

The Metropolitan Planning Process in San Juan: Past and Present Structure

1. INTRODUCTION

The objective of this research is to improve the understanding of urban planning issues in the San Juan Metropolitan Area and to determine how these issues are important in the context of the development of Tren Urbano. Specifically, we examine the implementation of a new law which allows planning at the municipal level, *La Ley de Municipios Autónomos*. Our research focuses on municipal planning in the San Juan Metropolitan Area. The design and construction of the Tren Urbano project is proceeding at a rapid pace, and we realize the importance of supporting its development with coherent urban planning. Understanding the current framework for urban planning will help establish some context for the technical issues that we are dealing with and will be useful as a baseline for future research projects dealing with urban planning issues such as station area design, service area planning, and value capture.

2. BACKGROUND

Puerto Rico's first organized planning authority was *La Junta de Planificación*, created in approximately 1945 as part of the Governor's office. Originally, planning was intended to be a distributed process on the island, but the Governor directed that a more centralized form be adopted. *La Junta de Planificación* was given tremendous authority over public agencies because it was empowered to perform both planning and permitting functions. Similar to the US mainland experience, it became known as a fourth power of the government -- after legislative, executive and judicial -- because it was able to influence public policy to a great extent. At its formation, the governor directed *La Junta de Planificación* to develop and administer a master plan for the island known as the *Plan Integral*. It was supposed to address economic and social concerns along with the traditional urban and infrastructure developments. The plan included everything from zoning regulations to the layout of utility networks.

La Junta de Planificación did develop and direct the implementation of the plan, but in the late 1960s, several state-level organizations started to do their own planning independent of *La Junta de Planificación*. A close relationship existed between *La Junta de Planificación* and the state agencies, and so the decentralization was not a cause for concern. However, in the early 1970s, two new agencies were created: the highway authority and the ports authority. As authorities, these agencies were relatively independent from the central government, and so *La Junta de Planificación* could not officially direct their planning. Instead, *La Junta de Planificación* adapted and became a regional coordinator for agency plans, insuring that they were coherent with each other. In 1975, this relationship was formalized through legislation. In addition, permitting was separated from *La Junta de Planificación*, by means of the ARPE (*Administración de Reglamentos y Permisos*), in order to facilitate the development of plans from agencies besides *La Junta de Planificación*. However, *La Junta de Planificación* still retained much of the political clout and top-level authority over planning in Puerto Rico.

Over the next fifteen years, the formal relationship between the many government agencies remained intact, but a growing number of local government bodies called for the ability to control planning in their regions. This culminated in a movement in Puerto Rico called *La Reforma Municipal* which is focused on smaller, decentralized forms of government, in this case the 76 municipalities in Puerto Rico. With support from then governor Rafael Hernández Colón, a group of mayors from various municipalities presented the legislature with a program of changes that gave the municipalities more control over issues ranging from construction permitting to tax collection. Much of this program was approved by the legislature in 1991, and implementation is currently underway.

La Ley de Municipios Autónomos -- passed on August 30, 1991 -- is one of the laws passed as part of the *Reforma Municipal*. It contains twenty chapters of material on the new structure and operations of a municipal level government. One of these chapters covers a new function for municipalities: urban planning. Chapter 13 of *La Ley de Municipios Autónomos* attempts to bring planning issues closer to the citizens by encouraging public participation and allowing municipalities to develop their own city plans once they have obtained the approval of *La Junta de Planificación*. The law requires the same administrative structure as the existing centralized planning process, but on a local level. In addition, the law promotes the use of six new planning strategies as tools for promoting development. The effectiveness of *La Ley de Municipios Autónomos* depends on the strength of the efforts of the municipalities and their adherence to the objectives of the new law as well as the participation of citizen groups in the process.

3. LA LEY DE MUNICIPIOS AUTÓNOMOS

La Ley de Municipios Autónomos establishes a new planning policy in Puerto Rico providing a maximum degree of autonomy to the individual municipality. It does so by expanding the municipality's planning capacity and transferring powers from the central government down to the municipal level. Land use planning within *La Ley de Municipios Autónomos* requires a coordinated effort between the municipality, its representative body and the centralized planning agency, *La Junta de Planificación*. Despite the decentralization of planning, *La Junta de Planificación* retains a great deal of oversight on municipal plans. Besides establishing guidelines for implementation of the law, *La Junta de Planificación* is required to accept the municipality's plans before approval by the Governor. In addition, the steps outlined by *La Ley de Municipios Autónomos* must be conformed to *La Junta de Planificación's* internal procedures and municipal level plans must agree with any existing and future plans made by *La Junta de Planificación*.

La Ley de Municipios Autónomos has several key elements designed to achieve coherent planning at the municipal level. Among these are the adoption of Territorial Ordinance or land use plans, the creation of municipal planning and permitting offices, the incorporation of public participation in the planning process, the transfer of permitting and planning jurisdictions and the provision of new tools to promote development. Also, *La Ley de Municipios Autónomos* redefines the role of *La Junta de Planificación* and the central government within the planning process. These elements will be briefly discussed in the following sections.

Territorial Ordinance Plans - "*Planes de Ordenación*"

Territorial Ordinance plans give the municipality control over its territory. *La Ley de Municipios Autónomos* establishes three types of Territorial Ordinance plans: a Territorial Plan, an Area Plan and an Expansion Plan. These plans must be elaborated and revised by the municipality in coordination with *La Junta de Planificación* and other public agencies in order to assure its compatibility with regional or island-wide plans. Plans from neighboring municipalities must also be taken into account, especially if these have already been approved.

The purposes of Territorial Ordinance plans are multifold. First, they delineate the strategies for the management of urban land, the transformation of urbanizable land into urbanized land in a satisfactory manner and the preservation of rural areas within the municipality. Territorial Ordinance plans will also promote the development of new infrastructure necessary to provide for new development. Furthermore,

the plans promote the economic and social development of the city by establishing criteria to manage the three types of land use categories.

