

A REPORT ON PLANNING IN NEW ORLEANS

For the Master Plan Coalition

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This report reviews the progress of planning and zoning in New Orleans and makes recommendations for reforming that process. The city has completed a land use plan as part of its effort to complete a master plan, and has also completed a draft of a new zoning ordinance. Unfortunately, neither document meets the city's needs for guidance in the development and preservation of the city. Although the land use plan can possibly provide a basis for more responsive land use planning, the draft comprehensive zoning ordinance (CZO) is inadequate and should be shelved until a more effective zoning ordinance can be prepared.

Neither does the city have an adequate legal basis for the planning process. The city charter requires the planning commission to adopt a master plan, but does not require the city council to adopt the plan and does not require zoning and other land use decisions to be consistent with the master plan. The city should adopt both of these requirements.

The Challenge

Historic neighborhoods. The City of New Orleans is a national treasure. Half of the city is designated as an historic district under the National Historic Preservation Act. The city created 13 local historic districts, and five applications are pending from neighborhoods that have proposed historic district designations. This chain of historic neighborhoods defines the city's signature quality. Each neighborhood is a mixed, fine-grained assemblage of land uses, each with its distinctive historic style and character.

Despite this legacy, the historic neighborhoods in New Orleans are fragile. They are threatened by development typical of car-driven, low-density suburban areas that can damage the historic development patterns typical of New Orleans. Large-scale retail development, usually associated with extensive and unattractive off-street parking, is especially threatening. It can

permanently damage the character of historic areas if allowed within them, destroy their architectural, historic, and residential appeal – as well as their unique role as cultural tourist destinations.

The lessons are obvious. Because the historic neighborhoods of New Orleans are unified by their architectural and design integrity, a planning program for the city must make this historic character its first principle of design. Planning policies and zoning programs that are not based on this principle will degrade the city's historic legacy.

Redevelopment sites and areas. There is another side to New Orleans. Areas of the city are in need of redevelopment, especially areas of blighted and abandoned housing. The city has about 6 to 8,000 abandoned housing structures. Some development in these areas will occur as infill on individual lots, but new development projects will also occur on a larger scale, often with mixed uses that can provide an attractive addition to the urban environment. Development at this scale cannot be handled through traditional zoning methods. It requires a distinctive planning and zoning program that avoids piecemeal decision making and considers the development and design potential of new development projects as a total entity.

The Master Plan

What planning does. The master – or comprehensive – plan has been an accepted element in the design of American cities for 80 years, but the role of master planning in the preservation and development of cities is not fully understood even now. The master plan is not zoning. Its purpose is to provide a long-range vision for a city that can guide its preservation and development. The American Planning Association (APA) has just published new statutory models for comprehensive planning and land use regulation that provide detailed requirements for a comprehensive plan. These statutory proposals include extensive commentary that explains why comprehensive planning is necessary:

Local planning provides the city council, city agencies, and residents in the community an outline of the community's major development problems and opportunities. The process of plan preparation, with its workshops, meetings and public hearings provides for communication between a city's residents and its officials that can present a vision of the community and how that vision can be achieved.... The plan is a blueprint of values that evolves over time. [Adapted from APA, *Growing Smart Legislative Guidebook*, 7-7, 7-8 (2001).]

A comprehensive plan is not a zoning ordinance. A zoning ordinance contains legally binding land use restrictions that apply to each lot ownership within the city. A comprehensive plan provides the policies the zoning ordinance carries out. The zoning ordinance relies on the policies in the comprehensive plan in making decisions about the use of land throughout the city. The zoning ordinance is not a plan; it is a regulatory tool to implement the plan..

A number of principles determine the function and content of a comprehensive plan and give it meaning. It must be general in the sense that it provides comprehensive policies for land use and development rather than specific land use designations for individual properties. It must also make the critical and important policy decisions for the future use and development of land and for the preservation of existing neighborhoods. A focus on citywide policies rather than limited sites or areas is essential.

The policies of the comprehensive plan are set out in a number of planning elements. These elements vary, but a key element in any plan is the land use element, which provides the policies for land use within a city. Other elements that are almost always included in a comprehensive plan are a transportation element, that provides policies for the city's transportation system; a community facilities element, that provides policies for the city's public facilities, such as parks; and a housing element, that provides policies for housing. A plan must include and integrate all of these elements in order to provide a comprehensive planning policy. The land use element cannot stand alone. It is only part of a comprehensive plan. For this reason, many state statutes, the APA model legislation, and the Baton Rouge city charter all provide that a comprehensive plan must be an integrated policy document.

The role of the zoning ordinance as subordinate to the policies of the comprehensive plan means that the city must adopt all of the elements of a plan before it adopts the zoning ordinance. The zoning ordinance cannot come first because the adoption of the comprehensive plan is necessary to provide a basis for the legally binding land use regulations the zoning ordinance contains.

Mandatory Planning

A mandatory planning requirement is essential to make the planning process work. The City of New Orleans charter requires the planning commission to prepare a comprehensive plan, but it does not require the city council to adopt the plan. Without adoption by the city council,

the plan cannot provide a basis for the land use regulations in the zoning ordinance.

