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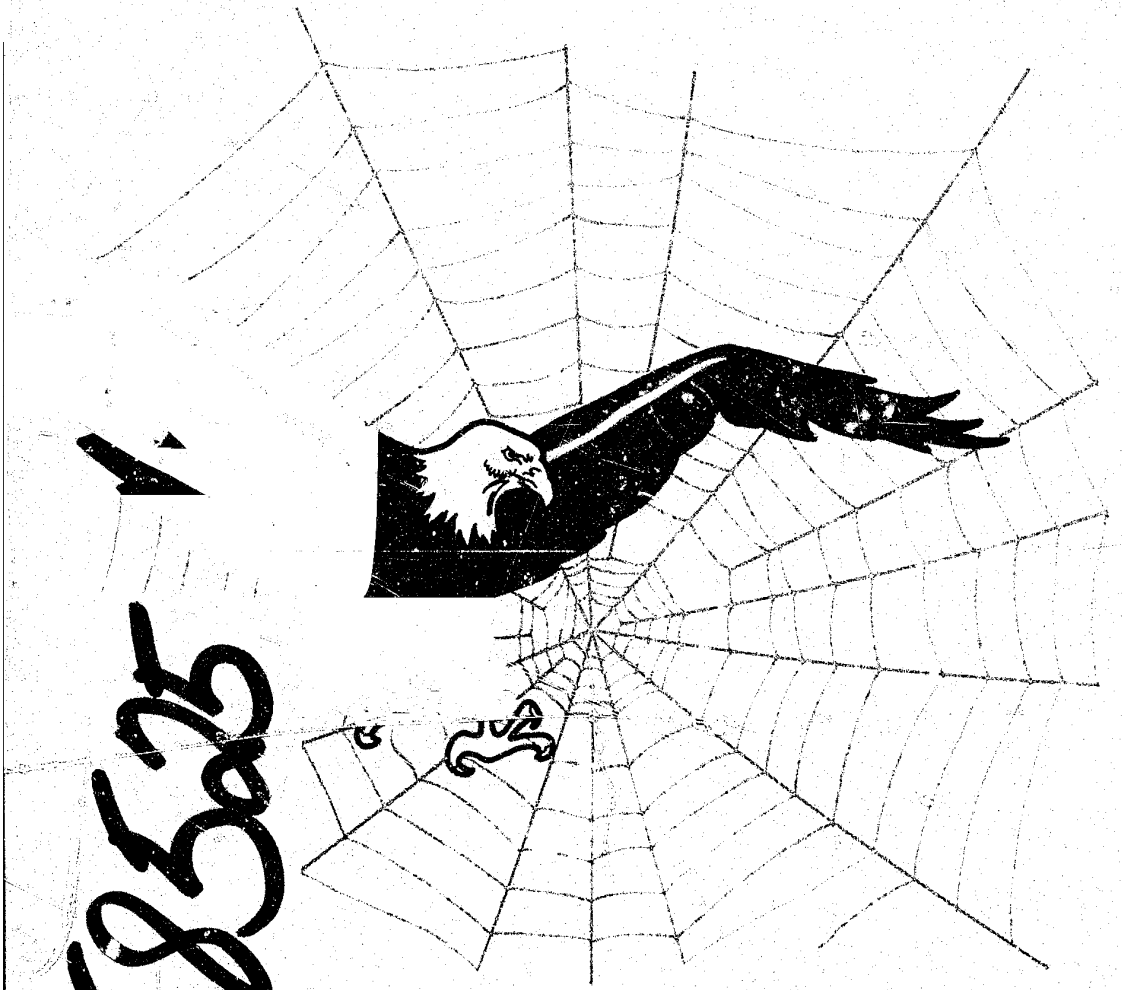
AN ANALYSIS OF ZONING REFORMS: MINIMIZING THE INCENTIVE FOR CORRUPTION



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An Analysis of Zoning Reforms: Minimizing the Incentive for Corruption

Program for the Study of Corruption in Local Government
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EXECUTIVE SUMMARY

An Analysis of Zoning Reforms examines the sources of corruption in the theory and practice of zoning and discusses a number of proposed reforms.

Current zoning practice is based on the fairly rigid "Euclidean" system which was established during the early years of the century to prescribe land uses and density regulations in advance of land development. At its inception, Euclidean zoning provided a few standard means of adjustment of the rigid categories for the individual landowner which are still widely used.

In addition to the adjustment procedures, new zoning techniques have been designed to admit an additional degree of flexibility into the zoning process. Performance zoning, incentive zoning and various negotiated zoning techniques have become part of the current system. These new techniques as well as the standard appeals procedures all admit some degree of discretion on the part of the granter. Though discretionary judgments are often blamed for corrupt practices, an examination of the system indicates the probability that other shortcomings of the system are more likely to be at fault.

The structure and the practice of the current zoning system give rise to a number of problems which provide grounds for corruption to flourish. These problems include: 1) Secrecy and lack of accountability, 2) Increasing complexity of administration, 3) Lack of standards, and 4) Land speculation. Each of these classes of problem has been met by specific proposals for reform.

Secrecy and Lack of Accountability

This problem is believed to have a strong relationship to the historic confusion between legislative and administrative responsibility in the zoning process. Sorting out the correct legislative and administrative roles has been the focus of considerable legal attention in recent years. One of the

central cases, Fasano v. Washington, 1973, highlights the issues. The decision of the Oregon Court in this contested rezoning case is accompanied by a detailed opinion of the courts that rezonings, traditionally the province of the legislature, should more properly be considered administrative procedures. Furthermore, the proper procedures for conducting administrative hearings are spelled out by the court. Subsequent to the Fasano decision the ruling was extended to cover the conduct of additional land use related procedures.

The significance of the Fasano case for zoning corruption is that the proper administrative procedures outlined by the courts for individual zoning hearings require public notice, public testimony, adequate records, and strict attention to due process. Furthermore, all out-of-court contacts between the parties to the proceedings and the hearing administrator are expressly forbidden. Procedural reform is the proposed approach to minimizing opportunities for corruption. The major drawback to this reform is its possible chilling effect on the participation of citizens who may believe that they must be represented by legal counsel in a tightly run administrative hearing.

The American Law Institute in its new Model Land Use Code proposes similar separation of administrative and legislative actions related to rezonings.

New laws affecting government administration in general will also affect the problem of secrecy and lack of accountability. Laws relating to financial disclosure, open meetings, open access to records, conflict of interest, and periodic justification of programs all have similar intentions and are applicable approaches to containing zoning corruption.

Increasing Complexity of Administrative Procedures

This problem arises as a result of the new discretionary zoning techniques and from an expansion of required permits from Federal, state and local governments. The institution of a number of good management practices has been proposed to relieve the lengthy procedures and assist inexperienced personnel administering land use decisions. These are the professional hearing examiner, the land-use task force, clarification of administrative procedures in the ordinance, clarification of the zoning

ordinance itself, review and supervision, and designation of land-use decisions along political and technical lines. Many of these reforms are practical measures primarily directed to increasing efficiency, and thereby relieving the confusion and delay which encourage corrupt practices.

Lack of Standards

Zoning legally rests on the concept of protection of the "public interest." The ever-widening definition of the "public interest" makes it difficult for legislators to provide firm guidelines to administrators. Where standards are unclear, corruption may flourish. Reforms that mandate planning are a means of forcing policy makers to consider and define their standards. Making the zoning ordinance legally depend upon an adopted plan is a further attempt to give status to a policy-oriented document containing explicit standards. If indeed such standards can be clearly spelled out by legislators, some opportunities for corruption might be minimized. It has been argued however that defining policies which are both general and useful for guiding everyday decisions is unachievable.

Technological standards, similar to those on which performance controls are based have been suggested as a way of increasing precision in defining the public welfare. Such an approach, while useful as a preliminary tool, cannot however be expected to offer guiding criteria. The public or its representatives must still define its goals.

Land Speculation

Proposals for mitigating the problems arising from land speculation include, on the one hand, abolition of zoning entirely, and, on the other hand, imposition of a system of taxes and insurance provided by the public sector for economic windfalls and wipeouts occasioned by zoning. The latter solution is being approached indirectly in a number of communities which require some form of development taxes. Buying and selling zoning reclassifications legally has also been proposed. In addition, land banking by the public sector is a time-honored way of guarding against private land speculation. These solutions do not appear to have general acceptance at this time.

Conclusion

Every proposed reform has its advantages and drawbacks. It is our conclusion that the best hope for zoning reform which touches the underlying issues involved in zoning corruption lies in the procedural safeguards suggested in the Fasano decision and the ALI code. Strict procedures, if followed, will have the additional effect of putting pressure on legislative bodies to provide clearer and more definite standards. Though the other methods of reform offer promise, the institution of procedural reforms directly reaches into the zoning process and appears to be the broadest reform and the one most likely to be accepted by the public at this time. Public scrutiny and public participation is the best protection against corruption, and strict procedures for reviewing and administering zoning appear to offer the best support for these activities.

SUMMARY CLASSIFICATION OF PROBLEMS AND PROPOSED REFORMS

Secrecy and Lack of Accountability

Separate administrative from legislative roles; set up proper procedures.

Pass related legislation:

- Sunshine laws
- Financial disclosure law
- Freedom of information law
- Conflict of interest law
- Sunset laws.

Complexity of Procedures

Establish hearing examiners

Set up land-use task force

Define administrative procedures

Clarify ordinances

Divide political decision-making from technical decision-making.

Lack of Standards

Establish mandatory planning

Make zoning dependent on plans

Use appropriate technological approaches.

Land Speculation

Remove zoning altogether

Establish windfall and wipeout provisions

Buy and sell zoning

Establish a government land bank.

