AMERICAN PLANNING ASSOCIATION, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND MANAGEMENT OF CHANGE (S. MECK ED. 2002)

ADMINISTRATION OF LAND DEVELOPMENT REGULATIONS

COMMENTARY ON CHAPTER 10[1]

Editor's Comments: This introduction to Chapter 10 of the Growing Smart model statutes provides the background to the Task Force model law, which is based on Chapter 10 as modified by the Task Force. Some editing has been done to delete text not relevant to the Task Force model law, though deletions are not shown, and some text has been added.

A local comprehensive plan is adopted, and land development regulations (zoning, subdivision, site plan review, impact fees, etc.) implementing it are enacted. But the process of carrying out the goals and policies of the plan doesn't just stop there. The application of the regulations occurs through an administrative process that has (or should have) a beginning, a middle, and an end. The applicant must know what development permit approvals are required, what information is needed, how long the review process will take, what person or body will act on the permits, and what happens if he or she disagrees with the decision of the local government–what are the procedures for appeal and judicial review of the decision.

ADMINISTRATIVE REVIEW IN THE SZEA

The Standard State Zoning Enabling Act (SZEA) 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 entity that was charged with handling appeals from administrative officers of the local government (presumably in interpretation of the zoning regulations in issuing permits and making enforcement decisions) and specialized adjudicatory decisions was the board of adjustment (hereinafter referred to the board of zoning adjustment or appeals, or BZA), composed of five members. The BZA was given the following powers:

[1]The model statutes and supporting commentary in this Chapter were written by Daniel R. Mandelker, AICP, Stamper Professor of Law, Washington University School of Law, with additional drafting and material by John Bredin, Esq., Research Fellow for the Growing Smart[SM] project, and Stuart Meck, FAICP, Principal Investigator for the Growing Smart[SM] project. Mr. Meck wrote the introductory commentary to the Chapter on administration of land development regulations.

> 1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.
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> 2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
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> 3. To authorize upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest, where, owing the special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.[2]

The SZEA required a concurring vote of four members of the board–not just a simple majority--in order "to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in the ordinance."[3] The board was to keep minutes of its proceedings that showed the vote of each member upon each question as well as abstentions and absences. The board was not obligated to provide a decision in writing that explained its thinking or rationale, but was required to "keep records of its examinations."[4]

THE CHANGING FACE OF DEVELOPMENT PERMIT REVIEW

It is fair to say that, since the SZEA was promulgated in the 1920s, the development review process has gotten a lot more complicated and unwieldy in many communities. There are two principal reasons for the increased complexity and corresponding delay.[5]

(1) **The use of discretionary approvals**. In the 1920s, even though the SZEA does not expressly mention it, the standard means of approving a development was a building permit or, sometimes, a building permit combined with a zoning permit. The local government's building official was usually the administrative officer who issued the permit. The building permit indicated that the building plans complied with the building code, which was typically a local ordinance, and the zoning permit or its equivalent (if such a permit were issued) confirmed that the proposed use of

[2]Advisory Commission on Zoning, U.S. Department of Commerce, *A Standard State Zoning Enabling Act* (Washington, D.C.: U.S. GPO, 1926), §7.

[3]Id.

[4]Id.

[5]This discussion is adapted in part from John Vranicar, Welford Sanders, and David Mosena, *Streamlining Land Use Regulation: A Guidebook for Local Governments*, prepared for the Office of Policy Development and Research, U.S. Department of Housing and Urban Development by the American Planning Association (Washington, D.C.: U.S. GPO, November 1980), 4-5.

the property, and the building itself–if a new building or addition was to be constructed–complied with the zoning code.[6]