Territorial Ordinance plans established by *La Ley de Municipios Autónomos* have many noteworthy goals for each land use category. The sections of the law covering goals and policy can be found in Appendix A, but mention of a just few of them will give a flavor for the urban planning issues that are important to the municipalities:

Urban Land:

- * Mixed use development that promotes pedestrian access
- * Protection of the traditional urban center
- * Development of the periphery of the municipality, independent from the center by providing adequate infrastructure
- * Mass Transit systems within the municipality
- * High density development in urban areas

Urbanizable Land:

- * Proper integration of new urban land to existing communities and transportation corridors
- * Use of mass transit systems to connect new development to traditional urban areas

Rural Land:

- * Conservation of open land to permit future expansion
- * Protection of natural resources whether it be water resources, ecosystems or resources of commercial use

Each land use plan confers certain planning capacities to the municipality. The "*Plan Territorial*" or Territorial Plan establishes the public policy regarding the use and development of land within the entire extent of the municipality. It is the first plan to be prepared and must be approved before any other plan is adopted. Its main objective is to classify the municipality's territory into the three distinct categories mentioned above: urban land, urbanizable land and rural land. The Territorial Plan will provide the framework for the use of each category of land. For example, within the urbanizable land category, the land must be subclassified as programmed or not programmed for development; within the rural land category, the land must be subclassified as common rural area or rural area that is specially protected. Once it has been approved, all land use decisions within the municipality must conform with the Territorial Plan.

The "*Plan de Ensanche*" or Expansion Plan gives the municipality the capacity to establish a detailed plan to convert land programmed for development into part of the urban area. Any new development within a municipality needs to prepare an expansion plan where both the physical elements of the plan as well as the costs and financing for the project are thoroughly explained.

The "*Plan de Area*" or Area Plan gives the municipality the ability to classify an area because of a special characteristic or its need for added attention. Thus, a municipality will be able to designate a land use type to an area within its limits due to its historic value or resources or its susceptibility to natural disasters. The Area Plan, however, does not allow a municipality to convert a parcel designated as rural land into the other two land use types without revisions to the Territorial Plan.

Each land use plan is elaborated by preparing a series of documents. The Territorial Plan is the most extensive of the three plans. It requires the preparation of six different documents: an announcement of the plan's objectives, a memorandum, a plan program, the plan's regulatory framework, a summary of the plan and the final plan itself. The most important of these documents are the memorandum, the plan program and the regulatory framework. The details concerning the contents of each of these documents is beyond the scope of this work, but it should be noted that they establish a precise timeline to be followed by the municipality interested in establishing a Territorial Plan. The application process also ensures public participation by requiring the municipality to hold public hearings at various steps of the process.

The Expansion Plan and the Area Plan require the preparation of only four documents each: an announcement of the plan's objectives, a plan program, a regulatory framework document and the final plan. Each also requires public participation after each step.

Due to the complexity of preparing Territorial Ordinance plans, a municipality has the option of coordinating them in conjunction with other adjacent municipalities that share similar land use characteristics or with *La Junta de Planificación* itself. Municipalities are encouraged to share resources in elaborating their Territorial Ordinance Plans and in the creation of planning and permitting offices. Thus, a group of municipalities in a particular area of Puerto Rico might share one Territorial Plan and Planning and/or Permitting Offices.

The process for final approval of the Territorial Ordinance Plans is quite complex. Once the municipal Planning Office has completed the final documents, it must present these to its legislative body, the Municipal Assembly. Within an established period of time, the Municipal Assembly must make a simple majority decision concerning the plans. The municipality's mayor must then approve the plan, after which it is presented to *La Junta de Planificación* for approval. Adoption of the plans by the Junta will allow the plan to be presented to the Governor of Puerto Rico, in whose hands the final decision is placed.

If approved, the Territorial Ordinance plans will be established as law via an Executive Order. Finally, the municipality must provide documentation to the Department of State of Puerto Rico.

Territorial Ordinance plans are to be revised in their entirety at least every eight years. Partial revisions to the plans are also possible within this period of time. All revisions must be made in conjunction with *La Junta de Planificación* to ensure its compatibility with other plans. If a particular plan affects neighboring municipalities, *La Junta de Planificación* will determine the factors to be considered in the revision of the plan. *La Junta de Planificación* may also require the municipality to revise its Territorial Plan in its entirety if a partial revision to the plan is controversial. However, municipalities that have obtained planning capabilities are not subject to approval of a partial revision by *La Junta de Planificación*, who only needs to be notified once the revision is approved by the Municipal Assembly.

In order to facilitate the preparation of Territorial Ordinance plans or the revision of these documents, the municipality and *La Junta de Planificación* both have the power to decree a moratorium on the concession of new permits. The municipality may decree a moratorium directly for those permits that involve powers that have already been transferred to it. If it has not been transferred these powers, *La Junta de Planificación* may decree the moratorium at the request of the municipality. The moratorium must be made public and can only last a period of one year.

Planning and Permitting Offices

La Ley de Municipios Autónomos allows municipalities to control its planning and permitting efforts by establishing municipal level offices for these purposes. These offices will have a better understanding of the planning challenges particular to the municipality and will be better prepared to address them at the local level than *La Junta de Planificación*. These offices will also be more concerned about the well being of the municipality which translates into plans that address the many planning issues previously ignored by the central government.

The municipality must create a planning office before it can begin the process of establishing its own Territorial Ordinance Plans. Its Municipal Assembly must also assign a Director for the office. This office is responsible for preparing the Territorial Ordinance Plans, holding public hearings, supervising the enforcement of the Territorial Ordinance Plans and helping the Community Boards, the *Juntas de Comunidad*, in carry out its endeavors.