PREFACE

The Project

Under a grant from the National Institute of Law Enforcement and Criminal Justice, SRI International (formerly Stanford Research Institute) has conducted a 2-year study of problems of local-government corruption in land-use and building regulation. We have found such corruption to be a significant problem in many areas in the United States and it is not likely to be insignificant in the areas we could not study. To provide a detailed understanding of how corruption occurs and how it can be prevented, SRI researched the environment in cities that had faced corruption problems in recent years, undertook an extensive literature search, analyzed the causes of corruption, identified numerous corruption prescriptions, and commissioned specialized studies from recognized experts in the field. The methods available for carrying out this study had severe limitations. As a result, the study produced not firm conclusions, but hypotheses to be tested by other researchers in other, more rigorous situations. The methodology and its limitations are discussed in detail in Appendix A to this volume.

The results of this 2-year study program are contained in six reports, as follows:

- Volume I: Corruption in Land Use and Building Regulation: An Integrated Report of Conclusions--A summary of the environment in which corruption can occur in land use and building regulation, and possible corrective and preventive measures. Illustrations are drawn from the case studies (Volume II).
- Volume II: Appendix--Case Studies of Corruption and Reform--Documented incidents of corruption in nine cities and one documented absence-of-corruption case. In each case study, the factors that acted to allow the corruption are pointed out.
- An Anticorruption Strategy for Local Governments--This report describes a countercorruption strategy that can be implemented by city administrators to monitor the performance

of employees and to increase their understanding of what constitutes corruption and how to avoid it.

- An Analysis of Zoning Reforms: Minimizing the Incentive for Corruption--This report, prepared by staff of the American Society of Planning Officials, discusses zoning reforms that can be considered by planners, zoning commissioners, and others involved in land-use regulation.
- Establishing a Citizens' Watchdog Group--This manual, prepared by the Better Government Association of Chicago, shows how to establish a citizens' group to expose corruption and bring pressure for reform.
- Analysis and Bibliography of Literature on Corruption--The results of a detailed search of books, journals, and newspapers made to identify descriptive accounts of corruption, theoretical analyses of the causes of corruption, and strategies proposed or implemented to control it.

The Report

This report addresses several of the hypotheses derived in Volume I of "Corruption in Land-Use and Building Regulation":

- The attractiveness of an opportunity for corruption rises when the action sought is congruent with city policies and drops when it conflicts.
- Opportunities for corruption will be increased by any legal or administrative requirement that is a precondition for private sector activity.
- Applicants' incentives to comply with demands made by officials will increase with the importance of regulatory decisions to their activities.
- Applicants' incentives to comply with demands of officials will increase as those demands reflect community and industry norms.
- The incentive for an official to participate in a corrupt act will be increased by community or organizational norms that conflict with official policies.

The measures examined here are not offered as a panacea for corruption, but as a tool for legislators and regulators (and planners) to use in considering the question of "how much regulation is really needed" and "what must be regulated." Obviously, throwing out the rules is a specious way to deal with the problem of repeated violations. But, just as obviously, clinging to archaic rules or unworkable plans is an invitation to corruption.

ACKNOWLEDGMENTS

Projects that require years to complete and that require data to be collected from all over the country invevitably depend heavily on the contributions of many persons outside the project team. The project director and the authors of the various reports in this series take this opportunity to thank all of those who have talked, debated, and argued with us for the past two years. The project has benefited greatly from your involvement.

In addition to the grant from the National Institute of Law Enforcement and Criminal Justice, support has been provided by the University of Illinois (sabbatical support for John Gardiner), by the American Society of Planning Officials, by the Better Government Association of Chicago, and the executives and management of SRI International.

The six volumes of this series have benefited from, among others, the substantive contribution of the following SRI International staff: Thomas Fletcher and Iram Weinstein who have played major roles in defining and setting the initial direction for the project; James Golub, Shirley Hentzell, Lois Kraft, Cecilia Molesworth, and Stephen Cura who have all helped shape various aspects of our work. George I. Balch from the University of Illinois and Joseph McGough and Thomas Roche from New York City's Department of Investigations have served as outside consultants providing valuable assistance.

The project has also been guided by an Advisory Committee, members of which have been drawn from the ranks of public interest groups, academia, and research. Representatives at the three Washington, D.C. meetings included Joseph Alviani, United States Conference of Mayors; William Drake, National League of Cities; Donald Murray and Nancy Levinson, National Association of Counties; Claire Rubin and Philip Singer, International City Management Association; Richard Sanderson, Building Officials and Code

Administrators International; Richard Sullivan, American Public Works Association; Nicholas Scopetta, New York Department of Investigation; Jonathan Rubenstein, the Policy Sciences Center; Geoffry Hazzard, Yale Law School; and Victor Rosenblum, Northwestern Law School. To these individuals we extend our appreciation; any frustrations their difficult role may have created were always masked by their evident enthusiasm.

Others have graciously taken valuable time to review one or more of the many working papers that underpin our final products. Elinor Bowen, Gerald Caiden, Michael Maltz, Daniel Mandelker, David Olson, and Larry Sherman have been prominent among these reviewers.

In each city studied for this project we talked with officials from throughout government service, journalists, clergymen, and citizens. While we will always honor our agreements as to confidentiality, we wish to express our gratitude to them for their comments and reactions.

Our project monitors, David Farmer and Philip Travers, justly deserve acknowledgment. They have been helpful not only in ensuring our compliance with the National Institute's rules and regulations but in helping us adhere to our research design even when we were in danger of being buried by the petty details of project work.

Finally, we could never overlook the people who put our often incomprehensible work into readable form. Edith Duncan, Sandra Lawall, and Josie Sedillo of SRI and Anita Worthington of the University of Illinois have earned more than simple acknowledgment, so let mention of their names serve as only a small token of our appreciation.

CONTENTS

I INTRODUCTION

As long as substantial financial advantages are to be gained in land transactions by the determined investor who knows his way around land use regulations, the potential for corruption exists. The newspaper stories are familiar; a landowner realizes how much money he might make if he could change the classification of his land from one that allows him to build only single-family houses to one that allows him a shopping center or a high-rise apartment. A single vote on the city council can change the value of his acre of land from $5,000 to $100,000. The temptation to approach the susceptible council member with a bribe may be irresistable.

The narrowest form of abuse and the one most likely to make headlines involves the case in which money is exchanged. It must be recognized, however, that cash is not the only form of exchange for favors. The payoff can come in many ways, of which these are only a few:

- The mayor manages to buy a piece of property just before a rezoning petition is submitted, and sells it immediately after.
- The zoning commissioner makes sure that a certain local consulting firm or law office is used to negotiate all planned unit developments.
- The corporations, with land holdings and interlocking boards, benefit from complicated buying and selling schemes. (Abstracted from Freilich and Larson, 1970.)

The schemes can become so complex that they can make a good detective movie (Chinatown) or a thousand-page biography (Caro's The Power Broker).

All these cases point out the difficulty of focusing on direct exchange of money as the major form of corruption in land use. This paper will concentrate on the particular machinery of the land use regulation system which appears to make it easier for such abuses as outright bribery to occur, while recognizing that the forms in which corruption are found are likely to be more subtle and far-ranging.

Land use planning by its nature is often a disorganized procedure responding to a variety of conflicting interests. The more democratic the process, the more difficult it is to confine and codify both the procedures and their effects. A degree of ambiguity is probably inherent in the system. Zoning, the most widely used tool for implementing planning is particularly subject to abuse.

Zoning corruption is not like the corruption that results from bending the specifications outlined in the building codes; it is not so likely to be measurable. Zoning frequently rests on criteria that can reasonably be debated. Ultimately, the better the planning which precedes zoning, and the more explicit the goals of planning, the less opportunity there will be for zoning corruption. Nevertheless, short of improving the planning process, there are points within the existing zoning system which can well be strengthened in an attempt to curb corruption.

II THE DEVELOPMENT OF ZONING

Zoning is by far the most common direct means of regulating land use in this country and the one with the longest history. The first comprehensive zoning ordinances were introduced by the state of New York in 1916 and were encouraged by the U.S. Department of Commerce in 1922 with the preparation of the model Standard State Zoning Enabling Act. Since that time every state has passed enabling legislation.

Although the system has been adopted across the country, it is by no means uniformly practiced. State enabling legislation varies from state to state; so do state court decisions affecting zoning. Local municipalities write their own ordinances which range from the most rudimentary to the most sophisticated. While this system permits a degree of variety and experimentation, it makes it impossible to describe the zoning system thoroughly or with any assurance that some community will not provide an exception to whatever may be considered the prevailing rule.

It is generally agreed, however, that the most common form of zoning in use today is Euclidean zoning. It is derived from the original model SZEA and named after a 1926 U.S. Supreme Court case, Euclid v. Ambler Realty, which sustained zoning as a valid exercise of the police power and not a compensable taking.

Euclidean zoning theoretically allows for little discretion on the part of municipal authorities. It divides land into discrete districts based on use. Land uses considered compatible may be assigned to a single district. As originally conceived, Euclidean zoning was to be virtually self-administering: a particular use would either fit into a zone or not, and the landowner would know exactly what he could do with his land by reading the list of permitted uses in the ordinance. Euclidean zoning, thus, is a relatively rigid system.

Consistent with the Euclidean zoning ordinance's predilection for orderly classification are the additional requirements in a typical ordinance laid down for building. Within each use district, height, setback, yard sizes, and other physical requirements are prescribed in advance of development. Little room is left for contributions on the part of the builder which will affect either the placement or the appearance of structures. Regulations are usually uniform in all districts zoned for the same use.

Most American communities today recognize the importance of planning and some form of zoning as an implementing tool. Almost all of these communities have based their zoning ordinances on orderly "Euclidean" categories. American day-to-day zoning consistently supports the separation of residential, commercial and industrial uses into discrete areas.

The gap between the rational and ultimately static Euclidean theory of zoning and the demands of actual practice, however, is obvious. Zoning ordinances cannot possibly cover each and every case, nor can they be designed to foresee the economic and social changes which affect the use of land. Even from its inception zoning ordinances had to provide a means of adjusting individual land use assignments which might be considered unfair or arbitrary.

