

## Conceptualizing Zoning Within The Lagos Megacity Project: A Prognosis\*

Akintunde Otubu

Faculty Of Law, University of Lagos Akoka, Nigeria

\* E-mail of corresponding author: [bullet20042003@yahoo.com](mailto:bullet20042003@yahoo.com)

### Abstract.

The paper examines the concept of zoning within the larger corpus of planning law and regulation within the megacity status of Lagos and evaluates its rationale, desirability, effectiveness, efficiency and drawbacks in a changing urban environment. In particular,

it examines the role and place of zoning in sustainable development of the environment and the health of man in a megacity and its challenges.

**Keywords:** Planning, Zoning, Megacity, Land Use.

“Let the water under the sky be gathered to one place, and let dry ground appear. And it was so”<sup>1</sup>

### Introduction.

Land is the fulcrum on which the existence of life and man depends. It is the substratum on which all other things on earth are fastened. Quite apart from the residential importance, land has a huge economic significance in terms of providing security for capital, investment, business and agriculture.<sup>2</sup> No nation can fold its arms and allow its land use management to fall into disarray, as “no nation handles the issue of land management within its borders with levity.”<sup>3</sup> It is imperative to **PLAN** the use to which the land is put particularly within the context of megacities to which Lagos<sup>4</sup> now belong. One of the veritable tools of physical planning in this regard is the concept of **ZONING**.

Given the preceding opinions, this paper sets out to examine the concept of zoning within the larger corpus of planning law and regulation in view of the megacity status of Lagos and to evaluate its rationale, desirability, effectiveness, efficiency and drawbacks in a changing urban environment. In particular, examines the role and place of zoning in sustainable development of the environment and the health of man in a megacity and its challenges.<sup>5</sup>

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<sup>1</sup> Gen 1V9 The Holy Bible New International Version 1992: God himself is the first planner and the progenitor of the zoning concept. Irrespective of His enormous powers He planned and implemented the creation of the earth in six days. What he could have done instantly in one day. In His planned process he employed the concept of zoning in creation; land separated from water, birds in the Air, water animals and land animals. Indeed the story of creation exemplified the planning and zoning concepts.

<sup>2</sup> Essien E. (2003) “Land Use Act and Security in Real Estate in Nigeria” Chapter 13 in the Land Use Act: Twenty Five Years After. Edited by I.O. Smith Published by the department of Private and Property Law, Faculty of Law University of Lagos, Akoka p.283

<sup>3</sup> Datong P.Z. (1991) The Role of State Government in the Implementation of the Land Use Act in the Land Use Act Administration and Policy Implication (ed) Olayide Adigun Unilag Press p.64

<sup>4</sup>Lagos is Africa’s leading NEPAD City and a burgeoning global urban agglomeration which attained mega city status in 1995 when its population reaches over 10million people, as per UN – Habitat. From its global city ranking of 31st in 1995, Lagos population exploded to 13.4 million of Y2000 to become the world’s sixth mega city and Africa’s foremost urban centre and hub of national, regional and global Scio economic and political activities. See Bamidele O’ Need for more Federal Government Presence in State Capitals: A case study of Lagos Megacity Development’ a paper delivered at ANAN Ikeja Annual Dinner on 12 December 2008.

<sup>5</sup> Adeyinka Adewale: Lagos Megacity Project : Issues, Challenges & Opportunities’ available at: <http://propertygateplc.com/Articles/the-lagos-mega-city-project-issues-challenges-a-opportunities.html> accessed 24/05/2012

## Concept of Zoning

Zoning is to plan a town so that different sections are devoted to different purposes i.e. residential, industrial, commercial etc.<sup>6</sup> That is, it is the division of a city or town by legislative regulation into districts and the prescription and application in each district of regulation having to do with structural and architectural designs of buildings, use to which buildings within designated district may be put.<sup>7</sup> The device attempts a rational apportionment of the land comprised in a planning scheme or master plan among the various competing private and public uses.<sup>8</sup> Thus the essence of the zoning device is to compartmentalize development along defined limits and ensure adherence to laid down regulations on physical development. Such compartmentalization breeds brevity, certainty and predictability in physical development.