A permitting office must also be created before the municipality is able to receive the permitting authorities that lie within the central government at ARPE ("*Administracion de Reglamentos y Permisos*").

This office will deal with the permitting in the municipality, store the permitting documentation and publicize any public hearings regarding the issue of permits. However, this office is not required in order to perform the functions to be carried out by the planning office; a municipality may choose to leave their permitting in the hands of *ARPE* if they wish.

As mentioned previously, adjacent municipalities may establish offices for planning and permitting in conjunction with one another. The director of this office is chosen by both Municipal Assemblies and the costs of the office are prorated between the municipalities. Both the planning and permitting office maintain a close relationship to *La Junta de Planificación* to ensure that its actions are compatible with other Territorial Ordinance plans.

Public Participation

One of the strongest elements present in *La Ley de Municipios Autónomos* is its incorporation of public participation in the planning process. This is crucial in creating a government that is closer to the people. Public participation is assured by two strategies: the use of public hearings as a method of having feedback on proposed plans and the creation of community based groups called "*Juntas de Comunidad*".

Public hearings are used to inform the municipality's population of the intent to bring about changes in their communities. The process for the approval of Territorial Ordinance Plans incorporates public hearings as a requirement of each document. Public hearings are also held during the final presentation of a plan, during a plan revision and even during a notification of a moratorium. In the past, public hearings have received little attention by citizens, regardless of the amount of publicity given via different means of communication.

In trying to improve this situation, *La Ley de Municipios Autónomos* requires that a municipality create one or more community based groups consisting of seven to eleven members that have no association with the projects or plans being considered. These *Juntas de Comunidad* are intended to represent the various ideological, social and economic concerns within the community. The municipality must create at least one community group per 50,000 inhabitants and its members are named by the mayor for terms of two to three years. The *Juntas de Comunidad* are intended to be a community based body that gives feedback on the preparation of Territorial Ordinance plans and its implementation in the municipality. It is also in charge of promoting public participation in all planning endeavors. The different *Juntas de Comunidad* send representatives to a larger body known as the "*Junta de Directores*", responsible for the integration of the work from each individual junta.

The transfer of jurisdictions on Territorial Ordinance

Once a municipality has established its Territorial Plan, *La Ley de Municipios Autónomos* allows the municipality to solicit for the transfer of jurisdictions from *La Junta de Planificación* and the *Administración de Reglamentos y Permisos (ARPE)*. The municipality must demonstrate its capacity to undertake the responsibilities transferred to it from either agency, its intent to exercise these powers within its own limits, and the reasons for soliciting the transfer of jurisdictions. These planning and permitting powers can be obtained through a series of five stages or categories, each describing different use permits for existing structures and lots of varying sizes. Included in the transfer of these five categories of jurisdictions are other incidental authorities conferred to the municipality.

The process for transferring these jurisdictions begins with the municipality's petition to the Governor of Puerto Rico for the jurisdiction. A process of approval in the central government, in *La Junta de Planificación* and in the Municipal Assembly then follows. With the transfer of these jurisdictions completed, the municipality, through its planning or permitting offices, will have the powers conferred to it by the new law. *La Junta de Planificación* and *ARPE* reserve the right to exercise a few broader jurisdictions. In particular, these agencies are informed periodically by the municipalities on the evaluation of permit or plan petitions. If the proposed development or plan is considered to be of regional character not included in a municipality's Territorial Ordinance plans such as a commercial center, hotels, recreational facilities, industrial facilities, school zones, hospitals or ports, *La Junta de Planificación* can reacquire jurisdiction over the final decision. Similarly, *ARPE* reserves its jurisdiction in specific cases.

New Tools for promoting urban development

La Ley de Municipios Autónomos has also conferred to the municipalities a group of six new tools for use in their planning and development efforts. The use of the tools is optional, but they can be of use to some municipalities under particular circumstances. To foster the proper use of these tools, strict procedures have been established to make them compatible with the Territorial Ordinance plans and require public hearings. These tools are as follows:

- * *Reserving plots for endowed uses* - Up to 10% of the urbanizable land may be reserved by the municipality for public uses including recreation, health, schools, culture, or sports facilities. The regional plan may dictate the location, particular use, and size of such reserved plots.
- * *Requirement to develop endowed uses* - The municipality is allowed to require that developers construct facilities internal to the project to serve for endowed uses as part of their overall plan,

such as recreational areas, concessions, or other services. This will prevent developers from transferring this responsibility to the municipal government.

* *Linkage*- For large scale projects, developers can be required to contribute up to 5% of their project costs to the development, improvement of, or investment in another public or social project, generally involving disadvantaged groups. This contribution can be in the form of land, financing, or design and construction resources.

* *Contribution for capital improvements* - The central government may require future projects to contribute to a fund to be held for the planning and construction of major capital projects of government services such as water works and roadways.

* *Development rights transfer* - A property owner may transfer his or her right to develop a plot to any other plot of similar land use type (urban, urbanizable or rural) or sell those rights to another developer to be used on one of the buyer's plots. Such sales and transfers must be approved by and registered with the municipal permit office.

* *Land Readjustment* - The planning board has the right to reparcel an area according to an organized, large scale plan. The object of this tool is to facilitate infrastructure, permitting, and financing for development by coordinating it on a larger scale.

The text of the law that covers these development tools can be found in Appendix B.

The role of *La Junta de Planificación* and the central government

La Junta de Planificación has already established the guidelines to be followed for the preparation of the Territorial Ordinance plans and other elements that ensure the decentralization of planning. Through these guidelines, *La Junta de Planificación* has created the procedural framework for the transfer of planning capacity to the municipality. It has retained a great deal of oversight at each stage of the preparation of the Territorial Ordinance plans and has established a timeline to carry out the approval of these plans. *La Junta de Planificación* must receive extensive documentation of the Territorial Ordinance plans and be notified of the course of action taken by each municipality, including the dates and locations for public hearings. It also will hear presentations from the municipalities during various stages of the preparation of the plans, and be active in the revision of plans and in the actions taken by the municipal level planning and permitting offices.

