LOCAL GOVERNMENT CONTROL OF COMMERCIAL DEVELOPMENT

Occasional Paper No. 33*

November 1989

Michael D. Wyatt
Department of Urban and Regional Planning
University of Wisconsin-Madison

*Individual copies of Occasional Paper Series in Urban and Regional Planning are available ($2.50) from the Department of Urban and Regional Planning, University of Wisconsin-Madison, 925 Bascom Mall-Old Music Hall, Madison, Wisconsin 53706 (608 263-2627).

LOCAL GOVERNMENT CONTROL OF COMMERCIAL DEVELOPMENT

TABLE OF CONTENTS

LOCAL GOVERNMENT CONTROL OF COMMERCIAL DEVELOPMENT

Introduction

Citizens in Wisconsin who participate in public hearings may notice that public officials do not always act in accordance with the official land use master plan. They may discover that master plans in Wisconsin are only symbolic documents which are not legally enforceable. This issue of enforcement frequently arises in connection with attempts to limit the rezoning of land for peripheral commercial development that is inconsistent with a current land use plan. Many discouraged Wisconsin government officials and citizens may believe that controlling the pressure for commercial development is a hopeless cause. They probably are unaware of methods effectively used elsewhere for exercising control of the extent, location and density of commercial development. In the belief that knowledge of these alternatives is a prerequisite to mobilizing political will, this paper is a review of how zoning and land use regulation have been used with success in many places to limit commercial sprawl.

Unrestricted commercial development has contributed to a homogeneous, generic urban landscape--a sterile environment lacking a unique sense of place (Leinberger & Lockwood, 1986, 43-52). Before the 1920s, retail and business districts were highly compact, centered around railroad terminals and trolley stops. Encouraged by the growth of auto transportation starting in that decade, every major street became open to extensive strip commercial development, (Gerckens, 1979, 38) with individual businesses strung together like beads on a long string.

Early zoning ordinances tended to freeze existing land uses, except for commercial and industrial uses, which were allowed to grow excessively. While this over-zoning may have enabled some homeowners to sell their property for a higher price, the overall effect was to lower home property values. Gross over-construction for commerce plus street congestion from auto traffic resulted in: vacant and poorly maintained businesses; noise; pollution; and decreased street access. Because commercial development was scattered more randomly than desirable, it became more difficult to forecast the logical placement of additional streets, fire stations and other government infrastructure.

Municipalities have had an even greater stake than individual property owners in commercial and industrial over-zoning. The greater taxable value of such uses relative to the perceived service costs they generate creates a fiscal bias favoring them. Such "fiscal zoning" has generally been upheld in the courts (Williams, 1974, Vol.1, Ch.14).

There has been another inconsistency in the treatment of residential versus commercial uses through zoning. The main

justification for zoning over the years was as a device to protect the value of existing residential property. Yet planners have been reluctant to use zoning in a similar way to protect existing commercial property for fear of interfering with competition and the "free market" (Babcock, 1966, 76-79). Such inconsistent treatment seems arbitrary if one considers that the loss in value of commercial property affects the stability of a neighborhood--both its physical and social character--quite as much as loss in value of residential property. This issue becomes particularly acute when the survival of a central business district (CBD) is at stake.

Given these problems what is the legal potential for using zoning to exercise greater control over the extent and location of commercial uses, including protection of existing business districts and especially CBDs? What tools are available for controlling commercial development outside the city limits and how effective are they? Finally, how effective has the recent increase in the use of consistency mandates--which legally require that zoning comply with a master plan--been as a tool for potentially strengthening restrictions on commercial growth?

"Anti-Competitive" Zoning to Protect Existing Business

Zoning decisions undertaken solely to protect specific businesses from the competition of new businesses entering the market have been almost universally invalidated by the courts (Strom, 1983, 124-127; Levin, 1983, 71-72; Dabney, 1979, 438-9). Furthermore, existing businesses have been denied legal standing to sue a municipality which takes action to promote competition through rezoning decisions (Dabney, 1979, 439-440). This is in accord with the traditional view that affords less protection of property value for existing commercial uses than is afforded to residential uses.

Despite these legal decision, many commentators point out that zoning, by its very nature, is anti-competitive because it restricts the use of land (Payne, 1981, 149; Deutsch, 1984, 71). One says:

> Zoning restrains trade to the extent that restrictions affect commercial land use. Construction projects worth billions of dollars are affected by zoning and subdivision regulations each year (Hartford, 1982, 903).

The legal support for zoning since the 1920`s has implicitly recognized that free market competition in commercial land "will not always facilitate the most efficient allocation of resources" (Hartford, 1982). So it is not surprising to find that whenever an arguably public purpose can be asserted for zoning restrictions on commercial development, the courts have upheld such action,

despite clear anti-competitive effects which may benefit existing businesses. Even explicit protection of existing business from competitors may be a valid concern in a zoning decision as long as it is not the dominant factor in such a decision (Dabney, 1979, 444-445).

Similarly, the common law of zoning ordinances has seldom interfered with the continuation of existing land uses, even if they don't conform to the prospective zoning classifications for such parcels. Such acceptance of nonconforming uses tends to create a local monopoly for existing commercial uses by excluding creation of similar ones nearby. Yet the U.S.Supreme Court in 1976 gave its approval to a formal grandfather clause that did just that, even though it recognized the ordinance was "solely an economic regulation" giving one vendor a monopoly position. In doing so, the court relied on a presumption of validity attached to zoning ordinances as legislative acts (Weaver & Duerksen, 1977, 68-69). (Note: As a result of the traditional constitutional separation of powers, courts generally avoid commenting on the content of legislative acts unless there is a constitutional issue involved or the means mandated are grossly unrelated to the legislative goals. Zoning and rezoning decisions are the jurisdiction of city councils and county boards; hence they constitute legislative acts.) Generally, in cases where zoning has been struck down on anti-competitive grounds, there was either no justification made in terms of the public interest or else the factual record was grossly inadequate to support a courts' finding of a public purpose.

It is important to note that although the courts have upheld the validity of fiscal considerations in zoning decisions, they have even more consistently held that a zoning classification which greatly decreases the value of a property owner's land is not confiscatory as long as any reasonable economic use remains for the property (Williams, 1974, Vol.4,154-155; Wright & Gitelman, 1982, 410-435). In a number of cases, the U.S. and state Supreme courts have even upheld regulations which destroy all value of an owner's land in the interest of preventing public harm or protecting the public welfare (Wright & Gitelman, 1982 403-409,478-485; Callies, 1986). Thus, it is clear there is no legal basis for preventing a property owner from realizing a greater financial return through zoning, as long as a valid public purpose is involved.