## History of Zoning

The concept and practice of zoning is thoroughly ancient. Over 1800 years before Christ, Egyptians cities revealed careful planning of residential district, workforce housing, and storage.<sup>9</sup> In modern times, New York City is credited with the first comprehensive set of zoning ordinances that applied to the entire city.<sup>10</sup> By 1926 a revised standard state zoning enabling code had been published in United States (USA) which broadly laid out what was understood to be the most legally sound and efficient zoning codes.<sup>11</sup> That same year, the US Supreme Court upheld the use of zoning in the case of village of *Euclid. Ohio Vs Amber Reality Company*.<sup>12</sup> The court held that zoning was reasonable and even indispensable given the complexities of urban life and land uses.

Today the use of the zoning device as a tool of physical planning had grown and spread worldwide even to the remotest part of the globe. In United State the only notable exception to the zoning institution is to be found in Houston where in 1993 voters narrowly rejected a referendum to establish zoning in that city.

## Philosophical justification of zoning

Various writers, commentator, jurist and academics have written on the philosophical origin and justification of the concept of zoning. These theories range from economic, property, psychological theories to statutory and technological innovation theories. Zoning proponents traditionally offered different answers on the question why zoning? Advocates of the US first comprehensive zoning ordinance enacted by the New York City in 1916 argued that zoning was necessary to protect property values<sup>13</sup> particularly the values of residential properties and especially single family homes. On this analysis zoning serves principally to protect property owners from the negative externalities of new developments. Without zoning, residential property owners would face plummeting property values if a development with significant negative externalities – a junkyard or brick factory for example - moved in next door. Moreover the mere prospect that such a development could move in would tend to depress the value of residential property. The solution is to divide the municipality into zones so that industries are sited near other industries, commercial enterprises near other commercial enterprises and residential properties with other residential properties. This rationale has some intuitive appeal based on the real or imagined horrors of entirely unregulated development. However the argument is not sacrosanct as it has not been empirically shown that zoning results in

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<sup>6</sup> Webster's Dictionary of English language. International Edition NY 1994

<sup>7</sup> Black Law's Dictionary 2002

<sup>8</sup> Utuama A.A.( 1990) Planning and Environmental Protection, Omotola J. (ed.) *Environmental Laws (Including Compensation)* Faculty of Law University of Lagos Publication p.17

<sup>9</sup> See generally Ben Joseph: The code of the City MIT press 2008, Dollinger, Andre: "Hat-hetep sanusret, a planned city" <http://nefertiti.webland.com> visited 10/07/2009

<sup>10</sup> Ibid

<sup>11</sup> Knack, R.S. Meck and I Stollman (1996) "The real story behind the standard planning and zoning Acts of 1920's *Land Use Law* p.3 c9

<sup>12</sup> 272 US 365 (1926)

<sup>13</sup> Karkhainen B.C zoning. A reply to the critics n 23 p.1

higher market value for residential properties<sup>14</sup> nor is zoning the only means or even the most effective or efficient means of controlling externalities.<sup>15</sup>

Zoning is also defended as a tool of a broader scheme of comprehensive urban planning.<sup>16</sup> However it is not in all cases that zoning is accompanied by comprehensive planning. In fact, at times, planners often find zoning a bothersome, time consuming and highly technical distraction from what they regard as their more important planning function i.e. charting the future for that area.<sup>17</sup> In particular with regard to mega-developments that often preoccupy big city planning department, traditional zoning appears to play a relatively minor role among the array of available planning tools.

