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**INTERSECTION BETWEEN  
ENVIRONMENTAL PLANNING AND  
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# **INTERSECTION BETWEEN ENVIRONMENTAL JUSTICE AND LAND USE PLANNING**

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**MAY 2006**

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Commentary

# Intersection Between Environmental Justice and Land Use Planning

Patricia E. Salkin

## INTRODUCTION

Environmental justice goes to the core of traditional land use decisions: choosing sites for locally unwanted land uses (geographic equity); the process for deciding where to site these unwanted land uses, including the location and timing of public hearings (procedural equity); and sociological factors, including which groups hold the political power inherent in land use decisions (social equity).

uses can be legally sited within a municipality, but the ramifications of zoning on environmental health and equity have been somewhat hidden.”<sup>4</sup> Yet planning and traditional land use control laws—including coordinated environmental review with these local government actions—can serve as more proactive measures to address environmental justice concerns.<sup>5</sup> As one scholar has noted, “The next frontier for both the movement and the focus

four years later,<sup>7</sup> set the foundation of state authority over planning and zoning. Because, in almost every state, decisions on land use planning and adoption of land use laws to implement these plans is entirely a function of local government, it is critical to examine the relationship between the legal and regulatory schemes within which these decisions are made and their relationship to environmental justice issues. Commenting on Justice Sutherland’s passing distinction in *Euclid* between the “general public interest” and “the interest of the municipality,” Alfred Bettman noted: “This passage in the opinion is noteworthy in that it presents the conflict not as one between the individual and the community, but rather as between different communities, different social groups, or social interests, which is, when profoundly comprehended, true of all police power constitutional issues.”<sup>8</sup>

At the start of the 21st century, there is a renewed interest in modernizing and reforming outmoded planning and zoning laws of many states. This interest presents a unique opportunity for environmental justice advocates to provide leadership by securing the passage of revised state enabling statutes that empower local governments to address these issues more effectively through land use planning and zoning.

### WHAT IS ENVIRONMENTAL JUSTICE?

“Environmental hazards fall disproportionately on the poor and minority communities who have borne the brunt of waste siting decisions. Race is the single best statistical indicator for predicting the location of a commercial hazardous waste site. Evidence of this environmental racism indicates the extent to which society has denied minorities the rights and benefits the majority culture enjoys.”<sup>1</sup>

“Environmental justice is the idea that minority and low-income individuals, communities, and populations should not be disproportionately exposed to environmental hazards, and that they should share fully in making the decisions that affect their environment.”<sup>2</sup>

Even following the enactment of the Civil Rights Act of 1964, “the property regulation, planning, and zoning policies of many cities around the country had what must be called a negative impact on EJ.”<sup>3</sup> One researcher notes that “zoning tends to act as the ‘gatekeeper’ in terms of where noxious

of environmental justice scholarship . . . is land use planning.”<sup>6</sup>

For more than 80 years, local officials have held the power to control the use of land by making decisions about what can be located where in a given area. The standard City Planning Enabling Act in 1922, followed by the *Euclid* decision

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1. Robert W. Collin, *Environmental Equity: A Law and Planning Approach in Environmental Racism*, 11 VA. ENVTL. L.J. 495, 496 (1992), cited in Michael B. Gerrard, “Environmental Justice and Local Land Use Decisionmaking,” in TRENDS IN LAND USE LAW FROM A TO Z: ADULT USES TO ZONING (Salkin, ed.) (American Bar Association, 2001).

2. Michael B. Gerrard, “Environmental Justice and Local Land Use Decisionmaking,” 126, in TRENDS IN LAND USE LAW FROM A TO Z: ADULT USES TO ZONING (Salkin, ed.) (American Bar Association, 2001).  
 3. *Id.*  
 4. See, Juliana Maantay, *Zoning Law, Health, and Environmental Justice: What’s the Connection?* 4 J.

