

AMERICAN BAR ASSOCIATION
STATE AND LOCAL GOVERNMENT LAW SECTION
ADMINISTRATIVE LAW AND REGULATORY PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

[Start continuous line numbering]

RESOLVED, That the American Bar Association urges states and territories to adopt THE Model Statute on LOCAL LAND USE PLANNING PROCEDURES. ~~Land Use Process.~~

MODEL STATUTE ON LAND USE PROCESS (AUGUST 2008)

Pursuant to Resolution 121-A, the American Bar Association urges states and territories to adopt the Model Statute on the Land Use Process that resulted from the work of a Joint Committee of the Sections on State and Local Government Law and Administrative Law and Regulatory Practice over the past two years.

REPORT

Introduction

For the past two years, the Sections on State and Local Government Law and Administrative Law and Regulatory Practice have been working on reforms of local land use PLANNING procedures. Approximately three-quarters of the states have adopted some form of the Standard Zoning Enabling Act (1926), which resulted from efforts by the United States Department of Commerce to provide states with model legislation to deal with zoning. While some states have revised their enabling legislation, there is no common base THAT LOCAL GOVERNMENTS CAN USE AS A MODEL TO MODERNIZE THEIR LAND USE PLANNING PROCEDURES. ~~to deal with how local governments deal with land use procedures.~~ THE STANDARD ACT IS OUTDATED, FOR EXAMPLE, IT ~~the stan~~For example, the Standard Act did not expressly provide for a system of permits for development. In fact, the term “permit” does not even appear in the model act. Section 8 of the SZEA said simply that the local legislative body “may provide by ordinance for the enforcement of this act and of any ordinance or regulation made thereunder.”

THE PROVISIONS OF THE MODEL ACT THAT IS THE SUBJECT OF THIS RECOMMENDATION GREW OUT OF EFFORTS OF THE ~~The~~ American Planning Association WHICH has worked on a reform of planning and zoning enabling legislation in its *Growing Smart* SM project SINCE ~~in~~ 2002. Both sections have an interest in modernizing local procedures. The Section of Administrative Law and Regulatory Practice has great experience in state and federal administrative procedures acts which

can be brought to bear to make local land use procedures (as well as appeals from local land use decisions) fair and transparent. The Section of State and Local Government Law is aware that many small local governments cannot afford expensive procedures and that many land use permits are relatively uncontroversial. The work of the two Sections has largely focused upon how to provide FAIR AND EFFICIENT ~~better~~ procedures and appeals. ~~in an inexpensive manner.~~

The Sections formed a task force to undertake that process. The Task Force was chaired by Edward J. Sullivan, Portland, OR and its members included:

Professor Michael Asimow, Los Angeles, CA
David E. Cardwell, Orlando FL
Cynthia Drew, Washington DC
John Gedid, Harrisburg, PA
Jim Godlewski, Neenah, WI
Otto Hetzel, Bethesda, MD
Richard Lehmann, Madison, WI
Robert Lincoln, Sarasota, FL
Professor Daniel Mandelker, St. Louis, MO
Christine Monte, Fair Lawn, NJ
Ed Schoenbaum, Springfield, MO
Bryan Wenter, Walnut Creek, CA
Hon. Alexander White, Chicago, IL

The task force was ably assisted by the work of Professor Daniel Mandelker, AICP, Stamper Professor of Law, Washington University School of Law. Professor Mandelker was a consultant on the *Growing Smart*SM project and has written and lectured on local land use procedures for more than fifty years.

Among the features of the proposed statute are:

- A comprehensive set of definitions. Sec. 101.

- Conduct of administrative decisions, including time limitations on decisions, completeness determinations, notice, conflicts, findings and decisions, notice of decisions. Secs. 201-204.
- Conduct of record hearings, including types of hearings, completeness determinations, notice, conflicts, findings and decisions and notice of decisions. Secs. 205-207.
- UNDER THIS DRAFT, A LOCAL GOVERNMENT HAS THE OPTION OF HOLDING A RECORD HEARING WITH RESPECT TO AN APPLICATION FOR DEVELOPMENT OR MAKING A DECISION BASED ONLY ON WRITTEN MATERIALS. IF ANY PERSON WISHES TO APPEAL THE A DECISION WHICH WAS BASED ON WRITTEN MATERIALS, A RECORD HEARING MUST THEN BE PROVIDED (or language to that effect)
- Consolidations of multiple decisions at option of applicant. Sec. 208.
- Appeals of administrative decisions to local Land Use Board, including procedures, notice, hearings, findings and decisions and notices of decisions. Sec. 209.
- Time limitations for decision making. Sec. 210.
- Land Use Board, including composition, appointment, and powers. Sec. 401
- Administrative Actions, including types (e.g., variances, conditional use permits), mediation, conditions, and procedures). Secs. 501-507.
- Judicial Review, including exclusivity of review, procedures, standing and intervention, stays, and record. Secs. 601-618.

There are also optional sections relating to corridor maps and the use of hearings officers or examiners.

The Model Statute involves a vast improvement in local land use procedures, incorporates the accumulated legal experience of the last eighty years, and provides a uniform, EFFICIENT, and fair method of treating land use applications. The Sections on State and Local Government Law and Administrative Law and Regulatory Practice recommend this model law.