REPORT OF THE

SPECIAL COMMITTEE TO STUDY LOCAL PLANNING AND ZONING

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Research Memorandum No. 428

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LEGISLATIVE RESEARCH COMMISSION

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Vic Hellard, Jr.
Director

MEMORANDUM

TO: Vic Hellard, Jr., Director

FROM: Gordon F. Mullins
Assistant Director for Research

SUBJECT: Research Study Directed by 1984 Senate Concurrent Resolution 45

DATE: December 23, 1985

Pursuant to Senate Concurrent Resolution 45, the Legislative Research Commission, at its August 1, 1984, meeting, established and appointed the Special Committee to Study Local Planning and Zoning. The Legislative Research Commission, at its October 2, 1985, meeting, extended the committee through December 31, 1985. The committee has met fourteen times during the interim, four of the meetings being public hearings, conducted in Louisville, Ft. Mitchell, Owensboro and Lexington. Committee activity has focused on KRS Chapter 100, the state local planning and zoning enabling legislation. Further, the committee has centered its attention on the application of zoning enabling statutes and the organization and operation of local planning commissions.

In addition to testimony from local government officials, state agencies, concerned citizens and experts in planning and zoning, the committee has heard from the Kentucky Municipal League, the Home Builders Association of Kentucky, the Kentucky Chapter of the American Planning Association, the Land and Nature Trust of the Bluegrass, the Kentucky Conservation Committee, the Kentucky Heritage Council, the Sierra Club (Cumberland Chapter), the Code Administrators Association of Kentucky, Community Coordinated Child Care of Louisville, the Kentucky Farm Bureau and various neighborhood associations.

The following report was approved by the committee on December 16, 1985 with instructions that it be submitted to the Legislative Research Commission as the committee's final report for the 1984-85 interim.

Legislative Proposals

The Special Committee to Study Local Planning and Zoning has heard comments on five bill requests. The following bill requests were prefiled by the committee on December 16, 1985, with favorable expression that they should be passed by the 1986 Kentucky General Assembly:

86 RS BR 284 - an omnibus revision to KRS Chapter 100, the state planning and zoning enabling statutes, prepared by the Kentucky Chapter of the American Planning Association in conjunction with the Home Builders Association of Kentucky.

86 RS BR 156 - amends KRS 100.211 to permit fiscal courts and legislative bodies to override zoning amendment recommendations of a planning commission by a majority of its entire membership or by two-thirds of a properly constituted quorum, whichever is less. It further would prohibit the presiding official of the legislative body who is not a member of that body from voting except in case of a tie, or exercising veto power.

86 RS BR 157 - amends KRS 100.237 to require written notice of a hearing on an application for a conditional use permit for land in a residential zone to be sent to an owner of every parcel of adjoining land. It further specifies the responsibilities of the applicant and the board of adjustment and specifies the procedures for mailing public notices.

The following bill requests were withdrawn from further committee consideration upon request of the sponsors:

86 RS BR 159 - amends KRS 100.173 and creates a new section of KRS Chapter 100 to permit a planning commission to employ a hearing officer, whose decisions become that of the commission.

86 RS BR 160 - amends KRS 100.203 and 100.213 to authorize cities and counties to require a development plan in granting a zone change and to permit the planning commission to impose additional restrictions and conditions, under certain circumstances, upon the use of property for which a map amendment is requested.

The committee has heard testimony and has received written comments from more than 100 individuals during the 1984-85 interim and lists those topics considered most pertinent, though not in any preferential order.

Mobile and Modular Homes

Mobile homes are a growing concern in planning and zoning parlance. By the early 1970's mobile homes accounted for better than one-fifth of the entire housing market and fully one-third of the single-family home market. Further, the Mobile Home Manufacturers' Association has stated that the "average stay in one location by mobile home owners is 58 months - about the same residency duration as in conventional housing."