To the progressive<sup>18</sup> zoning is justified as a necessary response to the realization that the laissez faire theory of government is no longer tenable in modern world.<sup>19</sup> Land and its resources must be efficiently managed and efficiency requires that all planning should have regard to the best economic use to which land can be put, to the provision of the soundest economic basis for industrial development and to the social organization of life so as to conserve the skill and physique of life of workers.<sup>20</sup> In the words of one of their disciple, “a planner could not possibly leave alone the free interplay of economic forces and social impulses, not when she could perceive the complex interwoven web of cause and effect that binds them all together. No one would rest content with an unscientific view of planning after the imagination had grasped the larger possibility of control.”<sup>21</sup> Thus, zoning emerged to address some of the fallout of growth and development in human evolution - industrial revolution and technology.<sup>22</sup>

Other writers and commentators have justified the coming of zoning concept by highlighting the observable favourable consequences of the adoption and implementation of zoning schemes on man and his environment. The first shot came from Euclid itself. Justice Sutherland delivering the lead judgment opined that:

*“until recent years, urban life was comparatively simple, but with the great increase and concentration of population, problems have developed, and constantly are developing, which requires, and will continue to require additional restrictions in respect of the use and occupation of private lands.”*<sup>23</sup>

To the learned jurist, zoning does no more than lay down a legislative and prospective blueprint to minimize the number of land use conflicts that might otherwise fester in a system without planned development.<sup>24</sup> In Penn

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<sup>14</sup> See generally Daniel P McMillen \* John F. McDonald (1993) “Could zoning have increased land values in Chicago v 33 *J. Urb. Econ* 167, 168

<sup>15</sup> Ibid. cf W.A. Fischel: (1985) *The Economics of Zoning laws: A Property Right approach to American land use control* J Hopkins Pres

<sup>16</sup> Ibid

<sup>36</sup> Robert H. Nelson *Zoning and Property Rights: An Analysis of the American System of Land Use Regulation*, Cambridge, Mass.: MIT Press Version 1977, see also, “A Private Property Right Theory of Zoning”, *The Urban Lawyer*, Fall 1979

<sup>37</sup> See Robin Paul Mallay (1987) “The Political economy of co-financing America’s urban Renaissance” 40 *Van L. Rev* 67, 73-83

<sup>38</sup> This was a political school of thought in USA with bias for scientific and socio-economic driven planning viewpoint. Their theory of zoning is founded on the concept of change and development in the society. They believe that zoning rules should leave open the maximum scope for individual enterprise, initiative and ingenuity that is compactable with adequate protection of public interest. They understand zoning as a necessary adoption to the exigencies of administering land-Use disputes in a crowded and complex country

<sup>39</sup> Bakar N. *The legal Aspect of Zoning* 35 (1927) ; Claeys E.R. “Zoning and Progressive political theory”, in the progressive revolution in politics and political science. Require change in America K. Masugi & J. Marini eds. 2005

<sup>40</sup> Adams Thomas “The development of the plan, in proceedings of the Ninth National Conference on City Planning Proceeding 141, 148 (1917) cited in Claeys E.R “Euclid lives? The uneasy legacy of progressivism in zoning” 73 *Fordham Law Review* 101-138 (2005)

<sup>41</sup> Fredrick Law Olmstend, Introductory Address on City Planning in Proceedings of the second national conference on city planning 26 (1910) cited in Claeys E.R: Ibid

<sup>42</sup> *Village of Euclid V Amber Realty co* 272 US 365, 386 (1926)

<sup>43</sup> See generally: Fischel *Infra* n 55

Control Transportation Co. Vs New York City<sup>25</sup> the court recognized zoning laws as the classic example of laws by which the health, safety morals or general welfare would be promoted. Zoning was interpreted as a generous endorsement of social engineering in the name of public health, safety and welfare.<sup>26</sup>

Writing in support of zoning, Utuama, opined that, “of even greater significance is that zoning relieves the environment of pollution and disease conditions which are inherent in unrestrained exercise of absolute right of property. Zoning has come to be seen as the public doctrine as against the common law private techniques of nuisance, covenants, the rule in Ryland V Fletcher, and negative easement, for restraining the indiscriminate development of property to create overcrowded conditions of life with their associated dangers of public nuisance”. To the learned author zoning approach operates as a dispersal device of human population and activities within available, spatial order.<sup>27</sup>