OF LAW, MEDICINE AND ETHICS 572 (December 2002).  
 5. CLIFFORD RECHTSCHAFFEN AND EILEEN GAUNA, ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION, 297 (Carolina Academic Press 2002).  
 6. Craig Anthony Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 DENVER U.L.R. 1 (1998).

7. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).  
 8. RICHARD F. BABCOCK, THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES, (The University of Wisconsin Press, 1966) at 145-6 citing Bettman, City and Regional Planning Papers, 55.

Environmental justice issues require an even more careful and proactive approach to ensuring effective participation by all citizen interest groups.

### Comprehensive Land Use Plans

Zoning is one of several legal techniques for controlling the use of land within a municipality. Zoning is usually based upon a comprehensive plan, and that plan is generally defined as “an official public document, preferably (but often not) adopted as law by the local government, [that serves] as a policy guide to decisions about the physical development of the community.”<sup>9</sup> The process of developing a locality’s comprehensive land use plan “provides a chance to look broadly at programs a local government may initiate regarding housing, economic development, provision of public infrastructure and services, environmental protection, and natural and manmade hazards and how they relate to one another.”<sup>10</sup> State governments typically leave the detailed contents of comprehensive planning to individual municipalities. But suggestions or guidelines about the elements of a plan may be adopted by state statute. This approach, together with a requirement that land be zoned in accordance with the comprehensive plan, is finding its way into more recent state statutory reforms.<sup>11</sup>

One specific goal of the smart growth movement should be to incorporate environmental justice concerns into any proposed list of factors and topics that should be or may be addressed in local comprehensive plans. This goal can easily be accomplished through training, education, and technical assistance for local planners and other officials. In 2001, California legislation required the Governor’s Office of Planning and Research to adopt guidelines for local agencies when addressing environmental justice issues in their general plans.<sup>12</sup> Even prior to passage of the legislation, the City of Los Angeles included a goal in its general plan for

the “physically balanced distribution of land uses,”<sup>13</sup> thus providing a foundation for the city to ensure that its future zoning ordinances take environmental justice into account.

### Citizen Participation in Preparation of the Comprehensive Plan

One way around the barriers preventing consideration of environmental justice concerns in local decisions is to make certain that local officials provide traditionally underrepresented populations with a meaningful role in the future development of their neighborhoods and communities through active citizen participation in the development of comprehensive land use plans. For most localities, municipal officials are already empowered to ensure that effective citizen participation can occur because state enabling statutes usually give local officials broad authority to develop their plans with little or no guidance; often there is little mention of the process by which such plans are to be developed and adopted.

Traditionally, however, citizen participation in the development of comprehensive plans and in the process for adopting zoning has been limited to participation in the single public hearing that is typically required by state law prior to the local legislative body’s official adoption of the plan or zoning ordinances. APA’s *Growing Smart Guidebook* urges local officials to do more:

The processes for engaging the public in planning are not made clear in many planning statutes. Requirements for public notice, public hearings, workshops, and distribution and publication of plans and development regulations are often improvised. Consequently, the public may find its role and the use of its input uncertain, and it may be suspicious of plans and decisions that emerge.

Planning should be doing the opposite; it should be engaging citizens positively at all steps in the planning process, acknowledging and responding to their comments and concerns. Through collaborative approaches, planning should build support for outcomes that ensure that what the public wants indeed will happen.<sup>14</sup>

While this observation is certainly true, environmental justice issues require an even more careful and proactive approach to ensuring effective participation by all citizen interest groups. Otherwise, “ensuring what the public wants” may not offer a level playing field for local low-income and people-of-color communities which are often disillusioned, if not disenfranchised, by most local decision-making processes.

States have taken varied approaches when adopting statutes to encourage or require effective citizen participation in local land use planning. Maine and Arizona laws offer two examples.

In order to ensure citizen participation in the development of a local growth management program, municipalities may adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this subsection is to provide for the broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments. (Maine, 30-A ME. REV. STAT., sec. 4324(3)(1995).

