

IN THE SUPREME COURT OF OHIO

B.J. ALAN COMPANY, *et al.*, : CASE NO. 08-0306
: :
Plaintiffs/Appellees : :
: :
v. : On Appeal from the Wayne County
: County Court of Appeals,
: Ninth Appellate District
CONGRESS TOWNSHIP BOARD OF :
ZONING APPEALS, *et al.*, : Court of Appeals
: C.A. No. 07CA0051
Defendants/Appellants. : :

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BRIEF AMICUS CURIAE OF THE AMERICAN PLANNING ASSOCIATION AND THE OHIO PLANNING CONFERENCE

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IDENTITY AND INTEREST OF *AMICI*

The American Planning Association (“APA”) is a nonprofit, public interest and research organization founded in 1978 exclusively for charitable, educational, literary, and scientific research purposes to advance the art and science of planning – including physical, economic, and social planning – at the local, regional, state, and national levels. The APA’s mission is to encourage planning that will contribute to the well-being of people today as well as future generations by developing sustainable and healthy communities and environments.

The APA resulted from a merger between the American Institute of Planners, founded in 1917, and the American Society of Planning Officials, established in 1934. The organization has 46 regional chapters and 21 divisions devoted to specialized planning interests. The APA represents more than 43,500 professional planners, planning commissioners and citizens involved with urban and rural planning issues nationally.¹

The Ohio Planning Conference (OPC), a chapter of the American Planning Association, was founded in October 1919 to “...promote the cause of city, town and regional planning in the state of Ohio.” Today OPC is the largest statewide planning advocacy organization in Ohio, counting over 1,250 members including elected and appointed officials and professional planners. The chapter’s work is carried out through six regional sections located in Akron, Central Ohio, Cleveland, Greater Cincinnati, the Miami Valley and Northwest Ohio.²

The APA has submitted *amicus curiae* briefs in many landmark cases of importance to the planning profession, including: *Williamson County Reg’l Planning*

¹ See, www.planning.org

² See, <http://www.ohioplanning.org/>

Comm'n v. Hamilton Bank, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985); *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987); *Yee v. City of Escondido*, 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999); *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002); *Kelo v. City of New London*, 545 U.S. 469, 125 S.Ct. 2655, 162 L.Ed.2d. 439 (2005); *Lingle v. Chevron*, 544 U.S. 528, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005); *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005); and *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 125 S.Ct. 2491, 162 L.Ed.2d 315 (2005). In 2005, APA filed a brief *amicus curiae* in the Ohio Supreme Court in *Norwood v. Horney*, 110 Ohio St.3d 353, 853 N.E.2d 1115 (Ohio, 2006).

As the need arises, the APA develops policy guides that represent the collective thinking of its membership on both positions of principle and practice. (Available at <http://www.planning.org/policyguides/>) Such policies are developed through a strenuous process that involves examination and review by both the chapters and divisions of APA. Three policy guides have direct relevance to the issues presented in this case -- the Policy Guide on Agricultural Land Preservation (1999) (Available at

<http://www.planning.org/policyguides/agricultural.htm>); the Policy Guide on Planning for Sustainability (2000) (Available at <http://www.planning.org/policyguides/sustainability.htm>); and the Policy Guide on Smart Growth (2002) (Available at <http://www.planning.org/policyguides/smartgrowth.htm>).

The present case has great significance to the future of land use and community planning in the State of Ohio. This Court's opinion will determine whether zoning is tethered to the comprehensive plan or, in the alternative, merely a land use regulatory tool disconnected from any plan or planning for the future.

STATEMENT OF ISSUES AND FACTS

The central issue in this case --- the relationship between the comprehensive plan and the zoning resolution --- is of great concern to planners in Ohio because zoning is the primary tool used by most communities to implement the goals and policies contained in the comprehensive plan.

The facts in this particular case raise a number of red flags for planners.

