

YOU AND RURAL ZONING

PART I

BUILDING PERMITS
REQUIRED
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ISANTI
SOIL & WATER
CONSERVATION
DISTRICT

NORTH BRANCH
TOWNSHIP
BUILDING PERMITS
REQUIRED



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Summary

You and Rural Zoning, Part I, has exposed the reader to many of the fundamentals of rural zoning, has told something of what it can and can't be expected to accomplish, and has listed some of the common fallacies that confuse the issue.

You and Rural Zoning, Part II, to be published, will fill out the picture, describing the interaction of zoning, people, and local government and the advantages and disadvantages of zoning. It will detail what zoning involves, why people are for or against it, and how to work within its framework for the benefit of individuals and the entire community.

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YOU AND RURAL ZONING

Robert W. Snyder*

Introduction

To the typical resident of nonmetropolitan America, farmer and nonfarmer alike, rural zoning is still an unfamiliar, sometimes controversial, subject. Mention the word zoning in a casual conversation and it is likely to stir up notions of authoritarian government that don't rest easily for rural people accustomed to taking care of their own affairs. Although it might be a necessary evil for their city cousins, rural zoning, they frequently say, is something else.

With changing times, this attitude toward zoning has been challenged repeatedly by evidence of new problems that could have been prevented by the prompt enactment of zoning laws. Many rural communities have already adopted ordinances; most others are considering it.¹ Still, few local citizens thoroughly understand how it affects them and their community—some have accepted stories and rumors that are untrue.

Many questions about rural zoning will be answered in the pages that follow. Consider, for example, the following, which are covered in the indicated chapter:

Chapter 1.

- What land uses and practices does zoning regulate?
- How many zoning districts should your community have?

- Should townships, rather than counties, pass zoning laws?
- What does the planning advisory commission do?
- How do you get involved in the zoning process?

Chapter 2.

- Why is rural zoning sometimes needed?
- Will zoning prevent pollution?
- Does zoning protect, or reduce, property values?
- What is the real purpose of zoning?

Chapter 3.

- How does zoning affect farming?
- Can you zone out waterskiing on lakes?
- Will zoning prohibit draining a slough?
- Do zoning ordinances control septic tank installation?
- Will zoning reserve private property for public use?

Chapter 4.

- Why isn't zoning unconstitutional?
- Doesn't zoning benefit mainly the wealthy?
- Why can't we vote on zoning?
- Will the zoning administrator tell farmers what to plant?

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¹ The word "community" is used in the broad sense throughout this publication, referring to a composite of people who share common interests and are usually associated geographically.

CHAPTER 1. WHAT IS RURAL ZONING?

First of all, let's recognize that rural zoning as it is discussed throughout this publication is a form of land use regulation and control. It sets certain limits on what you as a rural landowner can do with your property and stay within the law. Some land use practices that are perfectly legal in an unzoned community can be performed only at the risk of a fine or other legal reprisal in a county or township having a zoning ordinance.

There is a second way to look at zoning. Let's also try it on for size: zoning is a way for a rural community to adopt certain standards for its own physical development and then require those who live in that community to live up to the selected standards. This approach looks at zoning from the point of view of the entire community rather than an individual landowner. Of course, landowners are part of the community, so both points of view are relevant. Landowners are directly affected by any restrictions on their own land use practices, but they also have a stake in how other landowners use their property. Residents who don't own land likewise have an interest in the community they live in and what it will be like to live there in the future. Of course, they may become landowners themselves someday and have an even greater concern.

Before we talk about the kind of regulations that come under zoning, two key points are worth highlighting. First, rural zoning has at its foundation a single basic purpose: to prevent private landowners from using their property in ways considered detrimental to the best interests of their own rural community. This statement is very important. Since zoning is designed only to restrict land use practices that are considered harmful to the community, zoning regulations do little more than require that all landowners conduct themselves as prudent, respected, and considerate members of the rural society. Keep this in mind when you engage in a discussion or an argument about zoning. A great deal of the misunderstanding about zoning can be traced to losing sight of this fundamental idea.

The second key point is that zoning is basically a local affair. Local political subdivisions, including counties, villages, and townships, get their authority to zone from the state legislature, usually through what is called enabling legislation. Once enabling legislation is passed, the state generally steps out of the picture. Except in shoreland and flood plain zoning, the state permits, but does not require, local units to regulate land use. Even for shorelands and flood plains, local units adopt a local ordinance, although certain minimum standards, developed by state agencies, must be observed.