Attitudes Toward Business District Size and Expansion

The state of Arkansas was unique in making it unconstitutional for a city to place limits on the size of its business district, until the state supreme court ruled that limits could apply under a new state zoning enabling act. In California, case law early required that some vacant land must be mapped for a commercial district to prevent government endorsement of business monopolies

(Williams, 1974, Vol.4,71-77). By contrast, the Supreme Court of Missouri upheld zoning an entire village for single-family homes, thereby excluding all commercial use (Wright & Gitelman, 1974, 870-873).

However, this last case is not typical: single-use zoning ordinances are generally found invalid. However, severe limits on commercial zoning are allowed. In Sullivan v. Board of Supervisors (Wright & Gitelman, 1974, 873-876), for example, a zoning ordinance which was challenged as providing only "token" amounts of land for commercial use--in this case only 1% of the total land area--was upheld by the Pennsylvania Supreme Court as a valid exercise of the police power. The court established a "fair-share" standard in assessing the adequacy of land zoned for commercial use, analogous to the regional fair-share low-income housing requirements which have become well known today. This doctrine implies that a municipality has no obligation to provide more than its fair share. If the implications of this approach are applied to commercial uses, one observer suggests:

> ...a municipality will no longer be able to freely create an unlimited supply or oversupply of land for commercial development beyond its foreseeable needs (Weaver & Duerksen, 1977, 76-77).

The Sullivan case justifies severe limits on total allotted commercial land use, stating that:

> ... a municipality may have valid reasons for regulating commercial growth which might not suffice if those same reasons were advanced in support of a single-family dwelling restriction or a residential minimum lot size (Wright & Gitelman, 1982, 875).

The Court in this case also reiterated that the burden of proof for the inadequacy of land allocated for commercial use rests with the developer.

Recognizing Distinct Commercial District Types

Courts have accepted the legality of distinct types of multi-use commercial zoning districts, each of which may exclude certain ranges of commercial uses by type and size. Charges were made that this type of zoning discriminates in violation of the equal protection clause of the Constitution. But the U.S. Supreme Court implicitly accepted restrictive commercial districts in a 1976 case limiting adult theater uses. A number of cases have upheld zoning which is restricted to local retail districts that serve only daily shopping needs. Several courts have upheld the exclusion from general commercial districts of uses with unusually heavy traffic-generating characteristics. Other cases, however, have denied the

exclusion of specific uses like gas stations. There has been a general trend toward defining commercial districts less permissively than in the past. This is done by listing only permitted uses, instead of prohibited uses. This means that new or ambiguous uses must pass more stringent tests before being allowed (Williams, 1974, Vol.4). The application of performance standards to commercial uses--originally used only for industrial uses--is another example.

Control of Commercial Strip Zoning

Norman Williams, a veteran lawyer/planner maintains there has been a long-term trend to limit strip commercial zoning to the main corners of major streets rather than zoning the full frontage of such streets as commercial. Extensive use of strip zoning has been criticized as: inconvenient for shoppers; an eyesore on highways; wasting valuable land; introducing many curb cuts which interrupt traffic flow and cause accidents; leading to tax delinquencies from over-zoning. Courts have upheld a government's refusal to rezone highway frontage for commercial development in several states like Kansas, Washington and Colorado, on grounds that one-third of land so zoned already was not in use, or that substantial traffic problems would be created. However, zoning that encourages strip commercial development has gone largely unchallenged in other states like Missouri and Illinois.

In addition, there has been a shift to increased depth of strip zoning from 100 ft. to a 200 ft. average to allow room for supermarkets and more compact shopping centers. Decisions in several states have supported shopping centers requiring greater depths at a few places rather than continuous strip commercial districts (Williams, 1974, Vol.4).

Control of Number and Location of Specific Commercial Use Classes

Limits on the proliferation of a commercial use such as a shopping center can take two forms: (1) limits on the number of establishment of a given use that are permitted anywhere; and (2) limits on the proximity to existing uses within which any new operation of the same kind can locate. In theory, the first case, a cap on overall number of establishments, would be called for in cases where the market was saturated--where further growth would merely cause unnecessary economic dislocations such as bankruptcies, job shrinkage and property tax losses (Mandelker, 1962, 33-34). The second case might be seen as more likely to benefit specific existing businesses. But courts have seldom distinguished between the two cases. For one thing, distance requirements may be adopted for aesthetic or traffic reasons rather than to control competition (ASPO, 1968). Secondly, even a total prohibition of new sites may actually correspond merely to a larger

distance-separation requirement in an inter-municipal market context. For instance, in Reynolds v. Barrett, a limit on rezoning for commercial use was upheld by the court because adequate shopping facilities were available in neighboring communities (Hartford, 1982, 906).

The most common objects of distancing requirements in zoning ordinances have traditionally been liquor stores and gas stations. There are a massive number of court cases involving the latter class, with the courts generally split on the issue of upholding distance separation between service stations (Strom, 1983; Mosher 1965). It is likely that such ordinances have often been promoted on aesthetic grounds (ASPO, 1968, 63; Strom, 1983, 131). But until recently, courts were reluctant to justify police power restrictions on purely aesthetic grounds. However, since the U.S. Supreme Court ruled in 1954 that aesthetic considerations represented a valid public interest, more and more state courts have adopted a similar stance (Wright & Gitelman, 1982, 1004). So it will be increasingly possible to defend service station limitations without disguise on aesthetic grounds, and this has already happened in cases such as Stone v. City of Maitland and Hempturn Realty Corp. v. Larkin (Strom, 1983, 131).

Spacing requirements have also been successfully applied to shopping centers. A one-mile requirement was upheld in Shapiro v. Town of Oyster Bay, with the court relying on the presumption of legislative validity in making its decision (Tarlock, 1970, 175).

When we come to the issue of absolute limits on the frequency of a given use, a number of court cases reject this approach as arbitrarily limiting competition and benefiting existing business owners (Dabney, 1979, 442). But there are counter-examples also. In BP Oil Inc. v. Zoning Hearing Board, exclusion of further gas stations was upheld even though all seven current sites were fully occupied (Strom, 1983, 127).

In the residential arena, the right to limit the rate of growth of new housing has been upheld as in Construction Industry Assoc. v. City of Petaluma, but the absolute exclusion of new housing units has been rejected as a violation of the constitutional freedom to travel in Golden v. Planning Board of Town of Ramapo, and as a violation of a constitutional right to a "variety and choice of housing" in the New Jersey Supreme Court's Mt. Laurel decisions (Wright & Gitelman,1982, 491-521,957-966). Thus talking about an absolute cap on the frequency of a commercial use amounts to a much more stringent control than has been allowed in the residential field. But planner Richard Babcock has supported such a zoning of commercial uses by the numbers in order to limit "too much of a good thing." He offers the Elmwood commercial district in Berkeley, California as an example of where this has worked effectively. The district permits only two banks or savings and loans, seven restaurants, six women's clothing

stores, etc. by ordinance (Babcock & Smith, 1985). But ordinance provisions such as this are still rare. A much more common approach to limiting commercial use frequency is through incorporating some market demand or public need criterion into the zoning ordinance. This is then applied on a case-by-case basis instead of a blanket restriction on the total number of uses.

