

REVISITING *PALERMO*: THE TWENTIETH ANNIVERSARY OF LOUISIANA’S LANDMARK LAND USE RIGHTS AND ZONING DECISION AND ITS LEGACY FOR PLANNING IN LOUISIANA

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I. INTRODUCTION

Louisiana courts have spoken a few times regarding local governments’ ability to restrict the use of land in a community. Since 1990, many of these cases find their root in one landmark decision regarding an obscure hill of land south of Interstate Highway 10 in Calcasieu Parish. This “hill of land” and its proposed expansion is a seventy-foot high mound of garbage extensively discussed by the Louisiana Supreme Court in the case of *Palermo Land Co., v. Planning Commission of Calcasieu Parish*.¹

The following Article traces the themes and effects of the *Palermo* decision on the culture and practice of present day urban and regional planning in Louisiana. After first reviewing the decision in Part II, the discussion turns in Part III to the specific themes of this case that have been solidified in subsequent planning decisions in Louisiana: the burden of proof, the standard for arbitrary and capricious zoning decisions, and the presumption of validity granted to zoning authorities’ decisions regarding zoning changes or amendments. Finally, in Part IV, this Article discusses a legal issue that was given far less emphasis in the *Palermo* decision: the legal connection between a municipality’s comprehensive or master plan and its zoning ordinance. This Article argues that the absence of guidance by the courts on this connection has become a more pressing issue for the practice of planning and municipal and parish land use regulations in Louisiana today.

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1. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482 (La. 1990).

II. REVIEWING THE *PALERMO* DECISION AND THE LEGAL AUTHORITY TO ZONE

The *Palermo* case highlighted a land use and zoning decision near Sulphur, Louisiana, which is located in Calcasieu Parish in the western part of the state. The primary issues of the *Palermo* case were the local legislature's legal authority to zone and rezone property to protect the health, safety, and welfare of the community and the presumption of validity granted to these zoning decisions.² The authority to zone and rezone property in the State of Louisiana restricts and controls property rights for every parcel of land in a community and is granted to a municipality's legislative body.³ The *Palermo* decision codified several important themes regarding the legal aspects of urban and regional planning including: the extraordinary burden of proof for challenging zoning decisions; the standard for the arbitrary and capricious abuse of legal authority; and the presumption of validity granted to legislative zoning decisions.⁴ However, the *Palermo* decision paid little attention to the legal connection between a municipality's comprehensive or master plan and its zoning ordinance.

A. FACTUAL HISTORY

The Police Jury of Calcasieu Parish rezoned several tracts of land from heavy industrial (I-2) to light industrial (I-1), thereby preventing the expansion of an existing landfill owned by Browning-Ferris, Inc. (BFI).⁵ At the time of the original negotiations, the tracts of land adjacent to BFI's existing landfill, owned by the Palermo Land Company Inc. (western tract) and the Nelson family (eastern tract), were being considered for the expansion of BFI's landfill, which was nearing capacity.⁶ Although zoned I-2 at the time of this dispute, both Palermo's and the Nelson's properties were previously zoned differently.⁷ The Palermo property was originally zoned I-1 and the Nelson's property was originally zoned part C-3 (central business commercial) and part I-2.⁸ Both the Nelsons and the Palermo Land Company had agreed to sell their property to BFI, if BFI could obtain the required permits and licenses for the expansion of its landfill by

2. See generally *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482 (La. 1990).

3. LA. REV. STAT. ANN. §§ 33:4721-4792 (2009 & Supp. 2011).

4. See generally *id.*

5. *Palermo Land Co.*, 561 So. 2d at 484.

6. *Id.*

7. *Id.*

8. *Id.*

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March 1, 1988.⁹

In early 1988, and in response to a petition from citizens of Sulphur and surrounding Calcasieu Parish, the Planning Commission conducted a zoning reclassification feasibility study, including the area where the tracts in question in this case were located.¹⁰ The study found that the greatest increase in development pressure was for residential uses, and that land use in the area was 10% residential, 5% publicly owned, 20% commercial, and 65% undeveloped.¹¹ However, the study also recommended rezoning the Palermo's and the Nelsons' tracts of land from I-2 to I-1, which would prohibit the expansion of the landfill because this use was not allowed in I-1 districts.¹² Public hearings were held and the Planning Commission voted to recommend this rezoning as well as the creation of an I-2R heaving industrial restricted zoning designation, a special zoning classification for solid waste landfills. In February, the Police Jury of Calcasieu Parish voted to approve this rezoning.¹³

On March 4, 1988, Palermo and BFI filed suit against the Planning Commission of Calcasieu Parish to restore the I-2 zoning designation to Palermo's tract of land.¹⁴ Shortly after, the Nelsons similarly filed suit and the suits were later consolidated.¹⁵ In July 1988, the Police Jury accepted the Planning Commission's recommendation to create a new and restricted zoning classification for landfills, I-2R.¹⁶ The trial court found that the Police Jury's actions were not arbitrary and capricious and thereby found the rezoning to be valid.¹⁷

B. THE DECISIONS: THE SUPREME COURT VERSUS THE COURT OF APPEAL

On appeal, the third circuit reversed the trial court's decision, finding that the Parish could be estopped from rezoning property when the "the property owner justifiably relied upon conduct by the Parish indicating the property would not be rezoned."¹⁸ The court of appeal found that the Parish's rezoning of the properties in question constituted an unreasonable

9. Palermo Land Co. v. Planning Comm'n of Calcasieu Parish, 561 So. 2d 482, 485 (La. 1990).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Palermo Land Co.*, 561 So. 2d at 485.

16. *Id.*

17. *Id.* at 486.

18. *Id.*

exercise of police power and that the Parish had “failed to prove that the rezoning was due to a mistake in the original zoning or that the character of the neighborhood had changed to such an extent that reclassification was necessary.”¹⁹

In their analysis, the court of appeal stated that although the *State ex rel. Re-Lu, Inc. v. City of Kenner*²⁰ decision was one of the only Louisiana cases where equitable estoppel was discussed in the context of zoning, this case was distinguishable from the facts of the case presented in *Palermo*.²¹ The court of appeal noted that “numerous affirmative acts” had encouraged Palermo, the Nelsons, and BFI that their zoning classification would remain I-2 and that the landfill expansion would continue as an allowable use under this zoning classification.²² Further, the court of appeal noted that BFI had expended a considerable amount of money toward the development and expansion of their landfill.²³