Three standard means of introducing a degree of flexibility into the zoning ordinance short of a comprehensive rezoning are still widely used as the basis for change:

- Parcel rezoning--Adjustments to the basic zoning use districts on a case-by-case basis are provided for through set procedures which traditionally required a ruling by the legislature. Recent court opinions, however, have suggested this procedure is more properly an administrative function.
- Variances--A property owner may be granted relief from physical restrictions of the zoning ordinance when, because of a particular physical surrounding, shape, or topographical condition of his property, compliance would result in a unique hardship upon the owner.
- Special use permits--This device allows additional uses into a district when they meet conditions stipulated in the zoning ordinance. These permits are intended as a means of exercising control over certain exceptional or unusual uses of land and buildings such as hospitals and cemeteries, which are not likely to occur with any frequency, but which may be potentially troublesome if not controlled in advance by some form of review.

Theoretically, all three of these techniques--rezonings, variances, and special use permits--were intended to operate within the constraints of preset criteria that would be used to judge their appropriateness. But as they have actually operated, this has not been the case. Numerous court cases testify to the misunderstandings these common procedures are subject to. These techniques are often not understood by citizens, sometimes not by the boards and councils granting them, and in a few cases perhaps not by the courts themselves.

It turned out to be almost impossible to set criteria to handle the multiplicity of circumstances involved in any individual land use case. The desired flexibility has come to depend more and more frequently on the discretion and good judgment of the granting body.

In addition to the traditional ways of adjusting Euclidean zoning, and in part to remedy its shortcomings in providing some degree of flexibility, new forms of zoning were developed that extended the range of possible land uses and building requirements available to the developer within a given district. These techniques can be classified into three types: performance standards zoning, incentive zoning, and negotiated zoning. All three generally operate simultaneously with an underlying Euclidean system and allow the community to adapt its basic pattern of districts when it sees fit. As with the older appeal techniques, these too have tended to increase the discretionary power of the individuals administering them.

Performance standard zoning, as it was originally conceived, was intended to operate with as little discretion as Euclidean zoning. Instead of specifying uses for a particular district, the community was to set minimum measurable standards for development within each zone. The intention was to regulate the impacts of uses within a district rather than the uses themselves. For example, under performance standard zoning a nonpolluting industry would have a wider range of districts in which it might locate than an industry that caused serious problems with air pollution, noise, glare, or traffic. In practice, however, many of these systems cannot translate their standards into strict numerical measures and it is up to the zoning administrator to determine whether a particular proposal conforms or not.

Incentive zoning is a system under which developers are given bonuses in exchange for providing public benefits that the community feels are desirable. Higher permitted densities or floor area ratios, reduction in parking requirements, or special street arrangements are given to the developer by the municipality in exchange for such amenities as plazas, desired site design, or access to transit stops. While some cities have attempted to design an explicit point system in order to remove the element of discretion on the part of the zoning administrator, the communities that have used incentives most effectively have found that ordinances needed to be open-ended so that an exchange could be negotiated on a case-by-case basis.

The term "negotiated zoning" has come finally to cover a whole cluster of techniques. Contract zoning, site plan review, floating zones and planned unit development are some of these techniques. As their name indicates, these techniques allow the greatest flexibility to the individual developer. They all provide, within the zoning ordinance, broad outlines of procedures the community will use in making decisions about land, but they leave the specific details until an actual proposal is on the table.

Most of the flexible techniques have been promulgated and encouraged by planners, lawyers, consultants, and their professional organizations during the past 20 years. Their popularity is due, at least in part, to their apparent success. Developments in areas as diverse as Reston, Virginia, the Greenwich Street District in New York, and rural Northampton County, Virginia could not have been accomplished without the techniques that permitted the community to exercise discretion in negotiating zoning.

Thus, current zoning reflects on the one hand, a desire to lay down rational and dependable rules in advance of land development and on the other hand, the need for leeway to respond to changing demands. The growing number of methods which finally rest on the judgment of the individuals administering the laws attest to the strength of the latter trend.

Numerous commentators on zoning, however, are uncomfortable with the growing amount of discretion permitted. Since zoning corruption occurs at the point at which an individual deviation from the general rule is requested, it is often assumed that discretion allowed in the administration of zoning adjustment is the "cause" of corruption.

Norman Williams, Jr., for example in his treatise, American Planning Law, quotes with approval the judgment of a former leader of Tammany Hall, "The magnet which attracts corrupters . . . the natural locus of corruption is always where the discretionary power resides," (1975, footnote, p. 515). Whether in fact the tremendous increase in the amount of discretionary power has also increased corruption is, however, unknown. There has been little empirical research in the field of zoning. It is just as likely a hypothesis that the amount of corruption is related to periods of rapid economic expansion, such as the 1920s and the 1950s, as it is to the particular system in use.

Although examination of the zoning system indicates that discretionary practices are increasing, analysis of the roots of corruption in the system do not lead us to identify discretion per se as the source of corruption.

III THE PROBLEMS

The ultimate value of zoning is not our present concern. The complicated system has its proponents and its detractors and has been tinkered with and adjusted to accomplish any number of purposes. Our intention is to sort out of the numerous arguments for and against the zoning system as a whole, those which bear most directly on its apparent susceptibility to bribery and other forms of corruption, and to examine a number of the most commonly proposed remedies.

The problems which are believed to give rise to corruption in zoning represent a wide range of generality. These problems may be broadly categorized as relating to secrecy and lack of accountability, increasing complexity of administrative procedures, lack of standards, and land speculation.

Secrecy and Lack of Accountability

When the basis of a zoning decision is not clear, when standards are not explicit and records of hearings not available, the situation is clearly ripe for corruption. Such a situation often prevails when a "parcel" or small tract rezoning is applied for. These are the cases which involve an individual landowner or developer asking for a particular change from the existing ordinance. The process by which a rezoning is achieved contributes to the problems which often accompany this procedure.

The legislative and administrative roles have often been badly tangled in dealing with rezonings. Theoretically, legislative bodies must deal with the general case and not the particular; that is, legislatures must make policy, and administrative bodies must apply that policy to individual cases. It is clear, however, that in the practice of zoning, no such separation prevails. Legislatures have constantly involved themselves in the details of individual cases, and adminstrators find that they are making essential policy decisions without any policy-based criteria to guide them.

The blurring of the distinction between the proper legislative and administrative roles has direct implications for corruption: the standards that legally apply in the conduct of legislative procedures differ markedly from those that apply to administrative procedures. Legislative bodies, in general, tend to be insensitive to due process rights, and a verbatim

record containing justification for legislative decision is not required of such bodies. Actions classed as legislative are subject to a more limited judicial review than actions classed as administrative or quasi-judicial. In legal terms if a decision is considered "fairly debatable", the decision made by a legislative body will prevail over others.

An action classed as administrative, or quasi-judicial, however, is scrutinized more strictly. A judicial review of such a decision must be based upon a full record of the procedures. Evidence supporting an administrative decision must be contained in the record. Parties to a contested land use decision have a good chance of establishing that an administrative finding is "arbitrary, unreasonable, or capricious" on the strength of evidence; a legislative action, however is much more difficult to contest. Therefore, the classification of a land use decision as legislative or administrative can be of considerably more than theoretical importance to the landowner.

Even when no judicial review of a particular case is involved, the legislative/administrative muddle can contribute to corruption. A comprehensive rezoning made by a legislative body can expect to be thoroughly debated and standards will usually have to be stated, but parcel-by parcel decisions, when made by legislative bodies are seldom scrutinized, and are usually questioned only when aroused citizen groups or the press checks on actions they have reason to question. Administrative agencies, can at the least, institute regular auditing and review systems within the bureaucratic hierarchy to attempt to ensure accurate and honest decision-making.

Although careful separation of powers may not provide all the answers, it appears to offer a way to begin.

Increasing Complexity of Administrative Procedures

Even when there is no confusion between the proper roles of the legislative and the administrative bodies, local rules of administration themselves are, in general, confused and subject to their own vagaries.

> One zoning board may insist upon a transcribed verbatim record of ... proceedings, another board may be content with a pro forma record. Some administer oaths, other do not. In some instances it is hard to distinguish the attorney from the witnesses .... In one town the unverified petition of neighborhoods is the principal basis for decision-making; down the pike

> no value is attached to the petition. In one community the applicant has a chance to cross examine the planner... in another the planner's opinions are not available to the applicant... The casual attitude among local boards toward the content of the required 'findings of fact' is notorious.
>
> (Babcock, 1966, p. 155)

Fragmented and Time-Consuming Procedures

Zoning administration has always tended to be fragmented. Recent attempts to introduce flexibility into zoning have accelerated this tendency: discretionary powers are now scattered over a vast array of bodies and boards. It would not be uncommon for final decisions about land use to reside in any of the following places in one community: the city council, the zoning board of appeals, the planning commission, the planning director, the site plan review committee, the architectural review committee, and the zoning administrator or the building department. There are, of course, appeal procedures to the courts if a person feels that he has been unfairly treated by any of these bodies: the courts then will represent still another level of personnel.

The elaborate permitting procedures that have grown up in relation to land use have contributed to the number of persons making zoning decisions. Much of this expansion of permit procedures is due to increased state and Federal involvement in local land use decisions, but local governments have contributed to it as well.

Too few people involved at certain points in the complicated decision-making process may be as troublesome as too many. Even though large-scale developments are likely to engage many actors, some key decisions may still remain under the control of one or two individuals. This situation gives rise to a further set of problems. A permit granted by a single building inspector or structural engineer can escape the scrutiny of the inevitable review board. Long tenure in a vulnerable job coupled with inadequate institutional means of supervision may lead to abuse.

The proliferation of boards is reflected in the amount of time it has come to take to make land use decisions in the past ten years. Just as elaborate permitting procedures demand increased personnel, they inevitably demand increased time. While it is impossible to figure the

exact amounts of time involved, experts have estimated, for example, that a PUD will take 6 to 8 months longer to process than the standard subdivision--and the general trend has been in this direction, as local governments require more and more private development to go through such processes as site plan review or impact analysis.