Citing the need for adequate community placement of mobile homes, planning and zoning authority Professor Robert M. Anderson has noted that "the problem of providing suitable sites for mobile homes is not one of finding space for an occasional transient or migrant worker. It is the task of accommodating a relatively new but major type of dwelling to the existing uses and the community's plan for development."

With growing mobile home habitation comes the notion of depressed property values. In most communities the method of protecting conventional residential neighborhoods from the real or imagined harm of mobile homes is to relegate them to parks or courts. Many of these parks, however, have adopted an air of permanency, with foundations, patios and landscapes.

On the positive side, a well planned mobile home court is an attractive adjunct to a residential district. On the negative side, however, a poorly planned court is a residential nuisance. Problems inherent to a poorly planned and developed mobile home park take on many characteristics.

1. Clutter results from minimal storage space.

2. The park exists as a commercial venture with the possibility of an owner accommodating more than the legal number of units.

3. Overaccommodation leads to a drain on local facilities; i.e., schools, gas, electricity, water and telephone service, police and fire protection, and road maintenance.

4. Taxation comes into focus as conventional homeowners view mobile homeowners as freeloaders and confine them to less desirable sections of the community.

Discussion of mobile homes leads to the task of dealing with modular (or prefabricated) units. A modular home is constructed with modules (sometimes referred to as stack units) which are prefabricated and hauled to the building site.

The legal ramifications of mobile and modular homes take on various dimensions. At issue may be whether a modular unit is, in the absence of statutory clarification, a mobile home. Does the removal of wheels alter a mobile home's identity vis-a-vis KRS Chapter 100? To what extent may local prohibitions on mobile and modular homes be interpreted as exclusionary zoning?

The committee heard testimony regarding the problems associated with placement of mobile homes. Furthermore, the issue of differentials in taxable value between manufactured housing and on site constructed units has been raised, but without any immediate resolution. Clearly, the problems and semantics surrounding mobile and modular units need to be addressed. One major problem is the absence of any legislative directive regarding mobile or modular or manufactured units in KRS Chapter 100, with the exception of KRS 100.203 (4), which limits the number of mobile homes on land solely for agriculture.

Conditional Zoning

Conditional zoning has been described as a zoning amendment which permits using a parcel in a zoning district subject to restrictions other than those applicable to land similarly classified.

It is "a means of achieving some degree of flexibility in land use control by minimizing the potentially deleterious effect of a zone change on neighboring properties; reasonably conceived conditions harmonize the landowner's need for rezoning with the public interest and certainly fall within the spirit of enabling legislation" (Collard v. Flower Hill [1981] 52 NY2d 594, 439 NY2d 326, 421 NE2d 818).

As noted in the American Law of Zoning, conditional zoning regulations generally fall within three forms:

1. Rezoning is contingent upon the owner executing and filing a covenant, limiting the land's use to methods not common to other property similarly classified.

2. Amending a zoning ordinance to permit uses on condition that the owner covenant to use the land subject to certain conditions not generally applicable to other land in the district, or in districts similarly classified.

3. Reclassification subject to conditions not applicable to other property in the same or similar districts.

Conditional zoning is a tool to achieve a degree of flexibility within an otherwise rigid system. While the need for flexibility can be illustrated with numerous examples, two prime displays are: the periphery area where a highly restricted zone and a less restricted zone abut; and an area within a district which needs a use not permitted. These needs may be addressed through a myriad of administrative devices, including conditional use permits, variances, exceptions, the floating zone or conditional zoning.

An argument for conditional zoning is the inferred right from the general delegation of zoning power; i.e., while most state enabling statutes do not authorize the imposition of conditions, neither do they expressly forbid them.

Citing Church v. Islip, 8 NY 2d 24 (1960), it is noted that "authority to impose conditions was inferred from the authority to classify land without such conditions." Further, such conditions are generally designed to protect adjacent land from the loss of value which might result should the newly permitted use not specify any restraint.