The court of appeal and the plaintiffs argued: (1) Palermo’s property had been up-zoned to I-2 in 1985; (2) the Parish failed to adopt recommendations in 1985 to condition or limit the use of the property for landfill purposes; (3) three police jurors had sent letters in 1986 to BFI stating that they were in support of the landfill expansion; (4) one police juror had assured BFI that it was permissible to prepare for the landfill expansion; (5) Palermo, BFI, and a parish planner had discussions about the proposed expansion; (6) the Superintendent of Solid Waste sent a letter to the police jury requesting a copy of the proposed expansion; (7) several police jurors had requested information about the proposed landfill expansion and the proposed exit and entrance gates; (8) a parish planner acknowledged that BFI was preparing to expand their landfill in a published newspaper interview; and (9) a parish official sent a letter to Palermo stating that as of November 11, 1987, the Palermo tract, zoned I-2, could be used as a solid waste disposal site.²⁴

Although the court of appeal found these reasons sufficient to justify their decision that the Parish could be estopped from rezoning the tracts in question to I-1 and thus prohibit the expansion of BFI’s landfill, the Supreme Court of Louisiana overturned the court of appeal’s decision and

19. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 550 So. 2d 316, 317 (La. App. 3 Cir. 1989), *rev’d*, 561 So. 2d 482 (1990).

20. *State ex rel. Re-Lu, Inc. v. City of Kenner*, 284 So. 2d 866 (La. App. 4 Cir. 1973).

21. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 485 (La. 1990).

22. *Palermo Land Co.*, 550 So. 2d at 323.

23. *Id.*

24. *Id.* at 317, 319-22.

found that the Parish could not be estopped from rezoning property even when a property owner relied upon information or conduct from parish officials indicating that a property would not be rezoned.²⁵ Finding the *City of Kenner* case analogous, rather than distinguishable as did the court of appeal, the supreme court found that property owners should not assume that their properties would not be rezoned in the future.²⁶

The supreme court found that these arguments, considered both as separate issues and together, should have indicated to the Nelsons, BFI, and Palermo that their zoning designation would be subject to change in the future, and further, that public opinion and the concerns of community members could be included in the Planning Commission's recommendations and the Police Jury's decisions regarding proposed zoning changes.²⁷ In reinforcing a zoning authority's legal power to zone, rezone, and change or amend zoning classifications,²⁸ the supreme court's ruling signified that, despite indications or assurances from planning and zoning authorities or public officials about the future zoning designation of a particular piece of property, all property is subject to rezoning in the future to meet the community's needs, to address development and land use changes, and to protect the community's health, safety, and welfare.²⁹ As the supreme court noted, "zoning ordinances are subject to change" and the Police Jury's failure to rezone the properties in 1985 to a more restrictive classification did not mean that they would never rezone the property in the future.³⁰ In their considerations of the letters sent by three police jurors indicating that they supported the land fill expansion, the supreme court stated that it was unreasonable for the plaintiffs to assume that, because some police jurors supported this landfill expansion, they either represented the majority of the Police Jury or the Police Jury would "never exercise its police powers" to consider the rezoning.³¹ Similarly, the assurances by one police juror that BFI was free to undertake the process for the landfill expansion and the letter from the parish official stating the existing zoning classification permitted landfills were simply assurances that "at that time, a

25. *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482, 486 (La. 1990).

26. *See id.*

27. *Id.* at 487-88; see *Kirk v. Town of Westlake*, 373 So. 2d 601 (La. App. 3 Cir. 1979) for a discussion of the zoning authority's consideration of public opinion in zoning decisions.

28. *See* LA. REV. STAT. ANN. § 33:4725 (2009).

29. *See Palermo Land Co.*, 561 So. 2d at 486-88; see also *State ex rel. Re-Lu, Inc. v. City of Kenner*, 284 So. 2d 866 (1973) for a discussion of the information that property owners received from planning commissioners or authorities in regard to future zoning classifications.

30. *Palermo Land Co.*, 561 So. 2d at 486.

31. *Id.* at 487.

landfill operation on his property was permissible.”³²

The supreme court noted that the discussion between BFI, Palermo, and the parish planner about the proposed landfill expansion, the letter from the Superintendent of Solid Waste, and the newspaper interview indicated “nothing more than an awareness on the part of the Parish of BFI’s plans to expand its landfill. Awareness of matters of this sort is not surprising.”³³

Finally, the supreme court found that BFI’s financial investments in obtaining the properties and pursuing the necessary studies, appropriate licenses, and permits for expanding the landfill did not vest their interests in the expansion of their landfill onto the adjacent properties.³⁴ Rather, the supreme court noted that vested rights require the obtainment of a building permit and the commencement of construction, which make the legal authority liable for work and materials,³⁵ and that the property owners are subject to the police power and the legal authority of the Police Jury or legislature to prohibit and deny permits according to changes in zoning classifications.³⁶

C. THE LEGAL AUTHORITY TO ZONE

The legal authority to zone is codified in positive written law. Louisiana Revised Statutes (La. R.S.) §§ 33:103 and 33:106 give planning commissions, as appointed by the Police Jury or governing authority of a municipality, the authority to make and adopt a master plan and to amend, extend, or add to the master plan for the physical development of their municipality.³⁷ La. R.S. § 33:4726 gives zoning commissions, as appointed by the Police Jury or governing authority of a municipality, the authority to amend, supplement, change, modify, and repeal zoning regulations and to

32. Palermo Land Co. v. Planning Comm’n of Calcasieu Parish, 561 So. 2d 482, 487 (La. 1990).

33. *Id.*

34. *Id.* at 488.

35. *Id.* at 487 n.4 (citing *Dunn v. Parish of Jefferson*, 256 So. 2d 664, 667 (La. App. 4 Cir. 1972)).

36. *Id.* at 488; see *State ex rel. Fitzmaurice v. Clay*, 23 So. 2d 177, 181 (La. 1945); *State ex rel. Manhein v. Harrison*, 114 So. 159, 163 (La. 1927); *Wes-T-Erre Dev. Corp. v. Parish of Terrebonne*, 416 So. 2d 209, 214 (La. App. 1 Cir. 1989) (citing *Kotch v. Bd. of River Port Pilot Comm’rs*, 25 So. 2d 527 (La. 1946); *Fernandez v. Alford*, 13 So. 2d 483 (La. 1943); *Hi-Lo Oil Co. v. City of Crowley*, 274 So. 2d 757 (La. App. 3 Cir. 1973)); *Glickman v. Parish of Jefferson*, 224 So. 2d 141, 145 (La. App. 4 Cir. 1969) (citing *Manhein*, 114 So. at 163); *State ex rel. Jacobson v. City of New Orleans*, 166 So. 2d 520, 523 (La. App. 4 Cir. 1964) (citing *Manhein*, 114 So. at 163); *State ex rel. Shaver v. Mayor & Councilmen of Coushatta*, 196 So. 388, 391 (La. App. 2 Cir. 1940) (citing *State ex rel. Dema Realty v. McDonald*, 121 So. 613 (La. 1929); *Sampere v. City of New Orleans*, 117 So. 827 (La. 1928)).

