NOT IN ACCORDANCE WITH A COMPREHENSIVE PLAN: A CASE STUDY OF REGIONAL SHOPPING CENTER LOCATION CONFLICTS IN LEXINGTON, KENTUCKY

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INTRODUCTION

"Analysis has established that Downtown Lexington is in healthy condition and that its functions are being performed with reasonable efficiency and profitability. For the most part, it has maintained a strong position vis-a-vis competitive developments in the metropolitan area. The retail function, for example, is still largely centered in the downtown area as really first-class competition has not developed in the suburbs. Consumer-oriented office functions have developed at various points near residential markets, but most of the banking headquarters and region-serving office functions are still downtown. While the suburban motel has become the principal force in the local transient market, unlike other cities, first-class accommodations are available and are still being built in the downtown. Overall, the downtown real estate market is strong and property values have not declined as in the central areas of other cities.

"Downtown has reached a crucial point in its development, however, and the next two to five years may very well determine its role over the next two decades. The metropolitan market that makes

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it possible to support major retail developments at key suburban locations and the first regional center will open soon. Local traffic patterns are being drastically altered by the completion of a circumferential highway that for the first time will make it possible to move easily between development sectors without entering the central area. In combination, these two forces are making it increasingly attractive and economically feasible to build major facilities in suburban locations to compete with Downtown.

"At the same time, physical environmental conditions in Downtown itself are making it increasingly unattractive as a place to do business and increasingly difficult to attract new investments. Many buildings are obsolete, traffic conditions have markedly worsened in recent years, and the total image projected by downtown is unfavorable. Downtown's role in the metropolitan economy of the future will be largely determined by the ability to alleviate these and other problems and to create an attracive framework that will generate new private capital. Most American cities have met these problems too late and the resulting losses in sales, the building vacancies, the declining property values and the inefficient consumer service are well known. These problems can be avoided in Lexington as prompt and vigorous actions are initiated to renew its physical plant and to resolve its major problems."[1]

This excerpt from a report of the Lexington-Fayette County, Kentucky Planning Commission describes the problems now being faced by small and medium-size cities which are attempting to balance suburban commercial growth with that of the downtown area.[2] Lexington, Kentucky recently has been faced with this problem. The downtown has been deteriorating steadily since the end of World War II,

1. City-County Planning Commission of Lexington and Fayette County, *An Analysis of Commercial Activities in Lexington and Fayette County, Kentucky* (1966) (Hereinafter cited as *An Analysis of Commercial Activities*). Lexington is located in Fayette County, Kentucky. The city and the county have formed a joint city-county planning unit pursuant to KY. REV. STAT. 100.121 (1969) so that all plans prepared are county-wide. The Planning Commission passes on recommendations for map amendments for land located in both the county and the city and the Commission recommendations are forwarded to either the Fayette County Fiscal Court or the Lexington Board of Commissioners for final approval.

2. The pattern of suburban commercial growth experienced by large cities after World War II and the Korean War is now being repeated in smaller metropolitan areas and cities. The history of the post war exodus of commercial facilities to the suburbs is traced in G. STERNLIEB, THE FUTURE OF THE DOWNTOWN DEPARTMENT STORE (1962). *See generally* HORACK *Land Use Controls in an Urban Society,* 28 ROCKY MT. L. REV. 512 (1956).

and the first regional shopping center opened in 1966. During this time, a small urban renewal program was formulated, but before it could be determined if this initial effort would lead to a comprehensive re-vitalization of the downtown, the Planning Commission was faced with petitions for three map amendments to permit the construction of three regional shopping centers.[3] This paper is a study of the decisions taken by the Commission, local legislative bodies and the judiciary in dealing with these petitions.

These decisions were chosen because they provide a useful vehicle to evaluate the commonly held assumption that if the administration of land use controls is more directly related to professional planning criteria a more rational allocation of land will result.[4] They represent an attempt to use zoning to implement a professionally prepared community development plan which failed and they were made under what most planners should consider an ideal decision-making structure. The Planning Commission had adopted a professionally prepared land use plan which contained explicit recommendations for a regional shopping center location policy. These recommendations were formulated on the basis of several lengthy planning studies and were known and discussed at the time the plan was adopted. The state legislature had recently adopted a new planning and zoning enabling act which attempted to assure that map amendments would be granted only if they were consistent with an adopted community development plan.[5] In spite of all these conditions the planning commission was

3. This paper uses the shopping center classifications formulated by the Urban Land Institute. A regional shopping center is characterized by the uniform development of some 400,000 to 1,000,000 gross square feet of floor area with supporting parking facilities. J. Ross McKeever, Shopping Centers Re-studied 9-10 (Urban Land Institute Technical Bulletin No. 30, 1957). For a discussion of the function of regional shopping centers in contemporary urban planning see V. Gruen, The Heart of Our Cities (1964).

4. It has been hoped that the more detached perspective of the planner will make it possible for him to analyze future growth trends in the community and translate these into a master strategy for the optimum future growth of the community. Charles Haar in his searching inquiry into the function of the master plan justified the master plan because "It endeavors to liquidate the caprice of circumstance and thus provides businessman X, his competitors, the public, and property owners with a rational framework within which each can pursue his interests, protected to some extent from the attrition of the unexpected—certainly so far as public policy is concerned." C. Haar, *The Master Plan: An Inquiry in Dialogue Form,* 25 J. Am. Inst. Planners 133, 139 (1959).

5. Ky. Rev. Stat. Ch. 100 (1969). For a discussion of the legislation see Tarlock, *Kentucky Planning and Land Use Control Enabling Legislation: An Analysis of the 1966 Revision of Ky. Rev. Stat. Chapter 100,* 56 Ky. L. J. 556 (1968).

unable to formulate a set of rational criteria for its decisions and ultimately abandoned all policies contained in the plans and adopted a "come-one, come-all" policy.

This article has a subsidiary, yet inseparable purpose, studying the extent to which adopted plans control the administration of land use regulations. The value premises incorporated into the plan must be examined in light of the permissible uses of zoning. The plan attempted to time the entry of regional shopping centers into the community to protect existing merchants. This is an example of zoning for the general welfare in the broadest sense of the term, for it was defined as the exclusion of competition to protect the economic welfare of the city. Courts have jettisoned the nuisance rationale of zoning and sanctioned a wide variety of planning techniques designed to further the general welfare. However, they have generally failed to articulate new criteria to define the permissible uses of zoning and thus have encouraged its use for a number of doubtful purposes. One hope for defining the general welfare with greater precision lies in the use of adopted plans as a standard to review legislative action. However, the decisions taken by the Lexington-Fayette County Planning Commission indicate that adopted plans may fail to rationalize the decision-making process unless courts take an active role in institutionalizing reliance on them. This can be done by defining with greater precision the scope of the zoning power, by confining planning studies to an examination of relevant concerns and by using the plans as a new standard of judicial review.

BACKGROUND

Lexington is located in the north-central portion of Kentucky. It is bounded on the northwest by a privately-owned green belt of large horse farms. Inside the urban area well-planned, tree-lined streets give way to a mixture of sprawling, unimaginatively designed suburbs, garish neon strips, and a decaying city core which is uglier than most downtowns. Prior to 1954 Lexington had a steady but unspectacular population growth and a highly stratified social structure.[6] This

6. A good general history of the early development of Lexington is R. WADE, THE URBAN FRONTIER (1959). This city's first major industry was hemp but by 1810 it had eight cotton factories, three woolen mills and an oil cloth factory. It failed to become a major Ohio Valley center because it could not compete with the river cities of Cincinnati and Louisville but developed a steady economic base of tobacco, horses, regional retailing and public facilities, such as the University of Kentucky and a federal narcotics hospital, prior to its current industrial develop-

changed when a large IBM plant was located in the city. Other light industries followed with a resulting economic boom which continues today.[7] This boom had several consequences for the regional shopping center controversies. Increased population generated the demand for new commercial facilities. The previous community social structure was characterized by polarization between upper and lower income groups and the absence of a substantial middle class. Existing commercial facilities were geared to either upper or lower income groups, and two large department stores, supporting specialty shops, and smaller lower priced department stores met the community's retail demands. These facilities and stores were inadequate to meet the demands of the large influx of skilled workers, managerial personnel, and professional people brought in by the new industries, service facilities and the expansion of the University of Kentucky. Shoppers voiced frequent complaints about the limited merchandise mix and the slow response of the established downtown merchants to new demands. Since the regional shopping center which opened in 1966 is geared primarily to the lower middle income groups the demand for new retail facilities for middle-middle and upper-middle income groups remained unfilled at the time the three petitions were filed.[8]

The city and county began planning operations in 1928, although a professional staff was not acquired until 1961. Several master plans prepared by nationally known planners[9] were generally ignored by the planning commission and the city, largely because they were too conservative in projection of population growth. For purposes of this study, the most important plan was a 1958 supplement to an earlier master plan prepared by the Cincinnati firm of Ladislas Segoe.[10] This supplement was much more successful than earlier efforts and formed the basis for many of the plans subsequently adopted by the commission.

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ment. City-County Planning Commission of Lexington and Fayette County, *A Growing Community* 9 (1967).

7. Manufacturing employment increased 180% between 1950 and 1964. City-County Planning Commission of Lexington and Fayette County, *A Growing Community* 20 (1967).

8. Federated Department Stores emphasized that their store would represent the middle and upper price lines. Transcript of Hearing, City-County Commission, 28 (June 23, 1967) (Hereinafter referred to as Hearing of June 23, 1967).

9. *See, e.g.*, City Planning and Zoning Commission, *Comprehensive Plan of Lexington, Kentucky and Environs* (1931).

10. City-County Planning Commission of Lexington and Fayette County, Master Plan Supplement—1958. This supplement amended L. Segoe, *Master Plan for Lexington and Fayette County* (1950).

The 1958 Supplement was the first plan to propose specific locations for categories of land use and to face the problem of downtown-suburban commercial competiton. It classified the downtown as a regional shopping center and concluded that the chances of the continued successful operation of both the downtown commercial area and a new regional shopping center were "very poor." This recommendation, with its built-in protectionism, was supported by downtown interests and was incorporated into the 1962 interim and final land use plan. It also significantly influenced shopping center location policy of the professional planning staff.[11] In this author's opinion the unfortunate consequence of this recommendation was continual reliance by many influential persons in the community on protection, rather than development-oriented, solutions to an economically healthy downtown. Therefore, when the commission had to confront the problems presented by the three petitions for regional shopping centers, it found difficulty in articulating any reasons for its actions and ultimately capitulated to pressures for an unrestrained development policy.

In 1967 the Commission adopted a land use plan which contained a detailed regional shopping center location policy.[12] Much of this policy was based on a study of commercial activities in Lexington and Fayette County completed the previous year. The first regional shopping center opened in 1966, but this was the only instance in which the planning staff and the commission deviated from their policy of permiting no regional shopping centers in addition to the downtown. They never abandoned the assumption that the downtown needed to be protected, although they recognized that the growth between 1962 and the present was again in excess of its original projection and indicated a demand for new commercial facilities. In their plans they sought to protect the downtown by recommending that a regional shopping center should be developed only when there was a sufficient economic base to support it, and that existing commercial establishments be allowed to maintain their current sales revenues.[13] The

11. A study conducted by one of my land use planning students found that the staff consistently relied on the Segoe conclusion in recommending against rezoning to permit the development of regional shopping centers between 1962 and 1966. C. Care, *The Lexington Central Business District: Plans and Progress* (mimeo in Lexington, Kentucky 1968).

12. City-County Planning Commission, Lexington and Fayette County, *A Plan For Land Use* (1967) (Hereinafter referred to as *A Plan for Land Use*).

13. *An Analysis of Commercial Activities* at 105-110.

data and assumptions relied on in formulating this recommendation merit extended analysis.

The commercial activities study considered three alternatives for regulating future commercial growth: (1) a concentrated, (2) a balanced and (3) a dispersed retail system. The first would involve a policy of denying all applications for suburban retail regional shopping centers, the second would attempt to time their development, and the third would place no restrictions on their development. The first was rejected for the very practical reason that "it would be extremely difficult to maintain the restrictive zoning policies required for implementation" and "moreover, there is a serious question that the interest of the public can best be served in terms of convenience in shopping alternatives."[14] The third was rejected because it "represents the defeatist, no action program that would result in the emasculation of the downtown complex which should be the heart of the metropolitan retail system"[15] and "because it is unlikely that the population would be best served by this system as alternative shopping facilities outside the region would be sought."[16] There was no effort to reconcile the seemingly inconsistent reasons given for the rejection of the first and third alternatives. The rejection of the first alternative seems premised on the assumption that the downtown will not respond to new market demands, and the rejection of the third alternative seems partially based on the assumption that suburban regional shopping centers will not respond to the same demands. Not surprisingly, the study recommended that the commission adopt a balanced system of retail facilities. The study gave a cryptic reason for the recommendation: "It is not so much a compromise as a system which recognizes the realities and necessities of modern urban development."[17] The study did not elaborate further on the need to protect the downtown but instead emphasized that the policy of timed shopping center development must be combined with "a vigorous revitalization program for the downtown."[18] The study did not specify the precise program which should be implemented in conjunction with the timed development policy, but one implication which can be drawn is that the timed development policy is valid only in the context of the city's urban renewal program and related private efforts.

