

The Use of Urban and Regional Planning Act LFN 2004 and Relevant Cases in Evaluating City Zoning and Development in Nigeria

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Abstract

The purpose of this study was to examine the importance of zoning and development in city planning in Nigeria, with the aid of relevant statutes and cases. In order to generate meaningful data, we generated primary data from journals, books and online comments while secondary data was gotten from staff of government development agencies via interviews. With these staff we interviewed we generated data directly relating to the impact of zoning and development in city planning in Nigeria. Our findings revealed that the zoning of a city or state drives infrastructural development as well as human capital development in terms of creating jobs, attracting investors and increase internally generated revenue for the state. We recommended that government should decongest the existing cities from time to time by creating zones, districts, etc, as to drive the necessarily development.

Keywords: Zoning, Development, NURP ACT 2004, Relevant Cases

1.0 INTRODUCTION

The concept of zoning and development has been theoretically and empirically tested by scholars, environmental lawyers and other practitioners in this field over the years. Zoning dates back to the time of creation by the almighty God, in the bible¹ God after creating man saw the need to create other comfort facilities that would make man's living on earth comfortable, so he created the waters, land, animals, birds, etc. Therefore, God having understood the need for zoning, zoned water, land, animals and birds, also the night was zoned, the day and darkness were respectively zoned. Zoning can be defined as the act of planning a town, state and country so that different parts of the towns or country are located for different purpose in order to create place and social utility. Also, zoning is the process of planning for land use by a locality to allocate certain kinds of structures in certain areas. Zoning also includes restrictions in different zoning areas, such as height of buildings, use of green space, density (number of structures in a certain area), use of lots, and types of businesses. Therefore, development is the state of prosperity or economic progression of a town or country which is aimed at meeting the demands of the citizenry. However, it is worthy to mention that several researches or works on zoning and development has been published by scholars².

However for the purpose of this study we will make do with definition of development by NURP ACT³ section 91, defined development as the carrying out of any building, engineering, mining or other operations in, on, over or under any land, or the making of any environmentally significant change in the use of any land or demolition of buildings including the felling of trees and the placing of free-standing erections used for the display of advertisements on the land. Therefore, in contribution to the existing literature and advancement of the cause of knowledge, the objective of this research will be to examine the impact of zoning and development in city planning in Nigeria with the aid of relevant statutes and cases, especially the Nigeria Urban and Regional planning Act LFN, 2004. Finally, this study will generate primary data from existing journals and books as well as gather secondary data from established Government Development Authorities in Nigeria.

1.1 Defining Zoning and Development

The history of zoning as earlier mentioned is dated back to the time of creation this is because God is the universal master planner. Hence, he created everything ever existed and zoned them respectively, these were water, land, light, darkness, rain, sun and birds as well as animals, etc. In theory and practice, therefore the USA in 1926 established a revised standard state zoning which clearly laid out what was understood to be very satisfactory and efficient zoning code⁴. More so, Otubu¹ viewed zoning as an act of planning a town so that

¹ Genesis 1: 2-17 (Holy Bible)

² Otubu, A. (2012) Conceptualizing within the Lagos mega City Project: A Prognosis: Journal of Environment and Earth Science. Ogundele, F. O. et al (2010) Challenges and Prospects of Physical Development Control: A case study of Festac Town, Lagos; Nigeria African Journal of Political Science and International Relations. Tse R.Y.C. (2001) Impact of Comprehensive development and Zoning on Real Estate development in Hong Kong Land Use Policy 18, 321-328.

³Nigeria Urban and Regional Planning Act, CAP 138 LFN 2004.

⁴ Knock et al (1996)

different sections or divisions are devoted to different purposes, which is, residential, industrial, commercial, religious and gardens etc. from the definition above, it could also mean using legislative regulations or authorities backed by the necessary act of parliament to designate different divisions of a town or state for specific purpose. For instance, the Greater Port Harcourt City Master Plan of Rivers State had designated certain Areas of the new city for churches only, markets, schools, residential, banks and hospitals only respectively.