1. The record establishes that the Wayne County comprehensive plan dates back to 1977. (Joint Supplement in Support of Merit Briefs 101-124 (hereinafter J.S.)) There is nothing in the present record indicating whether the comprehensive plan has been updated or amended in the past thirty years.
2. Preservation and retention of prime agricultural land is a primary focus of that plan. (J.S. 104, 108, 110-116)
3. Zoning, as described in the comprehensive plan “requires a text and companion map of the zones and a Commission to administer changes as ‘nothing is as constant in community development as change.’” (J.S. 102)
4. Wayne County’s comprehensive plan acknowledges the effect that Interstate 71 has had on development in Congress Township. (J.S. 107) The plan also acknowledges that Wayne County is in

“a long term transition from agriculture to an increased mixture of industrialization and urbanization. ... unless regional and community plans and development standards are adopted, this undirected change can be the demise of the agricultural aspect of the economy.” (J.S. 108)

5. The Board of Trustees of Congress Township adopted a zoning resolution on July 25, 1994 which was approved by the voters in November 1994 (J.S. 75 & 100) and later amended on December 23, 1998. (J.S. 73)
6. The zoning resolution specifies two districts (“A” – Agricultural District and “B” – Business/Industry District). (J.S. 78) All of the land in Congress Township is mapped in the “A” district. (J.S. 11, 14, Merit Brief of Congress Township 5)
7. The zoning resolution provides a method for applicants to reclassify their property to the “B” Business/Industry District which includes: (1) submission of an application to the Zoning Commission, (2) notification of adjacent property owners, (3) referral of the proposed change to the County Planning Commission which makes a recommendation based on the community’s policies and objectives established in the County’s comprehensive plan and then sends it back to the Township’s Zoning Commission, (4) the Zoning Commission then holds a public hearing on the application and makes a recommendation to the Township Trustees, which may overrule the recommendation of the Zoning Commission by unanimous vote. (Article IX. Sec. 501, J.S. 90-92)
8. Appellees requested a zoning certificate to open a retail business in the “A” district on property near Interstate 71 which the zoning inspector denied. (J.S. 10)
9. Appellees appealed the denial to the Congress Township Board of Zoning Appeals (“BZA”) which held a hearing on November 20, 2006. (J.S. 10)
10. Appellees also requested a use variance in lieu of a zoning certificate, although they objected to the use variance procedure. (J.S. 10 & 13-14)
11. The BZA denied both the appeal and the use variance. (J.S. 68-70)

SUMMARY OF ARGUMENT

The American Planning Association and the Ohio Planning Conference (hereinafter “APA”) respectfully submit this *amicus curiae* brief to provide a national perspective on the central issue in this case – the requisite link between Congress Township’s zoning resolution and Wayne County’s comprehensive plan. Township officials assert that they relied upon the county’s comprehensive plan when they prepared and adopted the zoning resolution. (J.S. 71-72, Affidavit of William Cletzer, 82)

The Court of Appeals concluded that Congress Township’s zoning resolution was invalid because it did not regulate the use of land in accordance with a comprehensive plan.³ APA believes that if a township relies upon a county’s comprehensive plan for its decisions regarding growth, development and agricultural preservation, then the link between the zoning resolution and the plan must be stronger than a mere conclusory statement that such a connection exists.

Effective plan implementation requires that the day-to-day decisions made by local officials, such as the decision to deny Appellees’ requested business use variance, be consistent with the adopted comprehensive plan. The court’s review of whether consistency is achieved must be more searching when local officials are acting in their administrative (quasi-judicial) capacity.⁴

“*In accordance with a comprehensive plan*” in R.C. § 519.02 requires a tangible connection or link between the comprehensive plan, the zoning resolution, and the land use decisions intended to implement the goals and policies of the plan. Failure to

³ *B.J. Alan Co. v. Congress Tp. Bd. of Zoning Appeals*, 2007 WL 4554187 *4 (Ohio App. 9 Dist., 2007).