37. LA. REV. STAT. ANN. §§ 33:103, 33:106 (2002 & Supp 2011).

make these final recommendations, after public hearings are held, to the legislative body for final decisions.³⁸ The supreme court stated, “[e]quitable considerations and estoppel cannot be permitted to prevail when in conflict with the positive written law.”³⁹ The court continued, “[i]n a case presenting circumstances where an estoppel might be warranted, the traditional test of whether the municipality’s actions were arbitrary, unreasonable, or capricious provides a sufficient basis upon which such an unfair rezoning could be invalidated.”⁴⁰ Thus, the decision rendered by the supreme court in *Palermo* reified and codified the legal authority granted to the governing authority of a municipality to consider the recommendations made by their zoning commissions and to make final decisions regarding the zoning and rezoning of property.⁴¹

The arguments considered by the supreme court in the *Palermo* case included: the legal connection between a municipality’s comprehensive or master plan and its zoning ordinance; the burden of proof rule for challenging a municipality’s zoning decision; the standard for the arbitrary and capricious abuse of legal authority; and the presumed validity of zoning procedures and ordinances.⁴² Plaintiffs in the *Palermo* case argued that the rezoning of the Nelsons’ and Palermo’s properties was invalid because it was not enacted in accordance with the municipality’s comprehensive master plan.⁴³ Although the supreme court considered this argument regarding the legal connection between a municipality’s comprehensive plan and its zoning ordinance, emphasis was not given to this discussion,⁴⁴ as discussed later in this Article.⁴⁵ However, the supreme court did emphasize the following themes in their discussion and decision to reverse the court of appeals decision: the burden of proof rule for challenging a municipality’s zoning decision, the standard for the arbitrary and capricious abuse of legal authority, and the presumed validity of zoning procedure.⁴⁶

38. LA. REV. STAT. ANN. § 33:4725 (2009).

39. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 488 (La. 1990) (citing *Packard Fla. Motors Co. v. Malone*, 24 So. 2d 75 (La. 1945); *La. State Troopers Ass’n v. La. State Police Ret. Bd.*, 417 So. 2d 440 (La. App. 1 Cir. 1982); *Chambers v. Parochial Employees’ Ret. Sys. of La.*, 398 So. 2d 102 (La. App. 3 Cir. 1981); *Frazer v. Day*, 292 So. 2d 870 (La. App. 1 Cir. 1974), *rev’d*, 307 So. 2d 733 (La. 1975); *Port Finance Co. v. Ber*, 45 So. 2d 404 (La. App. Orl. 1950); *see also Locker v. Wilson*, 536 So. 2d 441 (La. App. 2 Cir. 1989); *Beverly Bank v. County of Cook*, 510 N.E.2d 941 (Ill. App. 1987)).

40. *Palermo Land Co.*, 561 So. 2d at 489.

41. *See generally id.*; *see also Folsom Rd. Civic Ass’n v. Parish of Saint Tammany ex rel. Saint Tammany Parish Police Jury*, 407 So. 2d 1219 (La. 1981).

42. *See generally Palermo Land Co.*, 561 So. 2d at 488.

43. *See generally id.*

44. *Id.* at 497.

45. *See infra* Part IV.

46. *See generally infra* Part IV.

Further, it is these three themes and their intrinsic legal considerations and guidelines that have been highlighted since in subsequent zoning decisions in Louisiana. Each of these themes is considered briefly below before the effects of these guidelines and *Palermo* on present day urban and regional planning in Louisiana are discussed in Part III.

D. BURDEN OF PROOF

The burden of proof guidelines discussed by the supreme court in *Palermo* rest on a history of Louisiana court rulings, particularly the *Dufau v. Parish of Jefferson* decision.⁴⁷ The supreme court differed with the interpretation of the *Dufau* decision made by the court of appeal in *Palermo*.⁴⁸ In *Dufau*, the “change or mistake” rule places the burden of proof on the proponents of change and precludes governing authorities from making needed zoning changes and amendments to guide the growth of their community to ensure and protect the health, safety, and general welfare of their residents, as recommended by their zoning commissions.⁴⁹ The supreme court’s discussion of the *Dufau* decision noted that the “change or mistake” rule has failed to gain legal precedent or acceptance in Louisiana⁵⁰ and in other states.⁵¹ Instead, the supreme court reaffirmed the decision rendered in *Four States Realty Co. v. City of Baton Rouge*⁵² and the court’s ruling that the “presumption of validity attaches to all zoning decisions, and the burden rests on the challenger to overcome this

47. *Dufau v. Parish of Jefferson*, 200 So. 2d 335 (La. App. 4 Cir. 1967), *abrogated by* *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482 (La. 1990).

48. *See* *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 488 (La. 1990) (citing *Dufau*, 200 So. 2d 335).

49. *Dufau*, 200 So. 2d at 337-38. The court set forth the following:

- The jurisprudential guidelines for zoning and zoning reclassification may be summarized as:
1. A homeowner has the right to rely on the rule of law that a classification made by ordinance will not be changed unless the change is required for the public good.
 2. The power to amend is not arbitrary. It cannot be exercised merely because certain individuals want it done or think it ought to be done.
 3. Before a zoning board rezones property, there should be proof either that there was some mistake in the original zoning or that the character of the neighborhood has changed to such an extent that reclassification ought to be made.
 4. The burden of proof of original mistake or the need for a substantial change is upon the proponents of the change.

Id.

50. *See Palermo Land Co.*, 561 So. 2d at 489 (citing *Lauritsen v. City of New Orleans*, 503 So. 2d 580 (La. App. 4 Cir. 1987); *Hunter’s Grove Homeowners Ass’n v. Calcasieu Parish Police Jury*, 422 So. 2d 673 (La. App. 3 Cir. 1982)).

51. *See id.* (citing *Lum Yip Kee, Ltd. v. City of Honolulu*, 767 P.2d 815, 823 n.14 (Haw. 1989); *Willdel Realty, Inc. v. New Castle County*, 281 A.2d 612 (Del. 1971); *Wisniewski v. Zoning Board of Stamford*, 506 A.2d 1092 (Conn. App. Ct. 1986); *Citizens Ass’n of Georgetown v. Dist. of Columbia*, 402 A.2d 36 (D.C. 1979); *Dye v. City of Phoenix*, 542 P.2d 31 (Ariz. Ct. App. 1975)).