As you proceed to reading about the details of rural zoning, keep in mind that regulations and stan-

dards discussed here are only suggestions. Some may fit the needs of your community and some may not. Slightly different measures could be very useful under some conditions. Zoning has been criticized for being too stereotyped, with many ordinances too much alike. The most effective ordinance is one that adapts zoning to fit local conditions, recognizing the goals and aspirations of local people. If zoning restrictions and standards proposed for your area don't fit the standard mold exactly, try to find out why. It may mean local leaders are imaginatively trying to work out an ordinance that truly fits your local situation. Such an effort should have a payoff to the whole community.

Two Basic Kinds of Regulations

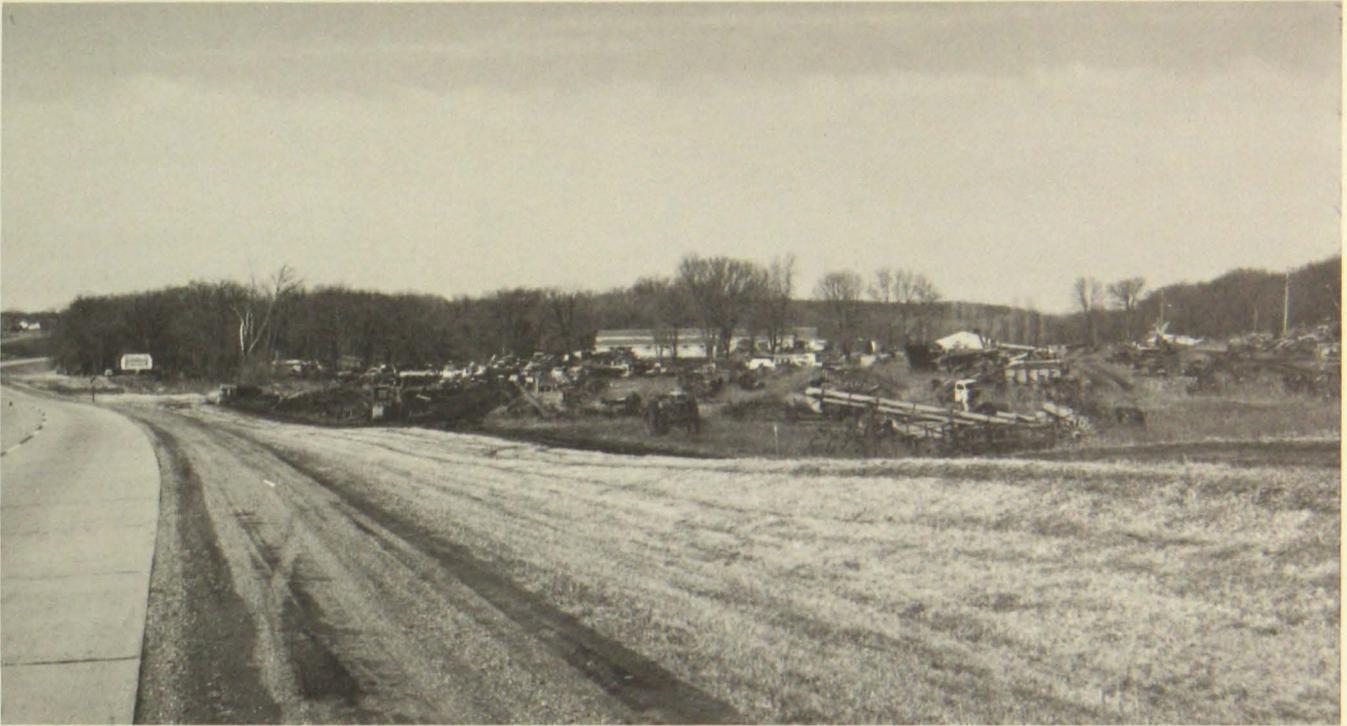
If you look at a zoning ordinance carefully, you will discover that it contains two kinds of regulations: those that vary from one zone or district to another, and those that are the same throughout.

Technically, only the first of these should be called zoning, which means dividing the total land area into geographic zones or districts and then applying different regulations or standards for each district. Any time restrictions and standards vary by geographic zones or districts within a single jurisdiction, zoning has occurred. Some land use regulations are of no value unless they differ from one zoning district to another.

The second type of regulation commonly found in zoning ordinances does not involve such a geographic division of the community. Some would argue that such regulations are not properly called zoning. This is true, if you insist on a strictly technical definition of zoning. But this is a situation where a strictly technical definition may do more harm than good. Let's look more closely at these overall regulations.