Consistency required. The city must also require that the zoning ordinance, any amendments to the zoning ordinance, and any change in land use under the zoning ordinance must be consistent with the comprehensive plan. If changes in zoning can occur that are not consistent with the comprehensive plan, there will be no certainty in the use and development of land throughout the city. Land use changes will occur piecemeal, on an ad hoc basis. They can destroy the historic legacy of New Orleans because development can occur, unguided by a plan, that is incompatible with its historic character. Suburban-style retail development that interrupts historic street facades is one example.

Uncertainty is also a major obstacle to the development of mixed-use projects on a large scale that are essential to the city's continued economic health. A developer will not commit substantial funds and energy to a major development project unless he knows the city will protect the integrity of his development. He needs the certainty that the city will not allow adjacent or nearby land uses that are incompatible with his development and that will damage its integrity and economic success.

Planning practice has developed the consistency requirement to provide the necessary link between the comprehensive plan and the zoning process, and to provide the certainty that the plan will be followed. Put simply, this requirement means that the zoning ordinance, and any change in land use made under the zoning ordinance, must be consistent with the comprehensive plan and the planning policies it contains. Any rezoning or other land use decision that is inconsistent with the comprehensive plan is not valid.

A Planning Model for New Orleans

The city of New Orleans charter specifies the contents of the comprehensive plan. The charter requires

a long term Master Plan for the physical development of the City, which shall consist of a statement of development goals, objectives, and policies and which shall show the general location, extend, and character [of named public and private facilities]. [Charter, § 5-402(1).]

Land use plan deficient. The 1999 land use plan, completed as the land use element of the city's master plan, is essentially a generalized description of future land uses in the city on a detailed scale, illustrated in color. This type of plan may possibly comply with the direction in

the charter for the preparation of a master plan, but it is not appropriate for a city like New Orleans. It fails because it does not include comprehensive planning policies on a city scale that indicate where future development and redevelopment can occur. It also fails because it does not consider the distinctive quality of the city's historic neighborhoods. It deconstructs the city by designating land use on a localized, block by block, basis without considering the preservation and development needs of New Orleans neighborhoods.

Land use policy plan proposed. New Orleans should adopt a radically different kind of land use plan with policies that can identify development opportunities and preservation needs throughout the city. Its historic neighborhoods and districts provide a natural framework for the “development goals, objectives, and policies” required by the charter, and this neighborhood approach can identify preservation areas and the policies that protect them. The plan should also identify areas where redevelopment and new development can occur, and should also include planning policies that will encourage that development to happen.

A land use policy plan of this type will not deconstruct the city, but instead will include preservation and development policies on a citywide scale that can provide needed direction for the zoning and land development process. An excellent example of this kind of policy planning that has been in place for some time is the planning program in Montgomery County, Maryland, an urbanized county adjacent to Washington, D.C. It has a comprehensive policy plan that is explicitly linked to a regional plan for the Washington metropolitan area that was adopted 35 years ago.

New Orleans should implement its policy plan through the adoption of plans for individual neighborhoods and for areas of the city where there is a potential for new development. There is precedent for this kind of planning in a study completed by the Urban Land Institute for downtown New Orleans in 1998.

Urban design planning. Subarea plans, and particularly plans that focus on the city's many historic districts, should be a feature of the land use element of the Master Plan. Neighborhood and area plans should have an explicit urban design element. Urban design planning does much more than establish allowable land use. It provides a generalized design framework that

identifies building mass and mix, architectural facade and character, open space elements, and pedestrian and traffic circulation. For example, a plan for an historic neighborhood can identify the historic character of its building architecture, its street plan and traffic demands, and its open space features. The plan can combine these design components to specify the development that is appropriate for the neighborhood. Design plans can have a three-dimensional element with drawings of buildings, street facades and streetscapes that illustrate design elements beyond what a flat, two-dimensional map can provide.

Urban design plans for downtown areas, which originated in San Francisco in the 1980s, are an example of this kind of urban design planning. Tacoma, Washington, has recently adopted a downtown plan of this type, and Nashville, Tennessee, has recently carried out a successful planning project for an area of the city needing development which is now being implemented. More detailed project planning consistent with the neighborhood design plan will occur as development projects are presented to the city for approval. Planning, in itself, will not bring new development to the city, but it is an important catalyst for organizing the public and private partnerships that are so essential if development is to occur.

Neighborhood and Subarea Plans

Another major problem is to provide a legal foundation in the city's planning program for urban design planning in neighborhoods and areas ripe for development. Neighborhood planning with the participation of neighborhood organizations and residents is the way to achieve this goal. Some cities with active neighborhood planning programs, such as Portland, require the city council to adopt neighborhood plans as part of the city's comprehensive plan, after the planning commission reviews them and recommends their adoption.

Consistency with master plan. Neighborhood plans must be consistent with the city's master plan. However, if the city provides for effective neighborhood participation in its planning process, the city's master plan will contain planning policies for neighborhoods that are consistent with neighborhood preferences. In this participatory process, neighborhood organizations should have the legal authority to comment on proposals for neighborhood land use policies in the master plan, and the planning commission will have to provide an adequate explanation if

it rejects a neighborhood organization's comments. A proposal for establishing a neighborhood participation program of this type is described in more detail below.

Urban design planning for neighborhoods and new development opportunities need not occur everywhere in the city, all at once. Much of the city consists of stable residential neighborhoods, where the existing residential character provides a basis for a planning policy. The comprehensive plan needs to identify those areas of the city where more responsive subarea design planning is required, and then set priorities for determining when design planning for these areas should occur.