To some advocates zoning makes it easier to provide fire services, it encourages the rearing of children, it reduces nervous disorders and most notoriously, it stops apartment houses from leeching off the green and quiet in residential neighborhoods like mere parasites.<sup>28</sup> Fischel, another advocate of zoning maintained that zoning can be justified in terms of efficiency on the ground that it helps local majorities maximize their collective preferences, about land use regulation.<sup>29</sup> It somehow gives the homeowners a say and influence in the use and management of community land, thus engendering good and responsive governance.<sup>30</sup>

Zoning in urban neighborhoods is not merely for protecting the market values of individual properties,<sup>31</sup> but rather is a device that protects a neighborhood from encroachments by land uses inconsistent with its character, regardless of the positive nor negative affects of a proposed development on the market values of individual properties. Its appeal lies in the fact that it allows homeowners to protect all the value we place in a home, including the consumer surplus that lies above and beyond the market price of the home, particularly the neighborhood commons (these includes inchoate rights in such communally owned property such as streets, sidewalks, parks playgrounds, libraries, public utilities etc). It seeks to protect neighborhoods from uses that threatens in some way to reduce the quality of the neighborhood environment by maintaining the character of the best residential districts and severely restricting the scope of new development or changes in the intensity and type of use of existing property.<sup>32</sup>

In all, justification for zoning stems from societal need for change in the management of land use towards the general wellbeing and in public interest. However, in spite of this justification the concept has been criticized by scholars and writers who have advocated for its rejection and the deregulation of the planning system. These critics usually refer to the Houston city experience where zoning was rejected as the main tool of planning policy.

### **Criticism**

Most of the critics of zoning fall into four broad categories. Two concern fairness or equity and the other two are based on considerations of economic efficiency. Zoning is said to be unfair because it benefits some landowners at the expense of others,<sup>33</sup> exclusionary<sup>34</sup> and therefore unfair to those excluded from a particular community. It is also

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<sup>44</sup> 438 US 104, 125 (1978) (quoting *Nectow V Cambridge* 277 US 183, 188 (1928))

<sup>45</sup> Id@388

<sup>46</sup> See Dukeminier & Krier “property” 747, 750-53, 951-56 (5<sup>th</sup> Ed. 2002)

<sup>47</sup> Utuama A.A. Planning Law and Environmental Protection in Environmental Laws (including Compensation) Omotola J.A. (ed) Unilag Publication 1990 p. 16 @18.

<sup>48</sup> Fischel W.A.. The Homevoter Hypothesis: How Home Values influence Local Government Transaction School Finance and Land Use Policies (2001)

<sup>49</sup> Haar C.M. & Wolf M.A Euclid lives; The survival of Progressive Jurisprudence 115 Havard law Review 2158 (2002)

<sup>50</sup> Steele H.E, Participation and Rules – The functions of zoning 1986 AMB found RES J. 7009, 713

<sup>51</sup> Coase R.H The problem of social cost 3 Journal of law and Economics 1 (1960) (positing that in a world free of transaction cost parties will bargain to efficient outcomes regardless of initial assignment of entitlements)

<sup>53</sup> Nelson R.H. Zoning and Property Right: AN analysis of the American System of Land Use Regulation (1977) p.14

said to be inefficient insofar as it adds large transaction costs to development decisions,<sup>35</sup> outweighing the benefits, if any, of zoning and also inefficient in that it distorts land use allocation decision<sup>36</sup> resulting in inefficient patterns of land use. Let us examine some of this criticism in details.

Some critics content that zoning is fundamentally unfair because it grants special privileges to some property owners at the expense of others including principally those owners who wish to develop their properties for other purposes other than zoned uses. Although it is enough to assert that a fundamental norm of fairness is violated when property owners are treated differently, yet our legal system recognizes many other kinds of unequal burdens by type of property, such as differential tax treatment. More importantly, the zoning concept has survived the constitutional test of unfair treatment in the Euclid case decided over 80years ago.

