

A-S-P Associates v. Raleigh: A Recent Court Test of Historic Preservation in North Carolina

In October, 1979, the North Carolina Supreme Court handed down a decision on one of the most significant land-use planning cases to be heard by that Court. Among the planning-law issues to be decided by the Court in *A-S-P Associates v. Raleigh* (1979) were the validity of historic district zoning, contextual standards for administrative issuance of permits, spot-zoning, validity of overlapping zoning districts, and the comprehensive-plan requirement. The decision represents a major victory for the historic preservation movement in the state, as North Carolina becomes the first Southeastern state to affirm the constitutional validity of historic preservation. The following article will discuss the context and nature of the decision handed down by the Court, as well as the implications for future planning practice in the state.

THE CONTEXT OF THE CASE

During the last decade, Raleigh, like many other cities, experienced rapid growth on its periphery and decline of its downtown residential neighborhoods. The Oakwood neighborhood, located directly East of the Governor's Mansion in downtown Raleigh, reflected the problem. Absentee ownership, redlining, real estate speculation, and nearly twice the city-wide rate of deteriorated and dilapidated housing units characterized the 100-acre neighborhood. At the start of the decade, the City of Raleigh had adopted a remedial planning strategy to combat these problems, which included increased residential density for the downtown, as well as construction of direct highway access through downtown. By 1975, however, both the north-south expressway and high-density residential zoning had been abandoned.

An alternative to the development strategy, presented in a planning staff report, recommended that Oakwood contain medium residential density with emphasis on preserving its historic aspects. The impetus for this recommendation came from the Division of Archives and History of the North Carolina Department of Cultural Resources, which nominated Oakwood for inclu-

sion in the United States Department of Interior's National Register of Historic Places. The neighborhood was placed on the National Register in June, 1974. In the required statement of significance, the division's survey and planning unit observed:

Oakwood, a twenty-block area representing the only intact nineteenth century neighborhood remaining in Raleigh, is composed predominantly of Victorian houses built between the Civil War and 1914. Its depressed economic state during most of the twentieth century preserved the neighborhood until 1971, when individuals began its revitalization. The great variety of Victorian architectural styles represented by the houses reflects the primarily middle-class tastes of the business and political leaders of Raleigh for whom they were built, as well as the skill of local architects and builders. Oakwood is a valuable physical document of Southern suburban life during the last quarter of the nineteenth century (*A-S-P Associates v. Raleigh*, 1979).

Proceeding under North Carolina's newly enacted historic district enabling law, the Raleigh City Council amended its zoning ordinance to create a 102-acre historic district which overlaid the Oakwood neighborhood, established the Raleigh Historic District Commission, and adopted architectural guidelines and design standards to be applied by the commission in its administration of the ordinance. The ordinance regulates building activity by requiring that all property owners who desire to erect, alter, restore, or move the exterior portion of any building, structure, or sign first obtain a certificate of appropriateness from the Historic District Commission. The Commission is authorized to prevent any such activity that is incongruous with the historic aspects of the district.

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The plaintiff, A-S-P Associates, is a law firm that owns a small vacant lot in the Oakwood Historic District. The lot, located at the edge of the district, is part of a relatively small area zoned for office and institutional uses. As part of the overlay historic district, Associates is allowed to erect an office building, but its design must be congruous with the Victorian architecture of Oakwood. A-S-P Associates brought a declaratory judgment action to invalidate the Oakwood ordinances, as applied to its property, on both statutory and constitutional grounds.

THE DUE PROCESS CHALLENGE

The first of these grounds was that the historic district ordinance violated due process. Due process, as applied to land use cases, requires that local regulations be related to the promotion of the public health, safety, and general welfare, and that the effects of such regulations be reasonable. The basic constitutional objection raised by Associates was that the historic district ordinance was outside the lawful scope of the police power. The Plaintiff contended that the ordinance focused entirely on the exterior appearance of structures in the district and, therefore, was based solely on aesthetic considerations without any real or substantial relation to the public health, safety, or general welfare. If accepted, this contention would prevent government regulation of private property for historic preservation in North Carolina. The North Carolina Supreme Court

"THE DECISION REPRESENTS A MAJOR VICTORY FOR THE HISTORIC PRESERVATION MOVEMENT IN THE STATE..."