The detail, format, and content of neighborhood and subarea plans can vary. Often these plans can be schematic. Detailed design planning may not be necessary, although greater detail will usually be necessary for plans expected to guide new development projects. The balance between textual regulations and design guidance will depend on the development problems presented, and the consensus on what kind of guidance is necessary to preserve established areas and provide a basis for new development. Creative planning at this scale is a very real challenge. It is time-consuming, it is expensive, and it requires real commitment from the city. But it is necessary if the legacy that defines New Orleans is to be preserved.

Implementation of Master Plan

An essential element in these reforms is action at the city level that will make the comprehensive plan mandatory and binding, and that will require zoning and land use decisions to be consistent with the comprehensive plan. An amendment to the city charter is one way to accomplish these reforms; state legislation is another possibility. A city ordinance is another alternative in New Orleans, and is a preferable first step. The State of Louisiana's constitutional home rule powers are potentially broad enough to authorize an ordinance that mandates the adoption of a comprehensive plan by the city council, defines the elements of that plan, and requires zoning and land use decisions to be consistent with the plan. An ordinance that adopts these reforms in the planning and zoning process must be carefully drafted so that all participants will know and

understand the rules under which planning and zoning in the city are organized and carried out.

Draft Comprehensive Zoning Ordinance

What zoning does. Zoning, as noted earlier, is simply a city ordinance that implements the comprehensive plan. Unfortunately, the model legislation developed in the 1920's contemplated a zoning ordinance based on the rigid pattern of gridiron lots and blocks that typifies Manhattan Island in New York. This model legislation requires the adoption of zoning districts in which only compatible land uses are allowed, and then provides rules to keep incompatible uses out of these districts. This type of zoning is static in concept, does not provide for change, and does not have an historic preservation element. It reflects the development patterns typical of the time, in which development occurred in small fragments, one lot at a time.

Problems with New Orleans zoning. Many states and cities, including Louisiana and New Orleans, adopted this zoning model without realizing it was inappropriate for their land use problems. New Orleans has continued this mistake in its comprehensive zoning ordinance revision. The ordinance further deconstructs the planning policies in the land use plan by adopting generalized rules it then rigidly applies to the historically distinct neighborhoods that make up much of the city. For example, it includes standardized neighborhood mixed-use districts that it then applies to a variety of neighborhoods with very different land use patterns. It is not possible to apply generalized land use standards to a city that consists of a collection of historically distinct neighborhoods, each with a special character.

Zoning matrix. A zoning matrix that is the heart of the proposed zoning ordinance complicates these problems. It decomposes land use in the city into an extensive list of specified land uses and then assigns these uses to designated zoning districts contained in the zoning ordinance. By atomizing land use in this way, it precludes any opportunity for considering the integrity of historic neighborhoods in the zoning process, and for dealing with new mixed-use and other development projects on a comprehensive scale.

Role of historic districts. Neither does the proposed zoning ordinance address the role of national and local historic districts that are present in much of the city and that overlay the zoning regulations. Local historic districts have their own set of regulations, and the federal National

Historic Preservation Act requires the review of any federal “undertakings” that has an “adverse effect” on historic districts designated under the federal act.

These national and local historic districts require a fundamental change in the way the zoning ordinance is constructed. Local historic districts, for example, serve a very different purpose than the conventional zoning district. Their purpose is to preserve the character of a district’s historic buildings through the design review of proposed changes in the character of these buildings. Historic districts do not regulate land use. Nor do they modify the zoning designations that apply to the district, so that zoning district regulations and historic district regulations often conflict. The historic district design review process is not integrated with the zoning regulations that apply within these districts. Neighborhood plans with a design element that conform to the umbrella Master Plan can help provide the necessary framework under which the zoning regulations and historic district regulations can be integrated.

Discretion in zoning. A final critical problem with the proposed comprehensive zoning ordinance is its failure to provide opportunities for the use of discretion in decision making on land use proposals. As noted earlier, the decision on how and in what manner to exercise discretion is a critical decision in the development of a zoning ordinance. For example, the revised zoning ordinance rejects the planned unit development method of land use regulation as a suburban zoning technique that does not apply to New Orleans. This decision is wrong. Discretion is not evil.

Traditional zoning ordinances do not deal effectively with the exercise of discretion because the 1922 model zoning act on which zoning ordinances were based contemplated a zoning system in which land uses were assigned to individual lots as a matter of right. The expectation was that the zoning ordinance and map would tell the landowner precisely what she could do with her property. The only opportunity for the use of discretion in the model act was through the zoning variance, which was intended as an experiment, and the conditional use procedure. Because a static zoning system of this kind is too rigid, many cities abuse it by overusing the variance and conditional use options. However, the potential for abuse in the existing zoning system is not a reason for rejecting discretionary zoning techniques that are properly conceived.

Draft CZO should be shelved. For the reasons that have been indicated, the proposed zoning ordinance does not meet the city's needs and should be shelved until the city can develop an adequate alternative. In particular, the proposed matrix system of assigning zoning requirements must be discarded. The city also needs to consider the role of discretion in the zoning ordinance, the advisability of applying generalized land use standards to the variety of neighborhoods in the city, and the need to integrate its historic district reviews with its zoning regulations.