Zoning is also criticized as being exclusionary because it is prohibitory in nature. It is argued that zoning is widely used to exclude racial groups, economic classes, and economic activities that are deemed to be undesirable.<sup>37</sup> At first glance this argument has some appeal but on dispassionate scrutiny it becomes clear that it is not immutable. The problem observers see in zoning's practice may be inextricably tied to zoning's design and institutional structure and not the viability or desirability of its concept. If zoning is consciously used to achieve racial or other forms of unjustified segregation, then there is a serious problem. But the problem should be addressed by constitutional and statutory protection laws and claims not by scrapping zoning<sup>38</sup>. Since it is not zoning on its face but rather its application that results in discrimination, those particular applications and not zoning should be eradicated.<sup>39</sup>

There is also the criticism that zoning adds unnecessary transaction cost to development cost outlay. However most proponent of this argument concede that some form of local land use regulation is necessary to control the negative effects of some types of land uses. It is also conceded that whatever type of control is employed comes with a cost; thus the issue of cost is a matter of degree. Infact it has been asserted that, that alternative schemes of land use regulation would result in lower transaction cost is both controversial and unproven assertion.<sup>40</sup>

The critics also argued that zoning distorts the natural allocation of land use within cities in a way that is detrimental not only to economic innovation and growth but also to the flowering of culture and the natural pleasures of city life. According to Jane Jacobs, a critic, "zoning renders the cities sterile and uncreative by stifling the diversity of land uses within neighborhoods and generally segregating land uses by type"<sup>41</sup>. To these economic critics, zoning is inherently inefficient because it forces landowners to make land use allocation decisions other than those they would

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<sup>34</sup> Epstein R.A. Taking: Private Property and the Power of Eminent Domain 263-66 (1985) where he argued that zoning frequently results in uncompensated taking of private property in violation of constitutional principles and fundamental norms of fairness. He recognized however that zoning sometimes has beneficial outcomes such as controlling nuisance or benefiting the regulated party along with his neighbours. See also Ellickson Alternative to zoning: Covenants, nuisance rules, and fines as land use controls 40. U. Chicago Law Rev. 681 (1973) Ellickson: Three systems of Land Use Control 13 Havard J.L. & Pub policy 67 (1990), Ellickson, suburban Growth controls: An economic and Legal analysis 86 Yale L.J. 385 (1977)

<sup>35</sup> See Kosman J. Towards an inclusionary Jurisprudence: A reconceptualization of zoning 43 Cath. U. L. Rev 59, 71-77 (1993) arguing that zoning is inextricably tied to invidious forms of racial and class exclusion; Rubinowitz: exclusionary zoning: A wrong in search of a remedy 6 Journal of law reform 625 91972), Sager L.G. Tight Little Islands: Exclusionary Zoning, Equal Protection and the indigent 21 stand L. Rev 767 (1969) see also *Gautreaux v Chicago Housing Authority* 304 F supp. 736, 741 (n.D. III 1969)

<sup>36</sup> Ellickson Alternatives n.66, Krasnowiecki J.Z. Abolishing zoning 31 Syracuse L. Rev 719 (1980); Kmiec D.W. Deregulating Land Use: Free enterprise and development system 120 U. Pa L. Rev 28 (1981)

<sup>37</sup> Seigan B.H. Non zoning in Houston 13 J.L. & Econ FI (1970) arguing that Landuse pattern in Houston are similar to those in other cities but achieve more efficiency because of absence of zoning. And contending that free market land use decisions tend to follow rational and efficient patens which are distorted by zoning

<sup>38</sup> Kasman J n.61

<sup>39</sup> Ellickson growth controls n.60, see also *Buchaman V Warley* 245 US 60, 82 (1917)

<sup>60</sup> Karkkainen BC n.28

<sup>61</sup> Karkkanen B.C. n 28

make in a free market situation. According to classical economic theory, free markets efficiently allocates economic resources and neither legislative type categorical regulation nor case by case decision by bureaucratic regulators can make such decision as efficiently as the market. Thus land use decisions made under a regulatory scheme inevitably result in inefficient distortions of the market.<sup>42</sup>

Surprisingly no major critics of zoning make this laissez faire argument in quite so pure a form. Most critics recognize the need to control negative externalities through some form of regulatory schemes. Thus their objections to zoning on this ground turn on equity and transactional efficiency and not its philosophy.