52. *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975).

presumption.”⁵³ Reinforcing the precedent in *Four States Realty*, the *Palermo* decision set forth the burden of proof, which “applies to all zoning challenges, including piecemeal and spot zoning.”⁵⁴ This means that challengers to zoning decisions must overcome both the presumption of validity granted to all zoning ordinances and rezoning decisions made by governing bodies and must prove that any zoning or rezoning decisions were arbitrary and capricious. As stated in *Four States Realty*, the “[c]ourts will not interfere with that legislative prerogative [(regarding a municipality’s legal authority to zone and the legislative nature of adopting and amending zoning ordinances)] unless it is plain that the action is palpably erroneous and without any substantial relation to the public health, safety or general welfare.”⁵⁵ Thus, “the burden of proving the contrary is on him who asserts the invalidity of nullity” of a zoning decision.⁵⁶

E. STANDARD FOR ARBITRARY AND CAPRICIOUS

The standard for the arbitrary and capricious abuse of legal authority is another critical theme discussed in the *Palermo* decision and is one of the criteria that opponents to zoning decisions must prove in order to meet their extraordinary burden of proof. The standard for whether a zoning authority’s decision is arbitrary or capricious is also closely tied with the presumption of validity that a zoning authority is granted in its decision-making. As a legislative function, zoning authority flows from the police power⁵⁷ and government bodies have the power to zone, amend, supplement, change, modify, or repeal zoning classifications and ordinances.⁵⁸ Therefore, this arbitrary and capricious standard rests on the

53. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 490 (La. 1990) (citing *Four States Realty Co.*, 309 So. 2d 659; *Folsom Rd. Civic Ass’n v. Parish of Saint Tammany ex rel. Saint Tammany Parish Police Jury*, 407 So. 2d 1219 (La. 1981); *Furr v. Mayor of Baker*, 408 So. 2d 248 (La. 1981); *Southside Civic Ass’n v. Guaranty Sav. & Assurance Co.*, 339 So. 2d 323 (La. 1976)).

54. *Palermo Land Co.*, 561 So. 2d at 491. The court stated that the rezoning in question in the *Dufau* case was “spot zoning” or “piecemeal zoning,” although the *Dufau* decision did not distinguish as such. *Id.*

55. *Four States Realty Co.*, 309 So. 2d at 664 (citing *City of Shreveport v. Conrad*, 33 So. 2d 503 (La. 1947); *City of Shreveport v. Bayse*, 117 So. 775 (La. 1928)).

56. *Id.* at 664-65 (citing *Ward v. Leche*, 179 So. 52 (1938); *City of New Orleans v. Beck*, 71 So. 883 (1916); *Meyers v. City of Baton Rouge*, 185 So. 2d 278 (La. App. 1 Cir. 1966); *Archer v. City of Shreveport*, 85 So. 2d 337 (La. App. 2 Cir. 1956)).

57. *Id.* at 664 (citing *State ex rel. Dema Realty Co. v. McDonald*, 121 So. 613 (La. 1929); *State ex rel. Civello v. City of New Orleans*, 97 So. 440 (La. 1923)); see LA. REV. STAT. ANN. § 33:4723 (2009); see also Stephen D. Villavaso, *Planning Enabling Legislation in Louisiana: A Retrospective Analysis*, 45 LOY. L. REV. 655, 657 (1999).

58. See LA. REV. STAT. ANN. § 33:4725 (2009); see also *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975); *Folsom Rd. Civic Ass’n v. Parish of Saint Tammany ex rel. Saint Tammany Parish Police Jury*, 407 So. 2d 1219 (La. 1981); *Morton v. Jefferson Parish*

presumption that the governing body has *considered* the health, safety, and general welfare of its residents in rendering its decision. For instance, it is presumed that governing authorities take into *consideration* the recommendations of their zoning commission and the evidence supporting a rezoning or a zoning amendment—including growth and land use studies, resident input and concern, traffic concerns, unsightliness, buffer zones and unwanted uses, land values and devaluation, and future growth needs.⁵⁹

While the arbitrary and capricious standard announced in the *Palermo* decision is extraordinarily demanding, this standard is also incredibly vague. The courts have failed to define the arbitrary and capricious standard other than describing it as an unreasonable violation of a community's health, safety, and welfare that can only be ascertained in the specific circumstances of a case.⁶⁰ This standard requires that opponents of a zoning decision prove that a governing authority's decision was a "willful and unreasoning action, without consideration and in disregard of the facts and circumstances of the case."⁶¹ Citing *State ex rel. Civello v. City of New Orleans*, the *Palermo* court recognized that it is sufficient for a governing authority to merely consider the health, safety, and welfare of the community.⁶² The *Palermo* court distinguished between the validity of an ordinance and the consideration given by governing authorities as to the health, safety, and welfare of its people in determining whether a governing authority has abused its legal power in an arbitrary and capricious manner.⁶³ The *Palermo* court further emphasized that the standard for arbitrary and capricious abuses of legal authority rests upon whether "*the result* of this legislation is arbitrary and capricious, and therefore a taking of a property without due process of law."⁶⁴ This emphasis on "*the result*" of zoning legislation is critical in *Palermo* because it distinguishes between the intent and the outcome of zoning changes. Additionally, the *Palermo* court stated that "whenever the propriety of a zoning decision is debatable, it will be

Council, 419 So. 2d 431 (La. 1982).

59. See, e.g., *Hunter's Grove Homeowners Ass'n v. Calcasieu Parish Police Jury*, 422 So. 2d 673 (La. App. 3 Cir. 1982); *Hernandez v. City of Lafayette*, 399 So. 2d 1179 (La. App. 3 Cir. 1981); *Hardy v. Mayor of Aldermen*, 348 So. 2d 143, 148 (La. App. 3 Cir. 1977); *Sears Roebuck & Co. v. City of Alexandria*, 155 So. 2d 776 (La. App. 3 Cir. 1963).

60. See, e.g., *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482, 492 (La. 1990).

61. *Four States Realty Co.*, 309 So. 2d at 666 (quoting 1 RATHKOPF, *THE LAW OF ZONING AND PLANNING* 2-26 (3d. ed. 1974)).

62. *Palermo Land Co.*, 561 So. 2d at 491 (citing *State ex rel. Civello v. City of New Orleans*, 97 So. 440 (La. 1923)).

63. *Id.*

64. *Id.* at 492 (citing *Hernandez*, 399 So. 2d 1179; *Westside Lumber & Supply v. Parish of Jefferson*, 357 So. 2d 1384 (La. App. 4 Cir. 1978)).

upheld.”⁶⁵

In sum, the precedent set forth in *Palermo* is an extraordinarily high standard for identifying an arbitrary and capricious abuse of legal authority. As all zoning decisions are presumed valid, opponents to a zoning decision must prove that the governing authority did not consider the health, safety, and welfare of the community in rendering its decision and that the resulting legislation is an abuse of legal authority.