14. *Id.* at 61-65.
15. *Id.* at 64-65.
16. *Id.* at 65.
17. *Id.*
18. *Id.*

This point was not extensively discussed during the hearings on the three regional shopping center map amendment petitions but will be more fully analyzed later in this article.

The commercial activities study was prepared by the well-known consulting firm of Hammer, Green, Syler Associates, Washington, D. C. and local assistance was provided by the Heart of the City Committee,—a local businessman's booster group. The study is a traditional planning statistical analysis and relies primarily on population, sales and income data. No attempt was made to gauge consumer reaction to existing downtown stores or to anticipate the demand for quality differentials among various classes of retail goods. The study divided the community's market area into three regions: (1) the primary market area, Fayette County; (2) the secondary market—seven surrounding counties in various stages of transition from agricultural to light industrial based economies; and (3) the tertiary market—thirty-nine rural middle-Kentucky counties including much of the hard-core poverty area of Appalachia.[19] The following chart gives the available population and retail shopping expenditures figures and projections on which the timing policy was based:[20]

Market Area	Number of Families	1963 Total Expenditures for Merchandise	Percent Expended in Lexington	1980 Projected Total Expenditures
1. Primary	53,000	$64,300,000	85%	$121,656,000
2. Secondary	45,000	$55,000,000	26%	$ 72,298,000
3. Tertiary	(not given)	$72,466,000	12%	projected Lexington expenditures estimated to range from $15,201,000 to $17,030,000

The study projected an increase of 44 million dollars in shopper expenditures between 1963 and 1980 and a split between the downtown and the suburbs in the ratio of 55%/45%, providing a revitalization program was undertaken. The study calculated that each square foot of retail space would generate 45 dollars worth of sales and concluded that the 985,000 additional square feet could be absorbed into the

19. *Id.* at 107.
20. *Id.* at 58-61.

community by 1980 without unduly curtailing existing retail sales.[21] The study emphasized that these figures do "not mean that a major new facility could not compete successfully in the market before that date; it means only that in such an event the market is likely to be oversaturated and that the older non-competitive facilities will be seriously affected."[22] It then examined the areas of the city which were experiencing the greatest growth, fixed the general location of the centers accordingly, and concluded by recommending that the commission allow only one center in the southeast sector by the early 1970's and one in the northern sector by 1980.[23] (See Map.) No regional centers for other geographical areas of the community were recommended.

A major stake in the shopping center market was the estimated $10,000,000 a year flowing out of the Lexington area most of this probably going to the larger metropolitan areas of Louisville and Cincinnati, each about 75 minutes from Lexington via interstate highways.[24] It was hoped that a regional center with a large regional or national department store catering to the unsatisfied middle and upper-middle class market could retain most of this slippage, which would never be regained by the downtown.

The timing policy was incorporated into the city-county land use plan. The plan recommended that several large tracts of land be reserved for the future development of a regional shopping center. It did not indicate the precise location of the first center to be built, but did indicate the general geographical area of the city in which the shopping center should be located, suggesting three alternative sites.[25] The effect of the plan was to force the commission to choose between one of the three sites. The plan also specified several other site and location criteria designed to minimize potential friction between the shopping center and competing land uses. It recommended that the centers have easy access to two major arterials serving the tributary trade area, that strip development be avoided, that buffering

21. *Id.* at 107-108.

22. *Id.* at 108.

23. *Id.* at 109-110.

24. *Id.* at 58. Estimates of the amount of slippage in studies may for private retail stores run much higher. A study prepared for Sears & Roebuck, which had for years been trying to break out of the downtown, put the figure at $87 million. First Research Corporation, *Economic and Market Analysis, Proposed Regional Shopping Center and Sears Store,* Lexington, Kentucky (March, 1964).

25. *A Plan For Land Use* at 95.

be implemented and that the regional centers be placed three to four miles apart "in order to maintain a serviceable market area."[26] This reflects the prevailing belief among developers that if the centers are too close together they will mutually suffer because of competition.[27] The recommendations contain several designed criteria: maintenance of natural features; development of a unified, functional shopping unit; and a "congenial shopping atmosphere." The study ended with a plea for "a designed quality that distinguished the center from a commercial area that happened."[28]

The timing policy ran into trouble from its inception because the study was too conservative in its population projections. It recommended that the first regional shopping center be developed between 1970 and 1975, on the basis of a projected population base of 175,000.[29] This, combined with the population of the secondary market, would give the area the second hundred thousand population most planners consider necessary to support an additional regional shopping center.[30] However, the data presented by the three applicants for map amendments indicated that by 1967, Lexington had equalled, if not exceeded, the 1967 projection.[31] This gave the three developers the wedge they needed to counter objections raised by the commission that approval of any petition was premature in view of their adopted plan. Developers could respond that immediate development was justified according to the population projections on which the timing policy was based, and that such development was consistent with the comprehensive plan.

Planning Structure In Kentucky

In Kentucky a planning commission must be formed before a city or county can engage in planning and the regulation of land use.

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26. *Id.* at 92.

27. C. Gruen and N. Gruen, Store Location and Customer Behavior, A Behavioral Approach to Optimum Store Location (Urban Land Institute Technical Bulletin No. 56, 1966).

28. *A Plan For Land Use, Supra* note 25 at 92.

29. *A Growing Community, Supra* note 6 at 4.

30. *See* H. Grossman, *Survey and Analysis of Shopping Centers in a Suburban County,* Montgomery County Planning Commission, Norristown, Pennsylvania MCPC 63-71, 22 (1963).

31. Homer Hoyt Associates, *Market Survey of Proposed Regional Shopping Center at Lakeview,* Lexington, Kentucky Metropolitan Area 3-4 (April 1967). The conclusion was based on FHA figures for the number of dwelling units in Fayette County.

Lexington and Fayette County have a joint city-county planning commission of eight members. At the time of this study, the Commission was operating under the 1966 revision of the state enabling legislation.[32] Two statutory features were significant: the preparation and adoption of a comprehensive plan is required; and subsequent map amendments must be consistent with the plan unless certain exceptions apply.[33] Section 100.213 of the statute provides:

> Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the community's comprehensive plan, or, in the absence of such a finding, that one or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission and the legislative body or fiscal court.
>
> (1) That the original zoning classification given to the property was inappropriate or improper.
>
> (2) That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of such area.

The enabling legislation's adoption of the "change or mistake"[34] rule appears to have been intended to restrict the power of planning commissions and local legislative bodies to grant map amendments. The Court of Appeals had previously held that "a reconsideration or re-examination of the conditions in any area of the city may justify a change in the zoning ordinance as it affects that area even though there has been no change of conditions in the area since the adoption of the original ordinance."[35]

The enabling legislation abandons Bassett's narrow conception of the function of the master plan as reflected in the Standard Planning

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32. KY. REV. STAT. §§ 100.111 - .191 (1969).

33. KY. REV. STAT. ANN. §§ 100.183, 100.213 (1969).

34. KY. REV. STAT. ANN. § 100.213 (Baldwin Supp. 1969).

35. Shemwell v. Speck, 265 S.W.2d 468, 470 (Ky. 1954). *See also* Louisville Timber and Wooden Products Co. v. City of Beachwood Village, 376 S.W.2d 690 (Ky. 1964), where city board of trustees was not required to follow the recommendation of planning commission.

The section also gave the Commission the power to veto any map amendment. A local circuit court held that both the planning commission and the local legislative body had to make the requisite findings in order for a map amendment to be valid. The double veto was eliminated during the 1968 session of the legislature. *See* TARLOCK, *A Comment on the 1968 Amendments to Kentucky Planning and Land Use Controls Enabling Legislation,* 57 KY. L. J. 83 (1968).

Act.[36] The comprehensive plan is not advisory in Kentucky, but it is binding on the commission.[37] It is a series of public documents separate from the zoning map.[38] It is not merely a land use map;[39] but must contain a "statement of goals and objectives, principles, policies, and standards, which shall serve as a guide for the physical development and economic and social well-being of the planning unit,"[40] as well as land use, transportation and community facilities plans.[41] The land use plan serves to allocate land for community needs "as far into the future as it is reasonable to foresee." Thus, the plan should not correspond to the zoning map when it is adopted but should serve as a set of criteria for the commission to follow in denying or granting map amendments.[42]

The legislation does not define the legal status of a land use projection incorporated into the comprehensive plan on the individual property owner. It is unlikely that the legislature intended a land use projection to be an encumbrance for the purpose of determining marketability of title. But, it does appear that the plan is intended to influence private land use decisions. Section 213 obligates the commission to follow the plan unless the two defined exceptions apply.

36. *See* BASSETT, *et. al., Model Laws for Planning Cities, Counties, and States,* 7 HARVARD CITY PLANNING STUDIES 40 (1935). *See generally* E. BASSETT, THE MASTER PLAN (1938).

37. Early lawyer-planners assigned an advisory function to the Master Plan because they wished to keep planning above city politics and they were afraid that the concept of planning would not be accepted if the plan were construed as an encumbrance on property. *See* A. BETTMAN, *City and Regional Planning Papers,* 13 HARVARD CITY PLANNING STUDIES XIII 23-43 (1946).

38. KY. REV. STAT. § 100.201 (1969) authorizes the enactment of a zoning ordinance after adoption of "at least the objectives of the land use plan elements." The drafters appear to have intended to require both adoption of a statement of goals and objectives and the land use plan, for legislation was introduced during the 1968 session of the General Assembly to change the "of" to "and." Senate Bill No. 383 (1968).

39. For a modern statement on the nature and function of the master plan see H. Pomeroy, *Some Thoughts on the Master Plan,* Westchester County, New York, Department of Planning (1951).

40. KY. REV. STAT. § 100.187 (1969). Section 100.191 specifies the research process which must be undertaken in its preparation of the plan to insure that it will be oriented toward the future. KY. REV. STAT. § 100.191 (1969).

41. KY. REV. STAT. § 100.187 (1969).

42. *See* Kozsenik v. Montgomery Township, 24 N. J. 154, 131 A.2d 1 (1957); Haar, *In Accordance With A Comprehensive Plan,* 68 HARV. L. REV. 1154 (1955). Others have interpreted the comprehensive plan to require only that the zoning power be exercised reasonably. Walus v. Millington, 49 Misc. 2d 104, 266 N.Y.S.2d 833 (Sup. Ct. 1966); Cianciarulo v. Tarro, 92 R.I. 352, 168 A.2d 719 (1961). *See also* Shelton v. City of Bellevue, 73 Wash. 2d 28, 435 P.2d 949 (1968).

This should operate to encourage private individuals to develop their property in a manner consistent with the plan for the expectation of receiving a map amendment for a use inconsistent with the plan has been substantially decreased compared to the previous law.

The definition of the comprehensive plan contained in the enabling legislation reflects many of the reforms proposed by academic planners such as Charles Haar[43] and John Reps.[44] The existing planning process has been much criticized because it produces a static document, or series of documents, which are not useful in resolving future land use conflicts.[45] Professor Haar has argued: "It is only as a series of statements and precepts, representing community choice and decision as to space needs of various activities and interrelationships of land uses, that the master plan can effectively fulfill its role as a guide to regulatory action."[46] In his 1964 Pomeroy Memorial Lecture, Professor Reps elaborated Haar's concept of the comprehensive plan as an "impermanent constitution," arguing that the plan should be adopted by the legislative body and "should show generalized proposed future land uses, circulation systems, population density patterns, and community facilities."[47] After adoption of the plan, it would be reviewed by a state-wide agency and thereafter "all discretionary review of development proposals would be guided by this plan. Appeals from local decisions could be taken to the state review agency. Further appeals to courts would be permitted only on matters of procedure or on the scope of statutory power, not on matters of substance."[48] Kentucky has adopted Haar's conception of the comprehensive plan, but has not adopted all of Reps's suggestions for the administration of land use controls pursuant to the plan. There is no state-wide agency to review planning decisions, and Reps's proposal for compensation when development of an individual parcel is severely restricted has not been adopted.[49] If adopted plans are to function as a meaningful limitation on the discretion of planning commissions

43. Haar, *In Accordance With A Comprehensive Plan, supra* note 42 at 1170-1175.

44. *See* REPS, *Pomeroy Memorial Lecture: Requiem For Zoning,* PLANNING 1964 56, 60-61.

45. *See* NATIONAL COMMISSION ON URBAN PROBLEMS, PROBLEMS OF ZONING AND LAND-USE REGULATION: RESEARCH REPORT NO. 2, 28-29 (1968).