The land-use system contemplated by the SZEA was intended to be self-executing. Once enacted, the zoning scheme would need few amendments. One indication of this was that, in the SZEA, a temporary zoning commission formulated the proposed zoning regulations and map of districts (although the city planning commission, where it existed, could also serve as the zoning commission). The SZEA rejected the idea that all changes to the zoning ordinance "be reported upon by the zoning commission before action on them can be taken by the legislative body." According to commentary in the SZEA, that would mean making such a commission a permanent body, "which may not be desirable."[7] Moreover, the SZEA argued that it was *before* the zoning ordinance was in place that "careful study and investigation" was necessary.[8] "Amendments to the original ordinance," stated a note in the SZEA, "do not as a rule require such comprehensive study and may be passed upon by the legislative body, provided property notice and opportunity for the public to express its views have been given."[9] The implication, of course, was that the zoning pattern was to be relatively static and, when it was modified, the change would be of much lesser significance.

Early zoning codes, based on the ordinance in *Euclid v. Ambler Realty*,[10] the 1926 Supreme Court decision that established the constitutionality of zoning, contained a few zones–residential, commercial, and industrial. Such ordinances typically listed a large number of permitted and prohibited uses. According to one analysis, "[a] few uses such as funeral parlors or airports were so unique they were not permitted in any zone but were allowed under an *ad hoc* determination as a special exception."[11]

This began to change in the 1960s and 1970s. As-of-right development permitting was supplanted by discretionary approaches, including–to name a few--conditional uses (also known as special exceptions), overlay zones, planned unit development, and cluster development, a variant of planned unit development where residential units are grouped together on a site.[12] The intention was

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[6]See, e.g., the City of Cleveland, Ohio zoning ordinance, adopted in 1929, appearing in James Metzenbaum, *The Law of Zoning* (New York: Baker, Voorhis, 1930), 392-418. Section 1281-19 of the ordinance provided: "The construction, alteration or relocation of any building or any part thereof shall not be commenced or proceeded with except after the issuance of a written permit for same by the Commissioner of Buildings in accordance with this and other city regulations." Section 1281-20 required a "certificate of compliance to change the use classification or enlarge the use in any building or premises." Id., at 408-418. See also Edward M. Bassett, *Zoning: The Laws, Administration, and Court Decisions During the First 20 Years* (New York: Russell Sage Foundation, 1940), 109-110 (describing building permits and occupancy permits, which are issued before buildings can be used).

[7]SZEA, n. 43.

[8]Id.

[9]Id.

[10]*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The Village of Euclid ordinance appears in James Metzenbaum, *The Law of Zoning* (New York: Baker, Voorhis, 1930), 335-352. Cleveland Attorney James Metzenbaum represented the Village in the litigation.

[11]Donald G. Hagman, *Urban Planning and Land Development Control Law* (St. Paul: West 1971), 71.

[12]For a discussion of these techniques, and others, from the vantage point of the 1970s, see Michael J.

to allow staging of development and
to encourage innovative site design, the retention of open space, the protection of environmentally sensitive areas and, through clustering, and a reduction in infrastructure costs. These new techniques recognized that development had changed from a lot-by-lot approach to one at a much larger scale. Major, multiphase subdivisions, regional shopping centers, industrial parks, planned communities, and mixed use development became the rule rather than the exception in the suburbs.

Accompanying this was the practice of zoning vacant areas into "holding zones," large-lot districts of one to five acres. This "wait-and-see" technique, as it has been termed, called for the developer to apply for a zone change for more intensive use as well as seek additional discretionary permits that governed the actual design of development. The process for obtaining the zone change and the discretionary permits is often a sequential, rather than a concurrent, one, and considerable negotiation and uncertainty (especially with neighboring property owners) occur at each step of the process.

