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award should satisfy needs and not punish either party.²⁷ If the supporting spouse challenges the court's assessment of the dependent spouse's needs, however, that misconduct may be emphasized by the court in sustaining the award.²⁸

The *Peterson* decision supports the policy of using fault as one of many factors in determining the duty to support. In spite of the no-fault divorce act, admission of marital misconduct remains a component of the balancing²⁹ necessary to reach an equitable division of property and a just determination of alimony.

Land Use Planning—THE METROPOLITAN LAND USE PLANNING ACT—Act of Apr. 2, 1976, ch. 127, 1976 Minn. Laws 292.

In response to steady, rapid urbanization of the Twin Cities area, the Minnesota Legislature in 1976 declared all metropolitan¹ governmental units to be interdependent² and established requirements and procedures for comprehensive, coordinated land use planning. Their product, the Metropolitan Land Use Planning Act,³ provides a design for the coordination and control of metropolitan growth as a joint effort between the Metropolitan Council and local governments. It also provides a method through which local proposals and plans will be exchanged among local governments likely to be affected. Prior to the Act, a community might carefully design, plan, and commence construction of a high-priced residential area on the city's edge, oblivious to the concurrent designation of the adjoining property as industrial by the neighboring community. The Act addresses the extra-territorial concerns of developing communities as well as the ultimate need to control metropolitan growth. If the local governments and the Metropolitan Council are able to resolve quickly conflicting land use planning objectives, a comprehensive development scheme for the metropolitan area will result.

The Metropolitan Land Use Planning Act is the product of nearly a decade of land use policy development⁴ by the Metropolitan Council.⁵

27. See note 23 *supra*.

28. See *Bollenbach v. Bollenbach*, 285 Minn. 418, 175 N.W.2d 148 (1970); *Borchert v. Borchert*, 279 Minn. 16, 21, 154 N.W.2d 902, 906 (1967).

29. See MINN. STAT. § 518.58 (1976) ("all the facts and circumstances of the case" are to be considered).

1. The Metropolitan Land Use Planning Act [hereinafter referred to as Act] affects the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. See MINN. STAT. § 473.872 (1976).

2. See MINN. STAT. § 473.851 (1976).

3. Act of Apr. 2, 1976, ch. 127, 1976 Minn. Laws 292 (codified at MINN. STAT. §§ 462.355, 473.121, .175, .851-.872 (1976)).

4. See Freilich & Ragsdale, *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009, 1018-24 (1974). For

In 1967, the legislature directed the Council to prepare and adopt a comprehensive development guide for the metropolitan area.⁶ The resulting metropolitan system plans recommended limiting the outward expansion of urban development and the overextension of municipal services needed to support the area population.⁷ In organizing its proposal, the Council divided the metropolitan area into an urban service area,⁸ that which can best accommodate new growth without greater demand for municipal services, and a rural service area,⁹ which is designated to remain primarily agricultural. The Metropolitan Land Use Planning Act empowers the Council to assure that local land use determinations and policies are compatible with these and other Council plans¹⁰ for the metropolitan area.¹¹

an analysis of current metropolitan planning, see METROPOLITAN COUNCIL OF MINNESOTA, LOCAL PLANNING IN THE TWIN CITIES METROPOLITAN AREA (1976).

5. The precursor to the Metropolitan Council was created in 1957 when the Minnesota Legislature found that metropolitan growth and development had given rise to problems transcending local government boundaries and coordinated cooperative area-wide planning was needed. See Act of Apr. 17, 1957, ch. 468, § 1, 1957 Minn. Laws 581. By the foregoing act, the legislature established regional planning and development commissions for the metropolitan areas. See *id.* § 3. Before a local governmental unit in a metropolitan area could make a final decision on a matter which it deemed to be of more than local significance, it was required to submit the proposal to the commission for an up to 30 day review period. The review power of the commission was limited to comment and recommendations. See *id.* § 6(6).