Several arguments have come forth against conditional zoning. The most frequently raised of these is the contention that conditional zoning entails the limitation on government entering into a private contract with a property owner for a zoning amendment, thereby abrogating its police power. A second concerns the uniformity requirement whereby zoning regulations "shall be uniform for each class or kind of building throughout each district." A third argument is that conditional zoning is invalid where the performance or nonperformance of the landowner might result in a reclassification of the land by force of private conduct. The automatic reversion feature has been disapproved by courts in California (1969) and New York (1964). In the former, the automatic reversion feature was void, as it constituted a second rezoning and would therefore violate the procedural directions of state law.

Despite the reasons noted above for eschewing conditional zoning in the past, the trend toward judicial and practical acceptance of this process is seemingly growing. Reviewing Scrutton v. County of Sacramento, 79 Cal. Rptr. 872 (Cal. App. 1969), one zoning authority noted that the California Court of Appeals "points out that the police power to zone and rezone may not be restricted by contract. However, the court, at the same time, points out that conditional zoning may be an appropriate description of a zone change which permits the use of property subject to conditions that are not usually applicable to land possessing a similar zoning classification. The California court takes the posture that conditional zoning which does not affect the property's use does not violate the objective of uniformity." Additionally, the court held the reversion feature also to be invalid.

The concept of conditional zoning has been the subject of judicial review in nearly all fifty states. Numerous zoning authorities have discussed the pros and cons of this zoning method. This matter has been discussed in committee, primarily regarding 86 BR 160. Witnesses for this bill indicate the need for the greater flexibility permitted by the issuance of conditions placed on the granting of map amendments. Others indicated that such procedures would create a hodgepodge of zones and that the applicant would be placed in the position of seeking subsequent changes even though many alterations may only be required. Some flexibility without question is needed to accommodate the development demands created in more urban areas; therefore, some concession could be given to permit conditional zoning on a limited, trial basis, with the understanding that a follow up study be made to determine whether such procedures should be extended.

Performance Bonds

KRS 100.281 states that subdivision regulations shall contain, among other things, "the provision of subdivision performance bonds to insure proper completion of improvements."

The Attorney General has declared (OAG 84-122) that, "in the absence of a statutory amendment or a judicial decision to the contrary, subdivision regulations...must contain, among other things, a provision to insure proper completion of required physical improvements, rather than provisions relating to letters of credit and escrow accounts."

The underlying purpose of the performance bond is to insure that the principal, normally a contractor or supplier, will indeed fulfill his commitment specified under the contract.

The committee has received correspondence citing two problems inherent to performance bonds. Primarily, insurance agents state that such bonds may be difficult to collect upon developer default. Bonds are often biased toward the surety institution underwriting the bonds, offering maximum protection to the institution and limited resource to the obligee. Secondly, most bonds contain a one-year expiration date, leaving the question, "What happens if construction lasts more than one year?"

Two alternatives to the performance bond have been suggested - letter of credit and escrow account. While other alternatives are available, these seem most appropriate, for two reasons:

1. It is easier to establish a letter of credit or escrow account; and

2. The developer's interest rate for letters of credit or escrow accounts is much lower than for the performance bond.

As KRS 100.281 (4) is specific in its call for performance bonds and no other form of surety, and as OAG 84-122 reinforces this interpretation, the committee recommends that KRS 100.281 (4) be amended, striking "subdivision performance bonds" and inserting the phrase "good and sufficient surety." Such language should allow communities sufficient protection (including subdivision performance bonds, if desired) while providing developers and contractors a more economic alternative to the current system.

The Development Guidance System Option

The Hardin County Development Guidance System is a departure from the traditional confines of zoning and may serve as a land use mechanism in areas which disdain the concepts of conventional zoning.

According to Dennis Gordon, Director, Hardin County (Kentucky) Planning and Development Commission, the principle behind the DGS is that, to be successful, "rural land use regulations had to be guided by rural issues and values, not urban values and solutions imposed on rural areas."

Serving only the unincorporated areas of Hardin County, the DGS views the county as a single, cohesive unit, not a system of numerous use zones. Gone are zoning classifications, districts and lines drawn on a map.