Limiting a Commercial Use Based on Inadequate Market Demand

Planners like Daniel Mandelker argue that communities should have the right to consider supply and demand projections in rezoning decisions (Tarlock, 1970, 179). Historical experience suggests that markets rarely make the most socially efficient use of land. They often fail to make the most economically efficient use of it either. If planners fail to analyze market demand it may be tantamount to giving all initiative in land use decisions over to the private sector.

Even in 1958, one planner suggested that public planning staffs should determine both the number and approximate locations of the shopping centers required in a municipality. Such public market studies he believed would:

> ...be more sensitive to the social costs of one site above another;... It might also suggest commercial locations with broader consideration for the full range of municipal facilities and capital expenditures (Horwood, 1958).

In the case of very large shopping centers, we have a situation where development is possible for only a limited number of firms. This suggests a public utility model for granting a limited number of development franchises. One of the main criteria for such a decision would be the economic feasibility of a project. Even in 1958, the cities of South Bend,Indiana; Kettering, Ohio; and Tacoma, Washington all required market studies by shopping center proponents to justify their projects. Tacoma also required that the prospective developer establish evidence of the need for a requested change in zoning and how it would promote the general welfare of the city. In addition the city set standards for the conduct of the market analysis (Horwood,1958). More recently, the Lexington, Kentucky-Fayette County Planning Commission also adopted a public utility approach toward limiting entry into the shopping center market. But in that case the Planning Commission's lack of guidelines for required substantiation of claims led to opportunistic behavior and anti-competitive protection of existing businesses (Tarlock, 1970, 180).

It is of great importance that with only one exception I could find, courts across the U.S. have uniformly upheld the validity of denials of rezonings for commercial use which were based on criteria of lack of public need or inadequate market demand. These

decisions were often based on the presumption of legislative validity which was referred to earlier, and the recognition that a valid public purpose was being served (Strom, 1983, 132-133).

By contrast, conditional use cases are handled under administrative review standards rather than legislative review standards, since they are decided by an appointed board of appeals. They involve closer judicial scrutiny. Here state courts are split on acceptance of market demand-based denials of commercial conditional use permits. Court decisions in Missouri, New York, Rhode Island, Illinois, Minnesota, and New Jersey have all rejected the legitimacy of the public need criterion in conditional use cases (Strom, 1983, 134; Williams, 1974, Vol.4,337). On the other hand, courts in California and Maryland have sustained such criterion for conditional uses. Courts in Pennsylvania and Connecticut have been split on the issue. Conditional uses are not guaranteed as of right, but are subject to standards contained in the ordinance at the discretion of the appeals board. In cases which rejected the "need" criterion, need was not adequately incorporated into the ordinance through measurable standards. The Minnesota court suggested that if an ordinance created standards for oversupply, it could then be found valid (Strom, 1983, 134).

I will close this section with a few examples of how a local government's denial of commercial rezoning, based on lack of need for the additional commercial use, was sustained by the courts. In Eastside Properties Inc. v. Dade County, the validity of a developer's figures in a market feasibility study were questioned. Since the county's use of conflicting evidence was "fairly debatable," the court upheld the denial of rezoning based on the presumption of validity accorded legislative matters. A similar reasonably debatable conflict over a commercial rezoning denial in Loudoun County, Virginia also resulted in judicial affirmation of the county`s position (Williams, 1974, Vol.4,159). In another case, the Mississippi Supreme Court upheld the City of Jackson's denial of commercial rezoning on the ground that the area was over-zoned for commercial use (LULZD, 1987, 18). An Oregon court in Duddles v. City Council invalidated a commercial rezoning on grounds that the extent of the rezoning would allow a shopping center development larger than needed to serve the local community (Weaver & Duerksen, 1977, 73). In Oregon, the Supreme Court has gone beyond sustaining the requirement that developers demonstrate need for a proposed project to also demand evidence that their proposed site is actually the best possible site for the commercial development (LULZD, 1979, 52). These examples show that in a wide variety of places denial of commercial rezonings in saturated markets have been upheld by the courts, despite arguments for "free market" competition.

Control of Commercial Competition to Protect the Downtown Area

Since the 1950s it has been well documented that the growth of regional or suburban shopping centers and malls has contributed to the loss of retail sales and offices from the downtown central business district of many cities (Fix, 1980, 101; Strom, 1983, 138). The vitality of the CBD is often impossible to maintain without restriction on development of outlying shopping centers. The harsh economic effects are particularly evident in the many smaller cities where the market is such that it will clearly not support more than one major commercial use concentration (Weaver & Duerksen, 1977, 59-60). This is especially important in light of the approaching saturation of regional shopping mall construction in the major cities, and the increasing shift to the "middle market" represented by the more numerous smaller cities (Finch, 1982, 1; International Council of Shopping Centers, 1979, 89-93, 22-24).

What is at stake is often much more than mere competitive disadvantage for downtown retail businesses. Frequently the CBD is also the government, financial and transportation center of its region, and represents a major social investment in public infrastructure, culture and human activities. The vitality of the CBD, or heart of the city, is key to a sense of regional identity and culture. It also represents a major remnant of the "commons," a free marketplace for economic, social and political transactions to take place. The current enclosed climate-controlled regional malls can never replace this function, because private ownership and the consumerist orientation restrict freedom of expression, creating a politically and culturally sterile environment.

Decline of CBDs is also accompanied by a spiral of diminished employment and shopping opportunities, higher crime, political alienation and social anomie, under-utilized public facilities and decreased tax base. Such decline reinforces trends toward residential sprawl, automobile dependence, pollution, inefficient energy and land use, and resulting increased costs for municipal services. Individual businesses are frequently unwilling to invest downtown when a major outlying center might be built. They require a commitment by city government and the predictability that is potentially afforded by zoning restrictions.

For all these reasons, there is a clear public purpose served by protecting CBDs and restricting growth of outlying shopping centers to accomplish this. Zoning in such cases has been clearly seen by many courts as a valid exercise of the police power regardless of anti-competitive effects. Planners and officials can demonstrate the reasonableness of CBD protection by showing the direct relationship between a proposed rezoning and the cumulative effects of such an action. But the burden of proof should rest with the developer in a court's view, because of the presumption

of legislative validity. In Forte v. Borough of Tenafly, the court ruled that zoning could be used to revitalize downtown by excluding new retail construction elsewhere in the community, even if this gives the CBD a "virtual monopoly over retail business." Such action was protected on public welfare grounds because there was no evidence that the borough was trying to benefit particular businesses within the downtown (Levin, 1983, 73; Tarlock, 1970, 178; Kane & Belkin, 1981, 130). The court said Tenafly had a right to preserve its CBD (Weaver & Duerksen, 1977, 70). In Carty v. City of Ojai, the court upheld a rezoning which withdrew shopping center zoning from all highway property in order to support CBD development (Strom, 1983, 149). In Second Norwalk Corp. v. Planning and Zoning Commission, a refusal to rezone land for a shopping center and department store was upheld based on expected impacts on the character of the town, traffic congestion, and disruption of the "economic health" of the existing business center (Levin, 1983, 73).