F. PRESUMPTION OF VALIDITY

The presumed validity of zoning procedures and ordinances, including piecemeal zoning, spot zoning, and reclassifications or amendments, was well established in Louisiana law prior to *Palermo*. The presumption of validity and the scope of judicial review are set forth in *State ex rel. Civello*, in which the supreme court stated:

It is not necessary, for the validity of the ordinances in question, that we should deem the ordinances justified by considerations of public health, safety, comfort, or the general welfare. It is sufficient that the municipal council could reasonably have had such considerations in mind. If such considerations could have justified the ordinances, we must assume that they did justify them.

. . . .

. . . We have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is to the ballot—not the courts.⁶⁶

In citing *State ex rel. Civello*, the *Palermo* court further affirmed legal precedent distinguishing between legal authority of a governing body to zone and rezone and the court’s oversight of these decisions.⁶⁷

These legal precedents for the presumption of validity include: *Village of Euclid, Ohio v. Ambler Realty Co.*,⁶⁸ *Four States Realty*,⁶⁹ and *Hernandez v. City of Lafayette*.⁷⁰ In *Hernandez*, the court noted that “even where no

65. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 493 (La. 1990) (citing *Hunter’s Grove Homeowners Ass’n v. Calcasieu Parish Police Jury*, 422 So. 2d 673 (La. App. 3 Cir. 1982); *Hernandez v. City of Lafayette*, 399 So. 2d 1179 (La. App. 3 Cir. 1981); *Hardy v. Mayor of Aldermen*, 348 So. 2d 143, 148 (La. App. 3 Cir. 1977); *Sears Roebuck & Co. v. City of Alexandria*, 155 So. 2d 776 (La. App. 3 Cir. 1963)).

66. *State ex rel. Civello v. City of New Orleans*, 97 So. 440, 443-44 (La. 1923).

67. *Palermo Land Co.*, 561 So. 2d at 491.

68. *Village of Euclid, Ohio v. Amber Realty Co.*, 272 U.S. 365 (1926).

69. *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975).

70. *Hernandez v. City of Lafayette*, 399 So. 2d 1179 (La. App. 3 Cir. 1981).

competent evidence to support a zoning decision was adduced in front of the governing body, the resulting legislation will nevertheless be upheld if the result is supported by evidence adduced at trial.”⁷¹ While the *Palermo* court emphasized that the standard for abuse of legal authority rests upon a determination of whether the *result* of a zoning decision is arbitrary and capricious,⁷² a zoning ordinance is presumed valid if it bears “the requisite relationship to the health, safety and welfare of the public.”⁷³ Such is a matter to be determined by a review of the facts and evidence of the specific case; hence, “[i]f it appears appropriate and well founded concerns for the public could have been the motivation for the zoning ordinance, it will be upheld.”⁷⁴

The presumption of validity is related to the presumption that governing officials can best attest to the changing needs of their communities. The *Palermo* court stated:

The differing needs of each parish, according to its size, population, level of industrial and commercial development, and the rapidity of growth of such development, will naturally result in different planning and zoning regulations in each parish. The need for change through rezoning or reclassification will depend on the same factors, thus rezoning decisions are properly left to those officials who are most familiar with the needs of each community. . . . Courts will not and cannot substitute their judgment for that of the legislative authority.⁷⁵

Palermo assumed that “zoning ordinances generally result from a rational decision-making process.”⁷⁶ This presumption also assumes that elected officials, endowed with final legislative zoning authority, represent the interest of the electorate and that their consideration for the public’s welfare appropriately justifies their zoning decisions.

Taken together these standards—the presumption of validity, the standard for an arbitrary and capricious abuse of legal power, and the extraordinary burden of proof—are closely connected, making it particularly difficult for opponents to challenge zoning and rezoning decisions. The burden of proof rests on opponents overcoming the

71. *Hernandez v. City of Lafayette*, 399 So. 2d 1179, 1182 (La. App. 3 Cir. 1981) (citing *Meyers v. City of Baton Rouge*, 185 So. 2d 278 (La. App. 1 Cir. 1966)).

72. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 492 (La. 1990).

73. *Id.*

74. *Id.*

75. *Id.* (citing *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975), and cases cited therein).

76. *Id.* at 494.

presumption of validity granted to governing bodies' zoning decisions by establishing that the actions of the governing authority willfully ignored considerations of the public's health, safety, and welfare.

III. TRACING THE *PALERMO* DECISION TO THE PRESENT DAY

Palermo continues to be the primary legal precedent for land use and zoning in Louisiana. Its legacy sets an extraordinarily high burden for challenges to zoning decisions.⁷⁷ Courts presume that zoning authorities have considered the health, safety, and welfare of their communities when making zoning decisions.⁷⁸ The Louisiana Supreme Court's ruling in *Palermo* reinforced the legislature's power to zone and rezone. By setting a high standard for what constitutes an arbitrary and capricious abuse of legislative power,⁷⁹ *Palermo* places the burden of proof with opponents to a zoning decision, rather than with legislative authority,⁸⁰ thereby granting governing authorities significant latitude when making zoning decisions.

To overcome the presumption of validity,⁸¹ opponents must prove that

77. See generally *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482 (La. 1990). Since *Palermo*, this burden has been discussed in several cases. See, e.g., *Cerruti v. Parish of Jefferson*, 94-608 (La. App. 5 Cir. 1/18/95); 650 So. 2d 315; *Bourbon Country Estates, Inc. v. Saint James Parish*, 611 So. 2d 180 (La. App. 5 Cir. 1992); *Lakeshore Harbor Condo. Dev. v. City of New Orleans*, 603 So. 2d 192 (La. App. 4 Cir. 1992); *Save Our Neighborhoods v. Saint John the Baptist Parish*, 592 So. 2d 908 (La. App. 5 Cir. 1991); *Bayou Self Rd. Dev. v. Jefferson Parish Council*, 567 So. 2d 679 (La. App. 5 Cir. 1990).

78. The discussion regarding the presumption of validity given to zoning authority decisions has continued since *Palermo*. See *Kelo v. New London*, 545 U.S. 469 (2005); *King v. Caddo Parish Comm'n*, 97-1873 (La. 10/20/98); 719 So. 2d 410; *Jenniskens v. Parish of Jefferson*, 2006-252 (La. App. 5 Cir. 10/17/07); 940 So. 2d 209; *Prest*, 930 So. 2d 1207; *TSC, Inc.*, 878 So. 2d 880; *Bailey v. Parish of Caddo*, 30,822 (La. App. 2 Cir. 8/19/98); 716 So. 2d 523; *Papa v. City of Shreveport*, 27,045 (La. App. 2 Cir. 9/29/95); 661 So. 2d 1100; *Clark v. City of Shreveport*, 26,638 (La. App. 2 Cir. 5/10/95); 655 So. 2d 617; *Cerruti*, 650 So. 2d 315; *Bourbon Country Estates, Inc.*, 611 So. 2d 180; *Lakeshore Harbor Condo. Dev.*, 603 So. 2d 192; *Bayou Self Rd. Dev.*, 567 So. 2d 679.