La Junta de Planificación plays a key role in a land use plan's approval. In its hands is the responsibility for assuring that a particular municipality's Territorial Ordinance plans are consistent with regional or state-wide plans and public policies as well as the plans of its neighboring municipalities. *La*

Junta de Planificación does not have the authority to revoke a plan. If it deems that these plans are unsatisfactory in some way, it can, however, prepare a document for the Governor regarding the plan's deficiencies. The Governor as head of the central government makes the final decision.

Regardless of the approval of a land use plan, the central government, through *La Junta de Planificación*, retains the capability of establishing its own planning initiatives throughout the island. Initiatives of this sort will have priority over any land use plan. In fact, *La Junta de Planificación* will notify the affected municipalities and these will have to amend their Territorial Ordinance plans accordingly. Here lies the irony of this decentralized planning effort, the central government maintains a great deal of power and can override any approved land use plan to fit its own initiatives. This mechanism will allow the central government to pursue regional plans such as Tren Urbano with no resistance from an individual municipality.

4. RECENT DEVELOPMENTS

La Ley de Municipios Autónomos has been implemented effectively in two municipalities, Bayamón and Ponce. Each municipality had made a fairly good attempt at planning at the municipal level before the implementation of the new law, mainly because they had long histories of strong leadership at the municipal level. However, their stories are interesting in terms of illustrating the process.

Bayamón

Bayamón's mayor for the last two decades, Ramón Luis Rivera, established a Planning Office in 1977 as one of his first actions in office. This office was in charge of coordinating the social, economic and physical development of the municipality. Its role, however, was limited to promoting projects for the area, studying the economic potential and need for projects and searching for the necessary consensus to bring projects about. Although it had no permitting or regulatory power, these initiatives are the reason behind Bayamón's successful economic and urban development in the last two decades.

Before approval of the *La Ley de Municipios Autónomos*, the central planning agencies, *La Junta de Planificación* and others, were able to deter any of Bayamón's planning initiatives that did not agree with their own plans. Bayamón was forced to respect the regional plans established for the San Juan Metropolitan Area, the latest of these being the *Plan de Usos del Terreno de la Región Metropolitana* (PUTRM) of 1982. Bayamón had unsuccessfully attempted to incorporate specific petitions into this plan for more than a decade.

Once *La Ley de Municipios Autónomos* was passed, the municipality promptly developed its *Plan Territorial*, which was approved in 1992. Its Planning Office was then able to use its knowledge about the municipality and planning to elaborate a plan that was more responsive to local needs. It also had the institutional recognition of its power to articulate plans on a local level to better served the municipality's population. The entire process culminated in March 9, 1994 when the transfer of powers from *La Junta de Planificación* and *ARPE* were completed and Bayamón was given the institutional tools it needed to do its own planning.

Among the changes implemented under Bayamón's Territorial Plan was the use of the new land use categories established by *La Ley de Municipios Autónomos*: urban, urbanizable and rural. It also promoted public participation in the planning process and created a vision of the future and a program and the associated regulations to achieve this vision.

There were three important improvements made in Bayamón's Territorial Plan which should be mentioned as examples of how a municipality can tailor planning to fit its own needs. It established land use districts specifically designed for the distinctive communities within the municipality such as a residential enclave, the town center, etc. It incorporated the ability to establish mixed-use development within different districts to encourage residential and commercial use in specific areas. Finally, it incorporated five of the six new tools proposed under *La Ley de Municipios Autónomos*: linkage, land readjustment, requirement to develop endowed uses, contribution for capital improvements and development rights transfer.

Bayamón's experience thus far with the decentralization of planning has been positive because it has empowered the municipality to better serve local needs.

Ponce

The municipality of Ponce began working on its Territorial Plan before the approval of *La Ley de Municipios Autónomos* as part of two municipal projects: the *Ponce en Marcha Plan* and the revitalization of the historic zone in Ponce. These two experiences gave officials in Ponce sufficient experience and knowledge about the centralized planning process and the government agencies responsible for island-wide planning to prompt a quick response to *La Ley de Municipios Autónomos*.

Once *La Ley de Municipios Autónomos* was passed in 1991, Ponce was on its way to establish its own Territorial Plan, completed in 1992. The municipal government in Ponce used the mechanisms established by the new law to develop its public policy toward development, create the necessary programs to make it happen and prepare regulations that would determine land use.

Ponce also obtained the power to give construction and land use permits and to elicit public participation in the planning process. It established a Permit Office that handles all permits that have an impact on the municipality. This allows them to pay special attention to project proponents, facilitate the development of projects and speed up the bureaucratic process. Public participation has increased in the form of informal meetings, seminars, public hearings on projects and the establishment of *Juntas de Comunidad*.

The experience in Ponce with *La Ley de Municipios Autónomos* has also been very positive. It established a balance between the municipal and central government that has been absent in Puerto Rico and it gave Ponce the control over its own planning and future developments.

Other municipalities

Ponce and Bayamón are the only two fully approved municipalities at this time. Many others are involved in the approval process, including several in the San Juan Metropolitan Area. The most notable of these are San Juan and Guaynabo, both of which have plans currently being reviewed by *La Junta de Planificación* and are in the public hearing stages. Other municipalities who are developing their plans include Carolina, Cataño, Trujillo Alto, and San Germán. *La Junta de Planificación* does not have the resources to support immediate conversion of all municipalities, and so the process of transformation will be relatively slow as a few municipalities are approved each year. There is no specific schedule for the municipalities to adhere to in terms of starting the process, and so if they have the resources and initiative, implementation may be able to occur at a more rapid pace. In the meantime, the plans of *La Junta de Planificación* will dictate developments in any unapproved municipalities.