In most cases of conflict between CBDs and developers of regional malls, the situation never gets to the courts (Levin, 28). In Sioux City, Iowa the city council had in place very permissive zoning in the peripheral area and a regional mall developer decided to take advantage of this. The council passed an interim zoning ordinance allowing discretionary denial of permits for commercial developments over 100,000 square feet. Despite its lack of foresight, the council might have prevented the mall if it hadn't granted, in an unrelated action, a commercial rezoning elsewhere in the city that was inconsistent with its stated policy of downtown revitalization. It thus opened itself to charges of discrimination (Babcock & Siemon, 1985, 119-133).

The lesson from the Lexington-Fayette County and Sioux City examples is that land use regulations need to be consistent with a well-thought-out comprehensive plan in order to most effectively document public welfare bases for controlling commercial development, while avoiding at the same time susceptibility to challenges based on violation of equal protection guarantees (Solnit, 1982, 118; Levin, 1983, 78; Strom, 1983, 148). The role of the professional planner is crucial in facilitating this process --both in terms of substantiating relevant cost and demand factors and in facilitating public participation and understanding of issues. Mobilizing and documenting public support for CBD protection--or for commercial controls in general--is an important aid to establishing the reasonableness of controls.

Control of Commercial Development Outside City Limits

I want to sketch some of the regulatory tools available to a municipality to try to control commercial development outside its corporate boundaries. Such methods include: annexation, extraterritorial zoning; regulation through control of state and federal funds; state and federal environmental impact requirements; judicial injunctions; and denial of infrastructure extension. Other options such as transfer of development rights and land banking to create Greenbelts will not be discussed here.

Regional or county zoning controls are one obvious solution to commercial sprawl outside city limits. Yet even where this is legally enforceable, lack of political will may render it ineffectual. For example, in Jacksonville, Florida and Honolulu, Hawaii city/county consolidations have placed the CBD and areas outside the city under the same zoning since 1977. Yet there has been no effort in either case to control outlying commercial sprawl (Weaver & Duerksen, 1977, 62). However, the potential exists for this to be an effective tool when the political will is present. In Chevron Oil Company v. Beaver County, for example, the county refused to rezone grazing land for highway commercial use because of the loss of business to the established downtown in Beaver City, and was sustained in court (Weaver & Duerksen, 1977, 72-73). Increased home-rule powers for counties may be one way to create the capability to leash in unrestricted commercial sprawl.

Annexation

Annexation of peripheral land is one solution sought by many municipalities. Once land is annexed it becomes subject to zoning control like all other municipal land. The effectiveness of annexation as a strategy for limiting peripheral commercial growth depends heavily on the extent of unilateral authority vested in the city to annex surrounding land, as opposed to laws requiring that owners of a majority of the land must vote in favor of such a decision. Based on available sources I found from 1977 on, about nine or ten states appear to allow cities the powers of unilateral annexation (J.F.H. Jr.& G.M.W., 1977, 729; Kane & Belkin, 1981, 133; Livey, 1985, 10).

Where unilateral annexation is not possible, outlying lands are often either improved or owned by developers by the time annexation takes place. If construction has occurred, the city faces the vested interest attached to any nonconforming use. If the land is still vacant developers generally refuse to annex unless allowed to follow through on development plans. However, planner Richard Babcock maintains that no vested right inheres in a zoning classification until after the owner has received a building permit or actually begun construction (Babcock, 1979, 429). A recent case bears out Babcock's contention. In Carly v.

Ojai, a city's prior agreement to rezone property for commercial use as a condition of annexation was held incapable of binding the city's subsequent rezoning for noncommercial use. Relying on the provisions of the city's master plan, the court declared that the promise of favorable zoning does not last indefinitely (DiMento, 1980, 41). There are states like Illinois which have a more permissive "vested rights" doctrine in effect which could bar rezoning based on substantial expenditures by a developer before a building permit is issued, but Wisconsin is not one of these (Bozung, 1987; West's Annotated Wisconsin Statutes, 1988).

Because annexation usually imposes higher taxes on newly annexed residents to pay for the higher level of services which cities provide, its premature use for land-use control has been frowned upon. Often by the time it is legally or politically applicable, it is ineffective as a planning tool. An interesting alternative developed in Texas, first at the ordinance level, later as a statewide statute. In 1956, the city of Denison rewrote its home-rule charter to include a power of limited-purpose annexation within a 5-mile radius. The area so annexed became subject to city planning, zoning, health and sanitation regulation, but paid no taxes to the city and received no other services. Annexed residents vote in city elections, but not in bond elections (Duncombe, 1968, 18). In 1963, this option was extended to other cities. Such provisions were upheld by the Texas Supreme Court. The City of Austin has also allowed limited purpose annexation since 1953, but didn't use it much until the 1980s. Currently however, about 28% of its land area fits in this category (Duncan & Morgan, 1986, 7-32).

Extraterritorial Zoning

Extraterritorial zoning is another tool for city control over development outside its boundaries which has been granted to certain classes of cities by statute in some states. It basically allows the city to extend regular zoning powers from 1 to 5 miles beyond its corporate limits (Kane & Belkin, 1981, 138). The effectiveness of extraterritorial zoning is generally limited for several reasons. First, such power has been confined to regulating development only within unincorporated areas (Becker, 1966, 24-25,55; Sengstock, 1962, 67). Yet often, as in Madison, Wisconsin the central city is ringed with other incorporated municipalities. No court has ever ruled on the constitutionality of exercising such authority over incorporated areas, because it has never been authorized to begin with (Becker, 1966, 30). But the constitutionality of such controls in unincorporated areas have been repeatedly upheld, if reasonably justified by public welfare goals, despite due process challenges (Becker, 1966, 30-35,41). Secondly, the legal boundaries for exercising such control usually bear no direct relation to the actual market radius of influence of each individual city. Usually the legal boundaries are far too

narrow to be effective in controlling urbanization,which often begins from 10 to 20 miles out (Maddox, 1955, 88; Becker, 1966, 54; Brown, 1981, 136,141). Finally, courts may limit outside zoning more rigorously than inside zoning due to traditional concerns--apparent in other cases of judicial review of extraterritorial municipal powers--about denial of due process to non-city residents subject to such regulation (Becker, 1966, 44; Bartelt, 1957, 391).