79. This standard for arbitrary and capricious has been further discussed in several cases since *Palermo*. See generally *King*, 719 So. 2d 410; *Jenniskens v. Parish of Jefferson*, 2006-252 (La. App. 5 Cir. 10/17/07); 940 So. 2d 209; *Prest v. Parish of Caddo*, 41,309 (La. App. 2 Cir. 2006); 930 So. 2d 1207; *TSC, Inc. v. Bossier Parish Police Jury*, 38,717 (La. App. 2 Cir. 7/14/04); 878 So. 2d 880; *Bailey*, 716 So. 2d 523; *Papa*, 661 So. 2d 1100; *Cerruti*, 650 So. 2d 315; *Bourbon Country Estates, Inc.*, 611 So. 2d 180; *Lakeshore Harbor Condo. Dev.*, 603 So. 2d 192; *Bayou Self Rd. Dev.*, 567 So. 2d 679.

80. See *id.*; see also *Hernandez v. City of Lafayette*, 399 So. 2d 1179, 1182 (La. App. 3 Cir. 1981); *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975).

81. See *Cerruti v. Parish of Jefferson*, 94-608 (La. App. 5 Cir. 1/18/95); 650 So. 2d 315, 317 (citing *Palermo Land Co.*, 561 So. 2d at 490, 492; *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975); *State ex rel. Civello v. City of New Orleans*, 97 So. 440 (La. 1923); *Save Our Neighborhoods v. Saint John the Baptist Parish*, 592 So. 2d 908 (La. App. 5 Cir. 1991)).

a “real or substantial relationship to the general welfare is lacking”,⁸² that authorities have willfully disregarded the facts of the case,⁸³ that land use and zoning decisions constitute an abuse of discretion or an excessive use of power,⁸⁴ and that the *result*⁸⁵ of a zoning decision is arbitrary and capricious.⁸⁶

Since this landmark decision, the courts have repeatedly cited *Palermo*, noting that “when there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.”⁸⁷ For instance, in *Bourbon Country Estates, Inc. v. Saint James Parish*, the Louisiana Fifth Circuit Court of Appeal cited *Palermo*, stating that “if upon consideration of the evidence the propriety of the authority’s action remains debatable, then that action will be upheld by the courts.”⁸⁸ In *Lakeshore Harbor Condominium Development v. City of New Orleans*, the Louisiana Fourth Circuit Court of Appeal indicated that a study documenting the changing needs of an area together with resident approval of zoning changes is sufficient evidence for governing authorities to make zoning changes.⁸⁹ Similarly, in *Cerruti v. Parish of Jefferson*, the Louisiana Fifth Circuit Court of Appeal stated that a governing authority’s considerations are not limited to the technical considerations, “but instead may consider other factors affecting the area.”⁹⁰

Together, these three closely intertwined standards, further codified in legal precedent since *Palermo*, result in a fundamental presumption that governing authorities have adequately considered the health, safety, welfare and reasonableness of a zoning decision.⁹¹ Having removed themselves

82. *Save Our Neighborhoods v. Saint John the Baptist Parish*, 592 So. 2d 908, 911 (La. App. 5 Cir. 1991) (citing *Palermo Land Co.*, 561 So. 2d at 490).

83. *See, e.g.*, *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659, 666 (La. 1975) (citing 1 RATHKOPF, *THE LAW OF ZONING AND PLANNING* 2-26 (3d. ed. 1974)).

84. *Palermo Land Co. v. Planning Comm’n of Calcasieu Parish*, 561 So. 2d 482, 495 (La. 1990).

85. *Id.* at 492 (citing *Hernandez v. City of Lafayette*, 399 So. 2d 1179 (La. App. 3 Cir. 1981)).

86. *Id.* at 489-90.

87. *See, e.g.*, *King v. Caddo Parish Comm’n*, 97-1873 (La. 10/20/98); 719 So. 2d 410, 418 (quoting *Four States Realty Co.*, 309 So. 2d at 666).

88. *Bourbon Country Estates, Inc. v. Saint James Parish*, 611 So. 2d 180 (La. App. 5 Cir. 1992) (citing *Palermo Land Co.*, 561 So. 2d 482).

89. *Lakeshore Harbor Condo. Dev. v. City of New Orleans*, 603 So. 2d 192, 194-95 (La. App. 4 Cir. 1992).

90. *Cerruti v. Parish of Jefferson*, 94-608 (La. App. 5 Cir. 1/18/95); 650 So. 2d 315, 318.

91. *See generally, e.g., King*, 719 So. 2d 410; *Jenniskens v. Parish of Jefferson*, 2006-252 (La. App. 5 Cir. 10/17/07); 940 So. 2d 209; *TSC, Inc. v. Bossier Parish Police Jury*, 38,717 (La. App. 2 Cir. 7/14/04); 878 So. 2d 880; *Bailey v. Parish of Caddo*, 30,822 (La. App. 2 Cir. 8/19/98); 716 So. 2d 523; *Cerruti*, 650 So. 2d 315; *Save Our Neighborhoods v. Saint John the Baptist Parish*,

from discussing the merits of zoning decisions, the courts have effectively removed themselves from offering guidance as to what constitutes the public's health, safety, and welfare in a particular circumstance. Of course, because zoning is a legislative act, it is appropriate that the courts have indicated that if a majority is unsatisfied with zoning decisions, their recourse is the ballot box and not the courts.⁹²

While these three standards protect the power of governing authorities to zone and rezone, the courts have abdicated themselves from dealing with a deeper discussion regarding the connection between a municipality's comprehensive plan and its zoning ordinance. As discussed in the following Part, the avoidance of this discussion significantly affects the practice and culture of present day urban and regional planning in Louisiana.

IV. CONSIDERING *PALERMO* AND URBAN PLANNING TWENTY YEARS LATER

From the perspective of the field of urban and regional planning in Louisiana, the legacy of *Palermo* and its progeny presents a particular set of legal contexts and issues. Governing authorities have ample discretion to utilize the tool of zoning to guide and control the future development of their communities. *Palermo* and subsequent decisions have assured zoning officials that if *the result* of a zoning decision in a particular set of circumstances was reached by reasonable consideration of the health, safety, and welfare of the general public, this decision cannot be found to be arbitrary and capricious.