46. Haar, *In Accordance With A Comprehensive Plan, supra* note 42 at 1174-75.

47. Reps, *Requiem For Zoning, supra* note 44 at 62.

48. *Id.*

49. *Id.* at 63.

and local legislative bodies in Kentucky the courts must take an active role in enforcing compliance with them.

Traditionally the Court of Appeals has not relied on adopted land use plan as a standard for judicial review. It has adhered to the position that map amendments are legislative decisions and that judicial review should be concerned only with the question of arbitrariness. In *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Comm.*,[50] the court confined arbitrariness to three grounds: (1) action in excess of granted powers; (2) lack of procedural due process; and (3) lack of substantial evidentiary support. The court defers to the judgment of the local legislative body so long as it is reasonable. The spot zoning rationale has been widely used to invalidate map amendments which appeared to have been granted solely for the convenience of the applicant, but apart from this limitation the court has generally been tolerant of the decisions taken by local legislative bodies.[51]

The courts have been unable to formulate meaningful criteria for judicial review because for the most part they have been reviewing *ad hoc* map amendments based on plans, if any existed, which did little more than describe the existing allocation of land in the community and spell-out some highly generalized development criteria.[52] However, as reliance on planning studies which seek to allocate land in advance of the need for the use increases, it is possible that the courts will begin to use the comprehensive plan envisioned in the 1966 enabling legislation as a new standard for judicial review. Arbitrariness could be redefined to mean failure to conform to the plan rather than a general inquiry into whether there is a rational basis for the decision. There has been some movement in this direction in Kentucky.

In *Fritts v. City of Ashland*,[53] the Court invalidated rezoning for light industry of a four-acre tract in the center of a stable residential district. The major reason for the zone change was the threat by the factory owner to leave the city. The Court characterized the case as one of spot zoning and relied on the traditional equal protection rationale, but significantly emphasized that the change was made without regard to any coordinated plan. The Court warned: "[It] is hoped

50. 379 S.W.2d 450 (Ky. 1964).
51. *See* Fritts v. City of Ashland, 348 S.W.2d 712 (Ky. 1961); Hodge v. Luckett, 357 S.W.2d 303 (Ky. 1962).
52. *See* T. KENT, JR., THE URBAN GENERAL PLAN 40 (1964).
53. 348 S.W.2d 712 (Ky. 1961).

that in the future zoning authorities will give recognition to the fact that an essential feature of zoning is planning."[54] *Ward v. Knippenberg*,[55] approved a shopping center location designated in the 1958 land use plan although the 1962 land use plan designated a different site. The Court rejected the argument that the map amendment was invalid because it was not in accordance with the 1962 interim land use plan:

> With respect to the first propositon, it seems clear that a zoning agency is not bound to follow every detail of a land use plan. As we understand it, such a plan is simply a basic scheme generally outlining planning and zoning objectives in an extensive area. It is in no sense a final plan and is continually subject to modification in the light of actual land use development. It serves as a guide rather than a strait-jacket. In fact the Commission recommended, and the Fiscal Court adopted, the shopping center location in exactly the same spot where it was shown on the 1957 land use plan. We know of no reason why the Commission could not, in the light of the latest developments, decide which of two different locations in the same subdivision area would best serve immediate requirements.[56]

A broad reading of the language would indicate that the Court of Appeals is unwilling to consider comprehensive plans binding on the commission and will not use them as a standard of judicial review. However, a narrow reading of the opinion suggests only that the Commission need not locate uses at the precise location designated in the plan provided the plan did allocate land for the use proximate to its ultimate location. The function of the court would be to examine the objectives of the plan to determine the types of use conflicts it sought to avoid and the level of use it attemped to encourage. If the map amendment would not upset the basic projected land use scheme, it could be found consistent with the comprehensive plan. Under this narrow interpretation, *Ward* would not preclude use of the comprehensive plan to invalidate a map amendment for a new use if no land had been allocated for it in the general area.

Adoption of the Lexington-Fayette County Land Use Plan

The members of the City-County Planning Commission can be broken into three categories: Two members are city and county employees and generally reflect the thinking of city and county officials; four are local business men and reflect what Sidney Willhelm has

54. *Id.* at 715.
55. 416 S.W.2d 746 (Ky. 1967).
56. *Id.* at 748.

categorized as "economic values"—that land use control should be dictated by the prevailing market situation.[56a] The last two members are employed by national companies, not dependent upon the local community for their livelihood, and represent what has been termed a collective value orientation,[57] and make a conscious effort to formulate a set of planning criteria which can be applied to an immediate controversy.

Planning-oriented legislation will be of limited utility unless the commission members perceive the plans adopted as a limitation on their discretion. They must be willing to formulate a definition of the public interest which can be applied to the controversies they face instead of acting merely as brokers between the developer and various city and county departments. It is difficult, however, for most commission members to transcend their broker role unless they are reinforced by influential segments of the community: For example, the news media or those whom Robert Dahl has categorized as the economic notables.[58] Planning interest among these groups is conspicuously lacking in Lexington. The one individual with sufficient financial resources to influence the development of the community has been content to keep his representative on the commission so that it does not interfere with his land development operations, while he engages in a prolonged status and financial struggle with the traditional establishment. The most important news media in the community are the two newspapers, jointly managed and controlled by a series of interlocking trusts. Unlike the nearby *Louisville Courier-Journal,* which takes a keen interest in the development of its community, the two Lexington papers follow the policy that whatever brings in more advertising space must be good for the entire community. The *Courier-Journal* has a limited circulation in Lexington but refuses to compete with the two local newspapers so that there is no effective "community conscience" examining commission action,

56a. S. WILLHELM, URBAN ZONING AND LAND USE THEORY 95-96 (1962). In this instance the existence of economic values are closely correlated to individualistic and present time value orientations. *Id.* at 120-122 and 145-156.

This group basically conceived their role to be that of brokers between the public and the various city and county departments, since the Commission spends approximately 80 percent of its time helping people conform their applications to local ordinances.

57. S. WILLHELM, URBAN ZONING AND LAND USE THEORY 118 (1962).

In many respects these two are the most influential members of the Commission because their arguments are generally better reasoned.

58. R. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY (1961).

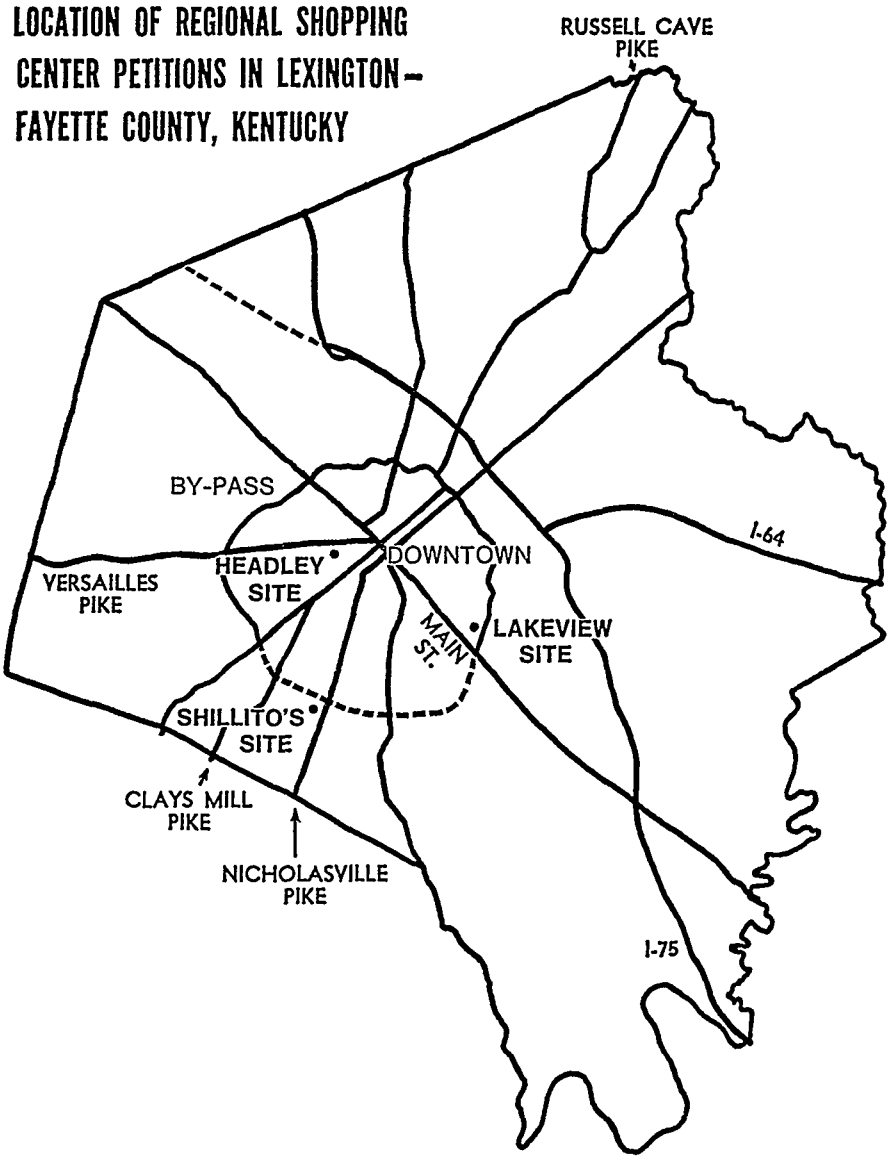
except for one citizen watch-dog group which has limited public support.[59]

The land use plan was adopted on March 2, 1967 after extensive hearings. The hearings are designed to serve several functions: They can generate public support for the plan; they can expose basic weaknesses in underlying assumptions; and they help educate commission members, lawyers, and developers about the plan's purpose and projected role in the resolution of future controversies. The educational function is important because the plan will be effective only if members of the commission perceive it as a limitation on their discretion and only if lawyers see it as a set of criteria which serve to structure the consideration of their client's petition. In light of their later behavior, it is hard to gauge the extent to which members of the commission perceived the regional shopping center recommendations as precluding them from approving more than one shopping center amendment. However, it is clear that they were aware of the consequences of the plan's adoption on expected subsequent petitions from map amendments for the construction of regional centers. It is also clear that the involved lawyers were sufficiently concerned to attempt to prevent the plan's adoption and, following its adoption, to obtain assurance from the members of the Commission that they would not follow the plan. Attorneys for the owner of a site not included in the plan urged that the plan not be adopted because "in view of Kentucky legislation it would freeze the community's possible growth for the next fifteen years."[60] Thus, the attorneys must have recognized that adoption of the plan would theoretically preclude consideration of their client's site unless they could show that the assumptions on which the plan was based were erroneous or involved zoning action in excess of statutory authority. Considerable behind-the-scenes bargaining was apparently going on, and some attorneys must have thought they could persuade individual commission members not to take the plan seriously.[61] Thus, while the commission was in theory

59. The Citizens Association for Planning monitors commission hearings and occasionally appears in court to challenge the commission or the city or county. For example, in 1966 the commission recommended that the fiscal court deny a map amendment for an industrial park in the county on the grounds that it was within the agricultural service area and thus inconsistent with the land use plan. The fiscal court approved the amendment and the Citizens Association for Planning brought suit against the fiscal court. The commission ultimately joined as a party plaintiff.

60. Hearings Before City-County Planning Commission, at 3 (Dec. 6, 1966).

61. During later map amendment hearings, the attorneys for the aforementioned non-included side argued that the side was entitled equal consideration with the



included side because "they were told that the land use plan would not preclude consideration of their property." In response, an indignant commission member replied that he "personally had given no commitment not to consider the land use plan at the hearing." Transcript of Lexington-Fayette County Planning Commission (Hereinafter referred to as Hearing of August 10, 1967) (August 10, 1967).

operating under a plan which would restrict its alternatives to three sites, the plan was not so rigidly viewed by some—perhaps the majority—of the commission members as their official statements reveal. One member stated to this author that the commission has always adhered to the philosophy that any person with a corner lot and $15,000 ought to have a go at developing it. All developers clearly met with this criteria.

The land use plan's recommendation for the timed development of regional shopping centers was under severe strain even before the plan was adopted. By January 20, 1967, the commission had before it petitions for three regional shopping centers, and each applicant announced his intention of developing the property immediately if the map amendments were granted. Thus, the commission's decisions would make or break this part of the land use plan and give a good indication of how the commission would handle other "hard" controversies in the future.

Each of the applicants applied for a map amendment which would classify the property as a planned shopping center district. The following chart indicates the names of the applicants and the nature of their zoning petitions. The sites can be noted on the map on the opposite page.