An Alternative Zoning System

A master plan that includes urban design plans for neighborhoods and major new developments requires discretionary procedures in the administration of the zoning ordinance. There must be discretionary procedures for translating the design objectives of these plans into land use regulations for development in areas covered by these plans. For example, a neighborhood design plan, a feature of the city's land use element of its master plan, may provide for infill development if it is carefully done, but the design policies for that development must be applied on a case-by-case basis through the zoning ordinance. Major development projects are another example. Design plans may also provide guidance for these projects, but there must also be a way to review these projects in the zoning process to determine whether they comply with the policies of the design plan. To provide for this kind of individualized review, the zoning ordinance must authorize discretionary techniques that can make urban design planning a reality.

Historic neighborhoods as zoning districts. One way in which to accomplish these changes is to abandon the idea of arbitrarily applying standardized land use districts and regulations across the city in historic areas with very different characteristics. A better alternative is to designate each of the historic neighborhoods in the city as an independent zoning district, each with its own set of land use regulations specially tailored to its character and needs. In this way, the zoning ordinance can implement the comprehensive plan to reinforce rather than degrade the historic character of New Orleans. More generalized standards can be developed for residential areas that are not historically designated, but that have an integral character that requires protection.

Design plans as substitute for zoning ordinance. As design plans are adopted for his-

toric and other neighborhoods, the zoning ordinance should be organized so that the council can adopt these plans as a substitute for detailed textual regulation in the zoning ordinance. These plans would then serve as a basis for reviewing new development proposals and land use changes within the area covered by the plan. They would take the place of existing zoning regulations, which would no longer apply.

Additional design detail may be needed in area plans if they are to serve as the basis for regulating land use, and they may also need textual regulations that implement the design ideas and that are specially tailored to meet the land use needs of the area. As a substitute for the zoning ordinance, subarea plans can provide the sensitive textual and design guidance that can guide new development while maintaining the integrity of the neighborhoods in which it occurs. The special districts that have been in place in New York City for some time are an example of this kind of zoning technique.

Planned unit development review. Planned unit development review is another well-known zoning technique the city should adopt to review and approve major development projects to decide whether they comply with design policies and textual regulations contained in area design plans. The proposed zoning ordinance states that the planned unit development procedure is appropriate only for suburban areas, but this statement is wrong.

The planned unit development procedure recommended here should provide an opportunity for the approval of project plans with appropriate standards for major developments in areas where the city's master plan and subarea design plans indicate that they are appropriate. Planned unit development procedures have a long and established history, and there are many regulatory models that can be adapted to New Orleans. As a minimum, this procedure should require participation by the planning commission and by neighborhood organizations in the area in which a development project will be built. It will require approval of the project plan by the city council if the project requires major changes in land use and density designations. Once the project plan is approved it should function as a substitute for the zoning ordinance as the basis for controlling development within the project area.

Nonconforming uses. The nonconforming use problem must also receive special attention in the zoning ordinance and in subarea design plans. Where nonconforming uses are detrimental to the neighborhoods in which they are located, the ordinance should provide an effective means for their elimination. This can be done through the adoption of the following techniques:

1. A requirement that the city must complete an inventory of existing nonconforming uses and create a register on which each nonconforming use must register. The city can then issue a certificate for each nonconforming use that specifies its extent and character. There is a proposal for registration in the city's recently completed draft zoning ordinance, but it does not require an inventory and does not provide for a nonconforming use certificate.
2. The city should create an adjudicative process in which a permit is required for any change in an existing nonconforming use, such as an expansion or repair of a nonconforming use. The certificate issued for a nonconforming use should be the basis on which any change in a nonconforming use is considered, and the ordinance should provide clear standards for nonconforming use changes, such as a requirement limiting the expansion of a nonconforming use to a designated percentage of its existing size or area.
3. A method for amortization, which is supported by Louisiana law, should be included in the new zoning ordinance. The proposed ordinance does not contain an amortization provision.
4. The prescription law provides that if an initially lawful use or structure is modified or altered so that it violates the current zoning restrictions, the city must act within five years of the date of the violation or, if it is a use violation, within five years of notice of the violation. Louisiana Stat. § 9:5625. If the city fails to prosecute the violation within this time period, the use is legalized as a nonconforming use. This law creates a difficult enforcement problem for the city and should be repealed.

Amortization is a zoning technique that allows a nonconforming use to continue for a specified period of time. The nonconforming use must be eliminated, without compensation, after this time period has expired. A vast majority of state courts have upheld the amortization technique, and the Louisiana Supreme Court was the first to do so in cases decided in the 1929. Model land use legislation proposed by the American Planning Association contains a number of alternatives for implementing an amortization program, and New Orleans can adopt one of these alternatives by ordinance.

Neighborhoods and Participation in Planning Process

An important priority in the improvement of the planning and zoning system is to provide an expanded role for citizens, the neighborhoods, and community and business groups in the planning and zoning process. As a minimum, all citizens and community groups should have an

opportunity to participate fully in the planning process, and to participate as parties in zoning proceedings and to appeal zoning decisions to the courts if they disagree with them.

In addition, the city should recognize that planning begins at the neighborhood level. Neighborhood concerns inform the planning process, and the neighborhoods should be given a legally recognized and formal role in the process, whether they are characterized as residential, commercial, or industrial areas of the city.