When preparing a general land use plan, local planning agencies in Arizona are required to:

... seek maximum feasible public participation from all geographic, eth-

9. JURGENSMAYER AND ROBERTS, *LAND USE PLANNING AND CONTROL LAW* at 26 (West Group 1998).

10. STUART MECK, FAICP, gen.ed., *GROWING SMART LEGISLATIVE GUIDEBOOK* (American Planning Association, 2002) at p.7-6.

11. Stuart Meck, *The Legislative Requirement that*

*Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute*, 3 WASH. UNIV. J. OF LAW & POL’Y 295 at 306 (2000). Meck reviews revised statutes in 12 states that have attempted to overcome the ambiguous language in the Model State Zoning Enabling

Act that provides that zoning be adopted “in accordance with a comprehensive plan.”

12. Chapter 762 of the California Laws of 2001.

13. CLIFFORD RECHTSCHAFFEN AND EILEEN GAUNA, *ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION* (Carolina Academic Press 2002) at 301 citing the City of Los Angeles

General Plan, Ch.3 Goal 3A.

14. STUART MECK, FAICP, gen.ed., *GROWING SMART LEGISLATIVE GUIDEBOOK* (American Planning Association 2002) at xlvi.

Disparate environmental impacts often exist even in the absence of any intent to create those effects.

nic, and economic areas of the municipality and consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of plans may be secured and properly located sites for all public purposes may be indicated on the general plan. (ARIZ. REV. STAT. Sec. 9-461.05(e)(1996)).

Ideally, a requirement to ensure meaningful citizen participation by all cross sections of the local population should be included in a state planning and zoning enabling statute. Providing for active involvement by people-of-color and low-income residents in developing the goals of a community's comprehensive plan, at least as it relates to their own neighborhoods, will help to ensure that local zoning laws or ordinances are developed or amended to reflect the desires of those communities. Once their concerns are part of the comprehensive plans, the local zoning ordinances will run the risk of being invalidated if they do not accomplish the goals of the comprehensive plans for addressing environmental justice concerns.

#### Zoning to Implement the Comprehensive Plan

When a municipality is ready to implement its plan or vision, typically it does so by enacting a zoning ordinance. Zoning is a process where land in a municipality is organized into any number of districts. These districts are then labeled, and the text of the zoning law describes what uses are allowable within each district. This form of zoning—also called “Euclidean zoning” from the famous Supreme Court case upholding the constitutionality of zoning<sup>15</sup>—is designed to separate dif-

ferent land uses that are believed to be incompatible.

What has emerged, however, is a pattern of land uses that produced different neighborhoods where people live, often identifiable based on race and socioeconomic status. Specifically, the “haves” who can afford the proverbial American Dream to own a single-family detached house are able to live next door to others similarly situated. Likewise, those who rent because they cannot afford to own their own home rarely live next door to owners of single-family houses. Rather, people with lower income tend to live among those of similar economic status and are concentrated together in the same areas because Euclidean zoning has separated single-family residential use into one or more zoning districts that are separate from the multifamily and apartment housing in other districts.

To overcome these effects of traditional Euclidean zoning, zoning enabling acts must include methods for environmental justice principles to be adequately addressed as part of the process for revising and adopting local zoning laws. Disparate environmental impacts often exist even in the absence of any intent to create those effects. The potential promise of effective coordination between local zoning, the comprehensive plan, and environmental justice is explained by author Craig Anthony Arnold:

First, an owner or operator of a prospective LULU [sic Locally Unwanted Land Use] would have much more difficulty obtaining approval for siting the LULU in a minority or low-income neighborhood, if the comprehensive plan and zoning ordinances prohibited the LULU in that neighborhood than if they allowed the LULU, either by

#### EXECUTIVE ORDER 12898

*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

President Clinton  
February 11, 1994

“To the greatest extent practicable and permitted by law . . . each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . . Within three months, the Administrator of the Environmental Protection Agency shall convene an interagency Federal Working Group on Environmental Justice . . . to provide guidance to federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations . . . to coordinate with, provide guidance to, and serve as a clearinghouse for, each federal agency as it develops an environmental justice strategy . . . to assist in coordinating research by, and stimulating cooperation among EPA, DHHS, HUD, and other agencies . . .”

