

Between Procedure and Substance: On the Interplay between Judicial Rulings and Planning Committee Decisions in Environmental Planning

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ABSTRACT

The field of planning maintains an especially deep and extensive relationship with the legal system, for several reasons: the detailed and focused regulation established by the Planning and Building Law; the legal status of plans as secondary legislation—namely, as regulations; and the growing involvement of NGOs and citizens in planning processes and their outcomes. Confronting all of this stands a fundamental principle: judicial intervention in the decisions of planning authorities is to be exercised sparingly.

This article focuses on the interplay between judicial rulings and decisions of the planning committees in several issues related to environmental planning. With respect to detailed planning, the courts recognize that such planning enables a precise examination of a plan's environmental implications, ensures transparency, and provides the public with full opportunity to object and to influence the process. This stands in contrast to flexible, enabling planning that entails substantial environmental uncertainty.

The reasonableness doctrine holds paramount importance in the realm of planning and building generally, and in environmental planning in particular, and the courts have invoked it on numerous occasions. The existence of the reasonableness doctrine guides the decisions of planning institutions, as they know their determinations are subject to judicial review.

Environmental impact statements (EISs) have been extensively discussed in case law. The courts attribute great significance to environmental considerations in planning, and to the role and necessity of the EIS as a central tool that enables decision-making based on complete information. Unlike the relatively well-established legal protection afforded to EISs—as well as to the legal safeguards over coastal areas—the protection of natural assets is characterized by substantial uncertainty and inconsistency regarding judicial intervention in the discretion of planning bodies to prevent harm to wildlife and habitats.

The judicial system, as well as planning policy, reflect worldviews, opinions, and levels of awareness. Until we internalize a deep understanding of the importance of protecting environmental values, and the insight that our existence and well-being depend on the existence of functioning and healthy natural systems, we will continue to engage in rearguard battles within the endless spheres of uncertainty between procedure and substance.

Keywords: Environmental planning, Environmental impact assessments, Environmental law, Planning and Building Law, Environmental organizations.

ENGLISH ABSTRACTS

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