According to Ugwuorah and Igwe zoning is the division or demarcation of a municipality of a town or state into districts for the purpose of regulating the use of private land and will be shown on a map or master plan². In their study, they further enumerated some ordinances of zoning which are, the permitted uses; the height and bulk of all infrastructures; the off – street uses; the population density; the land designated for commerce, industry, residence, etc. However, it is imperative to mention that the ultimate purpose of zoning is to channel city growth in the proper direction and proper uses in order to create a state, efficient and stimulating community. The residential district may be divided into high medium and low density, while industrial may be split into light and heavy industrial sub-districts. In another definition, Utuama³ opined that zoning relieves the environment of pollution and disease conditions which are inherent in unrestrained exercise of absolute right of property. For instance, private residential situated in an industrial area are prone to airborne disease than residential outside industrial zone. Fishel⁴ advocated 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. More so, it gives the home owners a say and influence in the use and management of community land, thus engendering good and responsive governance. Thus, zoning means to divide a city into zones which are restricted as to types of construction and activity, as residential, industrial, etc.⁵

1.2 Drawbacks of Zoning

Scholars and some practitioners have criticized the concept of zoning, their submissions ranges from unfairness to inequality. Zoning is said to be unjust as it benefits some landowners at the expense of others. It has also been posited to be a strategy that is used to empower political class thereby depriving the general public what is commonly owned for political purpose. For instance, in Maitama district of FCT⁶ Abuja it was given that properties are sold and allocated to highly placed citizens of the society by the FCDA⁷. Also, it is publicly conceived that zoning is fundamentally unfair because it gives preferential privileges to some property owners at the expense of others including, principally those owners who wish to develop their properties for other purpose other than zoned ones.

1.3 Benefits of Zoning

In spite of the drawbacks of zoning as mentioned supra, there are still some identified benefits of zoning a town, city or state respectively, these are; the maintenance of property value, encouragement of stable and homogeneous neighborhoods, zoning acts like a shield against unwanted development; reduction of traffic congestion; prevention of construction of undesirable types of buildings in selected neighborhood.

1.4 The Concept of Development

There are numerous definitions of the term development; this is because development means different things to different people based on their background or profession. Igwe and Ugwuorah⁸ defined development as an increase in the real output and income, elimination of poverty, inequality and unemployment, the acquisition of better food, howling, clothing, education, health as well as greater security of life and property. Deutsch⁹ opined that development is encompassing numerous attributes of changes which include partial mobility, occupational changes, and changes in roles, expectations, needs, behavior, association and identity. Like we had earlier mentioned development means different things to different people especially based on profession. To an engineer or architects the term development could reflect the process of carrying out the construction works which are associated with a change in the use of land with its buildings.

¹ Ibid

² Ugwuorah, A.N and Igwe, C.F. (2005) Urban and Regional Planning: A beginner's guide. The glory of the latter House Publishing.

³ Utuama, A.A.(1990) Planning and Environmental Protection. Faculty of Law, University of Benin Publication.

⁴ Fischel, W.A. (2001) The Home Voter Hypothesis: How Home Values Influences Local Government Transaction School Finance and Land Use Policies.

⁵ Webster Dictionary (2010 Edition).

⁶ Federal Capital Territory in Nigeria.

⁷ Federal Capital Development Authority.

⁸ Ibid

⁹ Deutsch, M. (1973) The Resolution of Conflict: Construction and Destructive Processes. Yale University Press.

According to Lichfield,¹ such works may include the alteration, erection or re-erection of building as well as construction of roads, provision of water walls, drainages, construction of hospitals, etc. The United Kingdom Town and Country Planning Act (1971) particularly in section 22, described development as the carrying out of buildings, engineering, mining or other operations in, on, over or under land or the making of any material changes in the use of any buildings or other land, among others. Similarly, the Lagos State Town and Country Planning Regulations (1986) defined development as the physical improvement of any land to be laid in the nature of road development services, water, electricity, drainage, including structure or such improvement that may enhance the value of the land for industrial, agricultural, recreational or residential purpose. From the above review of the term development we are given to understand that development has to do with tangible and intangible improvement of the existing or idol infrastructure to better the life and living of the citizens of a given country, state, town as well as community.

Consequently, for the purpose of this study, we adopted the definition by NURP ACT² which is in line with other definitions for the term development and section 91 of the act defined development as the carrying out of any building, engineering, mining or other operations in, on, over or under any land, or the making of any environmentally significant change in the use of any land or demolition of buildings including the felling of trees and the placing of free-standing erections used for the display of advertisements on the land. This is the most comprehensive definition of development and in relation to environmental law. However, Smith³ perceives development as a total welfare improvement to better the state of affairs of her citizens, with respect to who get what or where a development takes place. According to Abumere⁴ some indicators of developments, are as follows: Level of Urbanization; Road Density km/ area; Population per Hospital bed; Population per Doctor; Walking radius of a Hospital; Walking radius of Postal Facility; Walking distance to a Primary School; Secondary School Enrolment per unit Population; Population Density increased Industrial Development; Employment Opportunity; Power Supply and the Provision of Quality Water Supply, etc.