	Applicant	Status of Property Prior to Request for Rezoning	Acreage
Site No. 1	Headley Estates	Residential	
		Planned Shopping Center District[62]	80.34
Site No. 2	John Shillito	Agricultural	
		Heavy industry[63]	10.96
Site No. 3	Lakeview Estates	Agricultural	64.75
		Apartments	56.24
		Agricultural	4.00
		Apartments	54.00
		Planned Shopping Center	19.50
		Light Industrial[64]	1.25

62. This was the largest undeveloped tract in the central section of the city. The property to the north was being used for a golf course and a motel but was zoned for single family residences as was the property to the south. To the west is a developed subdivision. The property to the east contains a hospital and a

The Headley site was not recommended for a shopping center in the land use plan primarily because to do so would have violated the planning commission's location criteria, as the site was one mile from the community's existing suburban regional shopping center which opened in 1966. In addition, access was poor. The owners, however, had several positive factors in their favor. The property was one of the last of the old Lexington estates to be subdivided, and the fact that it represented "old money" meant a great deal. Further, one of the principal tenants was to be Sears & Roebuck. Sears, currently occupying obsolete facilities downtown, had been trying to move to the suburbs for several years without success. Local people were becoming concerned about incurring the displeasure of this large chain. However, a petition to rezone this site for a shopping center had been denied in 1964, a fact that would ultimately prove fatal to this developer.

The principal force behind the Shillito site was outside money—the Federated Department Stores of Cincinnati, a national retailing firm. This site was located outside the city at the time the petition was filed and presented problems of adequate urban services and access. The petitioners, however, were willing to become annexed to the city to provide urban services, and highway improvements were scheduled to take care of the access problem.

The Lakeview site was held by a local but "new money" land development syndicate. The planned shopping center was part of a larger complex which would include multi-unit residential dwellings and professional offices. This site was the closest to downtown and was the most easily accessible from a planned beltline and from the inter-

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duplex district. LEXINGTON-FAYETTE COUNTY CITY-COUNTY PLANNING COMMISSION, ZONING COMMITTEE REPORT OF PETITION FOR ZONING MAP AMENDMENT M.A.R. 66-46 (June 1, 1967).

63. This property was bounded on the north and west by a tobacco warehouse zoned for heavy industry. To the east are single family residence subdivisions and the property to the south is zoned for agricultural use. LEXINGTON-FAYETTE COUNTY CITY-COUNTY PLANNING COMMISSION, ZONING COMMITTEE REPORT ON PETITION FOR ZONING MAP AMENDMENTS M.A.R. 67-10 (February 7, 1967).

64. This property is located on the southern fringe of the city's prime residential district. The surrounding property was vacant and Lakeview Estates, which owned most of it, planned to develop the tract as a unified commercial, professional office and residential center; thus not all requested map amendments were for a planned shopping center district. LEXINGTON-FAYETTE COUNTY CITY-COUNTY PLANNING COMMISSION, ZONING COMMITTEE REPORT ON PETITION FOR ZONING MAP AMENDMENT M.A.R. 67-12 (March 7, 1967).

state highway system. The syndicate refused to divulge the identities of major possible retail tenants.

The planning commission held four hearings on the three petitions. The first was held on April 20, 1967 and theoretically was confined to the John Shillito petition, which was denied by a 5 to 3 vote. All the applicants were heard at a second hearing on June 23. After the second hearing, the commissioners deferred judgment until the third hearing, which was held on July 27. At this hearing the Headley Estates petition was approved and the other two denied. These actions prompted such a reaction from the losing parties and some members of the commission that a fourth hearing was held on August 10, 1967 to assign reasons for the decisions reached at the previous hearing. Ultimately, both the Lakeview and the Shillito applications were approved, while the Headley amendment was invalidated in a court suit.

Commission Resolution of the Controversy

In this section I summarize the four hearings. My objective is to determine the extent to which the existence of a comprehensive plan functioned to structure the arguments presented to the commission and the principles they followed in reaching their decisions. I will first analyze the Lexington planned shopping center ordinance, summarize and evaluate the arguments offered by the three petitioners at the first two hearings, and then discuss the reasons offered by the commissioners at the last two hearings for their decisions.

A. The Lexington-Fayette County Planned Shopping Center Ordinance

The Lexington-Fayette County zoning ordinance contains a special use classification for integrated shopping centers. Section 20-42 permits the establishment of a B-1P or planned shopping center district. An applicant desiring to develop a regional or other planned shopping center must comply with the requirements of Section 20-42 and demonstrate that his property, if it is not already zoned for commercial use, is suitable for B-1 or neigborhood business use. Section 20-42 was confusing because none of the lawyers was able to determine what he had to do, pursuant to the section, to obtain a favorable recommendation on his rezoning request. The statement of purpose, which appears in Appendix A, is the origin of this confusion. It attempts to state a general shopping center policy but is rendered meaningless by its

contradictory objectives. It begins with the statement that "It is not intended, nor would it be proper to forestall additional business zoning simply to prevent competition. . . ." but goes on to enunciate an extremely restrictive development policy. The ordinance appears to give the Commission the power to license shopping centers on a broad public interest standard. They can consider the impact of the proposed shopping center on the existing community retail market in addition to its impact on surrounding land use and traffic patterns.[65]

The ordinance also provides a set of location criteria,[66] designed to avoid traffic congestion, and a set of minimum design standards, *e.g.*, a two and one-half story height restriction, a 1:4 building to land ratio, and a requirement for three square feet of off-street parking for every square foot of floor space. The most important feature of the ordinance is the requirement of preliminary and final development plans. The preliminary plan must show the general layout of the buildings and their approximate total gross floor areas, ingress and egress, and the need for the proposed center at the proposed location. If the Planning Commission approves the plan, it holds a public hearing on the map amendment. If it is approved, the applicant has sixty days to submit a final development plan. If the Commission approves this, its recommendation of approval will be forwarded to the city council or fiscal court.

Zoning ordinances, designed to give planning commissions detailed control over large-tract development, give courts a great deal of trouble, and Kentucky is no exception. An earlier Lexington planned shopping center ordinance was declared *ultra vires* in *Pierson Trapp Co. v. Peak*[67] because: "Nowhere in the field of zoning law do we find any indication that the zoning authority may establish a zone or district that is limited to only one particular use."[68] The ordinance also raised serious equal protection problems because it applied only to an applicant seeking rezoning from residential to commercial use, rather than to an applicant who desired to construct a shopping center in an area already zoned for commercial use. Section 20-42 applies to all applicants desiring to construct a shopping center regardless of the classification of the property at the time they apply for

65. *See* APPENDIX A *infra.*

66. Lexington and Fayette County, Ky. Zoning Ordinance Resolution, § 20-42 (1966).

67. 340 S.W.2d 456 (Ky. 1960).

68. *Id.* at 459.

a B-1P classification. The 1966 enabling legislation permits the establishment of special purpose districts and specifically "planned business districts," eliminating statutory objections voiced in *Pierson Trapp*.[69] Ordinances which require a development plan as a prerequisite to approval also are challenged on the grounds that they constitute an unlawful delegation of legislative functions to administrative bodies. Section 20-42 should contain sufficient standards to overcome the delegation attack, and Kentucky has adopted the Davis view that the courts will not require precise standards when power is delegated, so long as the applicant's right to procedural due process is protected.[70]

B. POSITION OF PETITIONERS

The following tables are a summary of the arguments advanced in favor of and against each of the petitions. Many of the arguments are found in the typical zoning hearing. I have seen no need to elaborate, but have chosen to concentrate on those arguments which link the petitions with the objectives of the comprehensive plan.

ARGUMENTS IN FAVOR OF PETITION

Petitioner

1. John Shillito

Argument

The shopping center would be a unified development and would be consistent with the zoning policy of preventing unattractive strip developments. The site was near the intersection of a major radial and circumferential thoroughfare.

The shopping center is in the immediate area of one of the three alternative sites designated by the land use plan. The center was consistent with the timing policy of the comprehensive use plan because it would not be opened until 1972.

Market studies were favorable. The center would recapture some of the retail slippage going to Cincinnati and Louisville. They had widespread support among citizens and businessmen.

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69. KY. REV. STAT. § 100.203 (1) (e) (1969).

70. Butler v. United Cerebral Palsy of Northern Kentucky, Inc., 352 S.W.2d 203 (Ky. 1961).

Petitioner

2. Headley Estates

Argument

The Headley family had a long association with Lexington and had made great contributions to the community.

They had an "understanding" that adoption of the land use plan would not affect consideration of their petition.

They had a major client, Sears & Roebuck.

Petitioner

3. Lakeview Estates

Argument

The site chosen was superior because the use patterns of the adjoining lands were established and stable.

Market surveys indicated that they would enjoy some $10 million additional sales as compared to the Shillito site.

Access was better than it was at the Shillito site.

The Lakeview site was complementary with downtown because of its direct access out Main Street.

The Lakeview site would be the cheapest to the city because urban services were already extended and no widening of streets would be required to reduce traffic congestion.

Attorneys for Lakeview Estates and John Shillito agreed that the comprehensive plan required the Commission to choose one of three alternative sites and that only one map amendment would be granted. John Shillito had the most difficulty because the planning commission staff recommended that this petition be denied. Throughout the hearings the staff played a limited role, but their reasons for denial did serve to structure much of John Shillito's argument. The staff first argued that development of the Shillito site was premature because of the lack of urban services and because of the access difficulties. This reason is the usual justification for timing ordinances, and has not been widely accepted by the courts. The court decisions have in part been concerned with the discrimination which results if pre-

mature development is sought to be prevented without a comprehensive community plan.[71] If the community can demonstrate that its plans contemplate development of the property within a reasonable period of time, courts should be more tolerant of local zoning decisions designed to implement a timed development policy for valid reasons. For example, decisions designed to coordinate development with urban services or prevent the under-utilization of land should be upheld.[72]

The second reason is more confusing and opaque. It appeared that the staff was asserting the right to apply the public interest standard in the Preamble to Section 20-42. A staff member explained that while the site fell within the "broad and general framework of the commission's land use plan,"[73] the plan did not specify the final location of any of the centers. This caused problems because the land use categories for the surrounding land were designated without specific regard to the possibility of a regional shopping center.[74] He

71. Courts have been hostile to the argument that residential growth should be deferred or excluded because it would be costly for the city or county to provide adequate urban services. *See* National Land Investment Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1965) and Board of Supervisors of Fairfax County v. Carper, 200 Va. 653, 107 S.E.2d 389 (1959). *But cf.* Josephs v. Town of Clarkston, 24 Misc. 2d 366, 198 N.Y.S.2d 695 (Sup. Ct. 1960). These cases are distinguishable from this problem because they have involved attempts by small, middle and upper-middle class residential communities to exclude lower income groups through density controls. The cases should not be read to prevent a city which is in the process of furnishing urban services such as highways and streets to an area to defer development until the services are adequate providing it was done pursuant to a reasonable community development plan. *Cf.* Provincial Development Co. v. Webb, Cir. Ct. No. 7973, Fayette County, Kentucky (1961) which held that the planning commission could divide the county into an urban and rural service district and deny a map amendment for a subdivision proposal which would encroach on the rural service district.

72. Courts will still continue to be hostile to land reservation decisions, if they do not believe it is probable that the development projected in the plans will occur. In *Biske v. City of Troy* the city refused to permit the third gasoline station at an intersection because their master plan, which had not been adopted, envisioned that the corner would be the business and professional center of the city. The intermediate appellate court upheld the city in an opinion highly favorable to the use of comprehensive planning but was reversed by the Michigan Supreme Court. The court was extremely skeptical that the development envisioned by the city would occur and suggested that while a master plan might be used to regulate development in a "vacant, virgin community," its validity in an "improved and developed community" was doubtful. 381 Mich. 611, 166 N.W.2d 453 (1969) *reversing* 6 Mich. App. 546, 149 N.W.2d 899 (1967). The case again illustrates the need for a scheme of regulation with compensation.

73. Hearing of April 27, 1967 at 15.

74. *Id.* at 15-19.

explained that if the center were approved, changes in the land use plan would have to be made to incorporate the center into the site. Apparently the staff was arguing that approval of Shillito's would constitute spot zoning. However, such an allegation is inconsistent with the commission's adopted land use plan, which implies that a shopping center at any one of the alternative sites would not be *per se* incompatible with the surrounding territory if proper steps, such as good design and buffering, are used to harmonize it with surrounding uses.

The core of the John Shillito presentation was devoted to attacking the staff's first two recommended reasons for denial. Store executives and plaintiffs testified that the site was chosen because it would be at the intersection of major circumferential and radial thoroughfares.[75] These highways were not completed at the time of the hearing, but correspondence with the Governor and the Department of Highways was introduced to show that completion of the highways had high priority.[76]

The John Shillito Company also announced their intention of providing their own police and fire protection as well as sewage disposal facilities. Their attorney argued that the proposed center was consistent with the timing policy of the land use plan because it would not be completed until 1972.[77]

Objectors argued that the Shillito site would constitute spot zoning under decisions of the Kentucky Court of Appeals. Regional shopping centers have always been vulnerable to the charge of spot zoning because they involve large tracts of vacant land on the fringe of the city which are, and which will often continue to be, different from the uses made of the surrounding area.[78] A leading Kentucky case, not cited and reversed on other grounds,[79] held that the rezoning of a 30-acre tract from residential to commercial uses, would constitute a *prima facie* case of spot zoning. The Commission was not impressed with the spot zoning argument.[80] This attitude is consistent with that

75. *Id.* at 37.