Formal structure for neighborhood organizations. To carry out this objective, New Orleans should create a formal structure of neighborhood organizations designated by the city to participate in the planning and zoning process and authorized to comment on proposed plans, plan amendments, and zoning changes. To implement this program, the city should adopt an ordinance that specifies a procedure for designating neighborhoods and for recognizing neighborhood organizations, and providing for their participation in the planning and zoning process. An outline of this procedure, as proposed for a state statute, is contained in Sections 7-108 through 7-110 in the Model Statutes for Planning and the Management of Change published by the American Planning Association. The extensive home rule authority delegated to the City of New Orleans should allow the city to adopt this procedure by ordinance, with modifications it considers necessary to reflect local needs and preferences.

Delineating neighborhood boundaries. The APA model planning and zoning legislation, in Section 7-108(5), contains a list of ten criteria a city must apply when designating neighborhoods and determining their area. These criteria include factors such as patterns of development, physical character and resident attitudes that the city council should be required to consider. In addition, the ordinance should recognize that existing neighborhoods, especially locally designated historic neighborhoods, contain recognized boundaries for neighborhood participation. The ordinance should include a presumption that these neighborhoods should be the neighborhoods designated by the city for organizing neighborhood organizations. The burden should be on the council to show a reason to designate alternate neighborhood boundaries when neighborhoods that have recognized historic or other boundaries object.

The city ordinance authorizing neighborhood organizations should contain procedures that govern their establishment and representation in these organizations, such as appointment to office and the organization of the neighborhood board. Federal and state voting rights cases must also be

consulted to ensure that the neighborhood legal structure that is authorized meets constitutional voting requirements.

Authority of neighborhood organizations. There are a range of options for giving recognized neighborhood organizations the legal authority to participate in the planning and zoning process. They should clearly be given an advisory role in the adoption and amendment of the city master plan and area plans, and in the review of proposals for zoning and other land use changes, including the right to participate in hearings. A more difficult question is whether neighborhood organizations should be legally empowered to play a role in the adoption of the city's master plan and in the decision making process on land use proposals. What is clear, however, is that neighborhood organizations and interested citizens should be allowed to elect their own representatives to participate in the planning process.

New Orleans should follow the lead of other cities and go further. Neighborhood organizations in some cities are empowered to comment on planning, zoning and other land use proposals that are before the city council and city administrative bodies that effect their immediate area. For example, the Washington, D.C. Advisory Neighborhood Commissions have this statutory authority. City agencies are not required to adopt recommendations contained in these comments, but they must give them "great weight." The courts there have held that the statute requires a city agency to elaborate its response to Neighborhood Commission comments with "precision," and "come to grips" with their point of view.

New Orleans should adopt a similar comment-and-response system by ordinance. Other cities, such as Los Angeles, are beginning to implement similar neighborhood organization programs that give neighborhood organizations a role in the planning and zoning process, and their experience should also be consulted.

A formal procedure must also be provided for the participation of business and community groups. Recommendations for doing this are contained in recommendations for the planning and zoning process that follow.

Master Plan Adoption and Periodic Review

The planning process should be an open one that involves the entire community by providing for participation by residents through their neighborhoods and by community groups. This

kind of process, with full participation by neighborhood and community groups, can provide the consensus on policy that the plan requires, and an expectation that the city will follow and apply the policies included in the plan.

This process should also provide an opportunity for neighborhood organizations designated by the city to comment formally on proposals for the comprehensive plan. Comments by neighborhood organizations on plan proposals will require an adequate written response from the planning commission if the commission decides to reject or modify a proposal favored by a neighborhood organization.

Prevention of arbitrary plan amendments. Plans require revision, and the planning process should also provide for the review of the comprehensive plan at periodic intervals. However, there is also the danger that the plan will be amended in an arbitrary manner because the council can always amend the plan to authorize a zoning change that is inconsistent with the comprehensive plan. An arbitrary plan amendment of this kind can make the consistency requirement meaningless and undermine the plan and the planning process,

The planning process proposed in this report for the adoption of the comprehensive plan should prevent this kind of arbitrary amendment to the comprehensive plan. Because of the community involvement in fabricating the plan, it should create an expectation on the part of neighborhood and community groups that the plan will be followed and that zoning changes will be consistent with the plan. That expectation can help discipline the plan amendment process so that arbitrary changes do not occur.

The plan can also be protected by creating a disciplined annual procedure for the plan amendment process. Plans also require periodic review, and New Orleans should adopt the requirement adopted in Baton Rouge that provides for a periodic five-year review of the plan. The APA model legislation also recommends a five-year periodic review. This is a comprehensive review of the master plan in which major changes in policy are considered. Major five-year reviews of the plan should use the same process of citywide participation that is used in the initial adoption of the plan.

Annual review of the master plan may also be needed between the periodic five-year reviews. More frequent reviews are not necessary in a fully-developed city like New Orleans. Annual reviews of the plan can provide for minor adjustments in planning policies when these ad-

justments are necessary. These reviews will require a disciplined procedure in which citizens, neighborhood organizations and community groups participate fully, and amendments to the master plan should require a vote of five council members..