1.5 Drawbacks of Development

Having reviewed the conceptual definitions of development above it is therefore cogent to mention some operational applications of the real attributes of development is some of these drawbacks. They are the following: Poor Educational Facilities and High level of illiteracy; Hindered Scientific and Technological Advancement; Overcrowding and Poor Housing. Few Public Services and Bad Sanitation Attitude as well as Poor Social Conditions; Infectious; Respiratory and Parasitic disease are also common. Birth and Death rates are high and Low life expectancy. Populations are dominantly rural though impoverished urban numbers are on the increase and finally, per capital incomes are low with scarce capital or resources.

1.6 The Relationship between Zoning and Development in City Planning

The concept of zoning and development work hand in glove to attract the necessary transformation and improvement in city planning. Zoning is the catalyst for development because when cities or proposed areas are zoned for different purposes, it drives development in such area by way of deploying men, material and resources to such areas with effective action, plans and strategies good results are guaranteed. For instance, in the residential zones capital infrastructure needs to be developed, such as ; houses, roads, schools and drains, again in the industrial zones firms with allocations will need to develop their prospective firms' site, which will attract employment for the skilled, unskilled, roads, water and electricity power supply, etc.

2.0 Review of Relevant Literature and Relevant Cases on Zoning and Development

Under this context, we shall discuss relevant literature and cases on zoning and development. We earlier mentioned in the introduction of this study that several researches exist in literature on the study of zoning and development. Tse⁵ looked at the impact of comprehensive development and zoning on real estate development in Hong Kong, the study revealed that areas with comprehensive development plans have higher economic value than areas without CDA's, also it is deduced from the study above that government zoning seems to be contributing to externality of property development.

Their study further revealed that zoning helps in the development of an area by reducing environmental complaints and is of high economic value. In a related study, Omole and Akinbanijo⁶ examined land

¹ Lichfield, W. (1974) Economics of Planned Development, the Estate Gaze Ltd. London.

² CAP 138 LFN 2004.

³ Smith, D.M. (1974) Human Geography: A Welfare Approach; Edward Arnold Publishers.

⁴ Abumere, S.I. (1987) So the Rich Areas get even Richer; Some meditations on the Duality in the space Economy of Nigeria. Faculty Lecture Series No. 2, Faculty of Social Sciences, University of Ibadan.

⁵ Tse, R.Y.C. (2001) Comprehensive Development Area in Hong Kong.

⁶ Omole, F.K. and Akinbanijo, O.B (2012) Land Development and Planning Laws in Nigeria. Journal of Law, Policy and Globalization 8 (2), 25-31.

development and planning laws in Nigeria, their study found that there is need for land and planning laws to be incorporated and integrated so that citizens and the society at large could benefit. It also revealed that there is need for citizens to be educated and enlightened on the use of laws in regulating, guiding and directing their landed properties for everybody.

Otubu *supra*, limited his study to the conceptualization of zoning within the Lagos mega city, his study found that zoning is important and imperative in planning a town or city, he further, opined that zoning should be designed to address issues of social cohesion and inclusion and should seek to reduce social inequalities, age, sex, religion and income. Further, Ogundele, et al examined the challenges and prospects of physical development control. This study found that lack of planning tools and equipment, inadequate funding of planning agency and the act of bribery and corruption among development officer among others, has affected the smooth pace of development in Nigeria. More so, by **section 91** of the urban and regional planning Act 2004 we also understood that development is any improvement made on the land or property in whatever form or size. Having reviewed some existing relevant literature above, we hereby present some cases on zoning and development.

The US Supreme Court upheld the use of zoning in the case of *Village of Euclid Ohio V. Amber Reality Company*¹. The court held that zoning was reasonable and even indispensable given the complexities of urban life and land uses. Also, in *Penn Control Transport Co. V New York City*², the court recognized zoning laws as the classic example of laws by which the health, safety, moral and general welfare would be promoted, in other words zoning was interpreted as a generous endorsement of social engineering in the name of public health, safety and welfare.

In *Loretto V. Teleprompter Manhattan*³ the US Supreme Court held that physical invasion must be considered a taking. In *Pennsylvania Coal Company V. Mahon*⁴ which stated that government regulation that restricts property owner's freedom to use his or her property to such an extent that such regulation can constitute a taking. The court held that compensation must be awarded to the property owner. In the case of *Lucas V. South Carolina Coastal Council*⁵, the Petitioner, Lucas (Petitioner), was not allowed to build homes on the South Carolina beachfront property he owned. A state trial court found that the land was valueless as a result of the regulation of the Respondent, the South Carolina Coastal Council (Respondent).