(2) **The use of layered approvals.** Closely related to the use of discretionary permitting is the layering of the approval process itself. For example, a proposed development may be subject to a state environmental quality act that calls for the preparation of an environmental impact report upon which there can be considerable comment. The development may also be subject to specialized regulations that apply to wetlands and require separate authorizations from state and federal agencies. Within the local government itself the development proposal may need to be reviewed not only by the local planning commission and legislative body, but also by a specialized review board like an environmental commission (if special environmental resources are involved) and a design review/historic preservation commission (if, for example, the project is in a historic district, if the local government has adopted special design guidelines, or if a historic site or structure is involved).[13] These specialized local reviews were certainly not something that the SZEA anticipated or provided for. Each of these layers involves an additional level of discretion, sometimes with a public hearing, and telescopes the approval process.

THE INTERNAL ADMINISTRATIVE PROCESS

Even for routine permits, the process within the local government's administrative structure may be labyrinthine. The development proposal will need to be examined by the local government's planning department, the engineering department, various utility departments, the building department, and, in some cases, even the police department (for comments on security-conscious site design). How efficiently this review occurs will depend on formal organizational structure for development review (i.e., "one stop shopping" vs. being bounced back and forth between various

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Meshenberg, *The Administration of Flexible Zoning Techniques*, Planning Advisory Service Report No. 318 (Chicago: American Society of Planning Officials (now the American Planning Association), June 1976).

[13]The emergence of specialized review boards in the development process has resulted, some have contended, in the narrowing of the traditional purview of the local planning commission, as its function is appropriated by other body for a select area of development policy. As a result, the planning commission's review may be less comprehensive and less central than it was originally envisioned when the commission was first instituted. Moreover, in built-up communities, with little vacant land, bodies such as a board of zoning appeals or a historic preservation commission may, as a practical matter, have a greater say in what gets built because each project will require a variance or involve a structure that is historic. See John Vranicar, et al., *Streamlining Land Use Regulation*, 29.

local government offices), the skills of the reviewing staff and their willingness to complete reviews in a timely manner, the information provided to the applicant (e.g., clear application forms, checklists, and flow charts), and the deadlines for decisions, among other factors. Some of these factors may be influenced by statutes (such as number of hearings) or ordinances (such as application requirements and approval criteria), but other factors, such as the willingness of the local government review staff to coordinate with one another and provide clear advice and counsel to permit applicants at each step of the process or the recognition of problems with procedures in local development regulations, are more difficult to influence, except by the political leadership and administrators of the local government. Indeed, there may be citizen pressure to keep the local review process as difficult as possible as a device to stop or slow down growth, or-- taking a Darwinian slant--to insure that the only development that occurs is accomplished by the most hardy, with the deepest pockets.[14]

THE BOARD OF ADJUSTMENT

Originally designed as the "safety valve" of land-use administration, the board of adjustment or board of zoning appeals (BZA) has been the subject of much criticism. These criticisms have focused on the board's expertise, the manner in which it makes decisions, and its propensity for granting use variances, which allow uses in a particular district that are not permitted by the zoning ordinance itself–in effect amending the zoning ordinance.[15]

The model for the board that appears in the SZEA was based on New York City's board of appeals, which included five members with very strong technical qualifications: a chairman who was to be an architect or structural engineer; an architect member; a structural engineer member; a builder member; a fire chief member, plus two unspecified members. The chair was required to have not less than 15 years of experience, and the other technical members not less than 10 years. For the chair, the position was full-time, and could hold no other employment.[16]

Under the SZEA, there were no membership requirements to serve on the board. Perhaps the drafters of the SZEA believed that local governments, of their own accord, would incorporate membership requirements into their local ordinances, and therefore legislative direction wasn't necessary. Some, in fact, did, and typical membership requirements may include an architect, an attorney, a general contractor, a licensed engineer, a licensed real estate broker, and/or a planner.[17]

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[14]John Vranicar et al., *Streamlining Land Use Regulation*, 5, 16-17.