held that regulation of the exterior appearance of private property in the interest of historic preservation is a valid exercise of the police powers; in other words, historic preservation regulations promote the general welfare. Specifically, the Court found that historic preservation of the exterior appearance of buildings and structures promotes the accomplishment of a public good in a number of ways: it provides a visual, educational medium by which an understanding of our country's historic and cultural heritage may be imparted to present and future generations; it tends to foster architectural creativity by preserving physical examples of outstanding architectural techniques of the past; it can generate substantial tourism revenues; it can stimulate revitalization of deteriorating residential and commercial districts in urban areas, thus contributing to their economic and social stability (A-S-P Associates, 1979).

As part of its analysis, the Court recognized that the police power cannot be placed within fixed, definitive limits and that it may be extended to meet changing economic and social conditions. Further the Court cited with approval a federal court decision (Maher v. New Orleans, 1975) which held that "proper state purposes may encompass not only the goal of abating undesirable conditions but of fostering ends the community deems worthy.... Nor need the values advanced be solely economic or directed at health and safety in their narrowest senses. The police power inferred in the lawmaker is more generous, comprehending more subtle and ephemeral societal interests."

These pronouncements together with approval of historic preservation zoning may reflect a willingness by the North Carolina Supreme Court to allow localities to move away from traditional zoning (minimization of friction between land uses) and to allow local regulations which protect the environment, preserve the social character of the locality, and order urban development. Nonetheless, even with the A-S-P decision, North Carolina law is still not prepared to endorse reasonable regulations of property for aesthetic reasons alone.¹ This caveat is regrettable. Admittedly, historic preservation regulations are distinguishable from aesthetic regulations (Rathkopf, 1975: 15-4). However, the issue of aesthetic regulation was seriously contested by the plaintiff, and presently it is an important planning-law concern. The regulation of building design, landscape, and signs is commonplace, even in North Carolina. The silence of the opinion casts doubt about the validity of such regulations in North Carolina. The widespread enactment of aesthetic regulation, moreover, reveals that it is one of the primary devices local governments use to enhance the quality of life. Although approval of aesthetic regulation was unnecessary to the Court's holding, resolution of the issue would have eliminated the legal uncertainty about such regulation. It would have also strengthened the apparent willingness of the Court to accept more ephemeral societal interests as a basis for regulation.

A second important aspect of the A-S-P decision is its holding that requiring certificates of appropriateness for new construction is reasonable, even when applied to a vacant lot. No other appellate historic preservation case has approved the application of historic preservation to a vacant lot. Favorable resolution of this issue will enhance historic preservation efforts, since it is unavoidable that in historic districts some tracts of land will be vacant, and the potential for development and incongruous building activity is greater on vacant tracts than on already

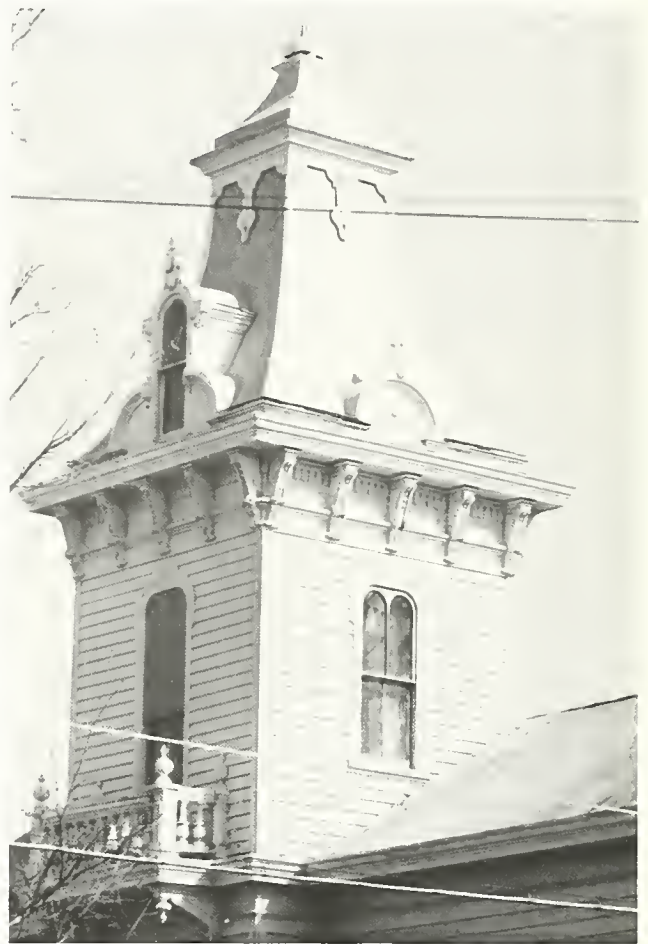
developed lots. Preservation and protection of the setting or scene in which structures of architectural and historical significance are situated is just as important to historic preservation as preserving and protecting significant buildings. If concern is limited to historic buildings only, landmark and historic site laws alone would be sufficient to protect the historical legacy of the nation. Now, however, it is recognized that externalities have an impact and must likewise be regulated.