Baton Rouge annual review procedure. Baton Rouge has developed an excellent procedure for annual reviews of the master plan in which the annual review process is not automatic, and that city's regulatory process should be consulted. The following annual review process is adapted from the Baton Rouge procedure. The annual review may or may not produce amendments to the plan. As in Baton Rouge, the planning commission can initiate an annual review only if the commission believes it is necessary. The annual review process in New Orleans should include the following steps:

1. A decision by the planning commission to begin an annual review following an open public hearing at which the need for an annual review is considered.. The ordinance should specifically state the reasons for an annual review, and the planning commission must find that one or more of these reasons exists. Citizens, neighborhood organizations and community groups must be allowed to participate in the public hearing. A decision by the planning commission to begin an annual review must provide an adequate written response to comments by legally designated neighborhood organizations if they believe that an annual review is unnecessary.
2. The submission of plan amendments to the planning commission followed by a public hearing with the full participation of citizens, neighborhood organizations and community groups. Legally designated neighborhood organizations may comment on proposed amendments to the comprehensive plan, and the planning commission must provide an adequate written response to these comments.
3. A public hearing by the planning commission on all proposed amendments with full participation by citizens, neighborhood organizations and community groups.
4. Submission of plan amendments approved by the planning commission to the mayor to be forwarded to the city council within 60 days of their approval.
5. The conduct of at least two hearings by the city council, held at least one month apart, with full participation by citizens, neighborhood organizations and community groups.
6. A decision by the council on the plan amendments within 60 days of the final public hearing. A council decision approving a plan amendment should require a vote of five council members.
7. Reconsideration by the planning commission of any plan amendments rejected by the council, including an open public hearing and written responses to comments by legally designated neighborhood organizations.
8. Submission of plan amendments approved by the planning commission to the mayor to be

forwarded to the city council within 60 days of their approval.

9. The conduct of at least two hearings by the city council on plan amendments approved by the planning commission, held at least one month apart, with full participation by citizens, neighborhood organizations and community groups.

10. A decision by the council on the plan amendments within 60 days of the final public hearing. A council decision approving a plan amendment should require a vote of five council members.

This kind of disciplined planning process will protect the comprehensive plan from arbitrary amendments that can undermine its policies.

Zoning Amendments as Quasi-Judicial Procedure

New Orleans also needs to reform its zoning process in order to implement the proposals in this report. Procedures for the approval of zoning amendments, variances and conditional uses should be similar to the procedures outlined for the annual review of the master plan, with the exception that applications for these zoning approvals will usually be made by a private entity rather than the city, though city initiation of zoning amendments is an option. Neighborhood organizations and community groups should have the same right to participate in this process. Because a zoning amendment, variance, and conditional use must be consistent with the comprehensive plan, the city need only require one public hearing and a majority vote by the city council. The city should also establish a different kind of zoning procedure for rezonings and other zoning changes. Zoning procedures, in New Orleans and elsewhere, have been unsatisfactory because the old model legislation on which state statutes are based did not provide an adequate process for making planning and zoning decisions. The American Planning Association gave me the responsibility of drafting a model statutory procedure for the judicial and administrative review of land use decisions in the zoning and other land use approval process as part of their model legislation project.

Chapter 10 of the APA model legislation provides a fair procedure for zoning decisions that are quasi-judicial in nature. A zoning decision is quasi-judicial if it requires the application of existing policies and standards to a request for a zoning change for a particular property or properties. Decisions on variances and conditional uses are quasi-judicial because they are based on pre-existing standards contained in the zoning ordinance. A rezoning that changes the zoning designation for a parcel of land is quasi-judicial under the planning and zoning system proposed here because it requires an application of policies contained in the master plan to the rezoning application

to ensure that the rezoning will be consistent with the master plan.

Quasi-judicial procedures require a court-like hearing and require the decision-making body to make findings of fact and give reasons for its decision. It may seem unnecessary to require procedures of this kind in the zoning process, but they are necessary to ensure that all parties to the proceedings are treated fairly, to give neighborhood and other community groups an adequate opportunity to participate in the hearings, and to provide an open record of zoning decisions by zoning agencies and the city council.

APA legislation model. Chapter 10 of the APA legislative model contains detailed recommendations for quasi-judicial zoning procedures. Although drafted for legislative adoption, many of these procedures can be implemented by ordinance at the local level, or by amendment to the City Charter. They include the following elements:

1. A requirement that a complete application for any proposed zoning change, such as a rezoning, variance or conditional use must be submitted to the appropriate city agency, with the agency to have an opportunity to determine whether the application is adequate.
2. A public hearing on all applications with notice to interested parties stating the basis on which the application will be heard. Staff reports on all the applications must be made available at least 30 days before the hearing. Interested citizens, legally designated neighborhood organizations and other interested groups should be allowed to participate in the hearing as parties. Quasi-judicial procedures, including the right of cross-examination by all parties, are used at the hearing.
3. A decision on the application by the responsible city agency that includes written findings of fact and that states the reasons why the decision was made.

Conclusions

New Orleans is a priceless legacy; its survival requires care and protection. Mandatory planning, and a requirement that all land use decisions must be consistent with the comprehensive plan, are necessary to manage development within the city and to protect its historic neighborhoods. Planning for New Orleans must also take a visionary approach based on urban design principles. This kind of planning can provide responsive neighborhood and development plans that reflect a sense of place, and that will furnish a blueprint for neighborhood preservation and new development projects.

The planning process must be completed through the preparation of all the necessary plan-

ning elements, and the land use plan must be revised to include the policy planning and neighborhood approach that this report recommends. The draft zoning ordinance should be shelved until the city can develop a different kind of zoning ordinance that implements the planning and zoning program recommended in this report.