[15]Robert M. Anderson, "The Board of Zoning Appeals--Villain or Victim?" *Syracuse Law Review* 13 (Spring, 1962): 353; Frederick H. Bair, Jr. "Boards of Adjustment and How They Got That Way," in *Planning Cities: Selected Writings on Principles and Practice*," Virginia Curtis, ed. (Chicago: American Society of Planning Officials, 1970), 486-49; Jesse Dukeminier and Clyde L Stapleton, "The Zoning Board of Adjustment: A Case Study in Misrule," *Kentucky Law Journal* 50 (1962): 273; R.M Shapiro, "The Zoning Variance Power--Constructive in Theory, Destructive in Practice," *Maryland Law Review* 29 (1969): 3.

[16]Frederick H. Bair, Jr., *The Zoning Board Manual* (Chicago: APA Planners Press, 1984), ch. 1 (discussion of the historic development of the board of zoning appeals and the impact of New York City on the SZEA).

[17]See Michael Barrett, "The ABCs of ZBAs: The Sequel," *Zoning News* (Chicago: American Planning Association, March 1996): 1-5 (describing membership requirements of ZBAs from a survey of 50 communities).

However, especially in small communities, it often proved difficult to get volunteers with the necessary expertise and, if they had expertise, to ensure that it was not tainted with conflict of interest. As a consequence, according to one trenchant commentary, "most cities simply eliminated qualifications and made the whole thing ultrademocratic. Anybody could join. This resulted in selection of board members without technical backgrounds to an 'expert administrative body.'"[18]

The prevalence of lay boards, often without training, has often meant that the decision-making process at the local level is flawed with variances and other determinations frequently made on political grounds rather than by a careful analysis of facts against a set of stated criteria.[19] The BZA was established as a creature to *grant* variances, not to *withhold* them, and indeed, in many communities, that is exactly what they do. In some communities, the approval rate is as high as 95 percent of petitions.[20] Caseload varies, but it is heavy in most places. In a survey of 50 communities in 1996, the American Planning Association found:

> Overall, the [annual] average was 153, but the range was broad, running from 12 in Springfield, Missouri, to 600 in both Milwaukee and Pittsburgh. Dividing that survey group yields a clearer picture. The 29 jurisdictions that fall in the 100,000 to 199,000 population range average 92 cases per year. The 21 jurisdictions at or above 200,000 average 237 cases per year. Twenty-nine of the communities had more than 100 cases per year; 13 had more than 200. Despite the broad range, it is clear that most ZBAs are very busy.[21]

One law journal article, which documented the problems of the board of zoning appeals in Lexington, Kentucky, appraised the problem as follows:

. . . [T]he variance procedure really falls short of giving intelligent flexibility within a framework designed to accord equal protection of the law. Planning considerations do not receive careful consideration there. The board does not have the expertise to know what is trivial and can be disposed of quickly and what is substantial and requires close examination. For lack of time it cannot sit down with the applicant and, by patience, suggestions, and persuasion, bring him around to making changes which will make the use compatible with the area. Furthermore, because of the "strict and severe limitations" courts have imposed on the board's powers, the board is not always prepared to be honest and articulate about its reasons for reaching a particular result. It cannot

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[18]Frederick H. Bair, Jr. "Boards of Adjustment and How They Got That Way," in *Planning Cities: Selected Writings on Principles and Practice*," Virginia Curtis, ed (Chicago: American Society of Planning Officials, 1970), 486-491, 488-489.

[19]See, e.g., Stuart Meck, "Rhode Island Gets It Right," *Planning* 63, No. 11 (November 1997): 10-15, 10-11 (describing how zoning board variance decisions were frequently set aside by Rhode Island state courts "because there was no record and little or no rationale," which led to a reform of the state's planning and zoning statutes in the late 1980s).

[20]Michael Barrett, at 2. In Smithtown, N.Y., the board hears 300 cases a year and the approval rate is 95 percent.