STANDARDS FOR HISTORIC DISTRICT REGULATION

A-S-P Associates also contended that the standards to guide the Historic District Commission were inadequate. This contention is bottomed on the rule which prohibits the delegation of legislative powers to administrative bodies. Accordingly, administrative bodies are not allowed to establish goals and policies (Jackson v. Board of Adjustment, 1969); their power is limited to determining facts which implement policies of the legislature. Fact-finding responsibilities must rest on definite, ascertainable standards; otherwise, the courts will invalidate the regulation (Coastal Highway v. Turnpike Authority, 1953). To show indefiniteness and unlawful delegation of legislative powers, Associates attacked the architectural guidelines incorporated into the Oakwood ordinance.²

Although municipalities have unlimited discretion to establish an historic district, the Court found that once a district is established, discretion is limited insofar as the method and the standard by which an historic district is regulated (A-S-P Associates v. Raleigh, 1979). Specifically, historic districts are administered by an historic district commission, the composition of which is specified by the General Assembly; the objects subject to regulation are delineated; and the procedural safeguards to offer expert evidence, cross-examine witnesses, and inspect documents help prevent administrative abuse (A-S-P Associates v. Raleigh, 1979). Furthermore, the high Court recognized that practical necessity requires that a substantial degree of discretionary authority be delegated to administrative bodies if historic preservation is to be achieved.

The analysis by the Court of the contextual standard of incongruity is particularly important to future preservation and planning cases. Both the state statute and Raleigh ordinance prevent building activity incongruous with the historic aspects of the district. As recognized by the Court, contextual standards derive their meaning from the total physical environment of the area, which must therefore be sufficiently distinctive to provide the required legal



Oakwood residences represent a variety of Victorian architectural style.

specificity. The standard of incongruity, when applied to Oakwood, is meaningful due to the Victorian architectural style which characterizes the area. Although other architectural styles are present in Oakwood, they do not render the standard of incongruity meaningless. These other styles are generally equally distinctive, and the architectural guidelines and design standards incorporated into the ordinance provide analysis of the structural elements of these different architectural styles.

Although total contextual uniformity is not required, planners and lawyers who advocate land use regulations based on a contextual standard must first be sure that the context in which the regulation is to operate is, in fact, distinctive and ascertainable. Contextual regulations applied to heterogeneous areas which make the standard unascertainable are invalid. Thus, the typical contextual standard that the requested special use be in harmony with the area is not, per se, invalid, but, if applied to an area with dissimilar architecture or land uses, such a standard could be invalidated as an unlawful delegation of power.

ISSUES IN HISTORIC DISTRICT LEGISLATION

Now that establishing historic districts, regulating new construction on vacant lots in these areas, and prohibiting incongruous building activity are firmly established in North Carolina, future preservation court cases will test specific applications of historic district regulations. Preservationists and their lawyers must alert themselves to the issues raised in such applications.

One issue which landowners may attack is the appropriateness of the historic district designation; not all areas of a city are of historical and architectural significance (remember, the Oakwood area is on the National Register of Historic Places). Furthermore, even if an area can fairly be termed historic owing, for instance, to its association with a famous person, the heterogeneous character of the area may not permit the exercise of the contextual standard of incongruity. In such a case, designation of historic sites may be the only way to achieve historic preservation.