These criticisms of the zoning scheme have led to the agitation and campaign for a more innovative proactive and effective land use regulatory system that will advance community development. The new advocacy in USA according to Nelson's<sup>43</sup> proposal is that, a new legal instrument be enacted to permit existing neighborhood to establish collective private property right regime of their own. Others have also argued in favour of multiple use zoning schemes<sup>44</sup> and inclusionary zoning practices<sup>45</sup> which are land use regulations enacted by municipal governments to encourage the development of mixed income housing; with its attendant potential of reducing concentrated poverty and providing economically disadvantaged residents with better access to employment by integrating affordable housing units into market rates development projects located throughout the community in line with the Millennium Development Goals (MGD) and the National Economic Empowerment and Development Strategy (NEEDS).<sup>46</sup>

A question that agitates the mind of this juncture is where does Nigeria stand in all these? What lessons, if any can be learnt from this zoning concept in our quest to develop our cities and suburbs. Is zoning a relevant concept to the mega city development project of Lagos State and the physical development strategies of other states in Nigeria? These and other questions are set to be answered in the next section of the paper.

### **Zoning and Nigerian Planning Policy**

It is submitted that the idea of planning and invariably zoning is innate in man and his culture. The idea of zoning was exemplified in our traditional, pre-colonial Nigerian societies through land use management practices.<sup>47</sup> Residential quarters are spatially separated from commercial areas and the farm settlements. For example in Yoruba traditional setting, burial grounds are usually located far from human settlements and markets are mostly located centrally within the community.

Colonialism brought in its wake the English concept of physical planning and zoning schemes. The first colonial physical planning legislation that employed the zoning mechanism was the Township Act 1917 under which the Governor General was empowered to declare and administer a place or area as first, second or third class township.<sup>48</sup> Resulting from the declaration of these townships, a local authority was established to undertake urban

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<sup>62</sup> Jacobs Jane: *The Death and Life of Great America Cities* 1964

<sup>63</sup> Nelson R. H. *Privatizing the neighborhood: A proposal to replace Zoning with Private Collective Property Rights to Existing Neighborhoods* |Vol. 7 No.4 G. Manson L. Rev 1999

<sup>64</sup> Seigan B.H. n.63

<sup>65</sup> Child P.D., Riddiough T.J and Trontis A.J. "Mixed Uses and Redevelopment Options" *Real Estate Economics* Vol. 24 no. 3 available at SSRN: <http://ssrn.com/abstract=9119> visited on 10/07/09 See Reoid D.C. *Inclusionary Zoning: A framework for assessing the advantages and disadvantages* available at [www.redestate.uncc.edu](http://www.redestate.uncc.edu) visited on 10/07/09, Pandilla L.M. *Reflection on inclusionary Housing and a renewed look at its viability* (1995) 23 *Hofsta law Rev*: 539-629 Margon J.M. *Zoning for all: Using inclusionary zoning techniques to promote affordable housing* (1995)44 *Emory Law Journal* 359-393

<sup>66</sup> *Meeting Everyone Needs: National Economic Empowerment and Development Strategy*. Nigeria National Planning Commission, Abuja 2004

<sup>47</sup> Adewale O. *Customary Environmental Law in Environmental Law and Sustainable Development in Nigeria* Ajomo & Adewale 9ed) NIALS 1994

<sup>68</sup> Section 3 Township Act 1917

administration particularly in the first and second class townships.<sup>49</sup> The fundamental planning implications of the Act appeared however in its sections 66, 67 and 68.