76. *Id.* at 50-51.

77. *Id.* at 52-53.

78. *See, e.g.,* McNaughton v. Boeing, 68 Wash. 2d 659, 414 P.2d 778 (1966).

79. Pierson Trapp Co. v. Peak, 340 S.W.2d 456, 461 (Ky. 1960).

80. The attorney relied principally on Fritts v. City of Ashland, 348 S.W.2d 712 (Ky. 1961) and Hodge v. Luckett, 357 S.W.2d 303 (Ky. 1962). *Fritts* invalidated the rezoning of a four acre tract in the midst of a stable residential neighborhood from R-2 to light industrial for the sole reason that the owner of

of recent cases from other jurisdictions, which have largely abandoned the Euclidian fallacy that all non-residential uses are incompatible with residential uses. Some of the cases simply do not discuss spot rezoning in reviewing map amendments for regional shopping centers.[81] Few have been as explicit as the Ohio Supreme Court, which took the position that the rezoning of a tract as large as 80 acres could not state a *prima facie* case for spot zoning.[82] Several cases have even approved the rezoning of large tracts on the fringe of the city for regional shopping centers in the absence of a land use plan or similar policy source, on the theory that there was a need for the center and that the city must be given the right to provide for these needs in advance of existence of the plan.[83] Perhaps the courts are beginning to presume that the performance standards increasingly contained in planned shopping center ordinances can adequately harmonize the shopping center with surrounding land uses.[84] The Kentucky Court of Appeal should have no difficulty sustaining the Lexington method of allocating shopping center land against a charge of spot zoning unless the aggrieved party can demonstrate that the criteria used by the plan in selecting the alternative sites were arbitrary or irrational.[85]

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a factory threatened to leave the city if he could not build a factory on the site. *Hodge* invalidated the rezoning of a low-lying 18½ acre tract from residential classification to light industrial finding that: "The reclassification in this case is not part of an orderly and systematic scheme of planning, nor has there been any change in the surrounding territory except that it has become more instead of less residential in character." *Id.* at 305.

81. For a review of the early cases *see* Bartlett, *Shopping Centers and Land Use Controls,* 35 NOTRE DAME LAWYER 184, 197-202 (1959).

82. Willett v. Village of Beachwood, 175 Ohio 557, 197 N.E.2d 201 (1964) *rev'g* 119 Ohio App. 403, 188 N.E.2d 625 (1963) and *aff'g* 87 Ohio L. Abs. 143, 176 N.E.2d 337 (1961).

83. *See* Pressman v. City of Baltimore, 222 Md. 330, 160 A.2d 379 (1960). *Cf.* Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 202 N.E.2d 777 (1964).

84. *Cf.* Luery v. Zoning Board of Stamford, 150 Conn. Supp. 136, 187 A.2d 247 (1962). The court sustained the rezoning of a 34 acre tract for an industrial park on the fringe of the city because it was in accordance with a comprehensive plan and adjacent property owners would be protected by the buffering standards contained in the ordinance.

85. The closest case to take this position is Bucholz v. City of Omaha, 174 Neb. 862, 120 N.W.2d 270 (1963). The court sustained the rezoning of a 103 acre tract for a regional shopping center and dismissed the argument that it constituted spot zoning. *See* Cunningham *Land Use Control—The State and Local Programs,* 50 IOWA L. REV. 367, 397-399 (1965). *See generally* Platt, *Valid Spot Zoning: A Creative Tool for Flexibility of Land Use,* 48 ORE. L. REV. 245 (1969).

Because the Headley Estates site was not included in the land use plan, their attorneys were forced to make a frontal attack on the plan. Their first argument was that non-inclusion was irrelevant because they had an "understanding" that adoption of the land use plan would not prejudice consideration of their petition.[86] They also tried to show that conditions in the area had changed since the preparation of the plan and the previous denial of their petition in 1964. The basic reasons for non-inclusion of the site were its close proximity to the existing regional shopping center and poor access. The Headley traffic expert based his case on the premise that most of the traffic would not use the poor access routes.[87] But under questioning by the commissioners he did indicate that existing conditions were not good. The director of the planning staff was questioned about the suitability of the site for a shopping center,[88] but he refused to state whether a shopping center at that site would be in the best interest of the community. He did, however, state that the traffic situation at the intersection was "bad" and that the proposed development would make it "worse."[89]

These arguments assume that the comprehensive plan is performing its classic function. In Bettman's words: "It embodies the interrelationships between different classes of public improvements, streets, parks, riverfront structures, and locations of residential, business, industrial, etc., areas, based on studies of need through a considerable period of time."[90] It is theoretically within the special competence of the planning commission to assess arguments directed to this function of the comprehensive plan. However, the most striking feature of these hearings was the fact that the commission also attempted to choose between the three competing applicants on the basis of which shopping center would have the most beneficial impact on the overall development of the community. Neither the state enabling legislation, judicial decisions, nor the Lexington planned shopping center ordinance furnished the Commission with criteria to make this kind of decision. Having turned from a limited but manageable use of the comprehensive plan to this broad conception, it is hardly surprising

86. Hearing of June 23, 1967 at 18.
87. *Id.* at 32-47.
88. *Id.* at 60-62.
89. *Id.* at 62-65.
90. A. BETTMAN, *City and Regional Planning Papers, supra* note 37 at 42.

that the commissioners were subsequently unable to offer a rational explanation for their decision.[91]

This line of inquiry is illustrated by the testimony of Dr. Homer Hoyt, a nationally-known real estate expert, for the Lakeview proposal. Hoyt argued that the Lakeview and Shillito sites served mutually exclusive trade areas. This concept was based on the assumption that shoppers approaching Lexington from the south and east on the Interstate would stop at the Lakeview center but not at the Shillito site because the Shillito site has no Interstate access. However, completion of the proposed bypass to the Shillito site would put it only fifteen minutes from the Lakeview site. It is hard to believe that shoppers outside the Lexington area would be put off by an additional drive of fifteen minutes. This point was recognized, and Dr. Hoyt's testimony largely discredited.[92]

C. THE PROCESS OF COMMISSION DECISION: THE LAST TWO HEARINGS

Prior to the third hearing, on July 27, 1967, one of the Commission members attempted to convince his fellow members to decide on one of the three sites at an off-record meeting so that they could present a unified front at the public hearing.[93] He believed that the Lakeview site was most consistent with the land use plan because of its superior access and because it could be functionally related to the downtown area. He hoped to persuade his fellow members to adopt a unit rule and recommend this site, but they refused.

The third hearing opened with a request by one commissioner that each petitioner agree to reduce his application to 40 acres because, if they did not do so, approval of one petition would necessarily affect disposition of the other two.[94] After some sharp discussion among themselves to the effect that the whole purpose of the hearing was to

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91. For an enlightening discussion of the analagous problem of television station license renewals see Jaffe, *WHDH: The FCC and Broadcasting License Renewals,* 82 HARV. L. REV. 1693 (1969).

92. In response to a question from a Commission member Dr. Hoyt admitted that no iron curtain separated the two potential market areas but contended that Shillito's was farther away from the major secondary and tertiary trade area to the east and thus Lakeview had the superior site. Hearing of April 27, 1967 at 131.

93. Interview with member of Lexington-Fayette County Planning Commission, March 21, 1968.

94. Transcript of Hearing, Lexington-Fayette County Planning Commission 2 (July 23, 1967) (Hereinafter referred to as Hearing of July 23).

choose one site from among the three, the proposal was defeated.[95] However, a few minutes later the same member announced he preferred "to vote right down the line for every one of them."[96] This illustrates that, after months of public hearings about the land use plan, at least one member had great difficulty in reconciling its recommendations with his personal economic value orientation. Following this exchange, the attorney for the Headley Estates saw an opportunity to win approval and orally attempted to amend his petition to 45.6 acres. He did not follow the Commission's established amendment procedure nor did he specify which 45.6 acres he wished to have zoned.[97] This procedure apparently took the other attorneys by surprise because they did not object. This was one of the pivotal points of the hearing, for just before the voting on the Headley site one member remarked that he felt "very good about the applicant" since it had reduced its request from 80 to 45.6 acres.

Another commissioner moved to approve the Headley site on two grounds: (1) that the character of the neighborhood had changed since 1964 when the petition was first denied, and (2) that rezoning for outsiders had been approved in the past so that it was time to approve one for a local man.[98] This argument also surprised the other two applicants because they did not object to the motion, apparently confident that it would be denied. After a brief discussion among the commissioners the motion carried by a vote of five to three.[99] The two members holding a collective value orientation voted to deny approval of the petition. Another commissioner immediately moved to deny the petition of John Shillito on the grounds that the community was now adequately served by regional shopping centers. Another stated that since the commissioners had committed themselves to the land use plan, more time was needed for rediscussion of the evidence;[100] another immediately moved to table the remaining two requests.[101] This motion failed to carry and the commissioners began to debate

95. *Id.* at 17.

96. *Id.* at 21.

97. The attorney for Headley Estates conceded at a subsequent hearing that they had made no formal request to amend their petition. Hearing of August 10, 1967.

98. Transcript of Hearing, Lexington-Fayette County Planning Commission, 20-21 (July 27, 1967).

99. *Id.* at 22.

100. *Id.* at 23.

101. *Id.*

for the first time just what the legitimate purpose of zoning might be in relation to the timing of commercial development.[102] After some loose talk about not inhibiting competition and the ability of the free market to avoid oversaturation, the motion to deny the Shillito petition was carried. A motion to deny the Lakeview petition carried by a six to one vote—one member had previously stopped voting. At this point the non-voting member observed that it was customary to attach reasons for commission recommendations and challenged his fellow members to come up with one good reason for their action. The members began to discuss whether this custom was mandatory or discretionary. As the hearing drew to a close one member summed it up when he told the secretary trying to take accurate minutes, "don't try and say we were consistent today."[103]

The Commission convened again on August 10, 1967 for a meeting which was styled in their minutes as "Special Meeting for Reasons for Regional Shopping Center Action." At this meeting, reasons for commission action were advanced but not amplified, questions about the legitimate function of the land use plan and the timing policy were raised but not answered and numerous motions were made which never came to a vote.

The chairman began by announcing that the Commission had not in fact approved any regional shopping centers because the reduction of the Headley Estates petition from 80 to 45.6 acres "eliminated its consideration as a regional shopping center."[104] A little later in the hearing another member questioned the validity of the oral amendment, since Commission procedures did not permit oral amendment to petitions. Also, neither the Commission members nor the director of the planning could ascertain just which 45 acres out of the original 80 acres had been approved. The chairman summarily dismissed

102. *Id.* at 34.

103. *Id.* at 44.

104. Hearing of August 10, 1967 at 5. He also argued that a citizen of long standing in the community should not be denied the right to develop his property and that conditions had changed in the area since the petition was denied in 1964. This argument was apparently an application of KY. REV. STAT. § 100.213(2) (1969), which provides that a map amendment may be granted if there have been "major changes of an economic, physical or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of such area." The land use plan had been adopted five months prior to the hearing and would seem to be the appropriate comparison date rather than the time the last map amendment for the property was denied. The member did not elaborate on the changes which had occurred or when they had occurred.

these objections, saying that the exact location of the center could be worked out in the development plan.[105]

This ended the explanation of the reasons for approving the Headley petition and the Commission moved on to Shillito. One of the two Commission members gave a lucid statement of the timing policy and concluded that he had reasoned that if one petition had been approved, all others must be denied. He also justified his denial on the necessity to protect the financial integrity of Lexington's urban renewal program. This point had been tangentially raised during the hearings but was never fully discussed. Two major plans dealing with the downtown—the Commercial Activities Analysis and a Design Plan for Downtown[106]—had been prepared. The Design Plan produced a conventional model of a "core beautiful" but it did not lead to the adoption of any radical implementation programs. A small urban renewal program is currently underway but it is confined to removing railroad tracks which parallel the main street, one block west, causing frequent traffic jams, and rehabilitation of some adjacent buildings.[107] At this time it is doubtful that the program will produce more than a few new parking lots and streets. There was no comprehensive urban renewal program for the Commission to protect, and they wisely did not choose to stress this argument although it might have more merit, given a more effective program. The lack of a comprehensive redevelopment program also casts considerable doubt on whether the conditions specified for adoption of the timing policy have been fulfilled.

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105. *Id.* at 6-7.