Another issue which may lead to litigation is procedural safeguards. Now that the North Carolina Supreme Court has recognized that the presence or absence of procedural safeguards is relevant to the broader question of whether a delegation of authority is accompanied by adequate standards, it is essential that procedural standards be included in local ordinances and rigidly followed. At minimum, procedural due process requires:

1. the party whose rights are being determined to be given the opportunity to offer evidence, cross-examine adverse witnesses, inspect documents, and offer evidence in rebuttal;
2. absent stipulations or waiver, findings about crucial facts must not be based upon unsworn statements;
3. crucial findings of fact must be supported by competent material, and substantial evidence in view of the entire record submitted;
4. the historic district commission must state, with sufficient specificity, the basic facts on which it relied to allow or deny a certificate of appropriateness; and
5. essential elements of a fair trial be followed (*Humble Oil v. Board of Aldermen*, 1974).

Failure to follow any of these requirements will result in invalidating the actions of the historic district commission. Hence, a letter from an absent interested party may not be accepted as evidence, unless stipulated by the parties. Members of the historic district commission must disqualify themselves from

particular cases if they have an interest in the outcome of the decision. If commission members have special knowledge of relevant facts, or have acquired such knowledge by personal inspection of the premises, the information must be revealed at the public hearing and made a part of the record. A notary public or other qualified person must administer the oath, unless stipulated otherwise.

Another potential issue for litigation is the appeal from a denial by the historic district commission of a certificate of appropriateness. In North Carolina, the only reason for denial of a certificate of appropriateness is that the proposed building activity is incongruous with the historic aspects of the district. The commission must enter in the record the historic aspects of the district and detail how the proposed building activity is incongruous with those aspects.

Yet another ground for legal challenge is the validity of the historic district boundaries. In the A-S-P case, the landowner alleged that the City of Raleigh acted arbitrarily and capriciously in setting the boundaries of the Oakwood Historic District. Associates' property is part of a one block area, zoned for office and institutional uses, which, in part, forms the southwest boundary of the Oakwood Historic District. Located on the block are four parcels: a nondescript, yellow brick-veneer building used for office space, Associates' vacant lot, the former Mansion Square Inn (built in the late nineteenth century), and a new office building of the State Medical Society. At the request of the Medical Society, its building and two lots used

"...HISTORIC PRESERVATION...PROMOTES THE ACCOMPLISHMENT OF A PUBLIC GOOD IN A NUMBER OF WAYS..."

for off-street parking were excluded from the Historic District overlay. Associates' request that its vacant lot be similarly excluded was denied; its property, as well as all other property on the block, was included in the Historic District. This, according to the plaintiff, violates the constitutional guarantee of equal protection and constitutes spot zoning. The Court of Appeals held that these facts constitute a *prima facie* showing of arbitrary and capricious spot zoning (*A-S-P Associates v. Raleigh*, 1979).

Spot zoning in North Carolina is "(a) zoning ordinance or amendment which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area, uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the larger area; or so as to relieve the small tract from restrictions to

which the rest of the area is subjected; and in the absence of any clear showing of a reasonable basis for distinguishing among zoning parcels spot zoning is beyond the authority of a municipality" (*Blades v. Raleigh*, 1972).

The Supreme Court (*A-S-P Associates v. Raleigh*, 1979) applied a literal and mechanical solution to the boundary contention and held that the City of Raleigh did not engage in spot zoning for two reasons. First, the Oakwood Historic District overlay, 102 acres, restricted numerous property owners. Second, the non-inclusion of certain property owned by the Medical Society was not a reclassification in that it was not relieved from any pre-existing zoning restriction.

In spite of the favorable result, this aspect of the decision is potentially troublesome. Spot zoning principles are now an integral part of historic district case law in this state, even though considerations used to delineate historic districts are different from other zoning boundaries. For example, unlike the designation of other zoning boundaries, where consideration of property ownership is irrelevant, protection of structures associated with public figures is of course vital to historic preservation. Furthermore, because historic preservation regulations are based on contextual standards, local governments must be free to gerrymander the district in order to exclude incongruous buildings and uses.