Instead of being organized by zones or districts, some regulations could be organized by land use or land use practices. One part of an ordinance might contain a set of regulations for all campgrounds, regardless of where they are located. Another might deal with all mobile home courts, a third with billboards, a fourth with junkyards, and perhaps a fifth would set minimum parking space requirements. If a community wishes, it can pass a zoning substitute—special regulatory ordinances for each of these land uses, provided state law permits.

Rural communities usually decide that they want both overall restrictions and standards and those that vary from one geographic district to another. So they include both types in their zoning ordinances. This avoids confusion by making any particular regulation both easier to find and harder to overlook.



What Kinds of Land Use Practices Are Regulated?

Although many specific land use practices are affected, almost all zoning regulations fit into four categories: those controlling land use; those that establish tract size and development standards; those that set up certain dimensional standards for structures; and a few special regulations imposing what are called performance standards.

Control Over Land Use

The oldest, most common, and probably most important regulation contained in zoning laws is control over the location of specific land uses. Under this type of regulation, land in a district zoned residential cannot be used for commercial or industrial purposes such as a factory, a drive-in, or a junkyard. If a farm is in an agricultural zone, it may not be possible to develop the land for certain nonagricultural purposes, such as a housing subdivision or a shopping center. Similarly, zoning lake frontage for residential or vacation home development might prohibit its use for a dance hall or tavern.

Land use regulations keep incompatible uses separated and protect the landowner and homeowner from the peril of nearby developments that may lower property value. They also protect the community from private developments that may put a sudden strain on roads, schools, and other public facilities.

The list of uses allowed in each zoning district includes those suited for the physical resources and the location of that district and compatible with each other. Use regulations frequently are controversial be-

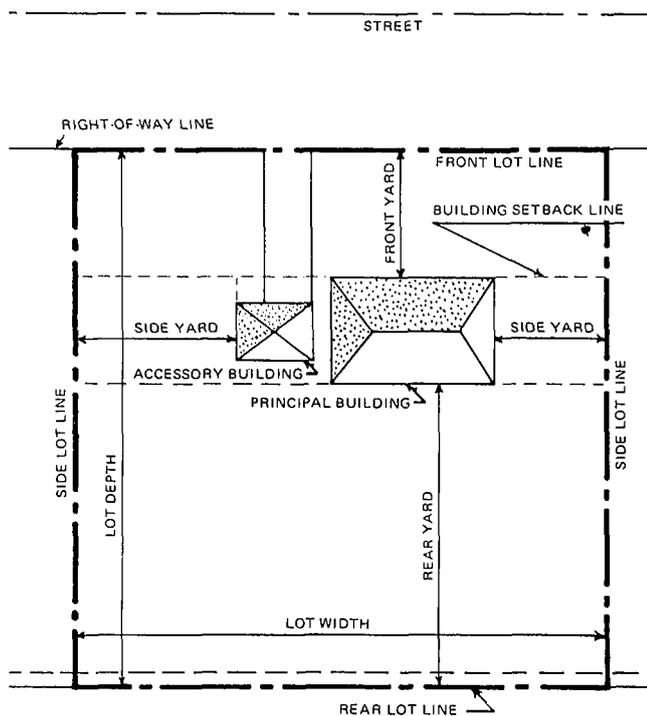
cause they may prevent a landowner from using or developing his property in the way he feels would be most profitable. This should only happen when such a development, though profitable to the landowner, would hurt neighboring landowners or the community.

Tract Size and Development Standards

The second category of regulations has to do with tract size and development standards. If you own a small lot that you intend to use for building a house, a 5-acre tract that you expect to sell for an apartment development, or roadside frontage that could be leased to a billboard company, you will probably be affected in some way by tract size and development standards. These regulations are not complicated, but are numerous and will affect most citizens.

Landowners building a house, for example, will need to have a minimum size lot, varying with the zoning district. They'll be required to have a minimum amount of street or road frontage and to locate the building to allow front, side, and rear yards of a minimum size. For example, to build an onshore lake cottage in a certain zoning district, a lot owner may need to use a half acre of land with 100 feet of frontage and to build the cottage 75 feet back from the water's edge, with side yards of at least 20 feet and a 20-foot backyard.

Another common tract development standard is the car parking space requirement. A lot for a private residence may be required to provide offstreet parking and turn-around space for one or more cars. Larger areas will be stipulated for multiple dwellings, restaurants, stores and other commercial establishments, based upon some measure of needed capacity.