[21]Ibid., at 5.

promulgate the kind of standards we need for administrative decisions, for queerly enough, they would be illegal. An ideal breeding ground for adventitious factors results.[22]

SOME SOLUTIONS

Recommendations for improving the land use decision making process include: establishing a central permit authority and joint review committees whenever several local government boards or departments are involved in project approval; employing a hearing officer to conduct quasi-judicial hearings on development proposals; and imposing substantive limitations on the powers of boards of appeal to grant variances.[23]

HEARING EXAMINERS

One oft-recommended solution that has enjoyed increasing use is the hearing examiner.[24] The hearing `examiner is an appointed official, typically with training in planning and law, who conducts quasi-judicial hearings on applications for development permits, conditional use permits, variances, planned unit developments, parcel-specific zone changes–and enters written findings based on the record established at the hearing, and either decides on the application, or a makes a recommendation to a local legislative or administrative body for a decision. A number of states expressly authorize the establishment of the zoning hearing examiner position.[25] The use of hearing examiners was a major recommendation of a special American Bar Association Advisory Commission on Housing and Urban Growth in a 1978 report.

The hearing examiner is often used where there is a heavy caseload or where elected officials felt the BZA needed to be replaced with a single professional decision-maker who is accountable for the final decision (rather than having the decision-making responsibility diffused among a number of lay officials). The hearing examiner thus frees the time of planning commission members and elected officials. The hearing examiner may also be able to hold hearings more frequently than lay boards and commissions (since the problem of obtaining a quorum is eliminated) and thus can reduce delay for both large and small applicants.

Duties and powers of a hearing examiner can vary. In some communities, the hearing examiner is limited to variances and conditional uses, and makes the final decision. In others, the hearing examiner may conduct hearings on subdivisions, if they are required, and rezonings, and makes a recommendation. There is still staff input to the hearing examiner, the same that is required for lay review bodies. The local government also typically adopts rules of procedure that govern the

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[22]Jesse Dukeminier, Jr. and Clyde L. Stapleton, "Boards of Adjustment: The Problem Re-examined," *Zoning Digest* 14, No. 12 (December 1962): 361-371, at 370-371.

[23]See generally Annette Kolis, ed., *Thirteen Perspectives on Regulatory Simplification*, Urban Land Institute (ULI) Research Report No. 29, (Washington, D.C. ULI, 1979).

[24]This discussion is adapted from John Vrainicar et al., *Streamlining Land Use Regulation*, 34-38, and Daniel Lauber, *The Hearing Examiner in Zoning Administration*, Planning Advisory Service Report No. 312 (Chicago: American Society of Planning Officials (now the American Planning Association), 1975).

[25]See, e.g., Alaska Stat. §29.40.050 (1998); Idaho Code §67-6520 (1998); Md. Ann. Code Art. 66B, §§2.06 and 4.06 (1998); Nev. Rev. Stat. §278.262 (1998); Or. Rev. Stat §§215.406 and 215.146 (1997); Wash. Rev. Code §35A.63.170 (1998).

conduct of the hearing and the manner in which the hearing examiner renders a decision or recommendation.

THE ALI CODE PROPOSALS

The American Law Institute's Model *Land Development Code* contained several proposals aimed at improving the administration of local land development review process. The ALI Code rejected a specific structure – a "rigid mold," in its terms – for local planning and land development control. Consequently, it did not include express authorizing legislation for a local planning commission and board of zoning appeals as direct participants in the development review process. Rather, it required the designation of a Land Development Agency that would oversee all planning and development control, including permitting, with the internal organization to be determined by the local government itself or by the Agency. Under the Code, the Land Development Agency could be the local governing body or any committee, commission, board or officer of the local government. The Code also allowed the power to make decisions dealing with particular matters to be given to officers, panels, boards or committees, that were either within *or without* the Agency, but the final responsibility for the decision, regardless of who made it, was that of the Agency.[26]

- To make citizen participation more constructive, responsive and timely.
- To make the regulatory system accountable and reduce opportunities for backroom agreements or corruption.
- To establish better working relationships between permit applicants and reviewers.
- To enable public officials to use their time more efficiently.
- To contain rising administrative costs.
- To control one of the factors that increases the cost of new housing.
- To encourage the kind of development the community wants by giving the community a competitive edge.