The facts showed that the State Medical Society's building is a modern structure with virtually all of its architectural style incongruous with the historic aspects of the Oakwood Historic District; that the Society made substantial investments in the foundations of the building in order that two additional stories could be added at some future point; and that

The State Medical Society Building was excluded from the Oakwood Historic District.



the adjacent lots owned by the Medical Society, which were also excluded from the district, were acquired to provide additional off-street parking necessary to future use of the building. Applying these facts to the standard test of equal protection, which requires that different treatment made by laws have a reasonable basis in relation to the purpose and subject matter of the legislation, the Supreme Court concluded that a reasonable basis existed for the exclusion of the Medical Society's property.

ZONING AND THE COMPREHENSIVE PLAN

The last major issue decided in the A-S-P case with particular relevancy to planners in North Carolina is the comprehensive plan requirement. Recently, courts, commentators, and legislators have redirected their attention to the general enabling requirement that zoning regulations be in accordance with a comprehensive plan. They have begun a close scrutiny of land-use regulations for their consistency with existing plans. For the remainder of this article, this recent trend will be called the "planning mandate theory."

The specific requirement of a comprehensive plan is intended to avoid an arbitrary, unreasonable, or capricious exercise of the zoning power (*Speakman v. Mayor & Council*, 1951). Fidelity to a comprehensive plan, it is believed, will ensure that long-term policy goals are given more emphasis in local zoning matters than the pressure of individuals for special treatment (*Harr*, 1955). It is also believed that fidelity will provide the courts a standard for review of land use matters which is more sharply defined than the standard due process test of reasonableness (*Harr*, 1955). Still another reason advanced for strict adherence to conformance is the belief that only through comprehensive decisions, in contrast to *ad hoc* determinations, is it possible to achieve efficient allocation of land uses. Thus, *Harr* (1955) has argued that land use regulations enacted without reference to a formal plan are, per se, unreasonable because they fail to consider the complex relationship between various land use controls and the general welfare.

North Carolina, like most other states, does not require zoning decisions to be based on extrinsic plans. Prior to the A-S-P case the decisional law in this state merely required that zoning regulations be geographically comprehensive and that such regulations be reasonably calculated to achieve the aims of the enabling law (*Allred v. Raleigh*, 1970). The Court, in A-S-P, reaffirmed this position despite the recent application of the planning mandate theory in other states. Even so, A-S-P is not an "anti-planning" case.



Oakwood homes document 19th century suburban life in the South.

The Court indicated that evidence showed that Raleigh had engaged in comprehensive studies of the city's transportation, public facilities, parks and recreation facilities, and housing stock. The evidence, moreover, showed that the adoption of the Oakwood Historic District Ordinance was based on a planning study which gave careful consideration to the various ways Raleigh was attempting to protect and promote the general welfare. The case can, in fact, be linked to the "planning factor doctrine," which advocates that the courts examine local land use decisions in light of adopted planning studies, but does not require the adoption of plans (Sullivan and Kressel, 1975). The Court's rejection of the planning mandate theory is justified at this time because of the numerous problems associated with the theory.

The most basic of these problems is definitional. What is a comprehensive plan, and what is meant by consistency? The illusive concept of comprehensive planning has been, and is, the subject of great debate. The Raleigh planning director (A-S-P Associates v. Raleigh, 1979) believes that a comprehensive plan is a rational process with no particular end-state. The Plaintiff, relying on the New York case of *Udell v. Hass* (1968), contends that a comprehensive plan is revealed through judicial review of "all relevant evidence as garnered from any available source."

California planning law mandates that the comprehensive plan contain specific elements, such as housing and open spaces, while other states, such as Oregon, require adoption of state-wide planning goals to which local plans and regulations must conform. Although North Carolina has no specific comprehensive plan legislation, it appears that the approach of this state is evolving towards the Oregon approach.³ However defined, the plan must be specific and internally consistent or it will amount to little more than a series of agreeable cliches that are of little assistance in directing municipal regulatory efforts. Therefore, under the planning mandate theory, not only must the courts mandate planning, they must actively supervise plan content to ensure specificity and internal consistency.