Zoning (whether extraterritorial or in-city) which merely freezes existing uses is usually less subject to judicial challenge than the more planning-based use of zoning to designate in advance the uses of undeveloped land (Becker, 1966, 46-48). But since the courts have generally upheld advance designation of intraterritorial land, there is no evidence to show that extraterritorial zoning would be treated differently. In Town of Grand Chute v. City of Appleton, the Wisconsin Appeals Court restricted use of extraterritorial powers to control commercial development by allowing a freeze on existing use only where there was no zoning already in place in a town. The court voided an injunction by Appleton against building a shopping mall on undeveloped commercially zoned land (Kane & Belkin, 1981, 135). The Wisconsin case appears atypical in that most states lack the town level of government in Wisconsin. I found no evidence in other states having extraterritorial zoning, of a provision for an extraterritorial review committee which gives the towns effective veto power over city zoning decisions.

Public Infrastructure

Selective control over the construction of public infrastructure, particularly sewer extension, is a viable means of regulating development. Early court challenges were based on a public utility model of sewer extension service which prohibited discrimination based on planning considerations. But more and more courts will uphold use of sewer controls as a growth control device if it is based on a clearly documented comprehensive planning process (Stone, 1982; Deutsch, 1978). For example, even in Wisconsin the Department of Natural Resources (DNR) has the statutory authority to deny sewer extension based on broader land use concerns. However the DNR consistently gives rubber stamp approval to sewer extension requests without utilizing this planning enforcement option (VanderVelde, 1977, 1152-1156).

Judicial Injunction

Another option a municipality can pursue to control commercial development outside its boundaries is to seek a judicial injunction. To do this, the city must demonstrate that it has legal standing to sue and that its interest is within the "zone of

interests" intended for protection by statute (Strom, 1983, 140). A locality may claim that determinations of law should not be resolved at the local level (DiMento, 1985, 114). In Hughes v. City of Peoria, CBD businesses were granted standing based on claims of special damages that would be suffered from a rezoning to allow a regional shopping center three miles away (Weaver & Duerksen, 1977, 66). In Ruegg v.Board of County Commissioners, the court granted standing to a city to challenge a shopping center rezoning granted by the county, based on the existence of a regional planning association and the trend to extend standing to persons other than those who own contiguous property (Strom, 1983, 144).

If a city can meet the test of standing, it may still have to demonstrate special damages in order to obtain an injunction. It must also show that its neighbors' zoning is unreasonable. The potential seems to be there to do this, although in the leading cases I will mention the plaintiffs were private parties. In Save a Valuable Environment v. City of Bothell, the court rejected a shopping center rezoning on the grounds that it would have "serious detrimental effects on areas outside Bothell's jurisdiction." In Matter of National Merritt Inc. v. Weist, a regional welfare analysis was used by the court to grant an injunction against a permit for shopping center development (Strom, 1983, 145).

Environmental Impact Requirements

State and federal environmental impact requirements have been used to challenge regional shopping malls which compete with CBDs, at times with success. With the passage of the National Environmental Policy Act (NEPA) in 1969, any federally subsidized project became required to prepare an environmental impact statement (EIS). Subsequently, at least 15 states have passed laws requiring EISs for state-funded projects as well (Wise, 1975). However, one author complains that there is usually little practical integration between environmental impact requirements and the regular land use planning and zoning procedures (Sedway, 1975, 230). EISs are used instead after the fact. Federal guidelines require that secondary, indirect social and economic impacts be considered as well as direct impacts on the physical environment. One planner notes:

> Such secondary effects... may often be even more substantial than the primary effects of the original action itself (Wise, 1975, 221).

In Hanly v. Mitchell, the court construed NEPA:

> ...to include protection of the quality of life for city residents. Noise, traffic, over-burdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban environment (Fix, 1980, 117).

In Dalsis v. Hills, a private mall developer was found subject to EIS requirements through its relation with HUD and other government sources of funding (Fix, 1980, 124-126). However, the general view of the courts has been that the socio-economic, or secondary effects by themselves are not grounds for triggering the EIS process, in the absence of a primary environmental impact (Fix, 1980, 116).

In several cases, state environmental impact requirements have been used to grant standing to challenge regional shopping malls. Two New York cases resulted in the effective elimination of public need and CBD market injury criteria in state EIS proceedings. By contrast, in Washington the Supreme Court gave a broad reading to the EIS requirement in Barrie v. Kitsap County, rejecting the county's EIS because it ignored the socio-economic effects of a regional shopping mall on downtown Bremerton. In Vermont, where the 1970 Land Use and Environmental Law (Act 250) is in place--amended in 1973 to provide an even stronger growth management focus --refusal of permission for a proposed suburban shopping mall was based primarily on the anticipated negative impact it would have on the CBD in Burlington and on other shopping centers in the area (Williams, 1982, 238-239). The actual objections listed by the District Environmental Commission included: the fiscal burden on Burlington; the excessive highway congestion; the lack of a capital plan and the strain on public services and highway costs; and failure to conform to existing local and regional plans (Fix, 1980, 129).

Enforcement of Other Federal Guidelines

Another tool that has been used against regional shopping malls and commercial sprawl is the enforcement of guidelines that exist in some federal agencies for withholding funding from projects which result in the loss of existing jobs, or in surplus goods or services for which there is insufficient demand. Such funds include those administered through the Farmer's Home Administration, HUD, the Public Works and Economic Development Act and the Appalachian Development Act (Fix, 1980, 104-105). Unfortunately, regional suburban shopping malls rarely use these sources of funding anyhow. The federal funding sources most utilized by developers--which include the DOT Federal Highway Assistance Program and the EPA's Construction Grants Program--lack comparable funding restrictions (Fix, 1980, 108). Nevertheless,

in one case, Mayor of Cumberland v. Daniello, the city attempted to enforce the restrictions against a mall developer who made use of FMHA grants for Water and Waste Disposal Facilities, but the case was never tested (Fix, 1980, 106).

Zoning and the Comprehensive Plan Doctrine

We mentioned earlier that the existence of a carefully prepared comprehensive land use plan lends strong credibility to city efforts to control commercial growth. For example, in Mason City Center Associates v. City of Mason City, the city's refusal to rezone an outlying site for a shopping center was challenged by the developer on grounds that the city colluded with a downtown developer and so engaged in conspiracy in restraint of trade. However, in the only jury trial which has ever taken place to test an antitrust challenge to a municipal land use decision, the jury found that the city had no liability. The primary factor in this outcome was the prior existence of a comprehensive plan clearly placing priority on downtown over peripheral development, plus the testimony of the city council that they had taken their action based on the provisions of the plan (Deutsch, 1984, 73-74).