Time bears a special relationship to land use corruption. With local zoning controls, none of the review and permit procedures can begin until the developer has accumulated the land and has a concrete proposal on the desk. Consequently, time is money. The developer must carry the land investment plus the front-end costs of the necessary engineering and design studies until the decision has been made and he can start building. There are, therefore, powerful incentives for him to use bribery as a means of making the process work as rapidly and efficiently as possible.

Political scientist S.J. Makielski, Jr. describes the likely results of the typical situation:

> The system ... is sufficiently complicated to permit a wide range of pressure points for those either attempting to influence or circumvent the zoning law, but if it is further realized that few of these agencies are monolithic, then the possibilities, multiply. Planning commissions, councils, boards of appeal are not single units, each has more than one man sitting on them. Pressure can be brought to bear on any of the people who are on these . . . boards. Winning a friend on just one level can represent an important, even a key, political advantage. The effect is to maximize the opportunities for corruption.
>
> (Makielski, Jr., 1967, p. 18).

Variability of Administrative Skills

The number of decisionmakers is further complicated by the variety of skills brought to the work. Board members exhibit a vast range of backgrounds and abilities. Many boards are filled with citizens volunteering their time, and many appointments to boards may be more closely related to political connections than ability to administer land use controls. Consequently, what may appear as a bought decision, may in fact be a mistaken or confused decision. The situation makes it particularly difficult to attempt to keep tabs on the quality of decisions or to hold the system in some way accountable.

The lay board member, furthermore, when faced with a complex problem, is often unwilling to commit himself and abdicates to what he considers to be the superior knowledge of the expert. Decisions requiring particular

expertise or demanding strict adherence to proper procedures place a high premium on the opinions of board members possessing special political or technical skills. The contributions that the layman is supposed to bring to a board often give way to the educated judgments of a lawyer or engineer in a particular situation. If expert decisions are lost to too ill-informed a board, opportunity for public oversight may be closed off by too professional a board.

More people--taking more time--to make increasingly technical decisions, are all part of a tangled problem which seems to recede from the public understanding. The very complexity of the system is the problem itself. The public doesn't follow what is happening, and is only dimly aware of how it may intercede in a system which appears to be too arcane for it to care. It is a situation that offers rich possibilities for secret deals, exchange of money under the table and public response only when one's own backyard is involved.

Lack of Standards

Legally, zoning rests on the basic power of the state to enact legislation protecting "the public health, safety, morals and general welfare of its citizens." That broad phrase--the general welfare--is used to justify a variety of questionable activities. The concept generates volumes of explanation and considerable confusion. The authors of The Text of a Model Zoning Ordinance, for example, identify the problem:

> Sadly, but not surprisingly, zoning regulations sometimes use the phrases 'public interest,' 'public purpose,' or 'public welfare' to cover personal prejudice, greed, or interest. Zoning has been used to make housing as expensive as possible in order to maximize tax return, to cut down the number of children in order to keep school costs low, to keep out small houses, and so forth.
>
> (Bair and Bartley, 1966, p. 9)

The authors go on, however, to confound the confusion. "When used for such purposes, zoning can scarcely be said to be 'reasonable'." Yes or no? If the public interest is defined, as it sometimes is, as fiscal soundness, perhaps the offending zoning may be said to have accomplished its goals. If, on the other hand, the public interest demands service to a broad mix of the population, then clearly it has failed. The authors, not alone in their difficulty, fail to offer any guidance beyond their statement, "A properly drafted zoning ordinance, correctly administered, and based on

demonstrable public interest is impossible to attack in court ...." (Bair and Bartley, 1966, p. 9.) "Demonstrable public interest" remains, however, to be formulated.

The question of the general welfare is unclear not only concerning the boundaries between public and private welfare but also concerning the boundaries between local and regional welfare. For example, the question of "general welfare" keeps recurring and arises with great force in recent years in respect to the question of whether local governments have an obligation to act affirmatively to serve the needs of broad groups in the population, or groups from a larger geographic area than the strictly local municipality.

Williams sums up the problem with the statement of an Ohio court referring to the general welfare--"What sins have been committed in thy name." (1974, p. 286).

The results of this problem are predictable. An enlargement of the concept of general welfare means that a wider range of issues has been brought into zoning--including esthetics, historic values, low-income housing, and the need to increase opportunities for minority populations. Zoning is stretched to protect social, fiscal and environmental goods that were not traditionally its goals. As the theory of the public interest expands, zoning expands. Whether zoning will be able to bear the increased burdens placed upon it is questionable. The collective needs of society are increasingly difficult to identify. Numerous interest groups on all sides of an issue firmly promote their particular concept of the public interest. City councilmen and mayors seek to avoid offending any potentially influential segment of the electorate and refuse to make clear cut decisions. The buck is passed to the judiciary to figure out the meaning of their noncontroversial compromises and the courts, thus, become legislative bodies.

The "public interest" or "general welfare," as a single concept, has little meaning. In reality, it has come to represent a set of often unrelated but politically necessary compromises. The inability to define the public interest may be acceptable and workable in a democratic society, but as the basis for the system of zoning, it leads inevitably to trouble. It is too vague, too ambiguous, to serve as a workable guide for making difficult choices between competing claims on the use of a specific piece

of land. In the face of standards that appear to be infinitely open to interpretation, it is small wonder that an unscrupulous or cynical developer feels free to encourage his view of the public interest by using whatever means he has at his disposal--including bribing those who finally make the crucial decisions affecting his property.

Land Speculation

Ultimately the root cause of corruption in zoning is land speculation. Part of the success of land-use controls in America might be said to be accounted for by the fact that they cost the taxpayer nothing, and while a private individual may stand to lose he may also stand to win even more if things work out for him. It appears to be worth the gamble. The "lottery" aspect of zoning has been identified as one of its major defects. (Hagman, 1974, p. 10).

While speculation based on capturing the unearned increment of income from land is a broad special issue not immediately relevant to this discussion, it is land speculation which is at the heart of zoning corruption. The two are linked; removal of the ability to get rich on the unearned increment associated with land use changes would also remove the incentive to speculate on zoning changes.

Speculation based on the manipulation of government regulation is constant throughout the history of zoning. It could be argued that the newer, more flexible techniques such as planned unit development would tend to reduce speculation, since they increase the potential supply of land for any particular use and provide legal methods by which a landowner can attempt to realize the increased economic return of his land. However, we currently have no evidence that this is true. The flexible techniques themselves may have hidden costs that may counterbalance this effect.

IV PROPOSED REFORMS

The following section discusses a variety of reforms designed to reduce the susceptibility of the zoning system to bribery and extortion. In analyzing these measure, it is necessary to determine how they directly or indirectly address the problems outlined above, how they sort out the complex strands of the zoning process, and what, if any, new problems these reforms themselves produce.

The most explicit reforms which affect the potential for corruption in land use regulations are those which attempt to simplify and clean up the confusion in administrative roles and procedures. This is hardly surprising; few people can object to requirements that a fair hearing be provided or that a zoning ordinance and its amendments be kept on record in the office of the county clerk. As long as the outcomes of such hearings are not prescribed, procedural reforms are politically feasible. The more difficult questions involving definition of standards are also approached by states which have mandated comprehensive planning.

Finally, approaches to the solution of problems arising from land speculation have been proposed, but these reforms, as we shall indicate, are still mostly implicit and local.

Secrecy and Lack of Accountability: Some Proposed Reforms

Clarify Administrative and Legislative Roles

The need to distinguish between the case where the local zoning hearing is considered an administrative procedure and the case where it is a legislative procedure has been the focus of much recent legal attention. Both the courts and the legislatures agree in principle: strict procedural standards, full records of proceedings, and in some cases requirements that zoning changes be justified by reference to adopted plans will result from clear definition of the roles of the legislature and the administration and may help thereby to achieve fairness, openness and honesty in zoning. Redefinition of appropriate roles represents a major trend in current zoning reform.

Fasano v. Washington County (1973), a case with important implications for the practice of planning in general, highlights the issues

involved in procedural reform, and goes far in trying to confront the confusion in definitions and the potential for abuse of the traditional rezoning procedures. An analysis of the case sheds light on similar reforms undertaken in other states (Padrow, Sharpe, and Sullivan, 1975).

In 1970, the county commissioners of Washington County, a fast growing suburb outside of Portland, Oregon, approved a rezoning application to build a mobile home park in a largely single-family neighborhood. The decision was appealed by neighbors, struck down in the lower courts, and finally reached the Oregon Supreme Court, which upheld the lower courts. The Oregon Supreme Court in its decision broke with the traditional view of rezoning as a process to be enacted by the local legislature. The Fasano decision distinguished between the proper function of legislative bodies to make rules of general application, and the function of administrative bodies to apply general rules to specific situations. A parcel rezoning, applying as it does to a specific situation, was therefore held by the Oregon court to be properly a quasijudicial (administrative) procedure. Moreover, as an administrative procedure, (unlike a legislative procedure) a rezoning application is subject to strict procedural standards and open to close scrutiny. The tightening up of the procedure is the crux of the matter as far as corruption is concerned.

Having established that rezonings were to be subject to administrative review, the Oregon courts went on to establish the procedural rules that were to apply.

> The procedures are strictly regulated as follows:
>
> - The burden of proof lay on the one seeking the change ....
> - Parties before a land use regulatory body had the following rights:
>   - Notice and an opportunity to be heard
>   - An opportunity to present and rebut evidence
>   - A hearings body free from pre-hearing (ex parte) contacts from any party to the proceedings
>   - A right to a record of the hearings
>   - A right to a decision based on findings which appear in the record.

Finally, the court stated that it would require parties (at least in rezoning cases) to prove that:

- The application conformed to the local comprehensive plan.
- The applications conformed to the appropriate land use enabling legislation.
- There was public need for the proposed use.
- The public need was best served by enacting the specific application under consideration.

Subsequent opinions stated that the Fasano ruling applied also to applications for special use permits, variances, and subdivision ordinances.