⁴ See Comment, *Zoning Amendments – The Product of Judicial or Quasi-Judicial Action*, 33 Ohio St. L.J. 130 (1972); *Fasano v. Board of County Commissioners*, 264 Or. 574, 507 P.2d 23 (1973).

establish that link makes successful implementation of the goals and policies in the plan doubtful. The only way to demonstrate that land use decisions (such as the denial of the business use variance in this case) conform to the comprehensive plan is by making findings that provide a fact-based rationale for the action.

ARGUMENT

“In accordance with a comprehensive plan” requires a tangible connection or link between the comprehensive plan, the zoning resolution, and the land use decisions intended to implement the goals and policies of the plan.

Despite the words of caution from the early drafters of the Standard Zoning Enabling Act [SZE] and the Standard City Planning Enabling Act [SCPEA] in the early Twentieth Century that zoning ordinances should be prepared “in accordance with a comprehensive plan,” a number of preeminent land use law commentators have pointed out that the connection between the two was called into question right from the very beginning.⁵ This zoning-planning enigma might have resulted from the unfortunate fact that the authority to zone contained in the SZE (1926) preceded the authority to plan in the SCPEA (1928).⁶ Many communities enacted zoning ordinances before they ever prepared and adopted a comprehensive plan, creating the analytical disconnect which has spawned a large body of litigation and corresponding commentary and analysis on the question of regulatory consistency.⁷

⁵ See eg., Charles Haar, “*The Master Plan: An Impermanent Constitution*,” LAW AND CONTEMP. PROBS. 20 (1955).

⁶ ADVISORY COMM. ON CITY PLANNING & ZONING, U.S. DEP’T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT (rev. ed. 1926); ADVISORY COMM. ON CITY PLANNING & ZONING, U.S. DEP’T OF COMMERCE, A STANDARD CITY PLANNING ENABLING ACT (1928).

⁷ Joseph F. DiMento, *The Consistency Doctrine and the Limits of Planning* (Cambridge, Mass.: Oelgeschlager, Gunn, and Hain, 1980); Edith M. Netter and John Vranicar, *Linking Plans and Regulations: Local Responses to Consistency Laws in California and Florida*, PLANNING ADVISORY REPORT NO. 363 (Chicago: American Planning Association, 1981); Larsen & Siemon, “*In Accordance With A Comprehensive Plan – The Myth Revisited*,” 1979 INSTITUTE ON PLANNING, ZONING AND EMINENT DOMAIN 105; Charles L. Siemon, *The Paradox of “In Accordance With a Comprehensive Plan” and Post Hoc Rationalizations: The Need for Efficient and Effective Judicial Review of Land Use Regulations*, 16 STETSON L. REV. 603, 627 (1987); Edward J. Sullivan and Laurence Kressel, *Twenty Years After – Renewed Significance of the Comprehensive Plan Requirement*, 9 URB. L. ANN. 33 (1975); Daniel R. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899 (1976); 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. U. J. L. & POL’Y 295 (2000). See also Charles M. Haar, “*In Accordance with a Comprehensive Plan*,” 68 HARV. L. REV. 1154, 1174 (1955) [Connecting zoning and land use decisions to the comprehensive plan “will mean that the municipal legislature has an ever-present reminder of long-term goals which it has been forced to articulate,

Even earlier, in the pages of the *National Municipal Review* in 1917, Alfred Bettman, the attorney who would later draft an amicus brief in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) urging the U.S. Supreme Court to uphold zoning as a constitutional exercise of the police power, opined about the significance of connecting zoning to a comprehensive plan:

“I believe that districting and other features of a city planning scheme will generally be upheld by the courts, when the legislation is the result of a comprehensive and scientific study. . . . A comprehensive city plan, based on a thorough, expert study and upon the promotion of the health, safety, and comfort of the whole community, will surely sooner or later – and probably sooner – be upheld by the supreme court of the United States as a modern form of the regulation of the use of private property for the promotion of general public safety, health, comfort, and welfare; especially as it can be demonstrated, if the ordinance is based upon a thorough study of the situation, that the effect of a city planning ordinance will tend to be toward the stabilizing of values, rather than of destroying or diminishing values.”⁸

Ninety years later, we know that Mr. Bettman was correct. The U.S. Supreme Court found zoning to be constitutional⁹ and thousands of communities across the country have relied upon zoning as an important land use regulatory tool to implement their goals and visions for the future.¹⁰

The role of the comprehensive plan, however, remained in doubt. In 1971, Professor Daniel Mandelker provided the following insight as additional reasons for the

and will give lesser play to the pressures by individuals for special treatment which tend over a period of years to turn the once uniformly regulated district into a patchwork.”]

⁸ Michael Allan Wolf, *The Zoning of America – Euclid v. Ambler*, University Press of Kansas (2008) at 26.

⁹ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

¹⁰ See, Charles M. Haar, “In Accordance with a Comprehensive Plan,” 68 HARV. L. REV. 1154 (1955).

failure by the courts to enforce the statutory comprehensive plan requirement in the early years.¹¹

The reasons advanced for this judicial emasculation of the statutory planning requirement have been many, and are often pragmatic, the most conventional being the point that many municipalities, especially the smaller ones, did not have plans until recently, and that to enforce the statutory requirement rigidly would have prevented municipal exercise of the zoning power. The explanation is suggestive, but it misses the point. What happened was that the courts were willing to accept the role of the zoning ordinance in adjusting land use interdependencies, but they were very reluctant to review the value preferences which the ordinance incorporated. To have done so would have involved the judiciary in the political function of evaluating community goals, and this they were unwilling to do. A narrow judicial reading of the statutory requirement avoided an appraisal of the community value judgments expressed in the zoning ordinance, an interpretation buttressed by judicial adoption of the conventional presumption that the zoning ordinance was constitutional unless proved otherwise. Also of interest from this perspective are judicial interpretations of the comprehensive plan requirement which emphasize a comprehensiveness in process as the essential component of the statutory test, rather than the substantive content of the plan's goals and objectives.¹²

Fifteen years later, Charles Siemon noted that "planning, a seemingly logical predicate for land use regulation, was lost in the shuffle... as courts bent over backwards to sustain local land use regulations."¹³ By 1987, the nexus between planning and zoning was becoming stronger, such that Siemon opined that "the relationship between planning and land use regulation has found general judicial acceptance."¹⁴ Nevertheless, he went

¹¹ Daniel R. Mandelker, *THE ZONING DILEMMA: A LEGAL STRATEGY FOR URBAN CHANGE* 57 (1971); as quoted in Edward J. Sullivan, *The Rise of Reason in Planning Law: Daniel R. Mandelker and the Relationship of the Comprehensive Plan in Land Use Regulation*, 3 WASH. U. J. L & POL'Y 323 (2000).

¹² *Id.* at 58-59.

¹³ Charles L. Siemon, *The Paradox of "In Accordance With a Comprehensive Plan" and Post Hoc Rationalizations: The Need for Efficient and Effective Judicial Review of Land Use Regulations*, 16 STETSON L. REV. 603, 608 (1987).

¹⁴ *Id.* at 614 [Siemon provided a comprehensive list of cases addressing the nexus required between zoning and the comprehensive plan.]

on to note the tension that existed between “the deliberativeness of planning” and the typical “post hoc rationalizations” that often accompanied land use decision-making.¹⁵