106. City-County Planning Commission, Lexington-Fayette County, Ky. *Design Plan for Downtown Lexington, Ky.*

107. Lexington's first urban renewal site was designated in mid-1965 and approved by the Urban Renewal Administration in June, 1968. The site contains 83 acres and forms a narrow rectangle through the core of the city. Thirty-two acres will remain intact if the property owners are willing to bring their buildings up to standards adopted by the urban renewal commission. Seventeen acres will be available for new private developments and the remaining 34 acres will be used for street widening. The Lexington and Fayette County Planning Commission, *The Lexington Downtown Plan* 17 (1967). The major activity as of late 1967 was the signing of a grant and loan contract with the federal government for $5,717,722.00 to remove a section of the main line of the Chesapeake and Ohio Railroad. A civic center for the site has been proposed but there has been no agreement as to its location or content. City of Lexington, Progress Report for 1966, 35-36 (1967). The rehabilitation project does not appear to be successful, as a student pilot study of one block on Main Street indicated that many established businesses are leaving the block rather than incurring the expense of bringing their property up to commission standards.

The Commission quickly passed on to Lakeview Estates, whose attorney moved that the Commission list the requirements for a regional shopping center under the B-1P ordinance and explain how the Headley petition met them while Lakeview's did not.[108] The chairman moved that the Commission comply with these requests but one commissioner objected because the staff would have had to stop all work in order to comply with it. The attorney for John Shillito offered to answer the questions for the Commission but the minutes do not record the acceptance of his offer. The chairman decided to withdraw his motion until "some decision could be reached on the forwarding of the recommendation."[109] Another member immediately moved that the Commission invalidate all previous actions on the three petitions.[110] In response to this motion the chairman justified his vote for the Headley site because the Commercial Activities Analysis stated that a new regional shopping center would be needed by 1970 providing Sears stayed downtown. "He knew for a fact that Sears studied our downtown area and tried to find a suitable location" and since they could not find one "he would like to do everything he could to get them a new store."[111] Another commissioner then reminded him that the Commercial Activities Study had been general and was not intended to single out any one business for special consideration.[112]

The motion to invalidate previous action was defeated by a five to three vote. This triggered a long harangue by one commissioner against the actions of his fellow members, the gist of which was about the Commission's duty to follow their adopted land use plan. The intensity of his remarks is suggested by the following excerpt:

> I personally have reached the point where I can no longer say that the Commission's actions are reasonable, logical, based only on public knowledge, public facts and are something this community can be proud of.[113]

The other commissioners were rather stunned. One member mused that perhaps the Commission was trying too hard to control the economy. He allowed that it was proper to exclude gas stations from residential neighborhoods, but if a firm was willing to invest $14 million

108. Hearing of August 10, 1967 at 8-9.
109. *Id.* at 23-24.
110. *Id.* at 48.
111. *Id.* at 48-49.
112. *Id.* at 50.
113. *Id.* at 63.

in the community, it was not the function of the Commission to prevent it.[114] More discussion about the relationship between zoning and the control of competition followed, but no conclusions were reached. A motion to forward the Lakeview and Shillito petitions to the local legislative bodies without approval of a preliminary development plan failed. The attorney for Lakeview Estates renewed his request for a comparison of his petition with Headley's but shortly withdrew it and asked that the Commission delay forwarding any recommendations to the city council so that his client could consider filing a petition for smaller acreage. This seemed to please everyone and was carried unanimously along with a motion made by the attorney for Shillito that the commission forward its recommendations to the fiscal court based on whatever material the Commission had in their files.[115] The hearing then closed.

Epilogue

Few people were satisfied with the Commission's action. John Shillito Company took its petition to the county fiscal court, which approved it. However, the petition was denied because both the Planning Commission and the fiscal court had to approve it. Shillito appealed the Planning Commission decision to the circuit court, but before the case was heard the Commission reversed itself and approved the petition after a rehearing on February 29, 1968. The fiscal court approved it on March 6, 1968. The Lakeview Estates petition was sent to the city Board of Commissioners pending a request to amend it. The petition was amended to reduce the size of the total planned development from 236.19 to 94 acres while the regional shopping center site was reduced from 58 to 53.1 acres. The petition was approved by the Planning Commission on January 25, 1968 and by the city Board of Commissioners on February 27, 1968.[116] Headley Estates was not without its troubles, though the city Board of Commissioners concurred in the Commission recommendations. Adjoining neighbors brought suit alleging that commission approval was inconsistent with the comprehensive plan.

The circuit court invalidated the Headley map amendment.[117] Relying on *American Beauty Homes Corp. v. Louisville and Jefferson*

114. *Id.* at 68.
115. *Id.* at 72-102.
116. Letter from City-County Planning Commission to author, June 26, 1968.
117. Baker v. Lagrew, Cir. Ct. No. 21174, Fayette County, Kentucky (1968).

County Planning and Zoning Comm.,[118] the court framed the issue as follows: "[W]as there substantial evidentiary support for the recited findings of the city legislative body for the action of the Planning and Zoning Commission?" The court held that a sufficient evidentiary showing had not been made because adoption of the land use plan precluded the city from locating a regional shopping center on the Headley property unless the statutory requirements had been met. The court then held that there had been no change of conditions since the 1964 denial, and that there was no evidence that the recently-adopted land use plan was in error.[119] The court distinguished *Ward v. Knippenberg*, which had seemed to hold that the Commission did not have to follow every detail of a land use plan:

> This is not to say, however, that the basic schedule outlining planning and zoning objectives in an extensive area can be completely ignored without findings based on substantial evidence that the plan was in error in its applicability to the subject property, or that conditions have changed since the actual land use development, or otherwise.[120]

The court's decision is narrow, holding only that the Commission had not made the necessary evidentiary findings.[121] However, the opinion does upgrade the function of adopted community plans because of the court's willingness to use them as a new standard for judicial review. It reiterated the statement in *American Beauty Homes* that there is "a presumption in favor of the original zoning plan,"[122] but it appears to have defined "plan" differently than the court did in *American Beauty Homes*. That court relied on an earlier Kentucky case[123] which clearly considered the plan to be only the zoning map. The Fayette circuit court seemed to treat the land use plan as an integral part of zoning.[124]

In February, 1968, the commissioners took steps to make their actions consistent with the land use plan by amending it. The timing policy and the policy of pre-selecting a limited number of alternative sites were abandoned because they did not allow for ". . . a reasonable

118. 379 S.W.2d 450 (Ky. 1964) (Hereinafter referred to as *American Beauty Homes*).
119. Baker v. Lagrew at 6.
120. 416 S.W.2d 746 (Ky. 1967).
121. Baker v. Lagrew at 7.
122. 379 S.W.2d 450, 458 (Ky. 1964).
123. Scholoemer v. City of Louisville, 298 Ky. 286, 182 S.W.2d 782 (1944).
124. Baker v. Lagrew at 8.

choice among other sites which might be set aside for future regional shopping centers. By being too restrictive such sites might be preempted for other uses and therefore might not be available for commercial uses at some long range future date."[125]

CONCLUSION

This study indicates that enabling legislation requiring adoption of community development use plans as a basis for regulation will not insure rational decisions. The decisions of the Planning Commission cannot be considered rational, if the term is defined as a thorough and objective consideration of a series of proposed alternative choices according to the previously agreed upon criteria. The initial choice of the non-included site was based on reasons which sharply deviated from the criteria the previously adopted plans deemed relevant. As a result, the Commission was unable to give adequate explanations for their decisions. Decisions such as these impeded community acceptance of planning, breeding disrespect and cynicism of the planning process. Planning is not viewed as a legitimate institution to control land development. The decision-making process must be improved. The need for improvement is especially critical since broader grants of planning and regulatory authority are being delegated to units of local government. If these delegations of discretion are not accompanied by new standards of judicial control, the decisions taken by the Lexington-Fayette County Planning Commission suggest that increased opportunities for arbitrary and discriminatory regulations will be created with little corresponding benefit to the public.[126]

The first question that can be asked about the decisions reached is whether the right people made them. Two important value orientations of the members appear to have been operative. The first is the possibility that political corruption existed so that objective decision-making was impossible. At an inquiry convened by the county judge to investigate corruption in Lexington shortly after the hearings were concluded, an attorney for John Shillito Company testified that he was told by a local financier, allegedly able to control the commission, that $35,000.00 would be necessary to secure a favorable recommenda-

125. Louisville Courier-Journal, July 27, 1968, at 1, col. 1.

126. *See* MAKIELSKI, *Zoning: Legal Theory and Political Practice*, 45 J. URBAN LAW 1 (1967).

tion for his client.[127] No criminal charges have been filed but the testimony indicates a factor which may always be present to interfere with the public interest. However, a more fundamental value orientation appears to have precluded acceptance of the plan by a majority of members. Basically, they were unable to reconcile the economic assumptions on which the plan was based with their own deeply engrained values. Their faith in the ability of the free market to achieve an optimum allocation is an example of the individualistic bias which characterizes the administration of American land use controls.[128] The continued existence of this value orientation suggests that professionally prepared land use plans can only function as a basis for local governmental decisions if they incorporate widely shared community values. Assuming that the functions of planning needs to be expanded, the alternative is to re-allocate the decision-making authority or re-educate lay participants.

Current reform proposals often assume that the decisions are being made by the wrong persons.[129] To remedy this it has been suggested that a city draw up a development code including detailed performance standards and then permit a professional planner to approve or disapprove individual requests for development. Professor Reps in his 1964 Pomoroy Memorial Lecture proposed the use of more elaborate community development plans which project future land uses and which are accompanied by state-wide review by a professional administrative staff of all local decisions made by lay bodies.[130] The Kentucky planning statute requires the preparation of plans along the lines envisioned by Reps but does not create a non-lay reviewing body other than the judiciary. This study provides support for the argument that more professionally trained, and hence more "objective," reviewing bodies are needed. However, it is also possible that the Lexington-Fayette County plans, prepared with the assistance of a technical staff, could function more rationally if the conceptual relationship between the adopted plans and subsequent map amendments and other regulations were made more precise.

A major justification for attaching legal consequences to the preparation and adoption of community development plans is that they

127. Louisville Courier-Journal, Feb. 12, 1968, § B, at 3, col. 3.

128. Mandelker, *The Role of Law in the Planning Process,* 30 LAW & CONTEMP. PROB. 26 (1965).

129. For a survey of current reform proposals see Note, *Administrative Discretion in Zoning,* 82 HARV. L. REV. 668 (1969).

130. Reps, *supra* note 44 at 62.

will permit more sophisticated regulatory decisions to be made in a non-discriminatory manner.[131] They can infuse more direction into the vague statutory mandates that land use controls be enacted pursuant to the health, safety and general welfare of the community. While the complex inter-relationships between land uses and their impact on factors such as traffic flow and the economic and social development of the community cannot yet be calculated with mathematical precision, reliance on previously adopted plans should be able to produce more rational land use patterns than are achieved under the present process of largely *ad hoc* decisions. The time at which community development plans are prepared and adopted is the most appropriate time to consider these inter-relationships and resolve competing claims for land allocation. It is at this stage that the impact of various alternative use patterns on the development of the community can best be appraised.[132]

Under most existing judicial definitions of the comprehensive plan there is only one crucial stage at which legislative or administrative discretion is subject to review. This is the request for a map amendment, variance or special exception. However, under the Kentucky statutes and Reps's proposals there are now two crucial discretionary stages subject to review: at the time the plan is adoped, and when it is applied. At the first stage the planning unit must decide whether to adopt a given development standard or allocate a given amount of land for a projected use in preference to other uses. At the second stage a particular request for development is evaluated in light of earlier general decisions about the desired nature of community development as expressed in the plan. The decisions which were the subject of this study raise the question whether the amount of discretion delegated to the planning commission or legislative body should differ depending on which of the two stages of decision-making is involved.

Greater discretion should be permitted when the plan is adopted than when it is applied. At the time of adoption a number of alternative development policies should be considered and choices made from them. The role of the judiciary—or any reviewing agency—should

131. Perin, *The Noiseless Succession From the Comprehensive Plan,* J.Am.Inst. P. 336 (Sept. 1967).

132. This analysis assumes that there will be increased public participation at the goal-formation stage of the planning process. This will, of course, be difficult to achieve. *See* A. ALTSHULER, THE CITY PLANNING PROCESS 306-32 (1965).

be to insure that policy choices were based on considerations consistent with the permissible objectives of land use controls, and that the decisions were reached consistent with concepts of procedural due process. But having adopted the plan, the planning commission, local legislative body or other decision-making body assumes a duty to follow it. The function of the judiciary or other reviewing body is not merely to insure that the decision was not arbitrary, but also that it was consistent with the adopted plan.[133] Decision-making units should still be permitted wide discretion in applying the plan, but they should be more restricted than in adopting the plan. Their decisions should still be presumed reasonable, but they should have a greater burden in justifying them.

