local land use plans. In those states that require consistency between adopted land use plans and land use regulations, the courts have conscientiously examined the relationship between the policies and guidelines contained in local plans and the land use controls adopted to implement them. Because only a minority of states require adopted plans, the majority of zoning actions are enacted, amended, or reviewed without the benefit of local land use plans. To say that zoning has failed¹²⁰ is premature and disregards the facts; actually it has not yet been properly conducted. The shortcoming of existing zoning is due to the failure of a majority of state legislatures to enact statutes that would make land use planning an effective basis for zoning.

120. See generally Booth, *A Realistic Examination of Rezoning Procedure: The Complementary Requirements of Due Process and Judicial Review*, 10 GA. L. REV. 753, 753 (1976).