Source: John Vranicar, Welford Sanders, and David Mosena, *Streamlining Land-Use Regulation: A Guidebook for Local Governments*, prepared by the American Planning Association for the U.S. Department of Housing and Urban Development Office of Policy Development and Research (Washington, D.C.: U.S.GPO, November 1980), 3.

The Code recast the variance power under new terminology, although, as noted, it did not provide for a BZA to grant them. For example, the Land Development Agency could grant a special development permit allowing modifications in regulations applicable to a permitted or existing use, but, in the Code's language, "would differ in regard to some other characteristic from general development [development permitted as of right], if compliance with the general development provisions would cause practical difficulties [as defined in the Code]" and if the modification was no more than necessary and if it would not "significantly interfere with the enjoyment of other land in the vicinity."[27] This was the Code's version of a bulk or area variance, where the "practical

[26]American Law Institute (ALI), *A Model Land Development Code: Complete Text and Commentary* (Philadelphia,: ALI, 1976), §2-301, Organization of Land Development Agency, 71 (hereinafter cited as "ALI Code"). Giving the authority to make certain development decisions to entities outside the Land Development Agency, as the ALI Code permitted, and then holding the Agency accountable for those decisions seem like an odd way of ensuring accountability.

[27]ALI Code, §2-202 , Modification of Regulations Applicable to a Permitted or Existing Use.

difficulties" arose from some physical characteristic of the property.

Another Code provision was a special development permit to allow economic use. This was the Code's language for the much-criticized use variance. Here the permit would be granted if the Land Development Agency, found, among other factors, that "the development will take place on a parcel of land that is not, either alone or in conjunction with any adjacent land in common ownership, reasonably capable of economic use under the general [as of right] development regulations."[28] Unfortunately, the Code did not articulate a test of how a local government was to determine when land was not "reasonably capable of economic use." Nor did it impose any substantive limitation on this power to prevent abuses, unless an aggrieved party wanted to litigate the question of whether the special development permit had indeed been properly granted.

The Code addressed the question of streamlining through two devices: (1) a statewide permit register; and (2) joint hearings for development requiring multiple permits. The Code required the State Land Planning Agency to publish and make available a listing of all the permits required in connection with development by any governmental agency (including the federal government, state agencies, local governments, and special districts). These permits could include "construction permits" (which involve the review of detailed drawings) like building permits and state elevator permits, permits that had no substantial relationship to the planning and land development control process (such as a license for a beauty or barber shop), and all other permits, including such as those involving preliminary or tentative approval of applications for construction permits, which were termed "initial development permits."[29]

The joint hearing procedure enabled a developer whose project involved more than one permit to seek such a joint hearing on all of the permits at the same time. The procedure did not change any of the substantive standards under which the permits are to be issued, but merely authorized a coordinated procedure to simplify and speed up the administrative process. The decision to conduct the joint hearing is that of the State Land Planning Agency, but the hearing itself is held within the jurisdiction of the local government where the development was located.

[28]ALI Code, §2-204, Special Development Permit to Allow Economic Use.

[29]ALI Code, §2-401, Permit Register. The permit register concept has been incorporated, in part, in Section 10-201(2), Unified Development Permit Review Process, in the *Legislative Guidebook*.

The Code authorized a panel of hearing officers to prepare a recommended decision on the basis of the joint hearing. The recommendation would not change any substantive standards for the issuance of permits but merely set time limits within which decision must be made and provides a consolidated procedure for judicial review. If any permit-issuing agency failed to issue a decision within the time required by the Code, then it would be deemed to have adopted the recommended decision of the hearing examiner panel.[30]

- Duplicative information requirements.
- Resistance to, or prolonged scrutiny for, innovative land use controls such as planned unit development or cluster development.
- Conflicts between building, zoning, health, and subdivision regulations.
- Hidden agendas aimed at keeping out particular types of development, such as affordable housing.
- Multiple and sequential hearings before different hearing bodies.
- Turf problems between permit-issuing agencies.