The planning and zoning program recommended in this report should be enacted into law by a city ordinance that mandates the adoption of a comprehensive plan by the city council and requires all zoning and land use decisions to be consistent with the comprehensive plan. The city charter can eventually be amended to authorize these requirements. The neighborhood organization program and planning and zoning procedures recommended in this report should ensure that the policies of the plan are implemented, and that the zoning ordinance is fairly administered.

Experience in other cities has taught me that you must adopt the legislation that mandates the creation of the master plan, establishes the principal of regulatory consistency, and legally structures the neighborhoods into the planning process before you begin to develop a plan for the community. Over and over again it has been shown that the public as well as private sector will ignore the plan unless they are legally required to follow it. To retain the services of planners, to write planning reports, and to involve citizens in a planning process before the legal authority has been established for that process is to waste taxpayers money and to cause citizen disillusionment.

Resume

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PROFESSIONAL HISTORY:

Howard A. Stamper Professor of Law, 1974-Present; Professor of Law, 1963-74; Associate Professor, 1962-63
Walter E. Meyer Visiting Research Professor of Law and Social Problems, Columbia University School of Law, 1971-72
Visiting Professor, Department of Urban Planning, University of Washington, 1968-69
Ford Foundation Law Faculty Fellow, London, England, 1959-60
Assistant Professor, then Associate Professor of Law, Indiana University, 1953-62
Attorney, Housing and Home Finance Agency (Washington, D.C.) 1952-53
Ford Foundation Fellow, Yale University, 1951-5
Assistant Professor of Law, Drake University, 1949-51

EDUCATION:

B.A., 1947, LL.B. 1949, University of Wisconsin
J.S.D., 1956, Yale University
Honors: Phi Kappa Phi, Phi Beta Kappa, Order of the Coif

LECTURES AND CONFERENCES

Distinguished Visiting Lecturer, Seton Hall University College of Law, 1998
The Inaugural Norman Williams Jr. Annual Symposium on Law and Public Policy, Rutgers University Law School - Newark, 1997
The Inaugural Robert E. Boden Lecture, Marquette University Law School, Milwaukee, Wisconsin, 1997
President's Commission on Risk Assessment and Risk Management, St. Louis, Missouri, 1994

White House-Construction Industry Workshop on National Construction Goals, National Science and Technology Council, Washington, D.C., 1994

University Lecturer, University of Wisconsin at Madison, 1993

1992-93 National Distinguished Lecturer, Journal of Land Use and Environmental Law, Florida State University

Fifteenth Denman Lecture, Department of Land Economy, University of Cambridge, Cambridge, England, 1992

Fifth Annual Rita C. Davidson Memorial Lecture, Maryland Land Use Roundtable, 1991

Conference on legal problems on the adoption of zoning for Houston, Texas, 1991

Journal of Planning Literature Lecturer, Ohio State University College of Law and School of Planning, 1989

Distinguished Visiting Lecturer, Florida Atlantic University Urban Studies Center, 1989

Workshops in Land Use Law for Planners and Lawyers, American Planning Association, 1982-92

Annual Zoning Institute, American Planning Association, 1981-90

Overseas Speakers Program, U.S. Information Agency, Israel and Yugoslavia, 1987

Tenth Annual Will E. Orgain Lecture, University of Texas School of Law, 1976

Keynote speaker, 100th Anniversary Banquet, University of Wisconsin School of Law, 1966

Frequent lecturer at national and regional conferences on land use and environmental law including national conferences of American Planning Association and ALI-ABA annual land use and environmental law institutes

APPOINTMENTS AND AWARDS

Faculty Associate, Lincoln Institute of Land Policy, 2000

Senior Fellow, Urban Land Institute, 1989-1995

Visiting Fellow, Faculty of Laws, University College, London, 1989

Visiting Fellow, University of Copenhagen, Denmark, 1989

John C. Vance Award, Most Outstanding Paper on Transportation Law
Submitted to Transportation Research Board, 1988 (with A. Kolis)
Visiting Scholar, Department of Urban Planning, Technion, Haifa, Israel,
1983
Visiting Scholar, Institute of State and Law, Moscow, Russia, 1978
Urban Seminar Faculty, Salzburg Seminar in American Studies, 1977
Brookings Institution Urban Program Faculty, 1965-73
Research Board, 1973-82
Legal Task Force on Joint Development, Transportation Research Board,
1971-73

MAJOR CONSULTATIONS:

Hamilton, Ohio sign ordinance, 1999-
Principal Consultant, American Planning Association, Model State Plan-
ning and Land Use Regulation Legislation Project, 1996-2000
(chapters on Administrative and Judicial Review of Land Use
Actions and The Relationship of State Environmental Policy Acts
to State, Regional and Local Planning, and sections on official
maps and amortization)
State of Hawaii, Office of State Planning, legislative program development,
1993-94
Hong Kong, zoning amortization study, 1993-94
Flagstaff, Arizona, sign ordinance, 1993-94
State of Hawaii Land Use Regulation and Management Study Institute,
1992-93
Monroe County, Illinois, floodplain regulations, 1992
El Dorado County, California, sign ordinance, 1990-91
Columbus, Indiana, sign ordinance, 1989-91
Environmental Impact Statement, Page Avenue Extension, St. Louis,
Missouri,
1989-90
East Camelback Road Property Owners Association, Phoenix, Arizona,
zoning
review, 1988-89
New Jersey Builders Association (with Team Four), review of New Jersey
State
Development Plan, 1987
Urban Land Institute, Environmental Mitigation Study, 1985-89
Sunset Hills, Missouri, sign code revision, 1987