The DGA prides itself on combining all planning concerns in a single policy framework, thus eliminating a developer's being bounced back and forth between regulations. The development requirements call for one application, one fee, one process.

The approval process is a tripartite approach. Initially, the Growth Guidance Assessment recognizes each site's diverse amenities and characteristics, all the while meeting the county's goal of guiding development into those areas best suited for it. Within this process are the twin goals of reinforcing the capital investments already made by local government agencies, while protecting the county's prime agricultural land. Following this assessment are the public assessment and a plan review under the County Development Standards.

The Growth Guidance System employs a point system in judging each site's development suitability, with computations completed on rating sheets filed with supporting data for later justification of planning commission action. Proposals are evaluated and assigned points based on eleven of the site's amenities and characteristics.

Other aspects of the Hardin County DGS which mark it as unique include:

1. Planning commission decisions within the DGS are final with appeals, prescribed within the ordinances, going to the fiscal court.

2. Proposals can be handled through the process within as few as six weeks.

3. During the public assessment, the developer and property owners meet early in the process, prior to large sums of money being spent developing the proposal.

4. All property owners within 1,200 feet of the proposed site are notified of the informal meeting and are urged to attend the meeting, at which planning staff preside.

In light of the information received, numerous witnesses have recommended that KRS Chapter 100 be amended to provide programs similar to the Hardin County DGS to other Kentucky counties. This form of land use control appeals to officials of rural areas and those locales where the conventional application of planning and zoning has been viewed with hesitancy.

Specifically, it has been recommended that KRS 100.201 be amended to permit the local enactment of "land use regulations, including zoning and other kinds of growth management regulations."

Transfer Development Rights

The transfer development right concept views the ownership of land as encompassing a variety of rights, each of which is separable and transferable,

the right to develop being one of these. Such rights may be sold to a second party, who would be required, by statute, to obtain a specific number of development rights prior to developing the property. The following states have enacted legislation authorizing the use of TDRs: California, Colorado, Connecticut, the District of Columbia, Florida, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Pennsylvania, South Dakota, Vermont, Virgina and Washington.

The transfer development right concept would require state enabling legislation as well as a sophisticated planning staff for administration. At present the committee has not fully explored the possibility of transfer development right legislation to an extent that would warrant transfer development right legislation for the 1986 session of the General Assembly. Due to the interest expressed in transfer development rights and the technical nature of its application, additional study is suggested.

Time Limit for Statutory Appeal

KRS 100.347 provides that appeals from commission or board of adjustment actions may be taken within thirty days after the action or decision and that all decisions which have not been appealed within thirty days shall become final. Prior to 1984, the court held in Muser v. Leon Coal Processing Company, 560 SW 2d 833 (Ky. 1978), that KRS 100.347 applied not only to decisions of the commission or board of adjustment but to zoning decisions of the legislative body, since final decisions on zoning matters rest with the legislative body. In Fiscal Court of Jefferson County v. Don Ridge Land Developing Company, Inc., 669 SW 2d 922 (Ky. 1984), the court held that KRS 100.347 applies only to decisions of the planning commission and board of adjustment and is inapplicable to actions challenging zoning decisions of the legislative body, thus overruling Muser v. Leon Coal Processing Company.

Several speakers before the committee have stressed the need to establish a specified time period for appealing zoning decisions of the legislative body. It is argued that without such limitations final zoning decisions remain subject to legal challenge for an indefinite period. It was the consensus of those persons testifying before the committee that the appeal period should be thirty days, which would be consistent with other appeal limits specified in KRS Chapter 100.

It was also suggested that KRS 100.347 clearly state that appeals must be taken within thirty days after the vote of a board or commission and that the action is determined to be final at that time, even though the minutes may not be approved until a later date. For example, it was reported that in a recent case before the Kenton Circuit Court, the trial court ruled that an aggrieved party had thirty days from the time the minutes were approved at the next meeting, which was approximately ninety days after the vote of the board of adjustment. Numerous witnesses have recommended that KRS 100.347 be amended to limit the right of statutory appeal of the final decision of the legislative body regarding a zoning map amendment to thirty days after the

vote of the legislative body. This appears to be a valid alternative to the current situation.