Source: National Institute of Building Sciences, *Land-Use Regulations Handbook* (Washington, D.C.: The Institute, 1990), 15-16.

CONSOLIDATED PERMITS; JOINT HEARINGS

A number of states now authorize consolidated permitting or joint hearings. For example, Oregon allows local governments to establish a "consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project."[31] Washington state allows a local government to combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency provided that the hearing is held within the geographic boundary of the local government; hearings must be combined if requested by an applicant so long as statutory time periods are satisfied or the applicant agrees to a schedule that would provide additional time to allow for the combination of hearings.[32] Maryland has a statutory provision that allows "joint and consolidated hearings on permits" for projects that involve development permits by state agencies and local governments.[33]

SOLUTIONS NOT REQUIRING ENABLING LEGISLATION

Some of the solutions aimed at improving the efficiency of the development review process, making it more predictable, fair, and efficient, have not necessarily been the creatures of enabling legislation, but instead have been homegrown–the result of local administrative initiatives.[34] These

[30]ALI Code, §§2-402, Joint Hearing, and 2-403, Agency Decision.

[31]Or. Rev. Stat. §215.416(2) (1997).

[32]Rev. Code Wash. §36.70B.110(7) (1998).

[33]Md. Code Ann., State Government, Tit. 11, §11-501 et seq. (Consolidated Procedures for Development Permits).

[34]For discussions of voluntary local streamlining initiatives, see John Vranicar, et al., *Streamlining Land Use*

include practices such as:

- on-going training of planning commissions, BZAs, and other local boards that conduct hearings on and approve development permits;
- a central permit information desk that allows information about permits and permits themselves to be obtained from a single central location;
- cross-training of staff to reduce specialization, increase coordination, and enhance flexibility, especially in times of high case loads;
- interdepartmental review committees with a designated coordinator who would coordinate reviews by multiple agencies and resolve problems;
- computerized tracking systems to tell an applicant the status of an application and more readily identify scheduling problems; and
- joint inspections that are conducted by several departments simultaneously; and pre-application conferences with applicants to address issues before expensive technical and engineering work are undertaken.[35]

A CAVEAT

It should be emphasized that there are limits to what state enabling legislation can accomplish in the development review area, since the process is so susceptible to: (a) the political and administrative direction that the local review agencies receive; (b) their organizational culture (in particular whether the local review agency sees value in efficiency, prompt decisions, certainty, and predictability); and (c) the capabilities and competence of the staff and boards conducting permit reviews. Moreover, if a local (or state) reviewing agency wishes to drag its feet to demonstrate its importance or independence or if the local political culture rewards delay, or when sweet reason otherwise fails, there is little else one can do short of litigation.

[Note: This material is not copyrighted. The model legislation is available on the American Planning Association's web site at www.planning.org. It is also available at www.landuselaw.edu in the Statutes section. For additional discussion see Sullivan & Richter, *Out of the Chaos: Toward a National System of Land Use Procedures*, 34 Urban Lawyer 449 (2002), and Mandelker, *Model Legislation for Land Use Decisions*, 35 Urban Lawyer 635 (2003), both available on Westlaw.]

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Regulation; NAHB National Research Center, *Affordable Residential Land Development: A Guide for Local Government and Developers*, prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research (OPDR) (Washington, D.C.: OPDR, November 1987); National Institute of Building Sciences, *Land-Use Regulations Handbook* (Washington, D.C.: The Institute, 1990), 16-19.

[35]See Debra Bassert, "Streamlining the Development Approval Process," in *Modernizing State Planning Statutes: The Growing Smart℠ Working Papers, Vol. 3*, Planning Advisory Service Report No. ___ (Chicago: American Planning Association, forthcoming).