Similarly, in the case between *Gove V. Zoning Board of Appeals of Chatham & Another*⁶, where the town of Chatham zoned several areas including its special flood hazard areas. The Massachusetts highest court emphasized that the town of Chatham had identified unique hazards on erosion-prone coastal A-zone property. The court further held that the plaintiffs had not sufficiently shown that they could construct a home in this area without potentially causing harm to others. *Conservation Easements*, as in the case of *Smith V Town of Mendon*⁷ which involved a requirement by a town that, as a condition of issuance of a building permit, the property owner must grant a conservation easement for some portions of the site, including flood hazard areas on which the town had imposed conservation over lay zoning that severely restricted development. The owner did not propose to build on these environmentally sensitive areas, but at the same time did not want to limit any future activity by granting a conservation easement.

The New York highest court issued a judgment from a floodplain management perspective; the interesting thing is that there was no real argument in the case that the town's restriction on building in flood hazard areas was a taking. Therefore, the plaintiff only argued against an easement that would restrict future development on other parts of the land, yet the court still upheld the community's requirement aimed at protecting environmentally sensitive and hazard-prone areas. In *Lujan V. National Wildlife Federation*⁸ the National Wildlife Federation (NWF) challenged 1,250 land-use designations made by the federal Bureau of Land Management (BLM). NWF filed suit under section 10(e) of the Administrative Procedure Act (APA), claiming that the actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." NWF argued that it had standing to sue because two of its members used public lands "in the vicinity" of lands affected by the BLM's decisions (four other members submitted affidavits claiming that they, too, used lands close to affected areas, but the District Court ruled that the affidavits had been submitted too late).

On appeal, however, the D.C. Circuit Court of Appeals reversed, holding that the initial two affidavits were enough to give them standing to challenge all 1,250 decisions. Moreover, the Court ruled that the District Court had abused its discretion by refusing to consider the additional four affidavits. Also, in the case of *Dolan V.*

¹ 272 U.S 365 (1926)

² 438 U.S 104, 98 S. CT. 2646, 57 L.ED. 2D 631, 1978.

³ 458 U.S 419 (1982)

⁴ 260 U.S. 393 (1922)

⁵ 505 U.S. 1003 (1992)

⁶ 444 Mass. 756 (2005).

⁷ 4 A.D. 3d 859 (2004).

⁸ 89-640, 497 U.S. 871 (1990).

City of Tigard¹ the Court ruled that the city did not present conclusive evidence that the walkway/bicycle path would reduce traffic congestion, and so could not require Dolan to give up her property as a condition of the permit. In addition, the city did not explain why a public greenway was necessary, as opposed to a private one. There must be an "essential nexus" between a legitimate state interest and permit requirements, the city failed to demonstrate that the benefits would justify the requirements. In a traffic concern case, between Lindsey Creek and Victoria Corporation V. Atlanta Merchandise Mart, Inc.² the court held that more increase in traffic congestion adjacent to ones property as the result of improvements erected on nearby property and the attendant inconveniences resulting there from which are damages suffered alike by all property owners similarly situated, does not give to one individual such a substantial interest in a zoning decision to authorize a challenge. Therefore, the court further emphasized that increased traffic is a condition incident to urban living; it is merely the result of normal urban growth and development.

2.1 NURP ACT LFN 2004 Cap N138

In a concise study of the Nigeria Urban and Regional Planning Act is made up of ninety-two (92) sections and parts one (1) to (6). Part one (1) is made of sections 1-26 which has plan preparation, administration and also includes types of plans and responsibility of the Federal Government on one side and the responsibility of the state Government and that of Local Government on the other side. Section 13 deals with the procedure for preparation of national physical development plans. While section 25 deals with the procedures of making regional sub regional plans, rural plans etc. and section 26 subject plans all these are tailored towards zoning and development.

More so, part two (ii) is made up of sections 27-63 of the Act and precisely section 27, deals with the establishment and jurisdiction of development control department whose functions and powers are numerous and as mentioned in the above stated section. But of particular control department has power to demolish a defective building, section 30(3) requires a building plan to be drawn by a registered architect or town planner. Section 39(7) establishes that an application for land development would be rejected if such development would harm the environment or constitute a nuisance to the community. Section 59 makes it an offence to disobey a stop-work. The punishment under this section, is a fine not exceeding (Ten thousand naira) and in the case of a company, a fine not exceeding (Fifty thousand naira) section 63 further states that the cost of demolition will be paid by the developer. In part (iii) section 72 the Act provides for the preservation and planting of trees for environmental conservation.