Board of Zoning Adjustment

Questions and comments regarding the board of zoning adjustment have been voiced at nearly all the committee meetings and public hearings, including the following:

1. Is there a discrepancy between the sixty-day appeal period in KRS 100.257 (regarding "any order, requirement, decision, grant or refusal made by an administrative official") and the thirty-day appeal period in KRS 100.261 ("after the appellant or his agent receives notice of the action")?

2. Can the board grant conditional uses when it is actually making judgmental decisions as to the use of property, which is beyond the dimensional variance concept?

3. Is the board better able to make such decisions than the planning commission, which is the author of the comprehensive plan?

It has been stated that sometimes the board of zoning adjustment grants dimensional variances carte blanche, and thus brings up the question as to whether the board represents the best interests and wishes of the community.

Philosophically, it is claimed that the board of zoning adjustment was created to make "hardship" decisions, to act as a safety valve in the planning and zoning process. However, witnesses have claimed that the board possesses extra-jurisdictional authority, making judgmental decisions in permitting the expansion of nonconforming uses.

It is argued that functions of the Board of Zoning Adjustments could be handled by an administrative officer subject to appellate review by the planning commission. Such actions would assure that decisions are made on professional judgments rather than the politically difficult task of saying "no."

Another witness noted that a variance granted by the board of zoning adjustments is final. The suggestion was made that all approvals for variance by the board be subject to approval by the legislative body.

Conditional use permitting by the board of zoning adjustment is one of the more contentious issues heard by the committee. KRS 100.111(6) defines a conditional use as "a use which is essential to or would promote the public health, safety, or welfare in one or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those in the zoning regulation." Pursuant to KRS 100.237 the board of zoning adjustment is authorized to hear and decide applications for conditional use permits. The question is whether

conditional use permitting should be the responsibility of the planning commission or the board of zoning adjustment, since decisions regarding conditional uses are more closely akin to the zoning map amendment process.

Taking the above into consideration, three options have been cited:

1. leave the board of zoning adjustment as it is;

2. eliminate the board of zoning adjustment; or

3. allow the planning commission to grant variances and conditional use permits, along with zone changes, linking variances, conditional use permits,and map amendments, all the while retaining the board of zoning adjustment for appeal purposes and complaints against administrative officials.

Based upon responses by most witnesses, the third choice appears to be generally accepted as the least disruptive solution.

An ancillary issue raised by representatives of the family day-care industry is the conditional permitting of family day-care facilities. It was noted that the current practice in many localities is to require family day-care facilities to obtain conditional use permits in order to operate. According to several witnesses, such requirements tend to be prohibitive.

Subdivisions

One of the most frequently raised topics before the committee this interim has been the definition and application of the term "subdivision." KRS 100.111 defines subdivision as follows:

County Size	Division of Parcel into
Containing city of 1st, 2nd, or 3rd class or Urban County Government	2 or more lots
All others	3 or more lots

Further, a division of land for agricultural purposes and not containing a new street does not constitute a subdivision. Division or re-division of land into parcels of less than one acre occurring within twelve months of division of the same constitutes a subdivision.

The committee is aware of the amount of litigation and the number of attorney general opinions on this matter; a brief outline of the pertinent questions follows:

1. At what point following division does "agricultural use" land cease to exist and become a subdivision?

2. Does sale of a tract of land larger than one acre each twelve months constitute a subdivision?

3. May a community, under home rule, set a more stringent definition of subdivision than KRS Chapter 100 does?

4. As reported in Northern Kentucky, title examiners have questioned the transfer and sale of subdivisions without approved plats. Is there an inconsistency between KRS 100.111 (23) and 100.277?