15. *Supra*, Note 7.

A CIS provides a mechanism for local officials to formulate their own statement of what they believe impacts will be if a particular use is approved or allowed to expand.

right or conditionally . . . Second, land use planning and regulation create greater certainty about what land uses will or will not be allowed in a neighborhood . . . Third, land use planning and [zoning] regulations improve the community's capacity to achieve its goals . . .<sup>16</sup>

The process of amending existing zoning ordinances offers another significant opportunity to address environmental justice concerns. Because planning, by its definition, requires perspective, thought, and vision, rezoning consistent with a new updated plan is essential for a locality to achieve its articulated goal and remedy an ongoing injustice that is allowed or caused by current zoning.<sup>17</sup> As Arnold explains:

Low-income and minority neighborhood groups will be more successful in achieving valid rezoning of neighboring properties from more intensive to less intensive uses if they follow four guiding principles: (1) seek rezoning before controversial specific land use proposals arise; (2) carefully document the incompatibility of existing high-intensity use designations and their impact or potential impact on the health and safety of local residents, as well as community character; (3) seek rezoning for all neighboring parcels with similar use designations and similar impacts (do not leave a landowner the argument that only his or her property has been downzoned while neighboring parcels remain zoned for more intensive uses); and (4) do not downzone so greatly that the landowner suffers a substantial diminution in the property's value (leave the owner some economically viable use—for example, downzone from industrial use to a commercial use, instead of all the way to a single-family use).<sup>18</sup>

### Eliminating Nonconforming Uses

When municipalities adopt zoning codes, they often grandfather existing uses that were allowed prior to the adoption or amendment of new zoning laws. These “nonconforming” uses typically include facilities that are no longer consistent with the current land use goals for the future of the community and may represent operations that pose significant environmental and health hazards.<sup>19</sup> There is little statutory authority for addressing nonconforming uses. Most states and local governments follow common law or case law on this subject.

Nevertheless, unwanted nonconforming uses can typically be eliminated in one of two ways: through adopting a local amortization law to eliminate the use,<sup>20</sup> or through a local finding that the use constitutes a public nuisance and obtaining a court order to cease. One strategy to address environmental justice issues could be for states to require that municipalities must “survey their nonconforming uses and determine whether any of them pose such health and environmental problems that they should be targeted for closure.”<sup>21</sup> Local governments can then effectively amortize the use, thereby beginning the process of improving conditions in people-of-color or low-income communities to achieve neighborhood-based environmental justice.

### Connecting Zoning and Environmental Review

State environmental policy acts “bring a new dimension to land use planning and regulation.”<sup>22</sup> Only 15 states, the District of Columbia, and the Commonwealth of Puerto Rico have adopted state environmental review

laws (“little NEPAs”) requiring advance consideration that may have significant environmental impacts.<sup>23</sup> Although less than half of the states have enacted specific statewide authority for local governments to conduct local environmental impact assessments, localities in other states may find authority under state municipal home rule laws or planning and zoning enabling acts to adopt their own locally developed environmental impact laws.<sup>24</sup>

One variation on local environmental impact statement is the community impact statement (CIS).<sup>25</sup> A CIS provides a mechanism for local officials to formulate their own statement of what they believe impacts will be if a particular use is approved or allowed to expand. Local reliance on the CIS process could be authorized by state legislatures or, in some cases, local governments may already possess the necessary power to adopt local laws or ordinances to authorize the CIS process.