LOT AREA= TOTAL HORIZONTAL AREA

LOT COVERAGE= PER CENT OF LOT OCCUPIED
BY BUILDING

Larger developments, such as apartment houses, churches, restaurants, and shopping centers will have different and more detailed standards than single family houses. So will tracts used for trailer parks, campgrounds, and junkyards, which often require a buffer area around their developed portions. Another type of tract development standard may set spacing and setback standards for signs and billboards along a highway.

Standards and regulations that affect the location of buildings and other structures on a parcel of property make up a large share of a zoning ordinance. They usually cause only minor changes in landowner plans, but they do keep structures from being placed where they will cause problems for others. And they tend to curb profit-motivated development plans which could mar a pleasant community environment.

Structural Dimension Standards

The third category of zoning regulations and standards controls structural dimensions of buildings and other structures, such as fences and billboards. They may set both maximum and minimum dimensions. A

given ordinance for example, may have maximum height limitations for billboards, fences, and buildings, maximum size limitations for billboards, and minimum floor space standards for new homes.²

Structural dimension standards are less numerous and no more complicated than tract size and development standards. They are used to improve the future appearance of a community (sign and billboard controls) and to prevent tall structures from restricting sunlight and air movement and thus reducing the neighbors' enjoyment of their properties.

Special Regulations

Most zoning ordinances provide for applying a few special regulations to make specific land uses or developments more compatible with their surroundings or less damaging to the environment. These are often referred to as performance standards. Among other things, they may be used to reduce soil erosion, prevent water-caused damage to neighboring properties, prohibit excessive glare resulting from the careless use of lighting devices, and outlaw unreasonably high levels of noise. Performance standards are particularly useful for large commercial and industrial projects that receive special attention in zoning administration.

What Types of Zoning Districts?

Before local officials can adopt a suitable zoning ordinance, they will have to face up to the question of how many and what kinds of zones or districts are needed in your community. Some communities have found that only two or three districts are sufficient. In other communities, three times that many may leave some citizens still unsatisfied.

Let's consider some of the kinds of districts that might be established and mapped to meet your community needs. It's very important for the reader to keep in mind that the name given a particular district is used only for the sake of convenience and may not be very descriptive of its actual use. A recreation zone, for example, will contain more than public parks and recreation areas. It most likely will include commercial recreation, such as resorts and shooting preserves; private personal recreation, such as vacation homes and rural residences; and private group recreation, such as Scout and church camps. But it probably will also contain certain nonrecreational uses, such as forestry or farming. So the label, recreation zone, merely indicates in a general way the predominant intended future use. The complete zoning ordinance must be read for full details.

Agricultural Zones. These are probably the most common zones found in rural counties. They are areas

² The minimum floor space standard is sometimes controversial. It may be illegal if the standard is set too high and used to keep out lower income families. As a practical matter, floor area minimums are usually set below normal living requirements and exclude only the tiny shack. They may need to be adjusted for vacation cottages or second homes.

of productive farm land where continuation of farming is the most desirable use from the standpoint of the community. This is encouraged by limiting the number and location of rural residences, which mix well with farms only if they are some distance away from many farming activities. Utility substations and dog kennels are examples of uses that can be mixed with farming in an agricultural zone.

Forestry Zones. These are located in areas not suited for farming and often combine forestry with some kinds of recreation. Houses and seasonal cabins may be prohibited to decrease the fire hazard. Excluding farming keeps people from trying to cultivate land that past experience has definitely shown to be unprofitable. Forestry districts are usually in relatively remote locations where pulpwood and timber production, processing and sales is one of the mainstays of the local economy and recreation pressures are light.

Recreation Zones. Recreation zones may be much like forestry zones except that they include areas more adaptable to various kinds of recreation and are usually closer to a city. They often are multiple-purpose zones where recreation, only one of several uses, is particularly important compared with other zones. Giving recreational development some priority in a zoning district may be especially advantageous for areas where recreation is important to the economy. With the boom in outdoor recreation, recreation zones are becoming more popular. In resort areas, they may be subdivided into recreation-commercial and recreation-residential. Near cities, they are sometimes used to encourage the preservation of open space.

Residential Zones. In residential zones, developments that can lower the value of private homes and residences are kept out or required to have a buffer strip around them. There are many variations, especially close to urban centers: the most common subtypes are districts that exclude apartment houses and those with large lot size requirements, sometimes called country estate districts. Many sociologists feel that it is a mistake to have several kinds of residential districts because sameness can develop ghettos of the wealthy or middle class as well as the poor and this contributes to misunderstanding and social prejudice. A variety of residential districts are still found in many areas, however, because this is one way to keep the density of development in line with the capacity of roads, schools, and other public facilities. In residential zones, some home occupations and neighborhood stores for convenience shopping are usually allowed.