In response to the first and last questions, it would appear that according to OAG 83-468 the answers are clear, where the opinion says " it is within the discretion of the zoning authority to determine whether or not an area may or may not have been used for agricultural purposes and to limit the extent of such usage."

The diversity of the issues regarding subdivisions includes numerous side topics. Within the area of subdivision regulations one witness called for erosion control through mandatory cleanup of construction sites. Another called for approved subdivision plats to be subject to legislative body approval. Others noted that in certain instances, subdivision construction may warrant a development plan, when the subdivision will result in substantial alteration of existing land forms or creation of environmental problems. Additionally, the question has been raised as to whether there is a need to establish some firm procedure for subdivision plats. In other words, for title transfer purposes, should a plat be required for every piece of property?

Outside of the definition of agricultural use, no other subject appears to be more controversial than issues surrounding subdivision regulations. Unfortunately, no clear direction has been given by those persons appearing before the committee. It is suggested that additional study should be given to these issues; however, it is suggested that a plat be required for transfer of title purposes.

Comprehensive Plan

The comprehensive plan has been described as "the only device on the horizon which can provide a community forum for thinking about all areas that may affect a community." KRS Chapter 100 mandates that a planning commission prepare a comprehensive plan to serve as a guide, to assure that development is in the most appropriate relationship. The court in City of Lakeside Park v. Quinn, 672 S. W. 2d 666 (Ky. 1984), distinguishes the duties and functions of the planning commission and the legislative body regarding the comprehensive plan and zoning. The court ruled that the overall responsibility for development of the comprehensive plan resides in the commission. The legislative body's duty is to approve, reject or amend the goals and objectives prepared by the planning commission and to adopt zoning ordinances.

Several speakers posed a philosophical question during the committee hearings. Should the comprehensive plan be simply a general guide or should it establish more stringent guidelines, thereby paralleling a zoning plan? Under the latter, to achieve a zone change would require a change in the comprehensive plan.

A second issue is the mandate for comprehensive plan review and (if necessary) amendment every five years. Some have argued for the five-year framework while others support a ten-year period. Still others call for continuous scrutiny. Establishing an artificial time frame for review may be unrealistic. However, cost and the sheer magnitude of such an undertaking may make reviewing the plan more often than established by statute prohibitive for some communities.

In planning theory, the comprehensive plan is dynamic, subject to constant review. Nevertheless, review does not automatically dictate constant revision. Additionally, artificial time frames must allow for consideration of size and situation of the community, and requiring a comprehensive plan review even less frequently than every five years may be unrealistic and unworkable.

A third problem stems from the comprehensive plan elements. Rural and urban areas possess different land use requirements and face the problem of differing land use elements. The plan should blanket all applicable elements with the packaging mechanism mirroring community preferences.

A lateral issue is inclusion of environmental concerns in the comprehensive plan. Should such elements be mandated? The committee has heard from one agency calling for ground water protection, floodplain management, development control of inundation and wetland areas and waterway protection to be included in the comprehensive plan. Although KRS 100.187 does not specify these items, the current wording of subsection 5 appears to be broad enough to permit such coverage. However, the question of whether planning for environmental concerns should be mandated statewide remains?

Agricultural Use

The planning and zoning statutes define agricultural use as five contiguous acres used for agricultural or horticultural purposes, including the dwellings of persons engaged in such production. The definition, however, excludes residential buildings on such lands which are for sale or lease to the public. Agricultural use appears to be the most perplexing issue facing many planning commissions. And it was the most frequently discussed subject before the committee.

During the 1984-85 interim several suggestions to alter the definition have been offered:

1) increase the acreage from five to ten contiguous acres;

2) employ the term "primarily used" for agricultural or horticultural production; and

3) link the definition to agricultural and horticultural land and income produced.