A statement accompanying the Fasano decision recognizes the corruption attending many rezoning applications:

> Having weighed the dangers of making desirable change more difficult against the dangers of the almost irresistible pressures that can be asserted by private economic interest on local government, we believe that the latter dangers are more to be feared.
>
> (Padrow, Sharpe, and Sullivan, 1975, p. 8)

Regularizing the appeals process, providing due process, and requiring appeal boards to be able to justify their discretionary decisions from the public record appeared to be a reasonable way to meet part of the problem.

The effects of the Fasano decision in Oregon were examined in the fall of 1973, by a questionnaire sent to the chairpersons of all the boards of county commissioners and mayors of all the major cities in the state. The responses indicated both problems and successes in implementing the Fasano decision at that time.

The urban centers reported more commitment to developing the required procedures than the small towns. Small jurisdictions felt that an overly legalistic approach to hearings might be the eventual result of the Fasano decision, with impeded communication, more meetings, and a declining interest in public affairs among the citizens.

The prohibition of all pre-hearing contacts was also hard to evaluate. The intention of this rule was admirable. It was meant to discourage the

> frowned-upon tactic of taking a member of the regulatory body to dinner to 'explain' a project, or entering into informal discussions in various offices or telephone calls 'from a friend of a friend' threatening electional retribution for a 'wrong action.'
>
> (Padrow, Sharpe, and Sullivan, 1975, p. 8)

Nevertheless, it appeared to be extremely difficult to minimize prehearing information exchanges in smaller jurisdictions; people tend to know about each other people's business. One option suggested to remedy this situation is the requirement that all contacts be reflected in the hearing record. How the courts can or will interpret whether or not an official was knowingly influenced is problematic.

Some elected officials, however, felt that they had been delivered from a great burden by the Fasano decision. The courts, in essence, had removed their planning activities from the enormous pressures that powerful, though not universally scrupulous, groups can bring to bear on elected officials.

Although the Oregon courts define the nature of the proceedings, they do not address themselves specifically to the question of what body should properly hear requests for rezoning--the legislative or administrative. A 1975 state law, however, subsequent to the Fasano decision, permits planning and zoning officials to increase their use of hearing officers and gives them authority to hear applications for zoning changes. Cities are also given the authority to prescribe the manner of zoning changes, possibly by means other than an ordinance formally adopted by the city council. The implication is that Oregon at least is willing to move some types of rezonings entirely out of the local legislature.

The Model Land Development Code adopted in May 1976 by the American Law Institute (ALI) and the draft report of the American Bar Association (ABA) Commission on Housing and Urban Growth continue to focus on disentangling the administrative and legislative roles. The ALI handles the confusion of roles between the legislative and administrative bodies in a slightly different manner from Fasano.

According to the ALI analysis, it is possible to differentiate between the role of the local legislature when it is passing general laws and the same legislature's role when it is hearing and passing on individual petitions. Procedural standards which do not apply in the one case can be required in the other.

Thus, the ALI code retains the power to hear requests for rezoning in the legislatures, but defines the rezoning roles of the legislature in a special way. The ALI restricts the ability of the local legislature to

adopt rezonings of individual pieces of property by defining rezonings as "special amendments." These rezonings are still adopted by the legislature on recommendations from the land development agency, but they carry with them the same safeguards of hearings and notice in administrative law that are required for other special permits. The ALI Code gives the legislature authority to approve or reject recommendations of the land use agency concerning the adoption of special amendments, but:

> The action of the governing body no longer carries with it an almost automatic presumption of validity . . . it is treated . . . as an administrative decision that must be supported by findings of fact and reason; and therefore . . . may be challenged in court on less than constitutional grounds.
> (ALI, 1976, p. 96)

Like the Fasano decision, the effect of the ALI Code is to change significantly local government procedures and rules for administering land use controls. In commenting on the new ALI Code, Timothy Hartzer, former assistant director of the ABA commission, expresses the ABA's agreement:

> These local land use change actions ought not be be characterized any longer as some sort of full-blown legislative process and, therefore, given a presumption of validity in judicial review, with very little inclination to look behind the decisions to the reasons that have gone into them. If you do characterize a rezoning or any other individual request for change as quasi-judicial or administrative, then you can begin to look at the essential due process and focus more on the record made at the local level.

Despite the belief that tightening up procedures for land use change is a positive step, reservations were expressed. For example, it was suggested that while the new procedures might relieve the pressures on local officials to respond to individual constituents, the procedures might also limit the ability of a legislator to respond to constituents (Einsweiler, in Mandelker et al., 1977, pp. 7, 10). Some reservations are based on the belief that new administrative procedures will favor the developer who can afford to prepare a strong case for the record. Provisions for a planning agency, or a consumer advocate to testify might need to be built into local zoning hearings. (In fact a zoning advocate for the public is already in use in New Jersey. Such an advocate position might be developed to represent local neighborhood, regional, or state interests, or alternatively to represent interests divided along functional lines.)

A number of questions were raised about the burdens that the tight new administrative procedures will place upon the untrained citizen who is party to a rezoning petition. Laymen will have to know the rules of the game and the chairperson conducting the hearing will have to be skilled in eliciting orderly testimony. Hartzer of the ABA, though generally approving of the reforms, raises some of the issues in commenting on the new ALI Code:

> It seems that if you really get serious about these administrative reforms, particularly, in an area where a lot of development activity is taking place, you find ... that the planning commission or city council is not capable of or interested in devoting the time and energy to this process. The next logical step may be the administrative hearing examiner approach, but it is just not realistic for small towns to initiate a hearing examiner. You are talking about too much money.
>
> (Mandelker et al., 1977, p. 11)

Robert Einsweiler of the University of Minnesota sums up his comments on the administrative reforms: "I would put in two pluses for the lawyers--the administrative process and hearings are certainly going to guarantee a lot of work." (p. 8).

Thus, while the clarification of procedures and the application of due process to zoning can be applauded, there are drawbacks. The reforms may make the rezoning process more difficult for applicants and increase the time and expense of preparing a case. The Fasano decision has been seen by some as a first step toward placing all zoning matters before the courts. If this does prove to be so, it may be necessary for those who take part in a zoning hearing to be protected not only by due process, but also by the availability of legal assistance. While proponents of the reforms argue that strict procedures based on good standards may help to avoid more lawyers in the long run, opponents argue that public involvement and public scrutiny may be diminished by too strict requirements, the new procedures may discourage citizen involvement, and citizens may eventually hesitate to testify at all. With all of its weaknesses, current zoning hearings and review are accessible to interested citizens, and it is not uncommon for planning commission meetings or city council meetings to be packed with citizens, anxious to state their opinions on controversial cases. One commentator on land use controls sees these meetings as one of the last bastions of town meeting democracy; a place where the individual,

if he or she wishes, can have direct influence on the decisions made by the government (Perin, 1975). However muddled and confusing this process becomes at times, the argument runs, it is healthy. The belief in citizens having power over the decisions that effect their immediate neighborhoods has, in fact, led to suggestions that certain classes of land controls should be decentralized even more than currently (See p.28 supra). The important point in this regard is that Fasano requirements moved procedures from a casual open public meeting format (controlled by Roberts Rules of Order) toward the more ornate procedures of the courts. It remains to be seen whether the new procedures will chill the public interest.

Related Reforms Increasing Openness

The definition of a number of zoning procedures as administrative rather than legislative concerns goes far in attempting to increase fairness and openness.

A series of Washington State Supreme Court decisions were directed to a similar goal. Beginning with a 1969 case, the Washington Court created the "appearance of fairness" rule out of a need to control procedural abuses at the local zoning level. Briefly, this rule requires that land use regulatory proceedings should not only be fair, but they should also appear to be fair to all parties involved. In 1974, the Washington Supreme Court extended the rule to cover the legislative act of adopting a zoning ordinance.

A number of new laws applying to a variety of government procedures are also attempting to assure openess and fairness. Publicity is their theme. Publicity appears to be a powerful means of curbing corruption. A vigilant press, better government group, or a well-organized neighborhood committeee, has often done a good job of tracking down and exposing corruption. Reforms that can aid these independent watch-dog groups are open-meeting laws, financial disclosure laws, freedom of information laws, and conflict of interest laws.

The most controversial of these is the financial disclosure law for public officials. There has been strong opinion expressed against them; they have been called an unnecessary invasion of privacy that would lead to the resignation of a significant number of officials and the refusal of others to serve; they have been called an insult to the citizen who is volunteering his or her time to serve on commission or board.

These fears may be unfounded. When Washington State passed such legislation there were a few officials who resigned instead of providing the information. People involved in public action may rightfully be expected to operate under conditions different from those they would meet in private business, and one of these conditions should be less privacy about their finances. The individual certainly has the right to decline public involvement if he/she prefers to keep his/her affairs private, but there is no evidence that this severely limits the pool of people qualified to act in the public interest.

On the other hand, knowing the various financial connections of a public official can certainly aid the private watchdog groups in looking for irregularities--particularly in the more complicated schemes where bribery comes through some other payment than cash. Such laws furthermore should be an incentive for the honest person to serve in local government. The honest public officials have less fear of being tainted by corrupt people around them if their dealings are in order and are a part of the public record.

Sunshine laws, and conflict of interest laws complement the financial disclosure laws. The financial disclosure laws provide access to the personal background of the public officials; the sunshine laws provide access to the actual activities and actions of those officials. These laws are much more controversial in the area of personnel methods and labor negotiations than they are with zoning matters. Certainly with the increasing negotiation in zoning, there are distinct advantages to having this process going on in the open where it can be watched by outside groups. One difficulty local governments have with these laws is the problem of determining what constitutes a meeting. For example, there is some concern that these laws will limit the useful exchange between developer and planning personnel when the developer initiates discussion about a potential program or when a planning director talks to a commissioner on a one-to-one basis. It is unlikely that open meeting laws will affect these practices, and it is in the one-to-one encounters where deals are likely to be made. However, if there are open meetings subsequently the process can be better scrutinized. A second problem is the fear that disruptive members of the press or citizenry can seriously hinder the efficient running of local

government by misunderstanding or misinterpreting what has gone on in the negotiations. This is a serious problem, but appears to be inevitable in a democracy. And finally, there is the belief that negotiations can proceed best in the smoke-filled room with closed doors where the individual can say what he "really thinks" without fear or having it all over town. However, that style of negotiating leads to the exact problem this paper is dealing with and should be discouraged anyway.