Under section 66, the Governor General had power and did zone each township for the purposes of urban physical development and settlement into European, non European Reservations and open spaces. Section 67 of the Act rendered unlawful at the pain of punishment any mixed racial residence in any of the reserved areas. Lastly section 78 banned natives subject to native tribunal who was not residing in the township, before it was so declared and not engaged in bonafide business or employment from residing within the walls of the townships.

The Act employed the zoning concept to achieve the end of racial segregation between the Europeans and the natives. Thus the concept of racial segregation became erected and discernible as the underlying philosophy of the colonial urban development and planning in Nigeria. The philosophy was continued under the 1928 and 1946 Acts. Accordingly most of the planning schemes framed were only beneficial to the European Reservation Areas in every township.<sup>50</sup>

At independence, the concept of racial zoning was dismantled as being unconstitutional, however the segregative impact of the township Act continued, sadly, to exercise influence over the post independence town and country planning process. The fundamental and more objectionable implication of this conceptualization is that our rural areas, where the bulk of our populations live, have been denied this very important process required to guide their orderly growth and the gradual integration into the urban system. Segregated planning is further perpetuated and reflected by contemporary public and private housing policy under which people are socially graded as it were, and settled according to their social status in physically fragmented high-medium and low-cost housing estates<sup>51</sup>.

An examination of the Town and country planning legislation in various states of Nigeria will reveal the adoption of the zoning concept in the administration of the physical urban development policies. The zoning concept is so sacrosanct to the extent that whether the operative scheme is the licensed development, planning schemes or master plans it is founded on the zoning philosophy. In the schedules to the Town planning law of Lagos State<sup>52</sup> one will find the use and adoption of the zoning philosophy running through the past and current physical planning schemes in the state. The Apapa Town Planning scheme,<sup>53</sup> for example provides that “in any zone in which the erection of buildings designed for a particular purpose is not permitted the use of a building for that purpose shall be a contravention of this scheme...”<sup>54</sup> Furthermore the scheme provides for height of buildings<sup>55</sup>, space about the building<sup>56</sup> and control of display of advertisement<sup>57</sup> amongst others. Other regulations in respect of physical development in the state also recognized the pre-eminence position of zoning in the scheme of things.

Conceptually we are not bereft of laws, rules and regulations to address our perennial and recurrent problems. Our

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<sup>69</sup> Section 5 Township Act 1917

<sup>70</sup> Utuama A.A. Town and Country Planning Law in Nigeria: Evolution and Philosophy in contemporary Issues in Nigerian Law

<sup>71</sup> *ibid*. A vivid example is the Jakande Estates scattered throughout Lagos State. The Low income Estates are today in deplorable and decrepit state as compared to the medium and high cost housing estates. This scenario depicts the entrenchment of the social segregation policy of government using the zoning ideology

<sup>72</sup> Cap 181 2005 laws of Lagos State. For example, the first schedule on outline development plans directed in clause 3 that matters to be shown on the plan must include “Zones for various classes of uses. The master plans shall include, definition of the main planning zones and the main types of developments and uses that are permissible and departure development and uses within them plus certain, but not all restrictions and conditions that may be imposed by the planning Authority on departure planning permissions

<sup>73</sup> See Apapa Town Planning Scheme (Approval) Order in Council F & L 1958 Vill 1107 and 1121 S. 23 See also Ikoyi (South west) Town Planning Scheme 1958

<sup>74</sup> *Supra* Clause 14(2)

<sup>75</sup> Clause 16

<sup>76</sup> Clause 17

<sup>77</sup> Clause 20

failings have usually been wrong application of the rules to the detriment of the citizens of this great country. Our earlier discourse on the concept of zoning and the examination of our laws showed that we appreciate the good in the concept; however an examination of the application of the concept in real terms revealed that we are more interested in the negative impact of the zoning concept.

Not only that, our implementation of the concept to physical development is a times too restrictive and rigid, leaving no room for dynamism. Ikoyi Southwest remains what it was until contraventions of the scheme turned what otherwise was a peaceful residential area into a bursting commercial centre.<sup>58</sup> This is in spite of the provisions it is enabling regulation for change of use and condonation of development.