Pensus Group, Phoenix, Arizona, development project, 1986-89
Spokane, Washington, zoning revision, 1986-87
Dallas, Texas, zoning revision, 1985
City of Orlando and Hillsborough County, Florida, and Marietta, Georgia, sign code revisions, 1985
Allen, Texas, comprehensive plan, 1984-85
California Department of Housing and Community Development, Affordable Housing Legislation Project, 1984-85
Nuffield Foundation Inquiry on British Town and Country Planning, 1983
Sarasota, Florida, Member, Regional Urban Design Assistance Team, American Institute of Architects, 1983
Honolulu, Hawaii, Mixed Use Development Project, 1982
Waco, Texas, zoning revision, 1981-82, 1984-86
Lemay Area Development Program, St. Louis County, 1981-82
Clearwater, Florida, Land Development Code revision, 1980-82
Portland, Oregon, Metropolitan Service District, Banfield Light Rail Transit Station Area Planning Program, 1980-82
Capitol Region Council of Governments, (Hartford, Connecticut), Inclusionary Zoning Study, 1980-81
National Science Foundation, Evaluation Panel for Tsunami Hazard Management Study, 1980-81
Franklin County, Missouri, On Site Treatment Systems Management Study, 1980-81
Abt Associates, Evaluation Panel, Environmental Review in Community Development Block Grants, 1979-80
Austin, Texas, zoning revision, 1979-81
St. Simons Island, Georgia, Growth management study, 1979-80
Arkansas State Constitutional Convention, 1979
Olympia, Washington, Member, Regional Urban Design Assistance Team, American Institute of Architects, 1979
Lincoln, Nebraska, zoning revision, 1978-79
National Science Foundation, Evaluation Panel for University of California (Davis) study of California Coastal Zone Management Act, 1977-79
Environmental Law Institute, Evaluation Panel, Solar Access Law study, 1977-79
Bellevue, Washington, Land Development Code Revision, 1976-77
East-West Gateway Coordinating Council, St. Louis, area-wide water quality management planning study, 1976-78
State of Hawaii, Department of Planning and Economic Development, state land use program, 1972-78

National Science Foundation, Evaluation Panel, University of North Carolina
Growth Management Study, 1976-77

United States Air Force, revision of environmental review procedures,
1975-76

Resource Management Corporation, highway relocation study for
Transportation Research Board, Washington, D.C., 1972-76

State of Washington, Office of Community Development, state land use
regulation, 1974-75

Tupelo-Lee County, Mississippi, revision of land use control system, 1973-
75

National Science Foundation, Evaluation Panel for Potomac Institute study
on
inclusionary zoning, 1973-74

Kansas City, Missouri, Temporary Advisory Commission on Housing, 1972-
73

Melbourne, Australia, Strategy Plan, 1972-73

United Nations Centre on Housing, Building and Planning, Expert Meeting on
regional and national development planning, 1972-73

Bloomington, Indiana, zoning revision, 1971-72

New York State Temporary Commission on the Powers of Local
Government,
consultant on land use policy, 1972

Boulder, Colorado, comprehensive zoning code revision, 1968-71

Committee on Banking and Currency, House of Representatives, United
States
Congress, national housing policy study, 1970-71

Los Angeles, California, zoning ordinance revision, 1969-71

National Commission on Urban Problems, consultant on Commission Report,
1967-68

BIBLIOGRAPHY:

BOOKS

Planning and Control of Land Development (with J. Payne) (5th ed. 2001)
Property Law and the Public Interest (with G. Hylton, D. Callies & P.
Franzese (1998)

State and Local Government in a Federal System (with D. Netsch, P. Salsich &

J. Wegner) (4th ed. 1996)
Land Use Law (4th ed. 1997 & Supp. 2000)
NEPA Law and Litigation (2d ed. 1992 & Supp. 2000)
Environmental Protection: Law and Policy (with F. Anderson, R. Glicksman,
& D. Tarlock) (3d ed. 1999)
Housing and Community Development: Cases and Materials (with others)
(3d ed. 1999)
Street Graphics and the Law (with W. Ewald) (1988)
Federal Land Use Law (with J. Gerard & T. Sullivan) (1986 & Supp. 1998)
Environment and Equity: A Regulatory Challenge (1981)
Reviving Cities Through Tax Abatement (with G. Feder & M. Collins) (1980)
Housing in America: Problems and Perspectives (with R. Montgomery) (2d
Ed.
1979)
Environmental and Land Controls Legislation (1976 & 1982 Supp.)
New Developments in Land and Environmental Controls (1974)
Air Quality Management and Land Use Planning (with G. Hagevik & R. Brail)
(1974)
Housing Subsidies in the United States and England (1973)
Street Graphics (with W. Ewald) (1971)
The Zoning Dilemma (1971)
Managing Our Urban Environment (2d Ed. 1971)
Case Studies in Land Planning and Development (1968)
Green Belts and Urban Growth: English Town and Country Planning in Action
(1962)