Proposed "sunset" laws are another approach to general public accountability which can be used to good effect in connection with land use control agencies. Under such laws, public agencies must submit reports at given intervals justifying their funding and programs. Failure to live up to certain standards will result in the agency's funds being drastically cut or their programs being abolished. The burden is on the agency. The State of Colorado has passed such legislation.

Although these laws do not directly attack the problem of zoning corruption, they are important in aiding public scrutiny of the system.

Other possible sources of scrutiny are ethics boards. These are occasionally established when governments adopt codes of ethics for their public officials. The boards can either be made up of members of the government itself or be blue-ribbon boards. The primary function of these boards is to give advisory opinions to local officials concerning possible conflicts of interest, but some are also empowered to investigate corruption and recommend criminal proceedings. These boards or committees have been notoriously weak at all levels of government--Federal, state, and local. A vigorous public prosecutor has been a more likely source of action.

Increasing Complexity of Administrative Procedures: Proposed Reforms

There have been numerous proposals for reform that are less far-reaching than those proposed above. These generally represent a piecemeal approach to the problems of zoning corruption, but they cannot be overlooked; any major overhaul of our land regulatory system is likely to be slow and evolutionary.

As we have indicated, the growing number of requests for open-ended decisions has begun to constitute a tremendous burden on both the time

and knowledge of the granting bodies. Many of the new flexible zoning ordinances, such as those covering floating and overlay zones, planned unit developments and various forms of incentive require special permits or rezonings. Developers find that their applications may take an inordinate number of days to process. A corrupt official can use the threat of delay or the demand for more information as the pressure for money or favors; he does not need to sell his vote. Particular problems that these reforms, individually or together, are designed to alleviate are the increasing amount of time and complex information required in processing a development application.

The Hearing Examiner

In an attempt to meet their obligations, a few communities in the 1960s instituted professional zoning administrators to decide variances, certain special uses, and in one jurisdiction, certain property reclassifications. Most of these administrators were charged with enforcement of the ordinances as well.

A further development of this role has resulted in communities instituting the office of zoning hearing examiner who in some cases may have the power to decide minor appeals. In 1975, eleven communities had delegated some of the responsibilities of the zoning boards, planning commissions, and councils to these officials. The duties and powers of the hearing examiners vary. While all zoning hearing examiners conduct public hearings in a quasi-judicial manner and enter written findings based on the record established at the hearings, some issue variances and special uses, or decide parcel rezonings, while others only make a recommendation to the local legislative body. No hearing examiner is assigned enforcement responsibilities while most zoning administrators are.

It is clear that the establishment of the office of hearing examiner is a response not only to increasing number and complexity of requests for zoning changes, but is in part a response to court decisions such as Fasano, which require professional treatment of applications for rezonings, variances and special use permits according to strict rules. The zoning hearing examiner provides a way of meeting procedural guidelines suggested by court rulings. It is no coincidence that nine of the eleven zoning

hearing examiners systems in existence in 1975 are located in the three states where the court has demanded such high procedural standards--Maryland, Washington, and Oregon.

Given the increasing complexity of regulations, professionalizing the hearing process appears to be inevitable. If it indeed cuts down the time developers must wait for their applications to be processed and cuts through the confusion and inaccuracy attending the deliberations of a number of ill-informed citizens, then it can be said to be a reasonable step toward curbing corruption. Professionalism, however, is no guarantee of honesty. While the muddle of too many cooks involved in the hearing process may make pressure tactics hard to discern, the vulnerability of one decision maker working alone is equally high. Even those examiners whose responsibility is limited to making recommendation to a legislative body have tremendous potential power to influence the direction of a decision. Some communities have rejected the idea of the zoning administrator or the zoning hearing examiner precisely because they were having problems with zoning corruption. In one community, it was the opinion of the public officials concerned about the corruption problem that a position such as a zoning administrator with delegated power to hear and in some cases decide zoning cases would easily be captured by corrupt forces. They feared a "zoning czar." They felt strategically that they were better off with a system that involved as many people as possible; they had a better chance if the honest were mixed up with dishonest so that they could yell foul when something happened.

As these systems have been developed in practice, both the claims that they are an answer to corruption problems and the fears of the "zoning czar," are overstatements. The primary goal of these positions is to free the planning commission and the city council from the time-consuming process of holding public hearings; the elected and the appointed bodies have kept the essential power in their own hands. A zoning administrator or a zoning hearing examiner does help, and sufficient safeguards can be provided. The work of the hearing examiner can be monitored by periodic review by the planning commission or another appropriate body. Likewise, establishing a fixed term, such as four years, and allowing removal only for "just cause" can avoid even the appearance of political pressure.

The Land Development Task Force

In response to the criticism that the review procedure for land use decisions is inordinately long and tangled, some communities have established land development task forces composed of the planning director and the heads of the other line agencies which must review development proposals. Once a proposal has been submitted, it goes directly to all of the relevant offices, and then the task force meets and makes one joint recommendation on the proposal. This structure makes one agency, generally the planning department, responsible for collecting the necessary data and forms from the developer, for making sure that all the necessary parties have reviewed the proposal, and for returning the final decision or suggestions for modification to the developer. As the hearing examiner streamlines the public hearing aspect of zoning administration, this procedure streamlines the internal review for governmental agencies. The task force approach relieves the developer of the job of approaching each department individually and thus reduces the chances of a single individual extorting money by simply holding the proposal. Likewise with all the departments presenting their arguments in a joint meeting, more checks and balances are provided by exposing the operations of one department to the scrutiny of others.

The land development task force represents the easiest and most practical of the suggestions for streamlining the permitting process--"one step permit shopping." Along these lines, the new ALI Code proposes a State Land Planning Agency to publish and make available information from local governments and state agencies concerning development requiring local permits, to set up a joint hearing process and even to set time limits within which decisions must be made (ALI, 1966, pp. 100-108).

Another suggestion has been to put all review functions into a separate agency, a land development agency. The zoning administration would be taken out of the planning department and the review procedures out of the public works, fire, and health departments, and centralized into one land development agency, which will include other bodies such as boards of education, and building departments. This suggestion is impractical for all except the largest cities; in addition it splits the review function from the other ongoing programs of the line agencies, and thus undermines part of the reason for their review in the first place.

Clarifying Administrative Procedures in the Ordinance

Another reform that has helped alleviate some of the difficulties in administration that give rise to bribery is the simple clarification of the procedures in the zoning ordinance itself. A well written zoning ordinance will specifically outline the data and information for which the developer is responsible and that for which the government is responsible. It will likewise set a specific maximum time for each step of the process. This provides applicants foreknowledge of at least the outer limits that the application may take, and it gives them a legal basis for complaint if the process is unduly delayed.

The same types of reforms have also been handled within the government administration. Some communities have developed guidebooks for developers that outline the correct procedures for applications for zoning changes, special use permits, etc. The guidebooks specify the forms and data that must be submitted at each step for the application to be processed. Internally, a good administrator can set up his own schedule for processing that will allow him to know where the application is at any moment and be able to identify the responsible individual if the application is held up.

Whether legislatively or administratively imposed, the clarification of administrative procedures and schedules helps normalize the process so that deviation from good practice can be caught and investigated for possible corruption.

Clarifying the Zoning Ordinances

Aside from the problems of defining the "public interest" discussed earlier in this document, many zoning ordinances are unnecessarily vague and poorly written. They lack standards and criteria where standards and criteria are possible; they skip important definitions; they are unnecessarily complex and inaccessible; or they have been amended, added to, and changed over the years so that what was once comprehensible and clear is an impenetrable thicket. Often a community can reduce corruption by simply going to the expense of having its zoning ordinance redrafted. Not only can the ordinance be clarified for those administering it, it can be written so that it is understandable to the interested citizen--certainly one aid in encouraging public scrutiny of governmental action.

Although it is difficult to establish good criteria for development, the people who draft ordinances can do a better job than they do. Classic examples of inadequacy are often provided by PUD ordinances. ASPO's first published guidebook to PUDs, stated; "It is not possible or even desirable to have particularly detailed development standards for PUDs. It is not possible to define 'good' development through regulation" (So, Mosena, and Bangs, Jr. 1973, p. 57). This statement is true, but many communities have left their PUD ordinances so open-ended that Norman Williams has some justification in his accusation of PUDs: "Along with the obvious possibilities for favoritism and/or corruption, the establishment of such a system is a step away from government by rule of law, and back to the system of government by deal" (1975, Vol. II, p. 231). Governments certainly can do a better job of defining what is negotiable and what is not in their PUD ordinances, and they are also capable of putting better bounds on those items that are negotiable. This is particularly true of the density bonuses and other incentives they give developers, and these bonus provisions are the items that have been subject to greatest abuse.

A few states have attempted to regularize the process of granting PUDs by passing special state enabling legislation for PUDs. This certainly would help establish bounds for some of the more flexible techniques.

Improvements in the drafting of zoning ordinances can also do something for the much longer standing problems of variances and special exceptions.

Some simple reforms in the variance procedure that has been proposed is that application forms be redesigned to focus attention on the requirements. Such forms would provide space for the applicant to enter: the nature of the hardship he believes he is suffering, the basis for the applicant's belief that his is a unique hardship, and the basis for the applicant's belief that a variance granted to him will not alter the character of the neighborhood. All considerations other than these three would be irrelevant. The form on which the Board records its decisions should require a statement of the findings under the same three headings. Use variances would be prohibited and legislative variances eliminated.