These legal guidelines affect the culture and professional practice of urban and regional planning, which as a field is guided by the ethical principle of improving "the welfare of people and their communities by creating more convenient, equitable, healthful, efficient, and attractive places for present and future generations."⁹³ Urban and regional planners, with input from residents and affected groups, create comprehensive master plans to guide the future growth and development of the community and zoning ordinances to regulate allowable activities and protect the community.⁹⁴ This process, from citizen input to the creation of the plan

592 So. 2d 908 (La. App. 5 Cir. 1991); *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482 (La. 1990).

92. *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482, 491 (La. 1990) (citing State *ex rel. Civello v. City of New Orleans*, 97 So. 440, 444 (La. 1923)).

93. *What Is Planning?*, AM. PLAN. ASS'N, <http://www.planning.org/aboutplanning/whatisplanning.htm> (last visited June 17, 2011).

94. *See generally id.*

through the adoption of the zoning ordinance, is well regarded in the field of professional planning as the appropriate means by which to ensure that the community's interests and needs are understood and protected, and that any future growth needs are anticipated and meet the needs of the community.⁹⁵

While *Palermo* and subsequent decisions affect the practice and culture of urban and regional planning in Louisiana today by validating citizen participation as critical to its professional practice, the courts have continued to abstain from considering in more detail the legal connection between a municipality's master plan and its zoning ordinance. The following Part first discusses the validation of citizen participation by the courts and then turns to a discussion of the legal connection between the master plan and its zoning ordinance.

A. CITIZEN PARTICIPATION

One of the main mechanisms that professional planners use to ascertain the general public's vision of the future is through citizen participation. *Palermo* and subsequent legal decisions support and protect a governing authority's use of citizen opinion and input when making decisions about zoning and rezoning. As stated in *Jenniskens v. Parish of Jefferson*, the "concerns and desires of the electorate are appropriate considerations in the decision making process on zoning. The opinion of the neighborhood associations and the other residents of the area must be given weight for determining the nature and character of the area."⁹⁶

The courts have gone so far as to leave it to the discretion of governing officials even when making zoning decisions that result in a non-uniform application of a zoning ordinance.⁹⁷ In *Papa v. City of Shreveport*, the zoning board of appeals was allowed to issue a special exception use for one facility to sell alcohol on their premises and to deny another facility the same special exception, despite similar circumstances.⁹⁸ In a dissenting opinion, Judge Sexton explained that although the Papas met all of the requirements under the guidelines for the approval of special exception use, the ruling in favor of the zoning board of appeals allowed for a de facto

95. See generally LA. REV. STAT. ANN. § 33:4723 (2009); *What Is Planning?*, AM. PLAN. ASS'N, <http://www.planning.org/aboutplanning/whatisplanning.htm> (last visited June 17, 2011).

96. *Jenniskens v. Parish of Jefferson*, 2006-252 (La. App. 5 Cir. 10/17/07); 940 So. 2d 209 (internal citations omitted) (citing *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482 (La. 1990); *Lakeshore Harbor Condo. Dev. v. City of New Orleans*, 603 So. 2d 192, 195 (La. App. 4 Cir. 1992)).

97. See generally, e.g., *Papa v. City of Shreveport*, 27,045 (La. App. 2 Cir. 9/29/95); 661 So. 2d 1100.

98. See *id.* at 1103-05.

non-uniform application of the zoning ordinance.⁹⁹ His dissenting opinion indicated that the denial of the special exception use in this case resulted from resident opposition to the Papas' application, whereas little or no resident opposition was presented in the case in which the special exception use was granted:

I can only conclude that the ZBA's unanimous vote to deny the Papa application while unanimously approving the Matassa application was simply a response to the vocal opposition presented at the meeting to the Papa application. I can perceive *no rational basis* for treating the two properties differently, given the similarities of the two sites and the differences which favor the Papa site.¹⁰⁰

The consideration of resident and neighborhood objections to proposed zoning changes is at the heart of planning's legal and ethical guidelines and the courts have been clear in their support of governing authorities' considerations of resident and neighborhood opinion and opposition as part of the evidence and supportive facts of a proposed zoning change. "Expressions of opinion made by citizens to a legislative body serve as a manner by which the legislative body learns the will of the people and determines what may benefit the public good."¹⁰¹ In *Jenniskens*, the court warned against the effects of "mob rule" in directing zoning decisions and influencing zoning authorities.¹⁰² However, the court is also clear that this warning should be handled by governing authorities and that their careful consideration of the evidence and circumstances of the particular case should include citizen input in addition to the recommendations given by professional planners, consideration for how zoning changes will affect adjacent properties and the community, and other technical concerns.¹⁰³

B. THE LEGAL CONNECTION BETWEEN MASTER PLANS AND ZONING ORDINANCES

As discussed in Part II, the courts reconsidered the "change or mistake" ruling of *Dufau v. Parish of Jefferson* in *Four States Realty* and in *Palermo*, thereby giving governing authorities legal precedent to use zoning

99. *Papa v. City of Shreveport*, 27,045 (La. App. 2 Cir. 9/29/95); 661 So. 2d 1100, 1105-08 (Sexton, J., dissenting).

100. *Id.* at 1108 (emphasis added).

101. *Prest v. Parish of Caddo*, 41,309 (La. App. 2 Cir. 2006); 930 So. 2d 1207, 1211 (citing *King v. Caddo Parish Comm'n*, 97-1873 (La. 10/20/98); 719 So. 2d 410; *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1975)).

102. *Jenniskens v. Parish of Jefferson*, 2006-252 (La. App. 5 Cir. 10/17/07); 940 So. 2d 209, 216.

103. *Id.*

to promote the health, safety, and welfare of their communities.¹⁰⁴ The *Dufau* decision prohibited governing officials from using planning and zoning to promote changes or to protect their communities from changes considered detrimental to the general health, safety, and welfare.¹⁰⁵ While the reversal of *Dufau* in *Four States* and *Palermo* further codified the legal connection between zoning and the comprehensive plan,¹⁰⁶ the discussion in *Palermo* was notably brief and, since *Palermo*, courts have failed to further discuss this matter. Particularly, in comparison to the extensive and continued reinforcement of the three legal precedents discussed above (the burden of proof, the standard for arbitrary and capricious, and the presumption of validity), a deeper discussion regarding the legal connection between master plans and zoning ordinances has been all but absent.