In addition to Charles Siemon and Professors Mandelker and Haar, Edward J. Sullivan, a distinguished land use attorney from Oregon, has also been a strong advocate for reforming the zoning-planning disconnect. For more than thirty years, Sullivan has traced the progress (and sometimes lack of progress) that states have made in linking zoning and land use decisions to the comprehensive plan.¹⁶ Although in 1975, he noted that “the relationship of planning to land use regulations has been a matter silently relegated, by the acquiescence of local government and the judiciary, to the back-waters of planning law,”¹⁷ more recently Sullivan believes that “slowly and incrementally, the comprehensive plan has been invested with an increasing role in judging land use regulations or actions, so that, either by legislation or court decision, separate plans are required and, once in place, are a significant, if not decisive, factor in evaluating regulations.”¹⁸ He also notes “the judicial discussion of comprehensive plans has tended to shift away from whether such plans are required and toward the manner of implementation of plans.”¹⁹

As another affirmation of the importance of connecting zoning with the comprehensive plan, in early August 2008, the House of Delegates of the American Bar

¹⁵ *Id.* at 616.

¹⁶ Sullivan provides an annual update of the role of the comprehensive plan in THE URBAN LAWYER. He has divided the state case law on this subject into three categories – the “traditional” approach, which gives no significance to the plan; the “planning factor” approach, which gives the plan a role in such determinations; and the “planning mandate” approach, which treats the plan as a dispositive standard for land-use regulations and actions. See, Edward J. Sullivan and Laurence Kressel, “*Twenty Years After - Renewed Significance of the Comprehensive Plan Requirement*,” 9 Urb. L. Ann. 33 (1975).

¹⁷ Sullivan and Kressel, *supra* note 16 at 33.

¹⁸ Edward J. Sullivan, *Recent Developments in Comprehensive Planning Law*, 38 URB. LAWYER 3 at 685, 686 (2006).

¹⁹ *Id.* at 686.

Association approved the “Model Statute on Local Land Use Process” which includes a requirement that a finding be made that the decision-maker has connected the land use decision to the comprehensive plan. It is hoped that this model will serve as a resource to both state legislatures and local communities wishing to update their land use regulations.²⁰

Just as families plan for college and retirement, communities must plan for their futures too. In a democratic society, the residents of the community express their goals for the future in two ways – by participating in a public planning process which culminates in an adopted plan, and by electing representatives to implement that plan. Local officials implement the community’s plan day-by-day when they, among other things, approve the local government’s capital infrastructure budget, when they adopt land use regulations such as zoning and subdivision ordinances, and when they approve or reject development applications. Connecting development and land use decisions to

²⁰ The Model Statute on Local Land Use Process includes:

(9) Findings, decision, and notice.

(a) A local government may approve or deny a development permit application, or may approve an application subject to conditions.

(b) Any decision on a development permit application shall be based upon and accompanied by a written statement that:

1. states the land development regulations and goals, policies, and guidelines of the local comprehensive plan relevant to the decision;
2. states the facts relied upon in making the decision;
3. **is consistent with the land development regulations, the goals, policies, and guidelines of the local comprehensive plan (including the future land-use plan map), and the facts set forth in the written statement of the comprehensive plan as it existed at the time of the development application;**
4. responds to all relevant issues raised by the parties to the record hearing; and
5. states the conditions that apply to the development permit, the conditions that must be satisfied before a certificate of compliance can issue, and the conditions that are continuing requirements and apply after a certificate of compliance is issued.

(c) A local government may give written notice of its decision to all parties to the proceeding [and publish a summary of its decision in a newspaper of general circulation and may [or shall] publish the decision on a computer-accessible information network.] *[emphasis added]*

the adopted plan is the best way to achieve the community's goals, or at least to increase the odds that the community's goals will be achieved.

The consequences of failing to plan or failing to implement the community's comprehensive plan can be serious. The challenges and opportunities confronting them are more difficult and complex today than they have ever been. Professor John R. Nolon from Pace University School of Law notes that in just 35 years,

... the nation's population will grow by 100 million people: an increase of 33%. The private sector will produce for these new Americans over 70 million homes and over 100 billion square feet of offices, stores, factories, institutions, hotels, and resorts. Researchers predict that two-thirds of the structures in existence in 2050 will be built between now and then.