5. OPINIONS ON LA LEY DE MUNICIPIOS AUTÓNOMOS:

The law is still in the early phase of its implementation, and so the implications for long-term urban development are not entirely clear. The most recent issue of the Puerto Rican planning journal called *PLERUS*, published by the University of Puerto Rico, contains commentary on the law by a number of planners and practitioners. We summarize two articles below in order to give some perspective on projected impacts of the law.

Rafael Hernández Colón, ex-governor of Puerto Rico (1972-1976 and 1984-1992)

In his article, "*La Reforma Municipal: un proyecto histórico de democracia*" (Municipal Reform: a historic project of democracy), ex-governor Hernández Colón discusses his views on the Municipal Reform that he began promoting in 1968 during his speech at the funeral of Luis Muñoz Marín, first elected governor of Puerto Rico. Municipal Reform was a cornerstone of his three terms of office and a topic that the ex-governor considered of utmost importance. He sees Municipal Reform as a project that improves the democratic participation of the citizens of Puerto Rico in their government. It is also a means of opening government to all and making it more responsive to the island's problems by bringing the decision making capability down to the municipal level.

La Ley de Municipios Autónomos, as part of the general municipal reform, enabled the transfer of power from the central government to the municipalities. Ex-governor Hernández Colón believes it also provides the democratic instruments that allow citizens to incorporate themselves in the planning process, thus enabling them to act on the changes that will determine their quality of life in the future.

Ex-governor Hernández Colón sees the new law as a way to redefine the role of *La Junta de Planificación* as a centralized planning authority. *La Junta de Planificación* could focus on coordinating an integral socio-economic plan for Puerto Rico, instead of discussing the particularities of a project that are best resolved by the municipalities themselves. The new law was also a vehicle for making planning in Puerto Rico more democratic and bringing government closer to the people.

Charles Siemon, Land Use Planning Consultant

In his article, "*La Ley de Municipios Autónomos: Otra oportunidad de asumir liderazgo en la planificación*" (Another opportunity to assume a leadership position in planning), Siemon expresses his view that the new law gives Puerto Rico and its municipalities a unique opportunity to assume a leadership role in land use planning and regulation. Although the strengthening of the municipality and public participation in the planning process are important, he feels that the most significant aspect of the law is the opportunity Puerto Rico has to achieve reforms in planning and zoning, many of which have not been incorporated in the United States. Among these reforms established under *La Ley de Municipios Autónomos* are:

- * Requirement of a comprehensive plan before zoning is performed.
- * Establishment of minimum standards in a comprehensive plan.
- * Simplification and modernization of zoning laws and procedures.
- * Establishment of a coordinated system of planning and zoning.

* Creation of new powers to implement comprehensive plans.

La Ley de Municipios Autónomos of Puerto Rico conditions land use planning upon the preparation of a comprehensive plan, in the form of a *Plan de Ordenación*. This ensures that the planning process in Puerto Rico be fiscally responsible and provide a coherent vision of the future. The law also requires that the comprehensive plan include a set of minimum standards established by the central planning agency, *La Junta de Planificación*. These requirements assure consistency among neighboring municipalities with each other and with the plans made on a regional level.

6. CONCLUSION

This paper is an overview of the past and present structure of urban planning in Puerto Rico. It is by no means a static situation; it will be a challenge to keep pace with the many changes that are involved in the transfer of planning power to the municipalities. Continuous contact with officials in Puerto Rico will be necessary to determine which municipalities have the authority to conduct their own planning and permitting. However, based on the experiences of a few municipalities thus far and the opinions of several experts, we can begin to formulate a picture of the planning landscape in the years to come. Planning appears to be moving in the right direction at the municipal level and the process does empower the local officials to determine the direction of development. However, a delicate balance of power will need to be maintained between the municipal and central planning authorities in the transition in order to ensure that a healthy and cooperative relationship develops and fosters strong development in the years to come.

APPENDIX A

La Ley de Municipios Autónomos:

Section 13.001 - Public Policy

Section 13.002 - Goals and Objectives of the Territorial Ordinance

CHAPTER XIII

Territorial Ordinance

Section 13.001.- Public Policy.-

The soil in Puerto Rico is limited and it is the public policy of the Commonwealth to propitiate the wise use and optimum development of the territory to ensure the welfare of the present and future generations, promoting an orderly, rational and integral development thereof. This process shall be carried out according to the Ordinance Plan which shall contain the strategies and provisions for the organization of urban land, the development of a particular ordinance plan that is functional, aesthetic and compact for the new land to be urbanized, and through the conservation and protection of not urbanized land.

It is hereby declared as the public policy of the Commonwealth of Puerto Rico to promote the participation of the citizenry in the process of drafting and adoption of the Ordinance Plan. The municipality shall promote public understanding using those means of information it deems adequate. Likewise, the municipality shall provide the citizenry with all the information needed to place every citizen in an equal position for his effective participation in the municipal territory ordinance process.

Section 13.002.- Goals and Objectives of the Territorial Ordinance.-

The Ordinance Plan shall comply with the goals and objectives directed to promoting the social and economic welfare of the population, among which are the following:

(a) They shall be compatible and harmonize with the public policies, the general plans for Puerto Rico, as well as with the regional plans and those of other municipalities, particularly with the abutting ones.

(b) They shall consider, in coordination with the pertinent public agencies, the social and physical infrastructure available or needed in their jurisdiction to allow new developments.

(c) They shall propitiate, in the drafting and adoption, a broad participation of the citizenry and of the inherent central government bodies.