The legal connection between the master plan and its zoning ordinance is, however, explicitly noted in the state's statutes. Louisiana requires that zoning ordinances be adopted in accordance with a municipality's comprehensive or master plan.¹⁰⁷ The comprehensive plan, as discussed in *Palermo*, is a guideline for the future development and growth of a municipality.¹⁰⁸ It must contain a general depiction of existing transportation routes; rights-of-way; corridors; and the location of public buildings, utilities, etc.¹⁰⁹ The plan also includes a land use plan and map, depicting the detailed existing and future land uses across the municipality.¹¹⁰ The zoning ordinance then gives the legal structure to the guidelines outlined in a municipality's master plan.¹¹¹ Zoning ordinances regulate the activities of private properties; density; building heights; the amount of space that a structure can occupy on a lot; the location of a building on a lot (setbacks); the proportion of the types of spaces on a lot, such as parking, impervious surfaces, and landscaping; and allowable commercial signage.¹¹²

Despite clear legal statutes requiring municipalities to adopt zoning

104. See generally *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482, 491 (La. 1990); *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659, 666 (La. 1975).

105. *Dufau v. Parish of Jefferson*, 200 So. 2d 335 (La. App. 4 Cir. 1967), *abrogated by Palermo Land Co.*, 561 So. 2d 482.

106. See generally *Palermo Land Co.*, 561 So. 2d at 491; *Four States Realty Co.*, 309 So. 2d at 666.

107. LA. REV. STAT. ANN. § 33:4723 (2009).

108. See generally *What Is Planning?*, AM. PLAN. ASS'N, <http://www.planning.org/aboutplanning/whatisplanning.htm> (last visited June 17, 2011).

109. LA. REV. STAT. ANN. § 33:106 (2002 & Supp. 2011).

110. Cf. LA. REV. STAT. ANN. § 33:106 (2002 & Supp. 2011).

111. LA. REV. STAT. ANN. § 33:4723 (2009).

112. LA. REV. STAT. ANN. § 33:4721 (2009).

ordinances in accordance with their master plan, *Palermo* is decidedly unclear on this issue. *Palermo* stated:

While the list contained in [§] 33:106 is quite exhaustive and specific, it is doubtful that each parish had, at the outset, a planning map in conformity with the complexity suggested by this statute [A]s long as such a plan exists, and amendments to or enlargements of the plan are not made in a chaotic fashion. A parish's comprehensive plan will be deemed sufficient under [§] 33:106 as long as amendments to the plan are enacted as the need for the specified public accommodations arises.¹¹³

The *Palermo* court then recited § 33:106 and offered its own analysis:

“As the work of making the whole master plan progresses, a commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the parish or municipality”

We are of the opinion that the parish did comply with the requisites regarding the creation of a comprehensive plan. . . . [T]he rezoning ordinance at issue was enacted in accordance with good land use planning. It should not be invalidated simply because previous ordinances were allegedly contrary to good land use planning principles, or because they were not in conformity with the comprehensive plan.¹¹⁴

Despite this discussion of the issue, which was pursued as a key argument by the *Palermo* plaintiffs, the court did not render its decision based on an analysis regarding whether the zoning ordinance was adopted in accordance with the comprehensive plan. Similar to their refusal to deliberate on the details and merits of a specific zoning decision, the courts have assumed that there is a connection between the zoning ordinance and the comprehensive plan and have presumed that planning and zoning authorities have complied with the legal requirement to adopt a zoning ordinance in accordance with the comprehensive plan.

Subsequent legal decisions that have taken up the issues of burden of proof, the standard for arbitrary and capricious, and the presumption of validity have—similar to *Palermo*—failed to address the issue of the legal

113. *Palermo Land Co. v. Planning Comm'n of Calcasieu Parish*, 561 So. 2d 482, 497 (La. 1990) (internal citations omitted) (citing *Folsom Rd. Civic Ass'n v. Parish of Saint Tammany ex rel. Saint Tammany Parish Police Jury*, 407 So. 2d 1219, 1222 (La. 1981)).

114. *Id.* (internal citations omitted) (citing LA. REV. STAT. ANN. § 33:106 (2002 & Supp. 2011)).

connection between the comprehensive plan and a municipality's zoning ordinance. This continued abdication by the courts leaves planners in need of more legal guidance on this connection, particularly as a renewed commitment to planning has emerged in recent years across the state, as evidenced in the extraordinary number of municipalities undertaking master plans and new zoning ordinances.¹¹⁵

V. CONCLUSION

While the *Palermo* decision established the burden of proof, the arbitrary and capricious standard, and the presumption of validity as the legal framework for zoning in Louisiana, this landmark planning and zoning decision gave little direction as to the role of the master plan and its connection to a municipality's zoning ordinance. Recent attempts to empower master plans with stronger language in Home Rule Charters in the cities of Lake Charles and New Orleans have raised new questions regarding the ultimate authority for the decision-making process. While Lake Charles followed its citizens' vote and added the downtown master plan to the City's Home Rule Charter, the City of New Orleans opted for a more focused approach with a thirteen-page amendment that the voters approved by a very slim margin in November 2008.¹¹⁶ On a larger scale the recently defeated Amendment Number 4 in the State of Florida would have subjected all land use plans and subsequent amendments to a local vote.¹¹⁷ Although varied, these efforts in Louisiana and other states indicate a reassertion to give more authority to master plans. While abdicating land use decisions to the ballot box does not seem like the intent or the result of *Palermo*—where it was clear that the court placed zoning authority with the legislators of a community—its lack of guidance regarding the connection between a municipality's master plan and its zoning ordinance leaves an ongoing chasm between a community's guiding vision and its legal ordinance for enforcing this vision.

While Louisiana's enabling statutes vest complete authority with the local planning body in a parish or a municipality, the implementation of the master plan is clearly a legislative act, the responsibility for which clearly sits with the elected officials in their specific capacity and duty as a

115. Including, at the time of this article, Baton Rouge, New Orleans, Lafayette, Shreveport, Alexandria, as well as a host of smaller municipalities across the state.

116. See Coleman Warner, *New Orleans Voters Approve master Plan Amendment*, NOLA.COM, NOV. 4, 2008, http://www.nola.com/news/index.ssf/2008/11/no_voters_approve_master_plan.html.

117. Kevin Spear, *Amendment 4 Soundly Defeated*, ORLANDO SENTINEL, Nov. 2, 2010, http://articles.orlandosentinel.com/2010-11-02/news/os-election-day-amendment-4-20101102_1_citizens-for-lower-taxes-amendments-florida-hometown-democracy.

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legislative body.¹¹⁸ The evolving nature of master plans in terms of their complexity and breath—particularly in a state dealing with such intricate environmental and land use issues—and subjective levels of citizen input and consensus, means that a nexus between master plans and zoning ordinances becomes more critical and more pronounced. Unfortunately, however, the courts have been reluctant to cross this line since *Palermo*.

118. See LA. REV. STAT. ANN. § 33:106 (2002 & Supp. 2011).