However, the mere existence of a strong plan is not enough. To see why, we need to briefly look at the origin and evolution of the planning basis for zoning.

The Standard Zoning Enabling Act, which was copied verbatim by 32 states in setting up their own zoning laws, requires that zoning be "in accordance with a comprehensive plan" (Williams, 1974, Vol.4,358-359). At the same time, zoning and planning became largely bifurcated through early court interpretations of this requirement. A reasonable person might take it for granted that such a requirement referred to the "master plan" document authorized under the separate Standard Planning Enabling Act. This statute placed the creation of the master plan in the hands of mayoral-appointed citizen planning commissions. The master plan was defined as a device for codifying the goals and objectives of the municipality regarding future land use and development. However, its role was defined by law as merely advisory, and its adoption was in any case optional (Roberts, 1975, 20; Becker, 1966, 29). Most communities developed zoning ordinances but remained without may master plan until at least the 1950s or 1960s.

As a result of this needless legal separation of zoning and planning in the enabling acts, the dominant judicial interpretation of the "comprehensive plan" zoning requirement until 1970 made no reference to a separate master plan. Instead, courts saw the comprehensive plan as something which inhered in the zoning ordinance itself, so long as it involved a "reasonable" prescription for orderly development (Williams, 1982, 218). Commonly, the zoning ordinance was seen to meet the test of

comprehensiveness merely by fulfilling certain mechanical criteria such as full geographical coverage (Williams, 1974 ,Vol.1,421-461) or uniformity in application of use restrictions to avoid charges of "spot" zoning (Haar, 1955, 1170). Such an interpretation was fueled by the unpopularity and fear of zoning in many communities and by the vested interests of property owners in existing zoning.

But there has been an increasing trend over the last twenty years to instead see the zoning ordinance as the logical implementation of a meaningful master plan involving clear goals, objectives, assessment of trends and advance designation of land (Haar, 1955, 1173). Norman Williams has presented strong evidence that case law has been shifting in this direction, even as early as 1972 (Williams, 1974, Vol.1,395-419,425-426.463-507). However, Williams notes that many courts have neglected to clarify the situation by overruling the earlier case law, so that "in some states two conflicting interpretations have survived next to each other, right down to date" (Williams, 1982, 218-219).

The Rise of Consistency Mandates

We have seen that the existence of a comprehensive plan embodying clear goals that limit the extent and location of commercial development is an important consideration in court acceptance of such control. A "consistency mandate" which gives the actual force of law to a land use master plan can be an even stronger tool for the control of commercial development. The need for such a mandate is clear for example from cases like Madison, Wisconsin where the city council has repeatedly allowed rezoning --of lands which had been designated as residential in the plan-- for commercial development (Waidelich, 1986, 2-3). With a consistency mandate, the city could be sued for such behavior. In California and Oregon there are provisions for such citizen suits.

As of 1981, 14 states had adopted legislation making planning mandatory for local governments. In 12 of these and in two other states where planning remains optional, either land use regulations, public works projects or both are required to be consistent with adopted local comprehensive plans at the county or municipal level. In addition to this, a number of other states including Connecticut, Montana, Illinois and New York have also moved toward requiring zoning consistency with a master plan for land use through case law (DiMento, 1980; Williams, 1974, Vol.1,572-3; Williams, 1987, 102-104; LULZD, 1987, 14; Weaver & Duerksen, 1977, 75). Other states like Wisconsin maintain the old nonsensical separation between comprehensive plan and master plan in court decisions like Bell v. Elkhorn, but a recent national survey by two lawyers notes:

> Bell is a holdover case from an earlier day when courts were reluctant to invalidate zoning when it was not clear what a "comprehensive plan" was under the Standard State Zoning Enabling Act. There is a clear trend in case law and statutory law to provide for a separate comprehensive plan (Bozung & McRoberts, 1987, 976).

Since the time of the 1981 survey the list of states with legal consistency requirements has grown. For example, in 1985 Georgia passed a state law requiring that rezonings be consistent with local land use plans in the Atlanta metropolitan area. This statute was recently upheld by the Georgia Supreme Court (Zoning News, 1988, 3). A pro-consistency decision, Coffey v. Maryland National Capital Park & Planning Commission occurred in 1982 in Maryland, another state without any statutory consistency requirement (DiMento, 1985, 119).

Increasingly, some local communities--not content to wait for state authorization--have taken it upon themselves to pass ordinances requiring consistency at the local level (Williams, 1974, 26). For instance, prior to the adoption of state-wide consistency legislation in California in 1971 and Florida in 1975, there were counties or cities in both states which had adopted consistency mandates on their own (Hagman & DiMento, 1978, 99). In other cases, local consistency ordinances continue to exist despite lack of legislation at a state level. For instance, Stamford, Connecticut, Yonkers, New York, Honolulu and one Washington county have such requirements (Williams, 1974, Vol.1,494-495). In January 1985, by a 2 to 1 margin, an Austin, Texas referendum passed a charter amendment requiring consistency of land use regulations with a comprehensive land use plan for the area (Duncan & Morgan, 1986, 7-4 to 7-5).

Application of Consistency Mandates

Consistency does not always operate effectively in practice. For instance, cases in Idaho have maintained that plan consistency does not apply to zoning ordinances which were already in effect at the time the consistency requirement goes into effect (Williams, 1987, 56-57). In Florida, a similar grandfather clause limits the effectiveness of consistency to zoning ordinances adopted after 1975 (Netter & Vranicar, 1981, 14). Despite lack of such a state statutory requirement, Dade County, Florida takes a less permissive approach. It refuses to automatically exempt existing zoning from consistency requirements and requires that an owner must prove the right to noncompliance through acquisition of vested rights to the zoning (Netter & Vranicar, 1981, 20). In such cases, freezing existing zoning for a period prior to plan adoption can minimize the damage done from developers rushing to push through rezonings prior to the start of the consistency mandate. Montana, California

and New Jersey allow one-year interim zoning of this type (DiMento, 1980, 79-80). In Connecticut, the Supreme Court even upheld a 9-month moratorium targeted only to business development, so that debate could occur over how " to protect the area from rapid exploitation" despite no explicit statutory authority condoning this (479 A.2d 801 Sup.Ct. Conn.1984). However, a similar moratorium targeted only at shopping centers was ruled void in Montana (593 P.2d 458 Mont.1979).

In some places, the discrepancy between plan designations of land and prior zoning designations is resolved by making the plan conform to the zoning rather than vice versa. This was the case in Orange County, California, for example (Johnston, 1978, 417). However, other places like Santa Clara County, California addressed the discrepancy by gradually amending the zoning on a project-by-project basis to conform to the plan. Since 1973, Sacramento County has also rezoned large amounts of land to conform to plan designations. By 1976, over 32,600 acres of rural land was rezoned from small-lot parcels ripe for residential use to parcels of over ten acres for ag land preservation.