(d) They shall protect the unurbanizable land, preventing its subdivision and prohibiting its urbanizing. The Plans shall promote, among others, the protection of:

- (1) agricultural, cattle, fishing, lumber or mining areas, currently in use or with a potential for their development for said use;
- (2) surface and underground water resources, and their immediate basin; ecological systems, habitats of flora and fauna in danger of extinction, and other systems and natural resources of ecological value.
- (3) open areas for the recreation and enjoyment of the inhabitants or with potential to be developed for said use; and
- (4) open areas for safety or public health reasons, such as areas that are floodable, subject to landslides, or sensitive to seismic movement;

- (5) open areas to allow the future extension of urban areas to meet the needs of future generations.

(e) Shall regulate urban soil pursuing the following objectives, among others:

- (1) balanced development of uses throughout the city, incorporating diverse, but compatible uses thereof to attain mixed communities where pedestrian access is made possible for the various uses;
- (2) strengthening of the economic, social and physical structure of each ward or neighborhood, in accordance with its particular characteristics, giving the diverse wards or neighborhoods the services and variety of uses needed or desirable;
- (3) protection, safeguarding and conservation of structures of historical, architectural, cultural and archaeological interest or value;
- (4) protection of the traditional urban center, avoiding the establishment of the exclusive use for commerce and services in its central area and protecting and promoting residential uses in said sector;
- (5) promote the integral development of suburbs by providing them with the economic and social infrastructure needed so that they will not depend on the central areas of the city;

- (6) protection of the continuity of the layout and system of roads, as well as promoting the physical integration of the city with the suburbanized zones and others alienated at present through its system of roads;
- (7) rescue and improvement of the public space of the municipality by promoting the protection of green areas, as well as the planting of trees and vegetation to improve the quality of the city's environment;
- (8) development of mass transportation systems, where worthwhile, to expedite communication and movement in the city and between its wards or neighborhoods;
- (9) promote the access of all citizens to the public spaces of the city.
- (10) coordination and implementation of the strategies for economic, social and environmental development designed by the municipality.
- (11) in the case of land that borders on urban land of other municipalities, the harmonizing of urban morphology and its system of roads with that of said municipalities;
- (12) intense use of urban land, including suburbs;

(f) Shall establish a clear process of transformation from urbanizable land to urban land, pursuing the following objectives for the new developments among others:

- (1) integration of new developments to the existing urban context and its possible integration to future developments, emphasizing the continuity of the traditional street layout and the continuity of the local and main roads.
- (2) establishment of new developments of a compact, functional and aesthetic form, that establish bonds of harmony with the environment and form a dignified public space that is sensitive to pedestrian needs;
- (3) incorporation of various uses compatible with the new developments of the city to attain mixed communities where dependence on automobiles is reduced and pedestrian access to the various uses is made possible;
- (4) liaison of new developments with the existing city through road systems and mass transportation;
- (5) promote that all citizens have access to public spaces;
- (6) coordination and integration of all physical-space aspects with the strategies for economic, social and environmental development designed by the municipality;
- (7) intensive use of the land to be urbanized.
- Section 13.003.- Definitions.-
- The following terms and phrases shall have the meaning indicated hereinafter, when used or referred to in this title, unless the context clearly indicates otherwise:

APPENDIX B

La Ley de Municipios Autónomos:

Section 13.021 - New Jurisdictions to Make Urban Development Viable

municipalities. Those regulations of these agencies that the Municipality can substitute according to what is established in this Act, shall continue in effect until the new planning rules are adopted as provided in this Act.

Section 13.021.- New Jurisdictions to Make Urban Development Viable.-

Once a municipality agrees to take control of the ordinance of its municipal territory and adopts a Territorial Plan as established in this Chapter, new jurisdictions and powers shall be granted to said municipality to make its urban development viable in accordance with the agreement established with the Governor. The use of the jurisdictions shall not be linked to the transfer of powers on use and construction authorizations or permits. These new jurisdictions may be exercised individually or all at once, as needed, to implement a Territorial Ordinance Plan. To collaborate in its implementation, the state agencies concerned are also empowered in some of the new jurisdictions, so that they can perform the same in support of said plans. These jurisdictions are the following:

- (a) Designation of Land for Community Use
- (b) Exaction (Taxing) by Impact
- (c) Transfer of Development Rights
- (d) Linkages
- (e) Requirement of Community Facilities
- (f) Reparceling

Prior to the use of a new jurisdiction the Planning Board shall be required to draft and adopt one or several regulations, as needed, which shall establish the substantive and procedural details of the new jurisdictions, as provided in Section 13.028 of this Chapter of the Law. Said regulations shall establish uniformity in the application of standards in the corresponding area within each municipality.

These new jurisdictions are granted to propitiate an effective implementation of the Ordinance Plans and guarantee that the public benefits that are derived from them for the health, safety and general welfare of the citizenry shall be distributed among the citizens of the municipalities efficiently, fairly and equitably, while ensuring the best use of the vital but limited land resources, and optimizing municipal investments through planning that will allow the limited resources of the municipality available to attend to the needs of its inhabitants to be used in the most advantageous way for the public good. Also, the purpose of these jurisdictions is to conform municipal solutions to the different needs that may arise in implementing said plans, providing various mechanisms that can see to particular or sectorial situations and offer reasonable remedies and options to the citizens to distribute the costs or encumbrances of the works required for the benefit of the entire municipal population, with the responsibilities and processes being shared by the different municipalities involved.

In case there is a Territorial Ordinance Plan that applies to more than one municipality, the jurisdictions may be exercised through the municipal boundaries included in such plan.

Section 13.022.- Designation of Lands for Community Uses.