All powers and duties of the Twin Cities Planning Commission which operated under the above statute were transferred in 1967 to the Metropolitan Council which was established for the purpose of coordinating the planning and development of the seven-county metropolitan area. See Act of May 25, 1967, ch. 896, § 5(1), 1967 Minn. Laws 1923. The Council was directed to prepare and adopt a comprehensive development guide for the metropolitan area to consist of policy statements, goals, standards, and programs prescribing guidelines for public and private development. See *id.* § 6(5). Municipalities were required to submit to the Council comprehensive plans on matters having substantial effects on metropolitan development. However, no provision for suspension of the plan or proposal existed beyond the Council's 60-day review period. See *id.* § 6(6). This requirement with respect to municipalities was repealed in 1974. See Act of Apr. 11, 1974, ch. 422, § 15, 1974 Minn. Laws 866.

In 1975, the Council's powers were extended to include suspension of local comprehensive plans prepared by cities, towns, and counties for up to 90 days while the Council reviewed them. The review was limited to recommendations which were filed with the plan. However, matters determined to be of metropolitan significance as to be defined by Council regulations could be suspended for periods up to 12 months. See Act of Mar. 19, 1975, ch. 13, 1975 Minn. Laws 196.

6. See Act of May 25, 1967, ch. 896, § 6(5), 1967 Minn. Laws 1928 (codified at MINN. STAT. § 473.145 (1976)).

7. See METROPOLITAN COUNCIL OF MINNESOTA, DEVELOPMENT FRAMEWORK CHAPTER OF THE METROPOLITAN DEVELOPMENT GUIDE (1974).

8. See *id.* at 30.

9. See *id.* at 13.

10. See MINN. STAT. § 473.854 (1976).

11. See *id.* § 473.851.

The Act, which is implemented by the Council,¹² requires each governmental unit¹³ within the seven-county metropolitan¹⁴ area to adopt an individual comprehensive plan¹⁵ consistent with the Council's metropolitan system plans in the areas of transportation, airports, waste control, and recreational open spaces.¹⁶

The Council's land use objectives are conveyed to each local governmental unit and school district in the form of a system statement.¹⁷ Derived from the metropolitan system plans, the statements apply the Council's projections of population, growth, employment, housing, and the timing and character of metropolitan public facilities¹⁸ to individual local governmental units. If the local unit disagrees with the content of the statement pertinent to its interests and priorities, it may demand a hearing before either a state hearing examiner or the appointed land use committee.¹⁹ At the public hearing, testimony and evidence presented by any interested person will be received.²⁰ However, the need for the metropolitan system plan and the reasonableness of the policies cannot be considered.²¹ Within thirty days after the hearing, the hearing examiner or committee will submit findings of fact, conclusions, and recommendations to the Council.²² Because the decision following the hearing is advisory only,²³ the Council retains the power to make a final determination on the content of the system statement.²⁴

No provision for appeal from the hearing appears in the Act. The proceedings are designated expressly as not being a contested case.²⁵

12. Implementation includes grant distribution to qualified local governmental units for assistance in the preparation of their comprehensive plans. See MINN. STAT. §§ 4.26-.30 (1976) (grant authorization); *id.* § 473.867 (Council to establish a model for distribution).

13. See MINN. STAT. § 473.858(1) (1976). Local governmental unit means all cities, counties, and towns in the metropolitan area. *Id.* § 473.852(7).

14. See note 1 *supra*.

15. See MINN. STAT. § 473.859 (1976) (describes content of plans).

16. See *id.* § 473.852(8).

17. See *id.* § 473.855.

18. See *id.*

19. See MINN. STAT. § 473.857(1) (1976). The Council is required to "establish an advisory metropolitan land use committee . . . , comprised of 16 members, one from each council district, and as many additional members as are necessary to provide representation from each metropolitan county, plus a chairman." *Id.* § 473.853.

20. *Id.* § 473.857(2).

21. *Id.*

22. See *id.*

23. See *id.* (examiner or committee to report findings of facts, conclusions, and recommendations to Council).

24. See *id.* § 473.857(3).

25. See *id.* § 15.0424 (judicial review of contested cases). A "contested case" is defined as a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an agency hearing. *Id.* § 15.0411(4). Although MINN. STAT. § 473.857(1) (1976) establishes the right to a hearing on the system

Further, the Act does not provide for subsequent appeal from the Council's final determination on the system statement.²⁶ From the language of the Act, an intent to reconcile differences extra-judicially at this stage can be inferred.