The term *consistency* involves at least three levels of analysis: internal consistency, consistency between local plans and state and federal goals, and consistency between local plans and local regulations. Although easy to explain, the concept of consistency is almost impossible to apply. Minor locational differences between mapped plans and the actual zonings have been both tolerated and disallowed by the courts.⁴ The state of confusion is perhaps best illustrated in California. In that

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state a statute requires that the various land uses authorized by ordinances be compatible with the objectives, policies, general land uses, and programs specified in local plans. George H. Murphy, California Legislative Counsel, commenting on whether this statute allows land regulations which are less intense than proposed in the plan stated that "a zoning ordinance which permits either a greater or less intense land use than that permitted by the general plan would not be in agreement with or harmonious with the general plan, and in our opinion would not be consistent with the general plan" (Sullivan and Kressel, 1975:52). The opinion of Murphy, however, is directly contradicted by the California Attorney General.⁵

The courts are similarly divided on this simple question.⁶ As of 1978, there were at least twelve California appellate court decisions which have involved the consistency requirement. Even the advisory guidelines to assist local governments (drafted by the California Council of Intergovernmental Relations) have not, according to Mandelker (1976), a leading supporter of the planning

mandate theory, done any more to clarify the consistency requirement than adopt a rule of reason which is strikingly similar to the position of prior court decisions. Similar difficulties exist in almost all planning mandate states; recent Florida and New Jersey planning statutes do not even define the term consistency, and court decisions sometimes even ignore the requirement. Ironically, the consistency requirement, according to its supporters, is intended to provide the courts a standard of judicial review more sharply defined than the standard due process test.

Practical problems aside, it must be asked if inconsistency is necessarily bad. Justice Brock, writing for the North Carolina Supreme Court in the A-S-P case, observed: "A rational process of planning for a large city's varied needs inherently involves conflicts, changes, and inconsistent proposals as to how they should be met." Excessive reliance on the consistency requirement might even chill the preparation of innovative plans by local governments and thus inadvertently place a premium on planning which supports existing policies. Unless the courts involve themselves in reviewing the substance of plans, there is the further danger that outdated plans or plans based on erroneous assumptions about future change will be imposed on local governments.

Policy flexibility is needed to prevent a community from being locked into an undesirable earlier decision; this was particularly true in regard to the Oakwood neighborhood for which Raleigh changed its policy from a development strategy to a preservation strategy. From a

"IF CONCERN IS LIMITED TO HISTORIC BUILDINGS ONLY, LANDMARK AND HISTORIC SITE LAWS ALONE WOULD BE SUFFICIENT..."

legal point of view, the community is always capable of using its police power to adapt to changing conditions or merely to implement a different set of values. As the Pennsylvania Supreme Court (Chenney v. Village, 1968) explains, "It is a matter of common sense and reality that a comprehensive plan is not like the law of the Medes and the Persians; it must be subject to reasonable change from time to time as conditions...change." Therefore, amendments to any adopted plan must be allowed, and court decisions have so recognized this right. If, however, local governments have the right to amend their plans without strict controls, the possibility of *ad hoc* decisions based on favoritism is just as great under the planning mandate theory as under the present rule.

Zoning is one of the many regulatory devices used to implement community plans. Eminent domain, housing assistance programs, and capital improvements are but a few of the many non-regu-

latory devices local governments can use to implement their plans. There is a real danger that, in reviewing zoning cases for conformity with local plans, the courts will lose sight of this and, through their decisions, zoning will become the sole regulating device. Because of the stricter requirements for conformance, the courts may abandon their earlier decisions that comprehensive plans are advisory documents and therefore do not give rise to due process "taking" claims. Thus, if a community plan designates an area for park and recreation use and the law in that jurisdiction requires strict adherence to the plan, it seems manifestly unfair for the landowner to remain uncompensated for the reduction in property values until the community is able to acquire the property.