The municipality is empowered to require the designation of land in fee simple, pursuant to the regulations adopted by the Planning Board to such effects, to furnish community uses such as parks, plazas, recreation, sports, education, health or culture, to urbanizable lands that will be converted to urban areas through an Extension Plan, or non-urbanized land on urban land, that that are submitted to development through an Area Plan, as identified by the respective plan. These lands shall attend to the community's needs caused by the new urban development. This designation of lands shall be in addition to the lands to be designated for the state or municipal system of roads, and the location of infrastructure, which shall also be designated to the municipality in fee simple. When the lands are needed to provide community needs served by public agencies, the municipality or the proprietor, with the prior agreement of the municipality, shall designate the lands to the corresponding agency. The designation of lands shall not exceed ten (10) percent of the total land usable for development, regardless of the use to which the lands are destined. The exact area of the lands to be designated, their location and use, may be established in an Ordinance Plan. The Planning Board Regulations shall establish the procedures to determine in which cases all or part of the lands shall not be needed

and to allow the substitution of the land required for a cash contribution.

Section 13.023.- Exaction by Impact.-

The municipality and the state infrastructure agencies--highways,

mass transportation, aqueducts, sanitary sewers, electric power,

telephones, ports and airports--are empowered, pursuant to the

regulations to such effects adopted by the Planning Board, to charge

the new projects a fee to defray expenses for the provision of

infrastructure or community uses, within or without the limits of the

project, as a direct result of said project. Every type of

construction work shall be deemed to be a new project, including

altering, extending, reconstructing, remodeling, restoring, and new

construction, or any land use which has an impact on the furnishing of

infrastructure or community uses.

Exactions by impact shall meet the following requirements:

(a) They shall be determined systematically and with due

justifications which show the criteria used to establish the exaction;

the service levels may be specified for different types of areas.

(b) They shall be determined with regard to the project's

infrastructure and community use demands, according to the cost of

satisfying said demand.

(c) They shall not exceed a contribution proportional to the cost

incurred or to be incurred to provide the infrastructure or community

uses required to meet the new demands.

(d) They shall avoid duplication, taking into consideration other payments, if any, that are made to provide infrastructure or community uses.

(e) They shall have a relationship between the collections and the benefits received, and shall be proportional to their impact, to propitiate fair treatment to the developer, the direct beneficiaries of the project, and the municipality.

(f) They shall pay for the direct costs of the new development and not arise from the needs of the existing established communities or for the recurrent expenses of the municipality.

(g) The calculation of the exactments shall be documented and justified in an official document of the municipality or state infrastructure agency, and shall be available in the Territorial Ordinance Office, or the central office of the state infrastructure agency.

The collection of the exactments shall be covered into a special fund for the provision of infrastructure or community facilities related to the project's impact and shall not be used to defray recurrent expenses of the municipality or the infrastructure agencies.

Section 13.024.- Transfers of Development Rights.-

The municipality is empowered to establish the mechanism of Transfers of Development Rights where it has been determined in an Ordinance Plan, pursuant to regulations adopted to such effects by the Planning Board. The Planning Board is empowered, with the support of the Puerto Rico Lands Administration, to impose and administer the transfers of development rights to comply with the provisions of a Planning Board's Land Use Plan, as established in said plan. The

transfers of development rights may be used in the following situations, among others:

(a) Preserve structures and properties of a historic or architectural value.

(b) Preserve certain open lands, permanently, for agricultural use or for natural reservations.

(c) Distribute the charges and profits to different proprietors within the area comprised in the Ordinance Plan.

The mechanism will allow a proprietor to acquire the development rights to other properties, as established in an Ordinance Plan. This Plan shall establish the areas among which transfers may be made, clearly establishing the areas that will cede the development rights and the areas that will have the power to acquire development rights. Any alteration of the areas shall represent a revision of the Plan and shall require public hearings.

The Regulations to be adopted to enact the mechanism shall meet the following conditions:

(a) The transfer of development rights may be made as a normal purchase and sale transaction between two free agents. Any transfer shall obtain an authorization of the municipality or the state agency concerned, which shall attest to its compliance with the Ordinance Plan, prior to the transaction.

(b) The person who cedes or purchases the development rights may do so through one or several transactions.

(c) Any Transfer of Development Rights, as well as its modification or encumbrance, shall be recorded in the Property Registry through the presentation of a public deed accompanied by evidence of the authorization of the municipality or the public agency concerned. A Registry of Transfers of Development Rights is hereby created for such purposes, which shall be maintained in each one of the Sections of the Property Registry. The Secretary of Justice is hereby empowered to issue the proper regulations for said registrations. The provisions of the Mortgage Act shall be used as supplements to this Act.

(d) Once the development rights of a property are sold or transferred, the rights to said property that are sold or transferred are extinguished.

(e) The municipality or public agencies concerned shall have the power to create a special transfer fund, with the capacity to acquire or sell development rights, as another agent.

(f) The municipality or the public agencies concerned shall keep an inventory of the development rights in their territory or jurisdiction, if any, and of all transaction made with them. Said inventory shall be included in a Development Rights Transfer Registry which shall be kept in the Territorial Ordinance Office of the municipality or in the Secretariat of the Planning Board.

(g) The municipality or the public agencies concerned shall publish annually, in case they have transfers of rights in the lands under their jurisdiction, in at least one newspaper of general

circulation, the availability of development rights in the lands under their jurisdiction. This jurisdiction shall be used mainly in areas where development pressures and the conditions that favor the investment justify their use.

Section 13.025.- Linkages.-

The municipality is hereby empowered, pursuant to the regulations that are adopted to such effects by the Planning Board and what is established in an Ordinance Plan, to require a developer to accompany a new project by an investment or cash contribution for the provision of social interest housing so that the developments in the municipality may collaborate in attending to the social interest housing needs of a municipality. Said investment or contribution shall not exceed five (5) percent of the construction cost of the new project. It shall be understood that the term "investment" shall include the contribution of land as well as the construction, reconstruction or improvement of buildings used or to be used as social interest housing.

The linkages shall have the purpose of propitiating that less-favored social groups will benefit of the economic growth of certain areas in the municipality.