Lakeshore Residential Zones. These are special residential districts with regulations especially designed to keep lakeshore frontage and the nearby area attractive and to prevent lake water pollution. These zones are becoming more popular. Lake frontage is getting more scarce and it is in the interest of the community to prevent helter-skelter and detrimental development. Because of the interest of the state in preserving water



Lakeshore residential zones are common in Minnesota.

quality and protecting the important natural resource represented by bodies of water, state law now requires these areas to be zoned.

Commercial Zones. These are areas set aside for businesses, such as stores, office buildings, bowling alleys, taverns, entertainment, and eating places. They need to be conveniently located near residential areas but where they don't impede traffic. In rural areas and especially in resort areas, commercial zones are used to contain commercial uses rather than have them haphazardly scattered over the landscape. It is quite a problem to locate them properly.

Industrial Zones. These areas are large, flat, and accessible enough to labor and transportation to make good sites for manufacturing and other industries. New plants often need large acreages and tend to locate where they know that other uses will be kept out. These zones are usually near cities and villages where they can be provided with public utilities and other community services at a reasonable cost.

Flood Plain Zones. History and hindsight tell us that putting up houses and other buildings in areas subject to flooding was a mistake. Unnecessary property damage, health problems, and physical harm to occupants have often resulted. The creation of flood plain zones is one attempt to prevent similar future mistakes. Some recreational, agricultural, and other uses not involving expensive structures or sources of serious water pollution are normally allowed. In some sub-types where flooding is infrequent, buildings especially designed to withstand flooding may be constructed. Because of the threat to life and property that results when developed areas are inundated, Minnesota law now requires the creation of flood plain districts with appropriate restrictions.

Lake Surface Zones. If your county includes lakes that are being used intensively, lake surface zoning is worth considering. There are three basic types: partial lake zones where some activities, such as water skiing or high speed motor boating, cannot be pursued in certain parts of a lake surface; whole lake zones, which apply certain regulations to some lakes but not to others; and time zones, which prohibit certain activities in parts or all of designated lakes during specified hours.

In some states lake surface zoning is already in practice. It has not been thoroughly tested in the courts, but most experts agree that it is a reasonable application of the zoning powers of local government. A 1971 Minnesota law provides specifically for lake surface zoning as a cooperative effort of the Department of Natural Resources and local units.

Special Purpose Zones. These are zones around airports, public parks, military reservations, and other installations where there is a special reason for the application of certain regulations or standards. More and more counties are finding a need for special purpose zones—especially around airports.

Planned Unit Development Zones. This is a relatively new type of zoning district encompassing an area planned and developed as a unit rather than piecemeal. Sometime called cluster developments, zone boundaries are usually based on the landowner's request although a minimum size may be stipulated by the zoning ordinance. Most existing planned unit de-

velopments include dwelling units plus some recreational facilities for the exclusive use of residents. Planned unit developments, called PUD's for short, can involve pooling open space as an alternative to larger building lots or the sharing of high value lake frontage property by several offshore lot owners.³

These are examples of zones you may want to think about establishing in your community. How many and what types will be needed? How large should they be? What restrictions and standards should be established for each? These matters have to be decided by rural community residents for themselves.

Such questions should not be answered in the absence of facts, however. Before a community enacts a zoning ordinance, it should make a study of local conditions and reach some consensus about what kind of future conditions are likely and desirable. This is part of a process known as comprehensive land use planning. Comprehensive planning, properly done, should be a great help to the people of a rural community by giving some guidance on the number, kinds, and extent of zoning districts that are needed.

Besides knowledge about local conditions and goals and aspirations of local residents, there are two basic principles that can be useful in setting up zoning districts. These might be called the principle of compatibility and the principle of proportionality.