Courts can limit the scope of delegated discretion by defining with greater precision the reasoning process which a planning commission must follow in applying a comprehensive plan.[134] The decision making unit should have a duty to submit a written statement. This would require more than a conclusionary statement of reasons paraphrasing the statutory standard. The courts can require that the statement of reasons be factual rather than conclusionary. This has been done in several recent cases.[135] The statement of reasons should demonstrate how and why the policies and land allocation projections contained in the plans were applied to a particular tract. This study indicates the need for such a requirement. At the fourth hearing some members of the Commission were unclear about their duty to submit reasons for their recommendations. This strongly suggests that they did not consider that the plan imposed any constraints on them in making their decision. If their duty to attach reasons had been clear from the outset, one can speculate that the hearing might have been confined to an application of the plan. The commissioners might have felt that they were under a duty to choose one of the two sites

133. McBride and Babcock do not recommend that communities be required to adopt a master plan, but if one is adopted, "it follows that this is a material fact in any judicial determination of the reasonableness of that ordinance." McBride & Babcock, *The Master Plan—A Statutory Prerequisite To A Zoning Ordinance?*, 12 ZONING DIGEST 353, 358 (1960).

134. L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION, 595-623 (1965).

135. *See, e.g.*, Blair v. Zoning Board of Appeals, City of Chicago, 84 Ill. App. 2d 159, 228 N.E.2d 555 (1967); Hunt v. Board of Appeals of Wilman, 227 N.E.2d 742 (Mass. 1967); Thomas v. Busch, 151 N.W.2d 391 (Mich. 1967) and Coderre v. Zoning Board of Review of Pawtucket, 230 A.2d 247 (R.I. 1967). *See* Comment, *Judicial Control Over Zoning Boards of Appeal: Suggestions for Reform*, 12 UCLA L. REV. 937, 949-53 (1965).

included in the plan, or to undertake a more complete inquiry into the reasons why the Headley site was not included in the plan. They could also try to determine if the "change or mistake rule" incorporated into Section 213 was applicable or if the plan should be amended. In either case the plan would have had a greater role in rationalizing the decision-making process than it did.

It has been suggested that a higher burden of proof should be placed on an applicant seeking to invalidate a decision made pursuant to an adopted plan.[136] However, I would urge that a greater burden be placed on the city to justify its decision. This standard of judicial review should be explicitly recognized as non-constitutional. That is, it would not be enough for a local governmental unit to prove that the decision was not confiscatory or discriminatory and that reasonable minds could differ over its wisdom. A decision would still be presumed reasonable, but as a defense the applicant should be able to prove that the city did not present evidence of substantial compliance with the development policies and land allocation projections contained in the plans. This standard would require courts to invalidate decisions which had been formerly upheld under the debatable rule, and thus property owners and developers would have greater protection from arbitrary decisions above that which now exists. Correspondingly the public interest would be furthered because a greater duty of loyalty to more objective standards would be encouraged.

This study also raises a more difficult question that courts and reviewing bodies must face if the adoption of a plan as a prerequisite for land use regulation becomes mandatory. To what extent can and should courts question the policy objectives incorporated into a plan? Throughout the preparation of the plans adopted by Lexington and Fayette County it was assumed that existing retail markets should be protected by regulating the entry of new competition. The use of zoning for this purpose is not free from doubt, as the planners were apparently aware,[137] yet no attempt was made by the lawyers or the Commission until the final hearing to question the legitimacy of the timing policy. The plan contained objectives which were of doubtful legal validity and this seems, in part, to have been the reason it was not accepted as a constraint on members of the Planning Commission.

136. Doeble, *Horse Sense About Zoning and the Master Plan,* 13 Zoning Digest 209 (1961).

137. The 1962 interim land use plan referred to Mandelker, *Control of Competition as a Proper Purpose in Zoning,* 14 Zoning Digest 33 (1962).

It is also arguable that the timing policy diverted the commissioners' attention from the valuable design and location criteria incorporated into the plan and rendered this criteria less influential than it should have been.

The failure of the courts to define with more precision the permissible objectives of land use regulation frustrates the realization of many desirable planning objectives. Some communities are reluctant to undertake innovative land use regulations because of substantial doubt over their validity. In others, the failure of courts to set more precise guidelines encourages communities to experiment with regulatory techniques which become sophisticated tools of discrimination and divert attention from the realization of modest but valid objectives of land use regulation. The continued tension between planning objectives to further the general welfare of the community and the existing judicial treatment of the scope of the zoning power is nowhere better illustrated than in the confusion over the extent to which communities can determine the demand for a particular use in deciding whether to allow it in the community. The courts have begun to formulate some rough guidelines, but their reasoning has often become too mechanistic to allow planners and lay planning bodies to distinguish between proper and improper uses of supply and demand projections in making regulatory decisions. If these considerations are to become an important element in the preparation of community development plans, clearer judicial guidelines in this area will be needed.

Many cases have adopted the rule that control of competition is not a proper purpose of zoning. The origin of the rule seems to be Bassett's dictum, "Neither can distribution of business be forced by zoning . . . it is not a proper field for zoning."[138] Two cases are cited for this statement but neither is based on this rationale.[139] Among the

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138. E. BASSETT, ZONING 53 (1940 ed.).

139. In Deerfield Realty Co. v. Hogue, 8 N.J. Misc. 637, 151 A. 373 (1930), the city argued they could deny a permit for a gas station on the grounds that there were already too many in the area. The court did not decide whether the city could grant or deny a permit for a business in a particular locality depending on whether it was in the best interest of the city to do so invalidated the city's action because it was done pursuant to an interim ordinance. Two years had elapsed since passage of a state zoning statute and the court considered the delay in enacting a permanent ordinance an unreasonable interference with the right to use property. Wiegen v. Board of Standards and Appeals, 229 App. Div. 320, 241 N.Y.S. 456, 173 N.E. 883 (1930), affirmed a decision by the Board of Standards to reverse the Superintendent of Buildings who denied a permit for a garage on the

reasons advanced by the recent cases are that control of competition is *ultra vires* or unconstitutional, that it may not be the dominant purpose for enacting the ordinance, and that businesses may not be licensed under the zoning power.[140] Other cases have decided the substantive issue by holding that a person has no standing to contest a zoning action if his only objection is that increased competition will result from the new use.[141] However, other cases, often dealing with the control of gas stations, have said that control may be a factor in zoning.[142] This latter position is tacitly approved by other jurisdictions by characterizing the issue as something other than control of competition. Courts will sustain the denial of map amendments for shopping centers if the planning commissions have done so because applicants did not show a sufficient demand for the new center. In denying these amendments such courts will rely upon the rule that the commission's decision will not be disturbed if reasonable men could differ on the wisdom of their choice.[143] Often this reasoning is coupled with the stern assertion that it is not the function of courts to inquire into the motives of planning commission members. But recent cases indicate that if the courts are convinced that a commission has used zoning for what they characterize as an improper purpose, they will not hesitate to examine the record to determine the

ground there were too many in the back. The only reason given by the court for affirming was general propositions that the courts should defer to the judgment of administrative agencies.

140. Mandelker, *Control of Competition as a Proper Purpose in Zoning*, 14 ZONING DIGEST 33 (1962).

141. *See* Paolangeli v. Stevens, 19 App. Div. 2d 763, 241 N.Y.S.2d 518 (1963) and cases cited therein.

142. *See* Mandelker, *Control of Competition as a Proper Purpose in Zoning*, *supra* note 140 at 37. This Article will not attempt an analysis of these cases. The city's ability to exclude gas stations from commercial areas is a function of its ability to convince the court that the reasons are for protection of personal safety rather than economic or aesthetic. *Compare* Hempturn Realty Corp. v. Larkin, 197 N.Y.S.2d 644 (Sup. Ct. 1959) *with* Glasser v. Larkin, 21 Misc. 2d 379, 198 N.Y.S.2d 257 (1960). *See also* Caudill v. Village of Milford, 10 Ohio Misc. 1, 225 N.E.2d 302 (1967).

143. Levitt & Sons, Inc. v. Board of County Commissioners of Prince George County, 233 Md. 186, 195 A.2d 723 (1963). A map amendment for a regional shopping center along an arterial highway was granted in 1961. Two years later a developer asked for a map amendment to develop another shopping center on a 35 acre adjacent tract. The amendment was granted over the recommendation of the planning staff. The Maryland Supreme Court reversed holding that this was not a proper case for application of the change or mistake rule stressing that no evidence was introduced to show that the existing center was not adequate to meet the current market demands.

real reason for the action.[144] When regulations are based on adopted plans and stated reasons the courts should feel less constrained in scrutinizing the purposes of the regulation. They have been quite properly reluctant to undertake an examination of legislative motives when decisions were largely *ad hoc*. But if plans and statements of reasons are required, it should be possible to determine the purpose of the regulation with greater certainty, and the courts will not be in the uncomfortable position of trying to second guess the reasons for a legislative or administrative decision.

There are two types of situations which involve control of competition. These have been characterized as questions of proximity and market demand.[145] While these two categorizations serve as a useful analytical distinction, both questions are present in many cases. In the first type of case an existing entrepreneur objects to a new entrant not on the ground that the market is unable to absorb both enterprises, but because his share of the market will be threatened. The only issue is whether a pre-existing enterprise should be protected from new competition rather than whether the economy of the community be served by controlling market entry. The second type of case involves general welfare considerations. The argument is that entrants must be regulated because the market cannot absorb them. Existing entrepreneurs argue that failure to regulate will result in severe economic dislocations in the community such as shrinkage in the total job market, bankruptcies, and loss of property tax revenues caused by the increase of unused or underutilized land. The sophisticated protectionist may even argue that regulation of market entry is merely preventing one decision maker from shifting external costs to non-decision makers—the most traditional basis for public regulation of land use.

Both questions were present in the three shopping center petitions. The land use plan's recommendation that regional shopping centers be located at least three to four miles apart was an attempt to protect existing centers from competitors. A one-mile spacing requirement was upheld by the New York Appellate Division in *Shapiro v. Town*

144. The most explicit rejection of the separation of powers argument is Pearce v. Village of Edina, 263 Minn. 553, 118 N.W.2d 659 (1962); *see also* Board of Supervisors of Fairfax County v. Davis, 200 Va. 316, 106 S.E.2d 152 (1957).

145. Mandelker, *Control of Competition as a Proper Purpose in Zoning, supra* note 140 at 34.

of Oyster Bay[146] on the grounds that the policy of the municipality was fairly debatable and that the restriction as applied was not a taking. This result is consistent with the location criteria formulated by urban real estate specialists. Gruen and Gruen, in *Store Location and Customer Behavior,*[147] urge the developer to choose a site with the least overlap with the market from which existing centers draw. However desirable a spacing policy for a developer's private decision-making, it may not be consistent with the equal protection clause. Thus, *Shapiro* is wrong if the policy was based solely on the wisdom of protecting existing centers.

The proximity cases raise the same equal protection objections that are found in the "true" spot zoning cases. The municipality has chosen to give preferential treatment to one individual or one class of individuals to the detriment of another individual or class of individuals with no corresponding benefit to the welfare of the entire community.[148] For example, in *Fogg v. City of South Miami,*[149] existing non-drive-in businesses succeeded in banning drive-in businesses from the downtown apparently for the sole purpose of forcing people out of their cars in the hope that they would patronize existing merchants. The mistake was in not phrasing the ordinance in more conventional terms such as control of traffic, noise, and prevention of nuisances. The court invalidated the ordinance because "the city made no showing that the prohibition against drive-in operations had any relation to the health, morals, and general welfare" and "a benefit or anticipated benefit to a special group within the City is not enough."[150] The dissenting judge, however, would have sustained it under the "fairly debatable rule." Other cases which have invalidated protective zoning have relied on the proposition that zoning for control of competition is not a proper purpose, but the equal protection rationale underlies their decisions. This rationale applies to the spacing policy of the Lexington-Fayette County land use plan and should not therefore be a basis on which to premise zoning decisons. This is, of course, not to say that the staff was incorrect in rec-

146. 27 Misc. 2d 844, 211 N.Y.S.2d 414 (1961), *aff'd mem.* 249 N.Y.S.2d 663.

147. C. GRUEN & N. GRUEN, STORE LOCATION AND CUSTOMER BEHAVIOR, A BEHAVIORAL APPROACH TO OPTIMUM STORE LOCATION, *supra* note 27.

148. *See* Spohrer v. Town of Oyster Bay, 219 N.Y.S.2d 376 (Sup. Ct. 1961) and Marie's Launderette v. City of Newark, 35 N.J. Super. 94, 113 A.2d 190 (1955), *rev'g* 33 N.J. Super. 279, 110 A.2d 65 (1954).

149. 183 So. 2d 219 (Fla. 1965).

150. *Id.* at 221.

ommending disapproval of the Headley site, for it violated the plan's location criteria on other valid grounds.