Again, in granting special permits, if abuse of the powers of the citizen board is to be avoided, the special uses permitted must be clearly spelled out in the ordinance. If such uses cannot be precisely stated and the community wishes them to be granted on such bases as "general welfare," these decisions ought to be given to the planning board for its consideration. Discretionary authority for this type of exception ought not to be given to an appeals board which lacks staff and experience when an agency with such resources exists.

Another simple proposed reform is the use of a map by the board of appeals showing the location of variances and exceptions granted over a given period of time. This will serve as a public reminder of the effects of their actions and might exercise a restraining influence. A concentration of such symbols in one area can serve to indicate conditions of general hardship which merit the consideration of the planning commission.

Review and Supervision

Both the International City Management Association (ICMA) report on corruption and the National Advisory Commisssion on Criminal Justice Standards and Goals indicate that corruption in such areas as zoning must finally be handled by good managers creating the right environmental situation for employees:

> Review and supervision still constitute the best environmental controls. An employee who is a free agent making decisions and taking action independently without the assistance of a team of peers or the regular review and supervision by a superior, is especially susceptible to bribery, theft and corruption.
>
> (Murray, 1977, p. 12)

Murray reporting for ICMA suggests the municipal employees who are free agents--such as building inspectors--should be rotated in their assignments. There are no "free agents" in the staff review of zoning, however. It is rare to have one individual on the staff totally responsible for staff critiques of land development applications; lower staff prepares material on applications and division heads or the planning director reviews it before it is sent to the Commisssion or the Council. It is probably this peer review that makes it unlikely that a lower staff member of

an agency would be bribed except with a turkey at Christmas or a box or candy on Valentine's day. The problem is much more with the managerial levels.

In their discussion of zoning, licensing, and tax assessment, the Advisory Commission states: "Regular audits by external agencies would go a long way toward protecting the public from venal public officials and their private corruptors" (National Advisory Commission on Criminal Justice Standards and Goals, 1973, p.258). The commission does not elaborate on this suggestion, and it is easier to imagine how such an audit would work for tax assessment than for permitting and zoning procedures. Now state and Federal law enforcement officers become involved only if there are serious allegations of corruption, but it would be possible for states, if they felt the problem significant, to devote resources to having staff specifically look for these problems.

Designation of Zoning Decisions Along Political and Technical Lines

Every proposed reform seems to generate a new problem. Regularizing procedures for hearings makes the process more legalistic and takes it out of the hands of the laymen; establishing technical performance standards puts the engineers in charge instead of the neighbors. What appears to be desired is a combination of technical expertise and political responsibility. Various proposed zoning reforms try to achieve this combination. One such plan would entrust the initial decisions to an expert followed by review by an appointed or elected lay board; another arrangement would take the opposite tack and provide ultimate review of the decisions of a lay board by a state board of experts. It is clear that neither the technical nor the political dimension can be safely ignored (Harvard Law Review, 1969).

The Advisory Commission on Intergovernmental Relations feels that the burden and responsibility of land use decisions should always be with elected and publicly accountable officials (p. 258). This has always been one argument for going to an elected executive style of local government and doing away with the commission and boards. If the chief executive

were responsible for zoning administration, he or she could be held accountable at election time for any corruption in his regime. However, the current appointment systems have checks and balances in them, and there is no reason that the elected officials cannot be held accountable. It is much more a function of whether candidates or citizenry make zoning corruption a part of the electoral process than which style of government is chosen.

A few cities have experimented with decentralizing the zoning function as a way of ensuring sensitivity to political concerns, permitting cases involving purely local issues to be decided by an elected board representing a ward, or a neighborhood, for example, rather than an entire city. The responsibility for honest administration of land use controls is kept close to the public.

While some shift of functions down to the neighborhood has taken place, it is clear that decisions involving technical considerations have not followed this course and have increasingly been shifted in the opposite direction. In some states, metropolitan county and regional agencies have been granted power to overrule, or regulate land-use development decisions of municipal governments. States have reserved for themselves new land use control powers, of shorelines, for example, or industrial development. Thus while providing more direct contribution from citizens for some kinds of zoning decisions at the neighborhood level, regional authorities with power to review appeals have been found to be necessary, primarily to protect systems of a technical nature at other levels.

It is likely that delineation between those cases which are essentially local and responsive to political solutions, and those which are of regional and state impact and responsive to technical solutions, will continue to be made particularly because of pressure from the Federal government. Federal programs covering hospitals, airports, sewage disposal, air, and water pollution, for example, cannot be expected to rest on purely local considerations; some coordination of programs will be required.

Lack of Standards: Proposed Reforms

Aside from numerous reforms directed at clarifying and opening up the administrative procedures of zoning, some attempt has been made to strengthen the policy bases of zoning by requiring that standards be set through a legally adopted plan. Legislative authority to set standards cannot be delegated to any other body. If, as has been proposed, parcel rezonings are to be carried out by administrative bodies, then the burden on the local legislatures to set advance standards is unmistakably clear. Theoretically, explicit statements of policy prepared by a responsible legislative body will go far to avoid the ambiguous situations in which corruption can grow. It has proved extraordinarily difficult, however, to achieve a policy document which is at once sufficiently specific and sufficiently flexible to avoid the old problems presented by Euclidean zoning. Oregon legislation again will provide a good example.

Mandated Planning

The Fasano decision was made in 1973 at a time when the Oregon legislature was in session. Noting a request in the court's opinion for definitive legislation, the legislature passed two bills which required Oregon cities and counties to adopt strict procedural rules applying to all aspects of land use regulation. It was this legislative body which passed at the same session Oregon's Land Use Act (SB100) requiring local elected bodies to adopt comprehensive plans (by January 1976) conforming to statewide goals and guidelines. These goals and guidelines, having the force of law, were developed by the State Land Conservation and Development Commission, with a full awareness of the Fasano decision. The requirement for plan adoption strengthens and is consistent with the court's requirement in the Fasano case that applications for zoning change conform to the local comprehensive plan. Thus, the Oregon legislature approached the problem of confused procedures by specifying proper administrative practice, and the problem of confusion in definition of "public welfare" by its mandate to the legislature to prepare plans which will set the policies on which zoning is to be based.

The feasibility of the legislative mandate to plan has been the subject of numerous arguments. The Fasano case better illustrates the problems and confusions than possible solutions to the central issue of the basis of zoning in the "public welfare."

The Oregon court's requirement that parties in rezoning cases prove that "public need" for a change exists is an illustration of the difficulties. If the vague wording in zoning ordinances that special exceptions to applicants who satisfy "public welfare" requirements is criticized, certainly the Fasano requirement that applicants must prove "public need" is no improvement. Few jurisdictions responding to the Oregon questionnaire following the Fasano decision were able to interpret what "public need" meant. The "burden of proof" that a landowner must give in support of a desired change still appeared to be interpreted on a case-by-case rather than a policy basis. It was believed in Oregon that the requirement for comprehensive planning might in time give a sharper meaning to the phrase "public need" but the responsibility for this definition is still unclear.

In another context, Williams in American Planning Law, recognizing the problem that the pegging of day-to-day practice to policy generally will cause, proposes that one member of the planning board ought also to be a member of the zoning board in order to interpret policy questions as they arise. It is clear that the separation of policy making and policy implementing will be difficult to maintain.

Similar reforms involving comprehensive planning proposed by the ABA Commission mandate consistency between the local comprehensive plans and the local land use controls. The ABA Commission states:

> State enabling legislation, traditionally permissive in its approach to local planning, should be amended to require local comprehensive planning and to require that the exercise of local land use controls be consistent with local comprehensive plans.
>
> (Fishman et al., 1977, p. 17-18)

The Commission goes on to attempt to define what it means by consistency--which turns out to be closer to what it does not mean by consistency. The commission states that consistency should "not be viewed in terms of a direct, rigid relationship between a mapped land use in the plan and a corollary designation on the zoning map" (p. 18). What is important,

according to the ABA, is first, that any judicial review of zoning should evaluate the extent to which local actions are responsive to the government's planning efforts--in other words, the courts should pay attention to the plans. Second, they recognize that planning has moved away from rigid, end-state documents toward flexible policy plans, and the land controls should not be required to be any more rigid than the plan itself. They recommend the curious "flexible consistency that is appropriate to the circumstances" (p. 18). Finally, in areas where the public welfare has been defined by a higher level of government (such as consideration of regional housing needs, or protection of critical environmental areas by the state or Federal government) then consistency should be enforced rigidly.

The basic philosophical concept behind the consistency arguments is that zoning and other land use controls should not spring full-blown as Minerva from Jupiter's head. Instead, it is believed, the rational process of comprehensive planning involves the collection of data on land forms, the projection of population, the identification of community needs for housing, industrial space, or commercial areas, and the creation of some basic goals or policy framework, which should always precede the establishment of a zoning code or a land use management system. If the court in the Fasano case is saying, "show us the reasoning behind your decisions on individual cases," the reformers promoting consistency are saying "show us the reasoning behind your entire zoning code."

Ideally, such a requirement would directly attack the problem of defining the public interest and consequently, at least indirectly, aid in preventing zoning from being bought or sold. Traditionally, comprehensive plans have not operated in this manner. They are advisory documents prepared by the local government's professional staff to give guidance to both the legislative and executive branches; commonly, they are not even adopted as an official document. The specific goals or policies that they reflect are generally the traditional consensus goals such as providing adequate housing for all people of the community or encouraging economic development with protection of environmental quality. Ironically, the definition of "public interest" found in the comprehensive plans is often

more loosely defined than similar statements found in the statement of intent which precede some zoning ordinance.

Thus, the attempt to use the general planning process as defense of the validity of a particular zoning decision appear difficult. Williams' suggestion that an interpreter might be necessary from the planning board to explain its intention only makes explicit the probable difficulties. The experience of states now implementing consistency requirements indicates that they do not clarify the basic public purpose behind zoning and, consequently, do not alleviate the problems directly contributing to bribery and corruption in zoning.