### **Zoning and Lagos Megacity**

In the building-up to the Lagos mega city status zoning has a major role to play. However its application should not follow the old, rigid and inelastic system that stifled development and bred sprawl communities. Zoning can be used to shape the place where people live and work and the country we live in. it can play a key role in supporting the government's wider social, environmental and economic objectives and sustainable communities. However for zoning to achieve the set goals and objectives it must be prepared with transparency, flexibility, predictability and efficiency to provide quality development needed to deliver sustainable development and secure sustainable communities. Zoning plans should be drawn up with community involvement and participation and present a shared vision and strategy of how the area should develop to achieve more sustainable patterns of development;

*"No matter how efficient, suitably qualified and dedicated city planners may be, no matter what legislative powers they possess, the success or failure of a settlement with regards to its habitability depends to a large extent on the interest and active participation of its inhabitants"*<sup>59</sup>

More effective community involvement should be a key element of the government zoning policy. This is best achieved where there is early engagement of all stakeholders in the process of plan making and bringing forward development proposals.<sup>60</sup> This philosophy of public participation was employed in the Nigerian Regional and Urban Development Decree of 1992, the application of which the Supreme Court has tacitly rendered void with respect to its binding effects on states.<sup>61</sup>

Zoning designs should address issues of social cohesion and inclusion and should particularly seek to reduce social inequalities, take into account the needs of all the community, including particular requirement relating to age sex, religion, disability and income. Zoning should seek to maintain and improve the local environment and help to mitigate the effects of declining environmental quality through positive policies on issues such as design, conservation and the provision of public spaces. It should stimulate and encourage accessible public transport in order to secure a more sustainable pattern of transport development.

Therefore if zoning is properly conceived and applied to our urban spatial order this can reduce the distance of motor trips, traffic congestion and the associated environmental hazard occasioned by the discharge of carbon monoxide by vehicles plying our roads.

Laudable as these objectives are, they are doomed for failure in the absence of sufficient and efficiently trained professional manpower to implement and deliver the goodies that zoning promised. With well trained and professionally equipped personnel the success of zoning as a veritable tool of town planning in our urban and suburban centers is almost assured.

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<sup>78</sup> Other planned/zones areas have not fared better whether it is old Ikoyi, Victoria Island, Apapa, Festac Town or Ikeja

<sup>79</sup> See Akinyemi O. "Education, Training and Research in Town Planning Published in House Ownership in Lagos State by Ikeja Planning Authority p. 232 cited in A.A. Utuama Town Planning Authorities A critical appraisal.

<sup>80</sup> See planning policy statement I. Delivering Sustainable development. A publication of the office of the Deputy Prime Minister. UK. Crown Copyright 2005

<sup>81</sup> See Attorney General of Lagos State V Attorney general of Federation. (2003) 12NWLR (pt 833) p1 sc.



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The only other headache is corruption and collusion in the system. This problem can be reduced where the system is transparent and the use of information and communication technology is employed in the administration and delivery of government services in this regard.<sup>62</sup> Also the enabling legal framework should empower individual members in the zone concerned with legal status to challenge any contravention or threat therein. They should not be left at the mercy of the common law rules and its technicality of *locus standi*.

### **Conclusion**

The task of this paper was to examine the concept of zoning within the larger concept of planning and evaluate its desirability in a changing urban environment in the context of Lagos megacity. In conclusion we have been able to highlight and discuss the issues raised and submit that zoning as veritable tool of planning is not only desirable but necessary in the quest for mega cities. It is therefore recommended to our government as a viable planning option. However we need to address our peculiar human problems in order to reap the full benefits of zoning policy.

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<sup>82</sup> See Akintunde Otubu E-government and land Administrative in Nigeria – A Recipe for Lagos State 2005/2009 Vol. 26 Journal of Private and Property Law pp. 62-72