Even during the reconciliation of the system statement, the local unit must remember that within a three-year period commencing with its receipt of the system statement,²⁷ it must prepare and submit to the Council a comprehensive plan.²⁸ Prior to sending its final plan to the council, the local unit must submit its proposed plan to adjacent governmental units and school districts for review and comment. A copy of the final plan as submitted to the Council also must be sent to the same affected parties.²⁹

The Act provides that the comprehensive plan contain objectives, policies, and programs in the areas of private and public land use; land and water development and preservation; expected industrial and commercial development; planned population distribution; and local public facilities capacities.³⁰ Although the Act does not require the comprehensive plan to be consistent with the system statement and the metropolitan system plans, the Council is given the power to compel modification of the local plan under certain conditions.³¹ Any modification required by the Council is subject to review by the district court.³² However, the appeal must be first heard by a hearing examiner who is required to make a full record of the proceedings.³³ The examiner's findings are advisory and must be followed within thirty days by a final Council determination including findings of fact and conclusions.³⁴ Appeal from a Council decision may be taken to the district court as a contested

statement, it does not require one. Moreover, the Metropolitan Land Use Planning Act expressly provides that the proceedings shall not be deemed contested. *Id.* § 473.857(2).

26. Appeal under the Administrative Procedures Act, MINN. STAT. §§ 15.0411-.52 (1976) may be precluded by the statutory definition at MINN. STAT. § 15.0411(2) (1976) which requires that an "agency" have statewide jurisdiction. Because the Metropolitan Council does not have statewide jurisdiction, its final decisions may not be appealable under MINN. STAT. § 15.0424 (1976).

27. *Id.* § 473.858.

28. *Id.* § 473.859.

29. *See id.* § 473.858(2).

30. *Id.* § 473.859(1).

31. *See* Act of Apr. 2, 1976, ch. 127, § 14, 1976 Minn. Laws 299 (codified at MINN. STAT. § 473.175(1) (1976)) (modification allowed if local plan substantially impacts or departs from metropolitan plans). The Council has the power to invoke district court enforcement of judicial decisions regarding modification rendered in its favor. *See* MINN. STAT. § 473.175(3) (1976).

32. *See* MINN. STAT. § 473.866 (1976).

33. *See id.* (provisions of the Administrative Procedures Act at MINN. STAT. § 15.0424 (1976) govern the hearing).

34. *Id.* § 473.866.

case.³⁵ The court is required by the Act to consider equally the hearing examiner's report and the Council's decision.³⁶

Implementation of the comprehensive plan may not begin until the local governmental unit has received the approved plan from the Council.³⁷ Until such time, the local government apparently may deal with land use decisions either under its former ordinances or under an interim ordinance as provided by the Act.³⁸ In this manner, the rights of private property owners need not be affected by the local unit's full utilization of appeal provisions.

Constructive interaction between Metropolitan Council and local government planners is encouraged by the reconciliation procedures of the Act. Nevertheless, local planning objectives and policies may conflict with Council determinations which reflect a regional perspective not always consistent with local political concerns. Developers and property owners are well advised to influence both local planners and the Council during the planning process to achieve an acceptable outcome. The Council's planning perspectives remain flexible throughout the process due to possible population and employment projection revisions.³⁹ Thus, introduction of persuasive data could influence plans in negotiation and conceivably those accepted.

If the Council's projections appear inaccurate or unrealistic, and its policy positions unyielding, the local unit could refuse to prepare or modify its comprehensive plan. However, the Council has the statutory power to prepare the plan itself or to compel modification judicially.

Knowledge that the Council controls the flow of federal money to local units through its power of review should encourage cooperation.⁴⁰ The Council's determinations could affect the local unit's ability to carry out projects included within its plan such as the construction of sewage facilities and public buildings and the implementation of open space land programs. Refusal to recognize the powers of the Council could prejudice a local unit's proposals on both state and federal levels.⁴¹

35. *Id.*

36. *Id.* The scope of the judicial review is governed by MINN. STAT. § 15.0425 (1976).

37. *See id.* §§ 473.864-.865.