Lack of Standards: Technological Solutions

The difficulty of defining the "public welfare" is being approached in a new way by the advocates of "performance standards." According to this approach technological definition of standards is theoretically possible, and offers policy makers the advantages of increased precision as well as increased flexibility in the assignment of use districts to development. Thus technology appears to help in cutting down deals and corruption. The advocates of this approach assert that the traditional controls are aimed at the wrong element of development when they restrict the use of a particular structure. Regulations should be aimed at how the development performs--specifically how it affects surrounding development.

In the 1950s, ASPO developed a concept of industrial performance standards for zoning ordinances. The performance criteria were in terms of measurable outputs as air pollution, noise, vibration, glare, and traffic generation. In its most radical conception, performance zoning would replace the typical segregation of uses of Euclidean zoning. The districts would be designed in terms of measurable environmental qualities instead of being defined by use. Consequently an industrial plant would be able to locate with residential uses if it met the standards of that district. Under this system zoning administration would be as automatic as that originally conceived for Euclidean zoning. The developer would simply have a licensed engineer or other approriate professional certify that his development met the standards set in the ordinance.

Industrial performance standards themselves initially were used to replace the typical use list in segregating industries among various industrial zones; however, in the past 5 years the concept has been broadened and is now being used for development more generally. The expansion of the concept has come about because of the increased sophistication of various forms of modeling. Carrying capacity models (for environmental systems), runoff and erosion prediction models, air pollution dispersion models, traffic generation models, all have the potential of providing much more sophisticated technical backup to zoning. Add to these the work being done on fiscal impact analysis and cost/benefit analysis, and we do have much more information about how development affects a community. Thus zoning decisions can be made on a much more accurate data base, and currently a number of these modeling procedures are being combined through the use of computers and sold to communities as part of regulatory systems called impact zoning.

The kinks, however, have still not been worked out of the systems. Many of these models were originally designed for other purposes than land regulation, and it is difficult to adapt them to the refined scale necessary to get accurate information on individual lots or parcels of land. Consequently the predictions are only gross, overall figures. Furthermore, the data base that these models need is not currently available at the local level and must be generated before the system can be used. The collection itself and the necessary updating of information are expensive, and for many of the functions zoning attempts to regulate, there are no predictive models or the models are only in the initial stages of design.

Because of these problems, the performance standards based on technology have been primarily used as part of the special use permit process with basic Euclidean zoning being maintained as the primary regulatory system. And since the numbers are gross, most of the systems rely on generalized performance criteria without stipulating specific numerical measurements.

Even the apparently value-free and objective performance standards themselves provide only the beginning of an answer to the zoning dilemma. Consider the following situation: a zoning board is faced with the problem of whether or not the new tax revenues which will be provided by an industry

(and which are predicted by the community's sophisticated fiscal impact study) will compensate for the fact that a limited neighborhood will have to suffer noise above the accepted performance standard. Or another situation: the community must consider how it can and if it can afford to provide the roads, sewers, and water (and if it wants to) to service the clean nonpolluting industry which its standards say it can accept. The evaluation of these factors requires a preliminary, expert explanation of the way in which the project would work and of its probable consequences. However, once the impact is made clear, the project's desirability takes the form of a political question. Probably a good expression of how these technological and analytic processes can best operate was made by Peter Steiner in his article "The Public Sector and the Public Interest":

> Clearly all sorts of decisions do get made and not all of them are sensible. My conception of the analyst's role is to force an articulation of the proximate objectives served and of the conflicts between such objectives. I should be willing to regard open decisions so arrived at by elected (or otherwise responsible) public officials as a reasonable approximation of the collective values that we call the public interest. I think at present that we conceal so many issues and conflicts, both among objectives and among alternative means, that we increase the discretion of the policy-maker beyond that necessary or desirable.
>
> (1970, p. 54)

As the need to justify deviation from the normal course of action to peers or citizen groups can help keep officials honest, the need to justify deviation from the evidence presented by these initial modeling procedures can also be a check on honesty.

There is no doubt that the increased technological sophistication has enabled governments to define more precisely what they are attempting to accomplish through regulation regarding certain types of development. But it must be remembered that modeling (especially combined with computerization) can mystify and obfuscate the zoning process for the average citizen; and finally it must be realized that predictive modeling cannot replace the process of defining the public goals or the "public interest" in regulation.

Land Speculation: Proposed Reforms

A few reforms have been proposed that specifically attempt to address the central problems of land speculation as a cause of corruption. They generally can be categorized as, on the one hand, laissez-faire approaches which rely on individual action and market mechanisms, and, on the other hand, as systems which attempt to encourage social recapture of the unearned money increment that forms the basis of speculation.

The laissez faire approaches include the total reliance on private covenants and easements in place of zoning and the reliance on nuisance law instead of formal regulatory mechanisms. The use of covenants assumes that the individual must buy compatible development from his or her neighbors. In many cases, there will be mutual interest among landowners and they can exchange covenants easily; but this system does not work in all cases. The only relief that the individual would have from a neighbor using his land in a way that is offensive to him would be through nuisance law. Such a system assumes equality of income, availability of legal assistance, or even access to the courts. Most communities in America have decided that these decisions can be made more equitably through the collective action of government.

This does not mean that private covenants do not have their place. They are in common use throughout the country when landowners want to guarantee development conditions that go beyond the basic guarantees of the zoning ordinance--such as view protections, architectural controls, and other development considerations that have limited general social value. Many local governments attempt to regulate such things through their zoning codes, and it may be wise to remove government controls and use private market procedures in these cases.

Another group of zoning reforms would deal directly with the implicit economic content of zoning. The financial losses and gains which are suffered as a consequence of zoning may be at the heart of the matter as far as corruption is concerned, but the burden of years of legal and philosophical resistance to facing economic issues makes it extremely unlikely that any explicitly economic solutions will meet with acceptance. Whether value gained by a developer through a municipal zoning decision should be taxed

for the benefit of the community, or value loss suffered by the individual landowner should be compensated responds to the same variety of viewpoints which prevent us from defining the public welfare. Though public resistance to any explicit system of taxes or compensation to regulate land development is obvious, in actual practice the opposition to regulation of profits and losses is not so clear as might immediately appear. Although zoning as an exercise of the police power has not been generally accompanied by compensation, there have been isolated cases where such payment has been made to landowners. (ALI, 1975, p. 184). Donald Hagman, in his discussion of the subject in Planning (1974) interprets the imposition of impact or development taxes by a community as a form of windfall payment on the part of the developer through which the community attempts to recapture a portion of the value which their regulations grant to him. As long as the developer passes on all of such taxes to the home buyer however, it cannot effectively curtail speculation in land. Nevertheless, the fact that the principle of a community development tax has begun to be accepted may suggest further efforts in the same direction. It is evident that those most likely to favor "wipeout" compensation will most vigorously oppose "windfall" taxation and vice versa. Hagman's forthcoming book, Windfalls for Wipeouts, summarizes international practices restricting financial profits and losses in land use regulation and indicates intriguingly how far the United States has already come in such practices. Making the intellectual connection between corruption and profits and losses is not too difficult, but recognizing that zoning controls ought to be equally explicit about economics will, however, be resisted.

A novel approach along economic lines to the corruption problem proposed by Marion Clawson in 1966 suggests that zoning and rezoning ought to be bought and sold as the result of open competitive bidding. The zoning authority might offer to sell, for example, a tract of perhaps 20 to 100 acres within a mile square; conditions to be met by the buyer would be specified and made part of the contract. Clawson points out that such a system is widely used by the Federal government in selling timber, mineral leases, and some other products from Federal lands.

The most direct proposal for alleviating speculation in land uses, is, of course, for government agencies themselves to buy land and hold it

for future use--"reserving to the public gains in land values resulting from the action of government in promoting and servicing development." (ALI, 1975, p. 226). Experience with land banking in this country is extremely limited. Like other forms of regulation, the possibilities of abuse may be unrecognized. The new ALI Code raises arguments on both sides of the question and suggests that only actual practice with land banking programs can provide the evidence on which to make a judgment. Land banking, although theoretically attractive, appears to be far from likely to play a major regulatory role in our system in the near future.

V CONCLUSIONS

Modern zoning has passed the point where sophisticated practitioners believe that all zoning contingencies can be laid out in advance, and every possibility planned for. Flexibility and discretion appear to be here to stay.

The problems of zoning corruption appear to arise not so much from discretion as from decision-making which is practiced behind closed doors. Discretionary judgments, arrived at openly and with technical advice on hand for the public to help its elected officials make up their minds, may involve cumbersome procedures. But though efficiency may suffer, public accessibility appears to be the best hope in guarding against corruption.

Every proposed reform must be examined with this in mind; land use administration must be open to the public. The public must be able to see and hear what is occurring; negotiation must take place in a fish bowl. The public sector must design procedures so that there will be no surprises in zoning. Efforts must be made to translate technical decisions into lay language. Finally the public must be able to do something about procedures it does not like through the political process. In short, there are no quick and easy solutions.

An examination of the various reforms proposed suggest directions which a local government can take if a reasonably honest land use control system is to be instituted. The administrative reforms required by the Fasano decision and the proposed ALI code point the way. These reforms are directly related to the land use control system. They reach to underlying problems in the system and are reforms that will be acceptable to the public in general.

In short, public hearings must be open, out-of-court contact must be avoided, due process must be protected. Furthermore the value of the public forum is protected by being firmly tied to the public record. Administrative hearings must keep detailed records and justify their decisions on the basis of explicit criteria. Such criteria, it is hoped, will be provided in a plan or at least explicitly within a zoning ordinance. Under the new procedures, criteria cannot remain undefined and pressure will be put upon local legislatures to define their policies.

The danger of legalisms in cooling public participation in the new procedures must be recognized, and attempts must be made to overcome this shortcoming. Experienced lawyers suggest that legal assistance may be necessary for the initial administrative meetings but should be able to be dispensed with after more experience has been had. Institutionalizing public oversight is the goal.

No land use system will work for all time. Changes in technological competence and in community values are inevitable. What cannot change in any attempt to control corruption is the need for open procedures. It is not discretionary judgments which lead to corruption, it is secrecy. These should not be confused.

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