However, in part v of the Act and in section 83, it deals with the restriction on power to demolish. This entails that the power of the authority to demolish or order the demolition of a building must follow the observance of all the paragraphs and as mentioned in section 83. Part (vi) which is the last part and is made up of section 86 -92, it deals with the establishment of the urban and regional planning tribunal, composition of tribunal, tenure of office, rules of procedure, repeal and saving, interpretation and finally citation. But for the purpose of clarity **section 91** is concerned with the subject of this work, it reveals the attributes and nature of development as affects the environment. In conclusion, the urban and regional planning act is aimed at overseeing a realistic, purposeful planning of the country to avoid overcrowding and poor environmental conditions.

3.0 Findings

The intention of creating zones in city planning is for urban growth through strategic planning and de-densification of the old city with 24 hours electricity supply; water supply; bulk sewage system, network of good road and streets; public transportation system; storm water management; waste disposal system; surveillance systems; as well as laid out residential, commercial, industrial areas, parks and gardens etc. However, when the auctioning of this mapped out facilities is the process and the driver of development, it creates employment opportunities for the skilled, unskilled and semi – skilled labor, which is a measure of economic development, also it will reduce the degree of urban density because citizens will tend to move from the old city to the new city thereby decreasing the collapse of infrastructure in the old city as well as the reduction of security challenges. More so, the development of the new zone will attract investors who may want to drive in to take advantage of the abundant untapped resources in the new zone or district.

4.0 Conclusion and Recommendations

The purpose of this study has been attained after all. The study submits that the practice of zoning in city planning like the commitment of the government as well as the private sector in the development of the zones cannot be overstretched. This study have been able to reveal that there is a strong relationship between zoning

¹ 512 U.S. 374 (1994).

² 101 Ga. App. 163, 112 S.E. 2d 793 (1960).

and development in city planning in Nigeria, because it enhances population control, since people will be migrating to new areas or cities. Zoning and Development also, creates employment, decreases the collapse of infrastructure in the old and reduces the issue of security challenges. Our findings are consistent with that of Omole and Akinbanijo supra, Otubu, Utuama and Abumere. We therefore, recommend that government should continually decongest cities within the states, regions or provinces from time to time by creating new zones, districts or areas so that more houses will be built, the existing cities will be decongested thereby reducing security challenges arising from rural – urban migration, creating of employment opportunity as well as attract prospective business investors into the state or country which are some yardstick of measuring economic development of the state. Finally, lawyers should as a matter of importance take the NURP ACT LFN 2004 seriously because out of it are issues life.

5.0 References

- 1) Abumere, S.I (1987). *So the Rich Areas get even Richer; Some Meditations on the Duality in the Space Economy of Nigeria*. Faculty lecture series no.2, Faculty of Social Sciences, University of Ibadan.
- 2) Deutsche, M. (1973). *The Resolution of Conflict: Construction and Destruction Processes*. Yale University Press.
- 3) Fischel, W.A. (2001). *The Home voter Hypothesis: How home values influence Local Government Transaction School Finance and Land use Policies*.
- 4) Knock and Stollman (1996). *Legal Information Institute, Archive of Cases*. United States of America.
- 5) Lichfield, W. (1974). *Economics of Planned Development*, the Estate Gaze Ltd. London.
- 6) Ogundele, F.O. et al (2010). Challenges and Prospects of Physical Development Control: A Case Study of Festac Town Lagos. *Nigerian African Journal of Political Science and International Relations*
- 7) Omole, F.K. & Akinbanijo, O.B. (2012). Land Development and Planning Laws in Nigeria. *Journal of Law, Policy and Globalization* 8 (2), 25-31.
- 8) Otubu, A. (2012). Conceptualizing within the Lagos Mega City Project: A Prognosis: *Journal of Environment and Earth Science*
- 9) Smith, D.M. (1974). *Human Geography: A Welfare Approach*. Edward Arnold Publishers, London.
- 10) The Holy Bible (2003). Old and New Testaments; Authorized King James Version.
- 11) Tse, R.Y.C. (2001). Impact of Comprehensive Development and Zoning on Real Estate Development. *Hong Kong Land Use Policy*. 18, 321-328.
- 12) Ugwurah, A.N. & Igwe, C.F. (2005). *Urban and Regional Planning: A Beginners Guide*. The Glory of the Latter House Publishing Co.
- 13) Utuama, A.A. (1990) Planning and Environmental Protection. *Faculty of Law, University of Benin Publication*,