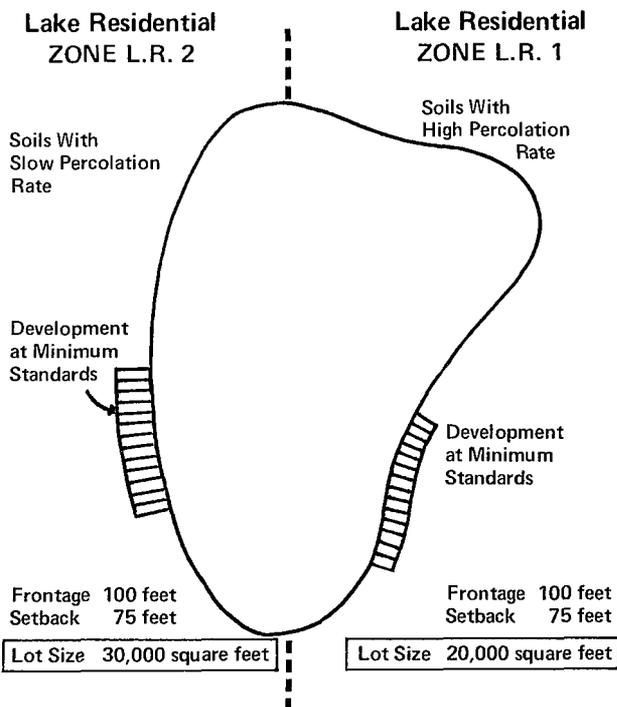
The Principle of Compatibility

This concerns the relationship between a specific land use or land use practice and other land uses or practices.

Consider a situation where there is a need for two or more different land uses that logically should not be located side by side. This immediately suggests creating two or more zones—perhaps one for each of the incompatible uses. As an example, both entertainment places, such as taverns and drive-in restaurants, and vacation homes may be needed in a rural lake community. Obviously, these land uses are complementary if they are located within the same general larger area, but incompatible side by side. The solution, and one application of the principle of compatibility, may be to create two zoning districts, one called lakeshore-residential and another called lakeshore-commercial.

The Principle of Proportionality

This is another basic concept that can be used in setting up zoning districts. Within a geographic area that will be subject to a particular zoning ordinance, there may be some sections in which fairly high standards, or, putting it another way, fairly tight re-



³ In some ordinances, proposals for planned unit developments are approved following an individual detailed administrative review rather than treated as a separate zoning district.

strictions, are needed. In other sections, land owners can be free to operate with less restriction or lower development standards. This situation seems to call for two zones: one with high and one with lower development standards. Thus restrictions are imposed only in proportion to the need. No landowner has to be bothered with controls that are not logically necessary.⁴

An example could be an interstate highway interchange being located in one corner of a county. Relatively few zoning restrictions might be needed in much of the county, but unless the area near the interchange is subject to more restrictive controls, undesirable land use practices are almost sure to occur.

The second application of the same principle involves harmonizing land use with natural land characteristics. Consider this example. An entire lakeshore area could be placed in one lakeshore-residential zone. If individual septic tanks are to be used, however, a larger sewage disposal field will be needed for houses or cottages on tight (slowly permeable) soils than for those on sandy (rapidly permeable) soils. Thus appropriate minimum lot size requirements might be larger for the former and smaller for the latter. If tight soils are concentrated on a certain part of the lakeshore, the easy way to do this is to create two lakeshore-residential zones instead of one.

The principle of proportionality suggests that the greater the number of zoning districts, the better, since this will allow different circumstances to be recognized by varying degrees of regulation. This can be done, but only to a point. The more districts created, the more complicated the zoning ordinance becomes. A complicated zoning ordinance is more difficult to understand and more costly to develop, administer, and enforce. Many local communities have decided that a compromise is best. The principle of proportionality is used largely to create districts that recognize significantly different circumstances. Prezoning studies that consider future and existing demands on a community's resources and pertinent natural features (such as soil type and water table) are necessary to accomplish this intelligently.

Zoning By Whom?

Right now the reader may be saying, "this is all very nice and interesting, but I'm really more concerned about who sets up all of these regulations and standards. If this is done by someone who understands our community's wants and needs, it may be ok. If some outsider does it, I'm not so sure. Who decides about these rules and zoning districts that I've been reading about?"

To get at that question, it is useful to break it down into two parts. First, which level of government should be responsible for rural zoning? Second, within the political subdivision, who is involved with making zoning decisions?

In rural areas, there are two levels of government that could adopt zoning ordinances: townships and counties.⁵ Zoning at both levels has been tried in a number of states, including Minnesota, so past experience can give us some guidance. This experience generally confirms the judgment of zoning experts that in most instances the county level of government is best suited to adopt and enforce a rural zoning ordinance. Certainly, a county board must have the support and cooperation of township officials if zoning is going to be effective. Township officers represent rural people living in all parts of the county, and zoning, to be successful, must consider the needs of everyone. But usually the actual ordinance should be passed at the county level.

A possible alternative is for several townships to join in developing a single ordinance or separate ordinances in a coordinated, cooperative effort. Administration and enforcement could also be accomplished jointly, by hiring one administrator working out of one office to handle zoning for a block of townships. Most of the advantages of county zoning would be present under this arrangement, but it would need to be a fully coordinated effort to be successful.