Even from a philosophic standpoint, strict reliance on the planning mandate theory may be suspect. The theory clearly elevates the rational planning model to legal predominance. All other models of planning, such as incremental or process planning, are excluded by the conformance requirement. Proponents of the planning mandate theory necessarily believe that governmental planning and allocation of land uses are the most efficient means of allocating resources. It is debatable whether this belief is in fact true. Certainly, con-

The N.C. Supreme Court held that historic preservation promotes general welfare.



sistency review is not an efficient use of judicial resources. If, as contended by supporters of the planning mandate theory, the proper role of the judiciary is to review land use regulations for consistency, who reviews the goals of those plans? Presently, the greatest utility of plans is the support and justification of harsh land regulations which are adverse to regional housing interests. Attention to the minutiae of consistency may distract judicial review away from the consequences of plans. It seems that an administrative board with expertise in planning is a more appropriate forum to understand and evaluate consistency than the courts. Of course, this solution requires new legislation. In fact, the wide range of problems associated with the planning mandate theory are best resolved by the legislature. Even supporters of the

"ATTENTION TO THE MINUTIAE OF CONSISTENCY MAY DISTRACT JUDICIAL REVIEW AWAY FROM THE CONSEQUENCES OF PLANS,"

planning mandate theory have advocated legislative intervention. Therefore, failure to embrace the planning mandate theory in A-S-P is not necessarily rejection of the theory.

Finally, proponents of the planning mandate theory have failed to sufficiently explain why means other than the comprehensive plan cannot be found to reduce arbitrary local land use decisions. Equal protection, with its requirement that properties which are similarly situated and located be treated alike, can be used to ensure fairness. Requiring a statement of reasons articulating the basis for rezoning decisions affords another safeguard against arbitrary and careless action, and such statements are likely to result in greater consistency in decision-making.

CONCLUSION

Clearly, except for the mechanical approach to spot zoning and reluctance to permit aesthetic regulation, A-S-P v. Raleigh is a very positive planning-law case. It permits local governments to preserve the historic legacy of the state, even to the extent of regulating vacant lots in historic districts. It recognizes the validity of contextual standards and establishes procedural and substantive guidelines on how these standards may be used, and the court steers a proper middle course with respect to the role of land use plans in court decisions.

NOTES

1. Even though in 1972 the North Carolina Supreme Court in *State v. Vestal*, 281

N.C. 517, 189 S.E. 2d 152 (1972), took note of the growing body of authority in other jurisdictions that recognized that police power may be broad enough to include regulation of property for aesthetic reasons alone; the rule in North Carolina, as well as most other states, is that such regulation is an impermissible exercise of the police power.

2. The guidelines vary in specificity. For example, the guidelines contain general standards, such as the prohibition of building activity that is "flagrantly out of character;" but they also contain specific standards, such as those prohibiting plateglass windows and flat roofs. The guidelines are divided into three major divisions: those which apply to proposed changes to existing structures, those which apply to new construction, and those which apply to landscaping. For new construction, the guidelines set forth limitations on spacing, lot coverage, and height which are all related to the same characteristics of existing structures in proximity to a proposed new structure.

Oakwood was placed on the National Register of Historic Places in 1974.





Concrete and steel contemporary building owned by the N.C. Medical Society.

3. Prior to the recodification in 1972, sec. 160-174 N.C. Gen. Stat. required that zoning regulations be in accordance with a comprehensive plan and be designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Since 1972, the specific purposes have been deleted from 160A-383 N.C. Gen. Stat. In 1976, the North Carolina Land Policy Council proposed that amendments to local land use plans be submitted for review to the regional planning body in order to be tested for consistency with the guidelines of the regional and state plans. Land Policy Council, A Land Resources Program for North Carolina 4-15 (1976). The North Carolina Coastal Area Management Act requires that a regional commission prepare guidelines (N.C. Gen. Stat. sec. 113A-107(a)) and that county and municipal plans prepare land use plans (N.C. Gen. Stat. 113A-110). In areas of environmental concern, local land use plans must be consistent with the promulgated guidelines (N.C. Gen. Stat. secs. 113A-107(a) and 110(a)).
4. Compare *Duddles v. City Council of West Linn*, 21 Or. 310, 535 P. 2d. 583 (1975), with *Ward v. Knippenberg*, 416 S.W. 2d 746 (1967).
5. 58 Ops. Cal Atty Gen 21, (1975).

6. Compare *Marracci v. City of Scappose*, 26 Or. App. 131, 552 P. 2d. 552 (1976), with *Louisville v. Kavanaugh*, 495 S.W. 2d. 502 (1973).

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