One potential benefit of preparing a CIS is that it can be a stand-alone review, totally separate from an environmental impact review, which may not always be conducted under the “control” of members of the impacted community. If conducting CIS reviews becomes part of local zoning reviews, local officials could be required to take the results of a community group's CIS into consideration, to hold one or more public hearings on the document, and to use the CIS as a vehicle for negotiating on behalf of residents of the impacted community with the applicant for a new or expanded facility. Requiring that a CIS be prepared and used in local zoning decisions could be important for impacted communities who might not otherwise have access to or influence over local decision

16. Craig Anthony Arnold, *Land Use Regulation and Environmental Justice*, 30 ELR 10395, 10407-8 (June 2000).  
17. *Id.* at 10404.

18. Craig Anthony Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 DENVER U.L.R. 1 (1998), reprinted in part in CLIFFORD RECHTSCHAFFEN AND EILEEN GAUNA, ENVIRONMENTAL JUSTICE

LAW, POLICY & REGULATION (Carolina Academic Press, 2002), 299.

19. Michael B. Gerrard, “Environmental Justice and Local Land Use Decisionmaking,” 148 in TRENDS IN LAND USE LAW FROM A TO Z: ADULT USES TO ZONING (Salkin, ed.) (American Bar Association 2001).

20. See, Margaret Collins, *Methods of Determining Amortization Periods for*

*Nonconforming Uses*, 3 WASH. UNIV. J. OF LAW & POL'Y 215 (2000).

21. *Supra*, Note 19 at 148.

22. *Supra*, Note 14 at 12-3.

23. See, Daniel R. Mandelker, *Melding State Environmental Policy Acts with Land-Use Planning and Regulations, in Modernizing State Planning Statutes: The Growing Smart Working Papers*, Vol. 2, Planning Advisory Service

Report No. 480/481 (American Planning Association, 1998). Professor Mandelker identifies the following states as having little NEPAs: California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, South Dakota, Virginia, Washington, and Wisconsin.

24. Kathryn C. Plunkett, *The Role of Local Environmental*

*Impact Review*, in NEW GROUND: THE ADVENT OF LOCAL ENVIRONMENTAL LAW (J. Nolan, ed.), 299 (Environmental Law Institute, 2003).

25. Sara Pirk, *Expanding Public Participation in Environmental Justice: Methods, Legislation, Litigation and Beyond*, 17 J. ENVTL. L. & LITIG. 207, 235 (2002).

Exclusionary zoning may be purposeful or unintentional, but is illegal and a violation of civil rights, resulting in legal judgments or costly settlements against municipalities.

makers and the results of other environmental reviews.

#### OTHER OPPORTUNITIES

There are numerous other opportunities to use existing land use planning and zoning techniques at the local level to address environmental justice concerns. Craig Anthony Arnold catalogues these options, which include:<sup>26</sup>

- Conditional uses can impose certain restrictions on uses that could create EJ concerns.
- Overlay zones may be used to impose additional requirements over an existing zoning district to ensure, for example, additional environmental protections; they can also impose a variety of specific requirements on industrial and commercial activities in predominantly low-income and minority neighborhoods.
- Performance zoning is a technique used not to regulate the land use but rather to regulate the impacts of the use of land by, for example, providing standards to limit certain nuisance-like activities.
- Buffer zones are usually local zoning districts that “buffer” or serve as a transitional district between two or more uses that might be considered incompatible.
- Floating zones are zoning districts described in the text of a zoning ordinance but not specifically placed on the zoning map so they can “float” until they are located based upon the presence of certain identified criteria and a request from a landowner to locate that type of district at a specific site for a particular development or facility.

- Exactions and mitigation fees are fees that localities can assess developers to reimburse the costs associated with their new developments to fund important public infrastructure needs in low-income or people-of-color communities.

Most of these tools are not specifically authorized by state statute, but have been recognized over the years by the courts as valid exercises of the police power, enabling these techniques to be used with little statutory guidance at the local level.

In most states, many other decisions about planning and land use requirements that could be used to address environmental justice concerns are left to the discretion of local officials. They include: membership on planning commissions, planning boards, and zoning boards; investment in training for zoning officials, planners and other local decision makers; and commitments to conduct more effective community outreach and information sharing.