The linkage mechanism may only be imposed on highly-profitable projects and on construction of more than twenty-five hundred (2,500) square meters. Public works and improvements shall be exempted from linkages. Residential projects shall also be exempted, except for those whose sale price per unit is more than one hundred and

seventy-five thousand (175,000) dollars. The Planning Board shall review periodically, and at least every five (5) years, the limit of the abovementioned sale price, taking as a basis the variations in the general consumer price index for the entire family, as established and certified by the Department of Labor and Human Resources.

The monies collected by virtue of the imposition of linkages shall be covered into a corresponding special fund in the municipality and shall be used exclusively for the purpose provided in this Section with the prior approval of the Municipal Assembly.

Section 13.026.- Community Facilities Requirement.-

The municipality is hereby empowered to require the construction of works, facilities and structures, as well as the designation of land and buildings to serve the internal community needs generated by each construction project that is authorized. Such power shall be exercised pursuant to the regulations adopted by the Planning Board to such effects.

Section 13.027.- Reparceling.-

The municipality is hereby empowered, pursuant to the regulations adopted to such effects by the Planning Board, to impose Reparceling where it has been determined in an Ordinance Plan. The Planning Board is also empowered, together with the Puerto Rico Land Administration, to impose Reparceling within a municipality's scope to comply with what is established in a Planning Board's Land Use Plan, when it has been determined in said plan.

Reparceling shall mean the grouping and new segregation of farms or lots comprised in an area whose surface or boundaries shall be changed according to what is indicated in an Ordinance Plan. To make the grouping of farms or lots that belong to different titleholders viable, a juridical entity shall be created whose members shall be the proprietors of the farms to be grouped. In the Reparceling, the resulting parcels shall be adjudicated to the participating proprietors in proportion to their respective rights, and the profits and encumbrances of the territorial ordinance shall be distributed fairly.

Reparceling has the following objectives, among others: to adjust the configuration of the farms; distribute the profits and encumbrances of the territorial ordinance fairly among the proprietors; and adapt the different properties for development subject to the conditions established in the corresponding Ordinance Plan and the applicable laws and regulations.

The start of the Reparceling project shall require the suspension by a moratorium of the granting of use, lotification and construction permits in the area until the Reparceling is approved. Said moratorium shall have effectiveness of more than one (1) year, which may be extended for one (1) additional year.

The Reparceling project shall take the following factors into account:

- a) The rights of the proprietors shall be related to the original characteristics of the property, including its use, surface area, accessibility, quality and capacity of the land, and others.

- b) The resulting lots shall be valued according to their relationship to the Ordinance Plan, with regard to their use and buildable area, and in accordance with their location, characteristics, degree of urbanization and use of its buildings.
- c) Whenever possible, the farms shall be adjudicated in a place next to the same proprietors' former properties.
- d) When the scarce of the rights of one or more of the proprietors does not allow the adjudication of an independent lot to each one, a fraction of a lot shall be adjudicated pro indiviso, or the adjudication may be substituted by a monetary compensation.
- e) The worth of the works, buildings, installations and improvements of the existing properties which cannot be preserved shall be considered in the Reparceling project, and their relationship with the proprietor's rights.

The Reparceling project shall be promulgated by the municipality or the public agency concerned. The corresponding municipality or agency shall call the proprietors of the area to be reparceled for a cycle of meetings, to discuss the manner that the Reparceling is to be made fairly and equitably. Said invitation shall be made at least two (2) weeks prior to the date of the first meeting.

Once the cycle of meetings is concluded, the municipality or the public agency concerned shall draft a Reparceling proposal which shall be submitted to the proprietors in a term that shall not exceed

two (2) months after the last meeting is held. Said initial proposal, if said action is accepted by the municipality or the public agency concerned, may be developed jointly with the proprietors. Once the initial proposal is drafted, if the majority of the proprietors agree, the Reparceling project can be approved; otherwise, three (3) months shall be granted for a new cycle of meetings in which a new Reparceling project shall be presented for discussion in the meetings that are planned. The new project may be worked out by the municipality or the public agency concerned, or if it is approved by the municipality or the public agency concerned, it may be worked out jointly with the proprietors. If the meetings for the Reparceling Project are concluded without reaching an agreement with all the proprietors, the municipality or the public agency concerned may expropriate the properties of those proprietors who are not in agreement. Prior to commencing the expropriation, the municipality shall hold public hearings on the final Reparceling project. Once the expropriation is done, the Municipality or the public agency concerned may hold the property and sell it at public auction after the Reparceling, to an interested party who agrees with the reparceling to be done, and with the Ordinance Plan. After the Reparceling project is approved, the Property Registry shall be asked to record the physical and juridical condition of the lots thus affected, and that of the lots resulting from the Reparceling.

The Reparceling may be used as a mechanism for the financing of the cost of Reparceling, infrastructure, and community uses, through

which the proprietors agree to dispose of common land, to be laid out in the Reparceling design, whose sale will generate funds for the financing of the infrastructure and community uses needed to develop the area. These lands shall be in addition to the lands required by the Designation of Lands for Community Uses to the Municipality, as established in this Chapter, and shall be in addition to the lands needed to supply the infrastructure, including the system of roads.

The cost incurred by the Municipality or the public agency concerned for the developing of the Reparceling project shall be shared proportionally by the proprietors. The Planning Board, through regulations adopted to such purposes, shall establish the criteria to exempt those proprietors affected by the Reparceling who have limited financial resources, from the payment of the costs mentioned above.

The Reparceling project may contain a procedure whereby the encumbrances and profits can be balanced adequately between the proprietors, which could include Transfers of Development Rights, direct contributions between proprietors, or other balancing mechanisms.

Section 13.028.- Regulations for New Jurisdictions.-

In order for the jurisdictions established in Sections 13.022 to 13.26 of this Act, to be exercised by a municipality or by a public agency as provided in this Title, they shall require the drafting and adoption of the pertinent regulations by the Planning Board. The Planning Board is hereby directed to adopt one or several regulations

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