In a number of states, the courts have directly ruled that an existing zoning ordinance is void if it conflicts with a comprehensive plan under a statutory or implied consistency requirement. This is true for example in Oregon, New Jersey and Nebraska (Williams, 1987, 46,55-56; DiMento, 1980, 23). In 1985, the District of Columbia adopted a comprehensive land use plan with a consistency mandate and an interim freeze on any zoning or building permit issuance that was inconsistent with the plan. Though challenged by developers, the interim consistency regulations were adopted on a permanent basis in 1987 (Bozung & McRoberts, 1987, 916-917).

Critics also claim that consistency mandates simply transfer opportunistic abuses and developer lobbying from the zoning stage to the planning stage. The problem of "spot" planning arises in the new system just as "spot" zoning occurred previously.

One feature of California law conducive to combatting "spot" planning has been the rule limiting the time at which plan amendments can be made to three occasions during the year. This both limits amendments, and gives them greater public visibility and attention (Johnston, 1978, 418). In Sacramento County the board of supervisors rejected 100% of the developer proposals which would have rezoned 3,700 acres of reserve land, forcing the developers to take to the courts (Johnston, 1978, 416, 420). In Dade County, Florida which adopted a local consistency requirement even before the state enabling legislation, it is very hard to amend the plan. Plan review occurs only once every two years and involves at least four public hearings, taking approximately nine months (Frank, 1978, 19). In addition to stringent public hearing requirements and limitation of occasions for plan amendment, Hawaii

has adopted other ways of avoiding "spot" planning. There, a two-thirds majority is required for the legislature to amend a plan compared with the normal majority vote. In addition, any plan amendment is held to the same standard of background study and analysis given to the original plan. These stringent procedural requirements were upheld in Dalton v. City and County of Honolulu (DiMento, 1985, 119). Kentucky, another consistency state, also applies the same criteria for plan amendment as it does for original plan adoption (DiMento, 1980, 31).

In addition, a growing number of states apply the "Fasano" doctrine to rezoning and land use regulation. Under this doctrine, the standard presumption of legislative validity attached to rezoning decisions is waived in favor of a more stringent judicial scrutiny for land use decisions involving specific parcels of land (Shortlidge, 1985). (Other common areas of application of this standard include planned unit development decisions, floating zones and conditional use permits.) Under Fasano, more stringent written findings and standards of evidence are required of the government to justify its decisions. Courts inquire more into findings of fact, allow rebuttal of evidence and examine bias and conflicts of interest on the part of legislative decision-makers (Shortlidge, 1985). At least 11 states take the Fasano approach, classifying rezoning as a quasi-judicial act. They are Utah, Oregon, District of Columbia, Nevada, Montana, Colorado, Hawaii, Kansas, Idaho, Washington and Kentucky. In addition, Maryland, New York, Wyoming, New Hampshire, Pennsylvania, Missouri and Mississippi have adopted aspects of the doctrine. The increased scope of judicial review in these states may operate to strengthen the enforcement of consistency mandates.

I would like to close this section with some examples of how consistency mandates have been used to control commercial development in line with master plan goals. In a New York case, Halev v. City of Utica, the city's rezoning of a residential area to permit construction of a regional K-Mart was ruled void, since "the amendment was not supported by any evidence that it accorded with the City's existing or evolving plans for development of the area" (Williams, 1987, 44). In Copple v. City of Lincoln, the Nebraska court used the evidence that the city had undertaken a thorough approach to developing a comprehensive plan in defending the city from charges by one shopping center developer that the city's favorable rezoning for a second developer was not arbitrary or capricious (Williams, 1987, 47-48). In Larson v. County of Washington, the court upheld a city's refusal to extend the depth of commercial zoning partly on the grounds that the land was designated for residential use in the county comprehensive plan (Williams, 1987, 73). In Manley v. City of Maysville, a Kentucky court invalidated a town's rezoning of an abandoned school building parcel for commercial use on the grounds that the land was designated for residential use on the local plan (Williams, 1987, 76). A recent Delaware case invalidated a rezoning of a small

parcel from residential to commercial on the basis that it was inconsistent with the locality's adopted comprehensive plan to do so (Williams, 1987, 78-79). A Montana court similarly overruled a locality's designation of an unzoned parcel for shopping center use, because the property was designated for residential use in the general plan, and the court ruled that zoning must "substantially comply" with the adopted comprehensive plan (Williams, 1987, 104-105). In Oregon, the state Supreme Court reversed a local approval of a shopping center for incompatibility with state planning goals mandated by statute (Stacey, 1980).

Conclusion

This paper has examined a number of regulatory devices available to local governments for controlling commercial development. Too often localities may believe they have to resort to use of eminent domain in order to preserve land from development before adequately considering their options under the police power. The overview we have presented shows that there are precedents for the successful application of zoning and other regulatory devices in some places which may be little known about elsewhere. This paper can help make these precedents and successes more widely known so that local governments better understand their potential range of options. It is hoped that this knowledge may aid in catalyzing the political will to make better use of available government powers for controlling growth in the public interest.

REFERENCES

American Society of Planning Officials. (1968) Problems of Zoning and Land Use Regulation. Research Report No.2., Washington,D.C.

Babcock, Richard. (1966) The Zoning Game: Municipal Practices and Policies. University of Wisconsin Press, Madison, Wi.

----- (1979) "Zoning". In So, Frank S., Editor. The Practice of Local Government Planning. International City Management Association, Washington, D.C.

----- and Charles L. Siemon. (1985) The Zoning Game Revisited. Oelgeschlager, Gunn & Hain, Boston.

----- and Marlin Smith. (1985) "Zoning By the Numbers". Planning. June, 1985.

Bartelt,Jr., Louis. (1957) "Extraterritorial Zoning: Reflections on Its Validity". Notre Dame Lawyer. May, 1957 Vol.32, No.3

Becker, David M. (1966) "Municipal Boundaries and Zoning: Controlling Regional Land Development". Washington University Law Quarterly. February, 1966.

Bozung, Linda J. & Randall McRoberts. (1987) "Land Use Planning and Zoning in 1987: A National Survey". Urban Lawyer. Vol.19, No.4, Fall, 1987.

Brown, H.James, et.al. (1981) "Land Markets at the Urban Fringe: New Insights For Policy Makers". Journal of the American Institute of Planning. Vol.47, No.2

Callies, David L. Callies. (1986) "The "Full Bore" Application of Hamilton Bank". Land Use Law and Zoning Digest. September, 1986.

Dabney, James. (1979) "Antitrust Aspects of Anticompetitive Zoning". Antitrust Bulletin. Fall, 1979.