At the state level, more can be done to ensure education and training. Typically, members of local planning and zoning boards, as well as members of local legislative bodies, are not required to receive any specific training on planning and zoning laws. Yet, scholars have documented that zoning and other land use controls such as large lot zoning, minimum floor area requirements, large setbacks, low density zoning and restrictions on manufactured housing and multifamily housing have been used to exclude certain populations from settling in a particular area.<sup>27</sup> Exclusionary zoning may be purposeful or unintentional, but is illegal and a violation of civil rights, resulting

in legal judgments or costly settlements against municipalities. Some of the local land use decisions that resulted in these court rulings could have been avoided by proper training for members of local land use planning and zoning boards.

Access to important environmental information is also critical for local decision makers. To address environmental justice issues effectively, local officials must have access to reliable information and sound science, and they need the capacity to incorporate this information into carefully designed land use plans, zoning ordinances, and regulations.<sup>28</sup> In part this need relates to training because, in some instances, the information exists if local officials and planners know where and how to access it. But in other respects, it is a separate issue that calls for state and federal agencies to provide local officials with access to meaningful environmental information so that they can make more considered land use and zoning decisions.

In most localities, environmental justice considerations will be factored into local land use planning, zoning, and siting decisions only where the impacted communities are represented on the bodies empowered to make these critical decisions. A 1987 survey by the American Planning Association revealed that:

- Nearly eight out of 10 members of planning boards were men;
- More than nine out of 10 members were white, although in some larger cities the number was closer to seven out of 10;
- Almost eight out of 10 were 40 years of age or older; and

26. *Supra* Note 16 at 10415-10420.

27. *Id.*

28. James M. McElfish, Jr., *Learning from the Past and Looking Towards the Future*, in *NEW GROUND: THE ADVENT OF LOCAL ENVIRONMENTAL LAW* (J. Nolon, ed.), 404 (Environmental Law Institute, 2003).

This arguable “elitism” in the composition of local boards is a major barrier to addressing environmental justice concerns and promoting effective citizen participation for all communities in local planning and zoning decision making.

#### ENVIRONMENTAL JUSTICE RESOURCES

Executive Order 12898 of February 11, 1994:  
[www.epa.gov/fedrgstr/eo/eo12898.htm](http://www.epa.gov/fedrgstr/eo/eo12898.htm).

Links to news about environmental justice  
[www.epa.gov/compliance/resources/newsletters/ej/](http://www.epa.gov/compliance/resources/newsletters/ej/).

Environmental Justice Smart Enforcement Assessment Tool: [www.epa.gov/compliance/resources/policies/ej/ej-seat-112905.pdf](http://www.epa.gov/compliance/resources/policies/ej/ej-seat-112905.pdf).

Letter reaffirming the U.S. Environmental Protection Agency’s commitment to environmental justice:  
[www.epa.gov/oswer/ej/pdf/admin-ej-commit-letter-110305.pdf](http://www.epa.gov/oswer/ej/pdf/admin-ej-commit-letter-110305.pdf).

*Environmental Justice for All: A Fifty-State Survey of Legislation, Policies, and Initiatives*: [www.abanet.org/ir/committees/environmental/statestudy.pdf](http://www.abanet.org/ir/committees/environmental/statestudy.pdf).

California Environmental Protection Agency: Intra-Agency Environmental Justice Strategy (August 2004): [www.calepa.ca.gov/EnvJustice/Documents/2004/Strategy/Final.pdf](http://www.calepa.ca.gov/EnvJustice/Documents/2004/Strategy/Final.pdf).

California Environmental Protection Agency: October 2004 Environmental Justice Action Plan: [www.calepa.ca.gov/EnvJustice/ActionPlan/Documents/October2004/ActionPlan.pdf](http://www.calepa.ca.gov/EnvJustice/ActionPlan/Documents/October2004/ActionPlan.pdf).