If the city argues that competition should be excluded because the market cannot absorb the new entrants except at the expense of a large segment of the existing business community, the cases are more divided. If the issue is framed squarely in terms of control of competition, the courts are likely to invalidate it. But if it is framed in terms of protecting the welfare of the community, the court will probably sustain it. The two contrasting attitudes are illustrated by cases from Florida and Indiana. In *Lachman v. City of Miami Beach*[151] the city refused to rezone a tract of large private homes built in the 1920's to permit the construction of high rise hotels. The city reasoned ". . . the construction of other new and modern hotels . . . would so reduce the patronage of those already in use that they would become so needless and unpopular as to raise the danger of creating a blighted area."[152] The court noted that the city's lack of faith in its ability to expand its tourist industry had "much to contradict or offset it," but they sustained the refusal to rezone because the wisdom of the policy was fairly debatable. The ordinance was not found unconstitutional as applied even though the property was much more valuable for resort hotels, because "This is a factor which must be weighed against the public welfare or the effect on the community at large." In *Ratner v. City of Richmond*,[153] downtown merchants, the owner of an existing shopping center, and adjoining property owners joined to bring a class action against the city to protest rezoning for an additional shopping center. Their complaint was remarkable for its candor:

> If such shopping center or other commercial businesses are constructed . . . there would result an over-development and concentration of shopping centers, creating traffic congestion and confusion in the area around the existing Shopping Center and bringing about vacant and distressed retail store locations in the downtown Richmond business section. . . . In addition, such persons thus would be subjected to illegal competition and interference with their established businesses resulting from the illegal zoning of the property herein alleged.[154]

151. 71 So. 2d 148 (Fla. 1953). *See also* Chevron Oil Co. v. Beaver County, 22 Utah 2d 143, 449 P.2d 989 (1969).

152. 71 So. 2d at 152.

153. 136 Ind. App. 2d 578, 201 N.E.2d 49 (1964). *See also* Board of Zoning Appeals v. Koeler, 244 Ind. 504, 194 N.E.2d 49 (1963).

154. 136 Ind. App. 2d at 582, 201 N.E.2d at 52.

The court held "It is radiantly clear that this complaint fails to state a cause of action sufficient to invoke the jurisdiction of equity." The court stressed that injury was problematical and that the projected competition was not illegal just because it was new. *Ratner* can be distinguished from *Lachman* because the latter involved a threat to the economic stability of the city as a whole while the former involved a threat to a limited group asking for special protection. In short, it could be argued that *Lachman* is a true demand case while *Ratner* is a proximity problem. However, this distinction is not valid since both cases involved the same type of threat to a similarly situated group of businesses and the projected adverse economic impact was likely to be proportionately as great in both cities. The cases therefore reveal conflicting notions about the scope of the zoning power and cannot be resolved by factual distinctions.

The question this study poses is whether the rapid development of regional shopping centers is a sufficient threat to the economy of a community so that their entry into the market may be timed to protect established commercial enterprises from competition. The preamble to Lexington's planned shopping center ordinance can be interpreted as giving the planning commission, the city, and county the power to license the centers on a public necessity standard. When the issue has been squarely presented in this form, the courts have been hostile to zoning authorities' assertion of a power analagous to licensing to control the entry of new businesses into the community.[155] In a recent Illinois decision, *Pioneer Trust & Savings Bank v. County of McHenry*,[156] a county asserted the right to deny a trailer park a conditional use permit because it was incompatible with surrounding uses and because there was no "public necessity for the conditional

155. A New Jersey case decided after the completion of this paper, *Forte* v. *Borough of Tenafly*, 106 N.J. Super. 346, 255 A.2d 804 (1969) indicates that courts are now becoming receptive to the use of planning to control market entry. Tenafly, a decaying community in the northern part of the state, adopted a zoning scheme designed to restrict new retail construction to the existing central business district. Despite the fact that plaintiff's property was located in an area with a number of nonconforming retail establishments, the supreme court held that zoning could be used to revitalize downtown areas by excluding new retail construction elsewhere in the community. "The fact that the ordinance may give the central area a virtual monopoly over retail business does not invalidate it" because this was an incidental effect of an otherwise valid ordinance. *Id.* at 807. While the decision will be welcomed by planners, the text discussion *infra* suggests that the decision is wrong.

156. 41 Ill. 2d 77, 241 N.E.2d 454 (1968). *See also* Nani v. Zoning Board of Review, 242 A.2d 403 (R.I. 1968).

use." A master found that the applicant had complied with all of the requirements of the ordinance except public necessity but that the public necessity requirement was unconstitutional and ordered the permit granted. The trial court agreed with his findings, but the appellate court reversed, holding that "A special use is one which carries with it a potential incompatibility with surrounding uses. It should be justified, if at all, by a public need for the specific use at the particular location."[157] The Illinois Supreme Court reversed although their reasoning leaves the power of the local governments to inquire into the public necessity for a proposed use unclear:

> We think that under the facts of this case, the appellate court placed too great an emphasis on the plaintiff's failure to satisfy this one standard of public necessity. . . . [W]hile lack of community need for a use sought to be established on a particular parcel of real estate is relevant to the relative gain to the public, this consideration is not in itself a conclusive or determinative factor. . . . [A]t least where, as here, (1) there is no uniformity of uses in the area, and the heterogeneous trial court determination that the proposed use would have no adverse effect on the adjacent properties . . .; (2) the denial of the proposed use would in no way benefit the public health, safety or morals; and (3) there is substantial economic loss to the plaintiffs resulting from such denial.[158]

Pioneer Trust provides almost no guidance to planners except to warn them against outright exclusion of a use. In attempting to formulate a standard, Professor Daniel Mandelker has argued that communities should have the right to consider supply and demand projections in locating uses. His reasoning is that, given a comparative scarcity of land in urban areas, private decisions do not make allowances for the community's point of view. Thus, "the market cannot be relied upon to make the most economic use of available sites. The planner will have to make these decisions, and his solutions will have an undeniable effect on competitive positions within the business community. Nevertheless, secondary effects of competition are an inevitable consequence of land use decisions predicted on land scarcities. The courts should uphold these decisions if they are fairly

157. 89 Ill. App. 2d 257, 267, 232 N.E.2d 816, 823 (1968), *rev'd,* 241 N.E.2d 454.

158. 41 Ill. 2d at 71, 241 N.E.2d at 460.

supportable. . . ."[159] He would not, however, affirm decisions intended to discriminate in favor of one competitor over another.

I would agree that communities should have the power to prefer one class of uses over another and to reserve land for this purpose.[160] But, the Lexington experience raises the question whether the planning process can be trusted to produce decisions which result in a net gain to the community rather than conferring monopoly status on certain classes of uses of individuals. I would suggest that the timing policy made it possible to define the general welfare to benefit narrow segments of the community to the detriment of large, politically powerless groups. The recommendations were used by the Commission to justify pre-existing value preferences for special groups and individuals. There was little evidence that the plans considered the actual impact of increased retail competition on the long-run economic development of the city. Instead, they concentrated on protecting existing merchants by minimizing the costs of short-run dislocations. No effort was made to substantiate the vague references to the danger of blight or the shrinkage of the property tax base. If courts are to permit communities to consider supply and demand factors in planning and zoning, this study indicates that increased discretion must be accompanied by more precise guidelines. If it is not, one of the principal by-products of increased discretion will be to sanction more subtle forms of exclusion to the detriment of a large segment of the community, which will be denied the benefits of retail competition.

It may be useful to distinguish between the type of inquiry attempted in a recent Michigan case, *Biske v. City of Troy*,[161] and the one reflected in the timing policy. The city refused to permit a gas station on a vacant corner in order to reserve the land for more intensive future use. This decision was a projection that the economic development of the community would require that certain classes of uses be preferred to other less intensive uses. This is consistent with the function of comprehensive planning, which seeks to determine the optimum use of land within the community. If this is done through the use of professionally prepared plans which are subject to

159. *See* Mandelker, *Control of Competition As a Proper Purpose in Zoning*, *supra* note 140 at 41-42.

160. *See* Biske v. City of Troy, 6 Mich. App. 546, 149 N.W.2d 899 (1967), *rev'd* 381 Mich. 611, 166 N.W.2d 453 (1969) discussed *supra* note 72. *See also* Bartlett, *supra* note 81 at 195.

161. Biske v. City of Troy, *supra* note 72.

public review and modification prior to their adoption, Professor Mandelker's argument that the anti-competitive consequences are tolerable is valid and the regulation should be upheld. This is especially true if the plans are subject to modification by regional authorities.

The Lexington-Fayette County Planning Commission made a different kind of decision. They estimated the demand for one class of services—retail goods—and asserted the right to decide how many entrants should be allowed to serve this demand over a period of time. The city was asserting that the use was analagous to a public utility, as the planned shopping center ordinance suggested, and that it was empowered to restrict market entry in the public interest. There was no suggestion that the city had decided that other classes of uses should be preferred to retail facilities. In this instance the principal purpose of the planning policy was to protect existing businesses at the expense of new competitors. This does not seem to be a proper situation for application of the "fairly debatable rule" because the individual property owner is subject to a high risk that regulatory decisions will be arbitrary and discriminatory with little corresponding gain to the public welfare.[162] I suggest that the courts should continue to assume that the public interest is best served by encouraging new services rather than protecting existing ones of the same type.[163] Thus, if the city alleges that a use should be excluded because the existing economy could not absorb it without losses to existing businesses and a detrimental impact on the over-all economy, the city should have the burden of proving these allegations. They should be able to discharge their burden only by showing that in their planning process they had collected sufficient data to allow the inference that the economy would suffer a net loss in terms of a long run decrease in the amount of available jobs and a decrease in the value of the property tax base. Otherwise, the court should presume that the purpose of the city was to exclude competition and that the exclusion is invalid. Of course, the city could deny a map amendment for a given location if the use would be incompatible with its surroundings or would have an adverse impact on traffic patterns.

In summary, it is hoped that this study will be useful to those

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162. For a general discussion of the role of zoning in control of competition *see* R. BABCOCK, THE ZONING GAME 70-79 (1965).

163. *See* Dunham, *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650 (1958).

engaged in building a conceptual framework to integrate the use of adopted land use plans with the administration of land use controls. It has examined one attempt to use adopted plans for the allocation of large tracts of undeveloped land and suggests that legislation which requires the preparation and adoption of community development plans is not enough to insure rational decision-making. New doctrines of judicial review, clearer judicial guidelines, and perhaps new administrative institutions must be created to insure compliance. Until this is done the correlation between planning and the administration of land use controls will remain intolerably imperfect.

APPENDIX A

The shopping center is a relatively recent and somewhat unique type of land use development arising from changes in merchandising techniques and the increased demand for off-street parking brought about by a rapid population growth in the urban and suburban areas, and, as such, should rightly be considered in terms of its over-all development and its effect upon a neighborhood and the community in general.

It is not intended, nor would it be proper, to forestall additional business zoning simply to prevent competition, for it is not valid to consider the adequacy of existing development unless the amount of existing development has some demonstrable bearing on the health, safety, and general welfare of the community. The primary consideration, rather, is assurance that additional commercial development will subject neither the existing commercial development nor the tax base of the community to the hazards of overdevelopment. Business is viewed as a service to people in an area, and the privilege of providing this service is matched with the obligation to do so, particularly since zoning by its very nature limits the number and location of such business. The need for assurance of development of land for business use, or at least assurance of the likelihood of development, thus becomes self-evident for only by this means can we be assured that an excessive amount of land will not be retained for commercial use but remain undeveloped, leaving an area without shopping facilities, and that would-be developers are not at the mercy of the owners of the only commercially zoned land in a given area. For these reasons, the economics of shopping center location, design and development should not be wholly within the province of private enterprise since there is a public interest involved which must be considered. The proper approach is to consider comprehensive community planning studies which indicate the approximate size and location of shopping centers or commercial areas necessary to serve existing and future populations involved and the proper timing of such development. Such detailed studies will make it possible for the Planning Commission to accurately determine how much additional business zoning is appropriate and justified at the specific site and at the specific time in question.

The purpose of the planned shopping center district is to encourage the logical and timely development of land for commercial purposes and the expansion of existing shopping centers in accordance with the objectives and standards established in the comprehensive plan. The protective standards contained in this provision are intended to:

> Assure convenience by providing commercial areas of sufficient size and in the proper location to conveniently serve the people of the area in relation to

their purchasing power and their needs and demands for goods and services.

Assure traffic safety and provide the improvement of major thoroughfare traffic capacities by properly locating and grouping commercial areas and by designing such commercial areas so as to provide safe and convenient access thereto and adequate off-street parking for automotive vehicles and by effectively separating vehicular from pedestrian traffic both within the commercial area and on adjacent public rights-of-way.

Provide for service vehicles by including convenient access and loading facilities in the design of commercial areas.

Protect adjacent residential neighborhoods from depreciation of property values resulting from commercial overzoning and from the overdevelopment or intrusion of undesirable commercial uses.

Promote community attractiveness by encouraging the design of commercial areas which will integrate with residential areas by effectively utilizing topographic features, transitional areas, and the liberal application of landscaping and screening devices, thus minimizing any adverse effect of any such commercial area upon adjacent land uses and providing a pleasant environment for the shopping and working experience.

Improve the economic base and tax structure of the Lexington metropolitan area by encouraging the development of stable, economically sound commercial concentrations.

Protect the investments of existing and future commercial concentrations by providing the basis for convenient and stable commercial development through the application of sound planning principles.

STATUTORY COMMENTS