Deutsch, Stuart L. (1978) "Capital Improvements Controls As Land Use Control Devices'. Environmental Law. Vol.9

----- (1984) "Antitrust Challenges to Local Zoning and Other Land Use Controls". Chicago Kent Law Review. Vol.60

DiMento, Joseph F. (1980) The Consistency Doctrine and the Limits of Government Planning. Oelgeschlager, Gunn & Hain, Washington.

----- (1985) "Taking the Planning Offensive: Implementing the Consistency Doctrine". In Gailey, J. Benjamin, Editor. 1985 Zoning and Planning Law Handbook. Clark,Boardman Co. Ltd., New York.

Duncan, James B. & Terry D.Morgan.(1986) "Growth Management at the Local Level: The Austin, Texas Experience". Institute on Planning, Zoning and Eminent Domain.

Duncombe, Herbert S.,et.al. (1968) Powers of Idaho Cities Regarding Urban Fringe Areas: A Study of Annexation and Extraterritorial Powers in Idaho and Other States. Bureau of Public Research Affairs, University of Idaho. October, 1968.

Finch, Joan. (1982) Shopping Centers and Medium sized Cities: The Upper Midwest Experience. Upper Midwest Council. June, 1982.

Fix, Michael. (1980) "Addressing the Issue of the Economic Impact of Regional Malls in Legal Proceedings". Urban Law Annual. Vol.20

Frank, James E. (1985) "Florida's Local Government Comprehensive Planning and Land Development Regulation Act". Land Use Law and Zoning Digest. August, 1985.

Gerckens, Lawrence. (1979) "Historical Development of American City Planning". In So, Frank S., Editor. Practice of Local Government Planning. International City Management Association, Washington.

Haar, Charles M. (1955) "Zoning According To Plan". Harvard Law Review. Vol.68

Hartford, Donald M. (1982) "Antitrust and Zoning - How Much Respect For Local Government?" Santa Clara Law Review. Vol.22

Horwood, Edgar M. (1958) "Public Policy and the Outlying Shopping Center". Journal of the American Institute of Planners. Vol.24, No.4.

International Council of Shopping Centers. (1979) Shopping Centers 1988: Answers For the Next Decade.

J.F.H., Jr. and G.M.W. (1977) "Municipal Annexation: An Urban Dilemma". Alabama Law Review. Vol.28

Johnston, Robert A.,et.al. (1978) "Successful Plan Implementation: The Growth Phasing Program of Sacramento County". Journal of the American Institute of Planners. October, 1978.

Kane, Howard E. & Elizabeth H.Belkin. (1981) "Legal and Land Use Issues: Suburb Versus Central City". In Sternlieb, George & James Hughes, Editors. Shopping Centers: U.S.A. Rutgers State University, New Brunswick, N.J.

Leinberger, Christopher B. & Charles Lockwood. (1986) "How Business Is Reshaping America". Atlantic Monthly. October, 1986.

Levin, Murray S. (1983) "The Antitrust Challenge to Local Government Protection of the Central Business District". University of Colorado Law Review. Vol.55

Livey, Kay. (1985) Local Boundary Changes in Other States. Alaska State Legislature. Research Request 85-209. March 8, 1985.

Land Use Law and Zoning Digest.(LULZD) (1979) February, 1979. Page 52.

----- (1987) March, 1987. Page 18.

Maddox, Russell W. (1955) Extraterritorial Powers of Municipalities in the United States. Oregon State University, Corvallis, Ore.

Mandelker, Daniel. (1962) "Control of Competition As a Proper Purpose in Zoning". Zoning Digest. Vol.14, No.33.

Mosher, Benjamin. (1965) "Proximity Regulation of the Modern Service Station". Syracuse Law Review. Vol.17, No.1. Fall, 1965.

Netter, Edith & John Vranicar. (1981) Linking Plans and Regulations: Local Responses to Consistency Laws in California and Florida. American Planning Association. Planning Advisory Service Report No.363. Sept.1981. Chicago, Illinois.

Payne, John M. (1981) "Recent Changes in Federal Law: Antitrust Law and Zoning". Real Estate Law Journal. Vol.10.

Roberts, E.F. (1975) A Basic Introduction to Land Use Control Law and Doctrine. Northeast Regional Center for Rural Development, Cornell University, Publication No.6. New York. March, 1975.

Sedway, Paul. (1975) "Commentary - Incrementalism or Environmental Planning?" In Listokin, D. & R.Burchell, Editors. Future Land Use. Rutgers University, New Brunswick, N.J.

Sengstock, Frank. (1962) Extraterritorial Powers in the Metropolitan Area. Michigan Legal Publications, Ann Arbor Mich.

Shortlidge, Neil R. (1985) "The "Fasano Doctrine": Land Use Decisions As Quasi-Judicial Acts". Institute on Planning, Zoning and Eminent Domain.

Solnit, Albert. (1982) The Job of the Plan Commissioner.

Stacey, Robert. Statement cited in "Comprehensive Plans and the Law: The Oregon Experience". Land Use Law and Zoning Digest. Vol.32, No.6. September, 1980.

Stone, Carol R. (1982) "The Prevention of Urban Sprawl Through Utility Extension Control". Urban Lawyer. Vol.14.Spring, 1982.

Strom, Fredric A. (1983) "Effects of Zoning on Business Competition". In Strom, Richard A., Editor. 1983 Zoning and Planning Law Handbook. Clark & Boardman Co.,Ltd., New York.

Tarlock, A. Dan (1970) "Not In Accordance With a Comprehensive Plan: A Case Study of Regional Shopping Center Location Conflict in Lexington, Ky." Urban Law Annual.

VanderVelde, Lea. (1977) "Utility Extensions: An Untested Control on Wisconsin's Urban Sprawl". Wisconsin Law Review. No.4

Waidelich, Mike. (1986) Commercial Land Use Issues. (Memo) Planning Department, City of Madison, Wi.

Weaver, Clifford L. & Christopher J. Duerksen. (1977) "Central Business District Planning and the Control of Outlying Shopping Centers". Urban Law Annual. Vol.14

West's Wisconsin Statutes Annotated. (1988) St.Paul, Mn. West's Publishing Co.

Williams, Norman. (1974) American Planning Law: Land Use and the Police Power. Volumes 1, 4, 5. Callaghan & Co., Chicago.

----- (1982) "Planning Law in the 1980's: What Do We Know About It". Vermont Law Review. Vol.7, No.2. Fall, 1982.

----- (1987) American Planning Law: Cumulative Supplement. Callaghan & co. Chiago.

Wise, Harold F. (1975) "The Environmental Impact Statement and the Comprehensive Plan". In Listokin, D. & R.Burchell, Editors. Future Land Use. Rutgers University, New Brunswick, N.J.

Wright, Robert R. & Morton Gitelman. (1982) Cases and Materials On Land Use. West Publishing, St.Paul,Mn.