State of California, General Plan Guidelines (2003), Governor’s Office of Planning and Research (p 9, 20-31): [www.opr.ca.gov/planning/PDFs/General\\_Plan\\_Guidelines\\_2003.pdf](http://www.opr.ca.gov/planning/PDFs/General_Plan_Guidelines_2003.pdf).

Principles of Environmental Justice, First National People of Color Environmental Leadership Summit, adopted Washington D.C., October 1991: <http://home.earthlink.net/~clearh2orev/ejprin>.

“Toward Equity in Land Use Development Using Health Impact Assessment,” *NACCHO Exchange* Winter 2005, Volume 4, Issue 1: [www.cpath.org/docs/naccho\\_Exchange\\_Winter\\_051.pdf](http://www.cpath.org/docs/naccho_Exchange_Winter_051.pdf).

*Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning*. (pp. 1-57): [www.napawash.org/Pubs/EJ.pdf](http://www.napawash.org/Pubs/EJ.pdf).

Final Report of the New York State Department of Environmental Conservation *Disproportionate Adverse Environmental Impact Analysis Work Group* (August 2004): [www.dec.state.ny.us/website/ej/dacireport.pdf](http://www.dec.state.ny.us/website/ej/dacireport.pdf) and [www.dec.state.ny.us/website/ej/workgroupreports](http://www.dec.state.ny.us/website/ej/workgroupreports).

*Environmental Justice: Guidance Under The National Environmental Policy Act* (December 10, 1997): <http://ceq.eh.doe.gov/nepa/regis/ej/justice.pdf>.

*Siting a Pollution Control Facility in Illinois*: [www.epa.state.il.us/community-relations/pollution-control-facility-siting.pdf](http://www.epa.state.il.us/community-relations/pollution-control-facility-siting.pdf).

Indiana Department of Environmental Management Environmental Justice Strategic Plan: [www.in.gov/idem/guides/publicparticipation/print/envjusticestrategic-plan\\_en.pdf](http://www.in.gov/idem/guides/publicparticipation/print/envjusticestrategic-plan_en.pdf).

Illinois EPA: Environmental Justice: [www.epa.state.il.us/environmental-justice/index](http://www.epa.state.il.us/environmental-justice/index).

Illinois EPA: Illinois Environmental Justice Advisory Group—FAQs: [www.epa.state.il.us/environmental-justice/advisory-group..](http://www.epa.state.il.us/environmental-justice/advisory-group..)

Illinois EPA: Interim Environmental Justice Policy: [www.epa.state.il.us/environmental-justice/policy](http://www.epa.state.il.us/environmental-justice/policy).

Illinois EPA: Environmental Justice Grievance Procedure: [www.epa.state.il.us/environmental-justice/grievance-procedure](http://www.epa.state.il.us/environmental-justice/grievance-procedure).

- Most board members were professionals such as businesspeople, lawyers, engineers, educators, and real estate agents.<sup>29</sup>

This study confirmed the findings of planning consultant Harvey S. Moskowitz, who examined the characteristics of New Jersey’s planning boards between 1981 and 1982. He concluded that the members of these boards differed from the general popu-

lation and were drawn from more elite groups than the general population.<sup>30</sup> Specifically, Moskowitz found that board members were predominantly white professionals whose family incomes were consistently higher than the median family income of the general population. They were also married, owned their own homes, and had dependent children at home.<sup>31</sup> This arguable “elitism” in the composition of local boards is a major barrier to

addressing environmental justice concerns and promoting effective citizen participation for all communities in local planning and zoning decision making. This data also explains and substantiates the fact that marginalized citizens are not sufficiently empowered to impact community development decisions.

To address this situation, states could advocate or require that localities appoint board members who rep-

29. See, STUART MECK, FAICP, gen. ed., *GROWING SMART LEGISLATIVE GUIDEBOOK* (American Planning Association 2002) at Chapter 7, citing WELFORD SANDERS AND JUDITH GETZELS, *THE PLANNING COMMISSION: ITS COMPOSITION AND FUNCTION*, Planning Advisory Service Report No. 400 (American

Planning Association 1987), 4-6 (based upon 4,380 nationwide questionnaires).