Many witnesses preferred the latter, which would require language consistent with or similar to that used for taxation purposes, as in KRS 132.010 (9) (10). In this instance land and income-producing improvements are included, but residences are excluded. [Dolan v. Land, (Ky. 1984) 667 S.W. 2d 684]. They argue that simply increasing acreage requirements or qualifying terms would still leave planning commissions and the courts without any firm legislative direction as to what is meant by agricultural use.

There appears to be general agreement that some form of land use protection is needed for agricultural land, especially around urban areas where nontraditional rural uses have intruded into farming areas. For instance, the committee heard testimony regarding the use of the certified agricultural district by one Kentucky farm family as a means of protection from the intrusion of a manufacturing facility into a farming area. The Hardin County development guidance system is yet another example. The usual protective device is the zoning ordinance, which exists in two forms: non-exclusive and exclusive ordinances. The former allows other uses, usually on a conditional basis. The latter prohibits non-farm dwellings. The general opinion expressed by expert and layman alike is that regardless of the direction taken by the local planning commission and local governing body, conflicts between residential and farm uses should be minimized. Some persons expressed doubt that the traditional zoning approach could deliver the desired result.

Additional Issues

During the past interim numerous issues were discussed by the Special Committee to Study Local Planning and Zoning. Naturally, some topics received extensive scrutiny by the committee, by staff and by interested citizens. Other issues, while equally important, received less oversight and publicity. For brevity's sake, a few of these issues are listed.

Elected Planning Commission Members

Witnesses have noted that planning commission members have no prerequisites for appointment, often receive no compensation and have no authority over staff or budget. One suggestion was to mandate training and education curricula for these members. Also, one witness called for an elected planning commission, stating that such a body would more adequately reflect the community's views. Training appears to be a real problem, the question is, who should provide such training? Currently, there is not any state agency equipped to provide the expertise necessary.

Natural Resources Consideration

At its March, 1985, meeting the committee heard extensive testimony calling for planning and zoning legislation to insure groundwater protection, floodplain management, development control in inundation areas, waterway protection from construction and wetlands protection. Coupled with water-related topics was a call for amendments to KRS 100.187 to mandate safety buffer zones around existing and closed landfills. Additionally, there was a suggestion for amending KRS 100.183 to include future landfill needs in the comprehensive plan. At the same meeting there was a suggestion to have KRS Chapter 100 provide guidance in the area of risks to public health created by the transporting of hazardous material. These natural resources issues are both immediate and long range and deserve further scrutiny.

Procedural Due Process

Although seldom mentioned during the interim, the topic of procedural due process looms as a topic deserving attention. With emphasis placed on the taking process of zoning and uncertainty often surrounding the appeals process as outlined in KRS Chapter 100, this aspect deserves closer scrutiny. One speaker, for instance, urged the committee to amend KRS Chapter 100 to require "both identification of the parties in advance of the public hearing, discovery, that is, the opportunity for both sides to find out what the other side wants and some type of supervised mediation or conference to try to resolve as many issues as can be resolved outside the public hearing." This recommendation recognizes the antagonistic aspects of zoning and merits further consideration.

Zoning Hearing Officers

An argument has been made that the planning body of a community must have time to plan and must professionalize the decision process when conflicts do arise. The argument goes that "trial-type" zoning amendment hearings should be handled by an administrative officer. This process would result in a more consistent and logical interpretation of the comprehensive plan in specific contexts. It is true that KRS 100.171 currently permits a planning commission to appoint one or more of its members as hearing examiners. However, in those instances the hearing examiner makes recommendations to the commission, not to the legislative body.

Extension of the Special Committee to Study Local Planning and Zoning

As noted in this memorandum, many issues have been discussed by the committee during this interim. While the research efforts have been extensive and the topics of discussion continuing, there have been suggestions by several witnesses that a comprehensive review of KRS Chapter 100 should not be accomplished in a single interim. One line of thought has been to target

specific aspects of planning and zoning and spend a full interim researching primarily these topics. If that is the committee's view, it is suggested that the issues of agricultural use, subdivisions, environmental concerns, and procedural due process be given top priority, along with innovative techniques, such as transfer of development rights.

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