This **growth cannot proceed randomly** without great cost to the economy, environment, and public health. This is neither an ideological nor a political issue. The consequences of haphazard development are not popular with the vast majority of Americans. They complain about the results of current growth patterns: an increase of asthma and obesity among the young, traffic congestion that stalls commuters, insufficient housing for the workforce and the elderly, the decline of cities as economic and cultural centers, threats to drinking water quality and quantity, reduced habitats and wetlands, higher incidences of flooding, rampant fossil fuel consumption, and an ever larger carbon footprint. *Id. (emphasis added)*²¹

Communities prepare and adopt a comprehensive plan to address these serious challenges; to find a way to get from the present to the future; and to balance the competing interests in a fair and democratic fashion. Not all plans are created equal; some plans are stronger, more thorough, and more focused than others. The quality of the adopted comprehensive plan certainly influences the odds that it will be implemented. However, there is very little chance for successful plan implementation unless local officials connect their land use decisions to the adopted comprehensive plan.

²¹ John R. Nolon, *The Future of Our Land: Presidential Leadership*, PLANNING & ENVIRONMENTAL LAW, Vol. 60, No. 1 (January 2008) at 4.

There are a number of reasons why the community's comprehensive plan must be successfully implemented.

- Planning should not be an exercise in futility.
- Some serious challenges -- such as preservation of agriculture and mitigation of climate change -- require that we take a longer view. Implementing the goals and policies in the comprehensive plan provides better odds that our community leaders are taking the longer view.
- In a democratic society, the public participates in setting the goals for the future. A comprehensive plan that is preceded by a meaningful public planning process presumably represents the desires of the community's residents and the inevitable competing interests have been heard and reconciled in that process.
- Successful implementation of the provisions of the comprehensive plan engenders greater public trust and confidence in the local decision-making process. "One of the greatest failings of contemporary zoning law," a land use law commentator notes, "has been the vulnerability of the system to influence by politically powerful individuals, a vulnerability that can only be overcome by establishing a procedural and substantive framework for individual decisions ---- planning."²²
- The general public, property owners, and developers have a desire for stability and predictability in the land use regulatory regime. Connecting development and land use decisions to the adopted plan not only implements the plan, but also provides a

²² Charles L. Siemon, *The Paradox of "In Accordance With a Comprehensive Plan" and Post Hoc Rationalizations: The Need for Efficient and Effective Judicial Review of Land Use Regulations*, 16 STETSON L. REV. 603, 627 (1987).

measure of stability to the zoning game²³ and helps avoid *ad hoc* decision-making disconnected from the plan.²⁴

- And perhaps most importantly from the perspective of the township, connecting its land use decisions to the comprehensive plan provides further evidence that the decisions are rational and reasonable. When decision-makers at the local level are making legislative decisions, the court's standard of review should be deferential. However, when decision-makers are acting in their administrative or quasi-judicial role, such as the denial of the business use variance in this case, the court's review should be more exacting.

The development called for by the next 100 million Americans will largely be reviewed and approved by local officials applying locally adopted land use standards. Our historical approach to influencing human settlement patterns and the use and conservation of the land has relied on private-sector forces and we have delegated the principal authority to regulate those forces to the local level of government through the adoption of land use plans and regulations. There's a very good reason for delegating this authority to local officials – they are more intimately familiar with the conditions and concerns at the local level. However, they should not make such decisions in a vacuum. As Professor Haar noted more than half a century ago, “in the press of day-to-day determinations in the field of land use, it is vital that there be some concrete unifying

²³ Richard Babcock, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES* 120-21 (1966).