Why Zone at the County Level?

There are good practical reasons for handling zoning at the county level. Most of them stem from the fact that the county is a larger unit. This means: (1) It has more revenue raising potential than the township; (2) it can better afford to hire professionally trained people to assist local people in drawing up an ordinance; (3) it can more easily justify hiring a full-time zoning administrator; (4) it is more accessible to the county attorney if legal enforcement becomes necessary; (5) it is more adaptable to long range comprehensive land use planning; and (6) it is able to avoid zoning conflicts that could arise, if, for example, one township were to set up a commercial zone next to a quiet residential zone in another township.

There are, of course, some disadvantages of county zoning. It is farther away from the people and it may be harder to get consensus on a zoning ordinance. Some people may feel that they are left out, that their views have not been considered. Much of this can be avoided. As suggested, township officials should have a hand in zoning. There are a number of other ways, discussed later, that local citizens are involved. Today, thanks to better roads and cars, improved telephone service, and television, county government is closer to

⁴ Of course, restrictions in one zone may tend to drive undesirable land uses into other areas. This fact must be considered when developing the zoning ordinance.

⁵ In some areas rural townships have been incorporated as villages. Where this is true, ordinances must be adopted by the village, since county ordinances do not apply within municipal boundaries.

the people than township government was 50 or 60 years ago. It is close enough to be responsive to the local rural community, but large enough to make effective planning and zoning administratively feasible and efficient.

County government, of course, represents urban centers as well as rural areas. This is both a handicap and an advantage. It is a handicap because rural landowners may feel that their property is being zoned and restricted by an elected board that does not sufficiently represent their interests. It is an advantage because in many instances municipal residents are justifiably concerned about what goes on in rural areas beyond their boundaries, since it may have an indirect effect on future conditions within municipalities. Consider, for example, the recreation-entertainment oriented village where business depends heavily on customers attracted to the area by a rural resource, such as a lake or river, that needs to be protected by zoning controls.

Will Township Zoning Work?

Township zoning has been tried, and sometimes it has worked. But lacking the advantages of the county, township zoning has seldom been fully satisfactory. Often it is township officials in zoned townships who are the first to support county zoning.

Township zoning is confusing to landowners, especially new residents. Some townships will have a zoning ordinance, others will have only a few specialized regulatory ordinances, while still others will have almost no controls. Each zoning or regulatory ordinance will be somewhat different from all the others. It may have different zones, different restrictions, different development standards, different procedures for making complaints, and different officials to contact to obtain permits. This makes it especially difficult for developers who have to operate in a hodge-podge zoning situation: just finding out who to talk to can pose a problem.

Even under the best conditions the success of township zoning can perhaps best be summarized by paraphrasing Abraham Lincoln: Township zoning will

work in all townships some of the time and in some townships all of the time, but not in all townships all of the time.

Generally speaking, township zoning's major contribution may have been its role as an intermediate step between no zoning at all and zoning at the county level. From here on rural zoning will be considered the same as county zoning. There still may be instances, of course, where township zoning, or joint multi-township zoning is the best solution to a local situation.

Who Is Involved in County Zoning?

As with most things that we do together through governmental process, rural zoning does not happen overnight. It often takes 2 or 3 years after a county has decided to move toward zoning before an ordinance is passed. During this time at least four groups become involved:

- the county planning advisory commission,
- the professional planning staff,
- the citizens of the county, and
- the board of county commissioners.

The county planning advisory commission. This group consists of five to eleven members appointed by the board of county commissioners to represent local residents. The commission ultimately recommends a specific zoning ordinance for adoption. In preparation, it may carry out studies related to such items as land use, population growth, and economic development, all designed to develop a comprehensive land use plan.

Commission members need to acquire a thorough understanding of zoning and other regulatory measures. Usually professionally trained planners are hired to assist the planning advisory commission. County officials and employees, such as the county attorney, land commissioner, highway engineer, assessor, and the county extension agent also may help. Those who are chosen to be on this commission will find that the job is time consuming and difficult, especially for people who receive no pay except their expenses. It's also a very important job; the success or failure of zoning in your county depends heavily on how well the planning advisory commission performs.

Professional planning assistance. This assistance may consist of the services of only one planner or it may involve several planners with a complementary office staff. Sometimes they are hired on a full-time basis and include a planner-in-residence. Sometimes professional help comes through a planning consultant firm that works in several counties at once on a short term basis. In all instances professionals need to work very closely with the planning advisory commission while conducting studies, developing a comprehensive land use plan, writing suggested drafts of the zoning ordinance, including a zoning map, for the commission to consider. The professional planner brings needed



expertise into the zoning process, while local citizens provide a good share of the judgment. Obtaining professional planning assistance that will do a good job under conditions in your county is an important step in the planning-zoning process.