30. *Id.* at Chapter 7, citing Harvey S. Moskowitz, “Planning Boards in New Jersey: Current Realities and Historical Perspectives” (unpub. PhD dissertation, Rutgers University, New Brunswick, N.J., 1983), ii.

31. *Id.*

A new nationwide study is needed to determine the current extent to which low-income or people-of-color groups are underrepresented among the members of local planning and zoning boards.

resent the diversity of the community as a whole, in terms of race, gender, income, age, and status as home owners or renters. There is also precedent for states to authorize, but not require, that municipalities appoint individuals to planning boards who may serve in a representative capacity. For example, New York statutes authorizing the creation of planning boards provide that, in certain situations (where there is a locally established agricultural district pursuant to state law), municipalities may appoint one or more members of local planning boards who derive a certain threshold of their income from agricultural pursuits in the same municipality.<sup>32</sup>

Because these studies documenting membership on planning boards are now 15 to 20 years old and did not include membership on zoning boards of appeal or other local land use bodies, a new nationwide study is needed to determine the current extent to which low-income or people-of-color groups are underrepresented among the members of local planning and zoning boards. A new survey would not only yield updated data, but also could include an explanation of environmental justice concerns and how they relate to the planning and zoning decision-making process, thus providing another opportunity for educating local officials about how they can address these issues.

#### CONCLUSION

The National Academy of Public Administration, in conjunction with the Government Law Center of the Albany Law School, conducted three regional workshops last winter to provide assistance to state and local public administrators involved in planning and zoning issues. The workshops raised awareness about environmental justice and

identified practical tools and strategies to assist in preventing and mitigating environmental justice problems. The regional workshops focused on the intersection between environmental justice and local land use planning and zoning and followed up on the Academy's 2003 study, *Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning* ([www.napawash.org/Pubs/EJ.pdf](http://www.napawash.org/Pubs/EJ.pdf)).

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Nearly 300 local zoning and planning officials from the Chicago, Albany, and San Francisco metropolitan areas heard leading national and regional practitioners and experts offer practical advice and case studies to demonstrate how environmental justice goals are being effectively integrated into local planning regulations and zoning laws. The American Planning Association hosted the workshop in Chicago. A clearinghouse of the conference materials can be found on the Academy's website: [www.napawash.org/ejworkshops](http://www.napawash.org/ejworkshops). Some of the materials from the workshop are highlighted in the Environmental Justice Resource sidebar on page eight.

Commentators, professors of environmental and land use law, and community advocates have only recently started to write about the critical connections between environmental justice problems and local land use planning and zoning decision making. While there are significant challenges to incorporating environmental justice

principles into our nation's planning and zoning system in large part due to the fragmented nature of local land use decisions, the opportunities and potential rewards are great. Given the magnitude of local land use planning and zoning efforts, environmental justice advocates should not ignore this critical step in community decision making and development.

Arnold argues that "land use planning and regulation foster choice, self-determination, and self-definition for local neighborhoods, not paternalism that insists that there is a single correct environmental justice goal."<sup>33</sup> From a timing perspective, the opportunity for changes that address environmental justice concerns has never been better due to the currently active national movement for modernizing state planning and zoning enabling laws. Significant investments in training and education through a network of partnerships are necessary, but can yield substantial returns to enable local officials to address environmental justice concerns.

There is already a growing network of public, private, and nonprofit interests, all committed to ensuring that environmental justice issues are taken into account through local planning and zoning. Increasing collaboration and cooperation, shared resources, and joint efforts will help to remedy past environmental justice problems and prevent their repetition in the future.

32. N.Y. TOWN LAW, sec. 271 (1) (McKinneys 2002); and N.Y. VILLAGE LAW, sec. 7-718(1) (McKinneys 1996).

33. *Supra*, Note 16 at 10427