38. The Act provides that a municipality may suspend development for up to two years under an interim ordinance pending development of a comprehensive plan. *See Act of Apr. 2, 1976, ch. 127, § 20, 1976 Minn. Laws 304 (codified at MINN. STAT. § 462.355(4) (1976)). See also Almquist v. Town of Marshan, ___ Minn. ___, 245 N.W.2d 819 (1976) (court concludes that moratorium ordinances of limited duration adopted in good faith pending development of comprehensive land use plans not violative of due process).*

39. Local governmental units are required to amend their comprehensive plans if necessary to conform to changes in Council projections after distribution and receipt of the system statements. *See MINN. STAT. § 473.856 (1976).*

40. *See, e.g., Demonstration Cities and Metropolitan Development Act of 1966, § 204, 80 Stat. 1262.*

41. *See MINN. STAT. §§ 473.171(1), .181(2) (1976).*

When the implementation problems and uncertainties of the Act are overcome, a coordinated regional system of planning to control urban sprawl should result. However, the Act does not provide a complete solution. Only the seven-county metropolitan area is within the jurisdiction of the Act, but the problem of urban sprawl already extends beyond the area.⁴² Metropolitan control may induce intensive fringe area growth, thereby necessitating vast regional control to follow the development pattern. But for the metropolitan area, the Act, if successful, will mitigate serious urban problems through regional-local land use coordination.

Torts—STRICT LIABILITY FOR ABNORMALLY DANGEROUS ACTIVITIES—*Ferguson v. Northern States Power Co.*, ___ Minn. ___, 239 N.W.2d 190 (1976).

Rylands v. Fletcher,¹ a landmark nineteenth century English case, established the rule that a defendant is strictly liable when he damages another by an activity unusually dangerous and inappropriate in relation to the surroundings in which it is carried out.² The rule of *Rylands v. Fletcher* has been adopted by an overwhelming majority of American jurisdictions,³ Minnesota being among the first to do so,⁴ and has been embraced by the *Restatement (Second) of Torts*.⁵

42. The counties surrounding the Twin Cities show a disproportionately rapid rate of population growth. Four of these counties, Chisago, Isanti, Sherburne, and Wright, have the potential to double in population between 1970 and 2000. DIVISION OF DEVELOPMENTAL PLANNING, MINNESOTA STATE PLANNING AGENCY, MINNESOTA POPULATION PROJECTIONS 1970-2000, at 43-44 (1975).

1. [1868] L.R. 3 H.L. 330, *aff'g* [1866] L.R. 1 Ex. 265, *rev'g* [1865] 3 H. & C. 774, 159 Eng. Rep. 737. In *Rylands*, defendants, mill owners, were held liable when a reservoir which they constructed upon their land broke through into an abandoned mine shaft and flooded along connecting passages into the plaintiff's mine. The court found trespass and nuisance actions were not maintainable and the case was decided by holding the defendant strictly liable.

2. The rule of the case is that the defendant will be liable when he damages another by a thing or activity unduly dangerous and inappropriate to the place where it is maintained in light of the character of the place and its surroundings. See generally W. PROSSER, *SELECTED TOPICS ON THE LAW OF TORTS* 135-49 (1954).

3. The rule has been adopted in over 30 United States jurisdictions. See W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 78, at 509 (4th ed. 1971). The only jurisdictions which still reject the rule are Maine, New Hampshire, New York, Oklahoma, Rhode Island, Texas, and Wyoming. *Id.* The author is apparently in error with respect to Oklahoma, however. See note 23 *infra*.

4. Minnesota adopted the strict liability rule three years after it was first promulgated in *Rylands v. Fletcher*. See *Cahill v. Eastman*, 18 Minn. 324 (Gil. 292) (1871) (liability imposed when an underground water tunnel broke, damaging plaintiff's property). The rule was reaffirmed in Minnesota as recently as 1968. See *Sachs v. Chiat*, 281 Minn. 540, 162 N.W.2d 243 (1968) (defendant held strictly liable for concussion and vibration damages resulting from pile driving).

5. *RESTATEMENT (SECOND) OF TORTS* §§ 519-24 (1977).