²⁴ Charles Siemon notes that “[i]n the absence of planning policies adopted in the abstract as a part of a serious planning effort, individual land use decisions become nothing more than *ad hoc* judgments influenced by the heat of the moment (‘a decision based on ... impulse, prejudice, or just plain fatigue ...’), what has been sarcastically described as the ‘mockery of *ad hoc*.’” *See*, note 22 *supra*. [Siemon quoting Babcock & Siemon, *THE ZONING GAME REVISITED* (1985) at 262.]

factor providing scope and perspective.”²⁵ That is the role of Wayne County’s Comprehensive Plan.

There are two competing purposes for requiring that development decisions be consistent with the adopted comprehensive plan.²⁶ First, from the macro level, consistency “is seen as a way of improving the results of land-use regulations and public infrastructure investments,” focusing on the need for efficiency and environmental protection.²⁷ At the micro level, the second reason “deals with the fairness accorded landowners and neighbors in the regulatory process” because connecting development decisions to the comprehensive plan is considered a “touchstone for judicial review and a means of guaranteeing that political influence is not allowed to run roughshod over the individual or community interests.”²⁸

A simple assertion that Congress Township relied upon the Wayne County Comprehensive Plan when it prepared and adopted its zoning resolution is insufficient. (J.S. 71-72) The public is left wondering how the zoning resolution implements the goals and policies of the comprehensive plan. They also might question whether the goals and policies adopted thirty years ago in the Wayne County Comprehensive Plan are still valid. Have intervening events changed the assumptions upon which the original plan relied? In this case, connecting the zoning to the comprehensive plan requires a demonstration of how approval or denial of a rezoning request for a B-1 district supports

²⁵ See Charles M. Haar, “*In Accordance with a Comprehensive Plan*,” 68 HARV. L. REV. 1154, 1174 (1955) [Connecting zoning and land use decisions to the comprehensive plan “will mean that the municipal legislature has an ever-present reminder of long-term goals which it has been forced to articulate, and will give lesser play to the pressures by individuals for special treatment which tend over a period of years to turn the once uniformly regulated district into a patchwork.”]

²⁶ Robert Lincoln, AICP, Implementing the Consistency Doctrine, THE GROWING SMART WORKING PAPERS, VOL. 1, PLANNING ADVISORY SERVICE REPORT NO. 462/463 (Chicago: American Planning Association, 1996).

²⁷ *Id.* at p. 90.

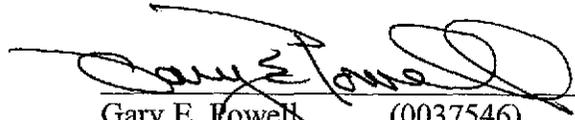
²⁸ *Id.* at p. 90.

and furthers the goals of the comprehensive plan, a plan which calls for the preparation of “community plans” and “development standards” to address an “increased mixture of industrialization and urbanization.” [J.S. 108] Although, in Ohio, the zoning resolution itself might satisfy the “in accordance with a comprehensive plan” requirement, it cannot do so if it fails to either map the “B” district or indicate what criteria should be used to justify a rezoning to the “B” district. In such cases, the zoning resolution effectively allows the whim or caprice of the zoning officials to govern, which is clearly the antithesis of “zoning in accordance with a comprehensive plan.”

CONCLUSION

“In accordance with a comprehensive plan” requires more than a mere assertion that such a connection exists; there must be a tangible connection or link between the comprehensive plan, the zoning resolution, and the development decisions intended to implement the goals and policies of the plan.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary E. Powell", is written over a horizontal line.

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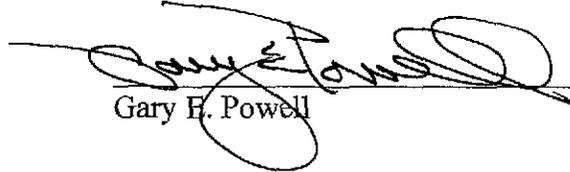
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Brief Amicus Curiae of American Planning Association and the Ohio Planning Conference was served on all parties entitled to service this 28th day of August 2008, by regular U.S. Mail.



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