The citizens of the county. Before your county board can adopt a zoning ordinance, the planning advisory commission is required to hold a public hearing, giving every citizen a chance to take part in zoning decisions. The purpose of a public hearing is to receive constructive criticism, discover flaws in the ordinance that may have gone unnoticed, and learn of local situations the planning advisory commission may have overlooked. Unfortunately, many public hearings are characterized by arguments based on a misunderstanding of the purposes of zoning. Careful listening will help you to sort out false rumors and allegations from valid comments and objections. Making your views known, speaking as an informed citizen, will perform a real service to your community. After the hearings, suggestions from witnesses may be incorporated in the ordinance before it is recommended to the county board for adoption. The county board also may advertise the time and date it intends to act on the recommendation; this provides another opportunity for citizen comment.

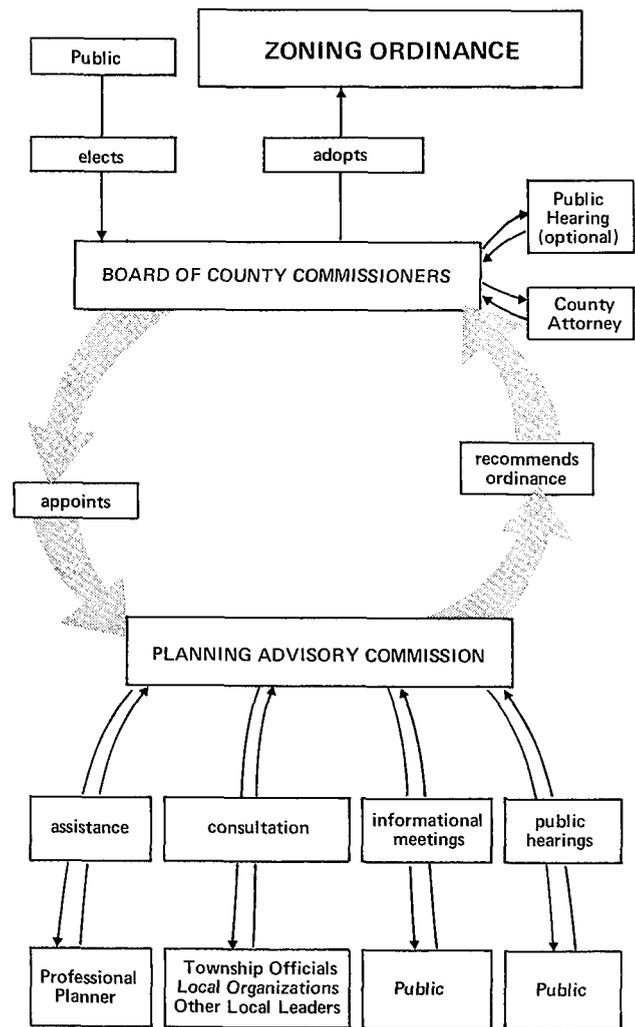
Probably there will be several other occasions for you as an individual citizen to get involved. Your town board may hold special meetings to get reactions to zoning proposals. The planning advisory commission or the county extension agent may hold a series of educational-discussion meetings in different parts of the county. There should be plenty of opportunities for individual citizens to keep abreast of current zoning developments. Watch your newspapers and listen to the radio for notices of meetings and hearings.

Another method for influencing zoning decisions is through membership in one of several local interest groups present in every community. The expressions of such organized units as farm organizations, sportsman clubs, taxpayers associations, and garden clubs are often an important contributing factor in rural zoning.

The board of county commissioners. As elected representatives of the citizens throughout the county, county commissioners have the ultimate responsibility for adopting an ordinance that best reflects the needs of the entire community. A zoning ordinance has no legal force until it is officially enacted into law by resolution of the county board. The board may accept the recommended ordinance in its entirety or make whatever additions, deletions, or changes they think necessary. With few exceptions, the decision to zone

and the choice of zoning districts, standards and regulations are local options.⁶ Although the advice and recommendations of other groups and individuals are important factors, county commissioners you elect must make the final decision.⁷

Who is involved with developing and passing a zoning ordinance? Almost anyone who wants to be. Many local citizens are involved: some by voting in a county board election; some by actively supporting or opposing specific zoning regulations or standards, often through local organizations; some through membership on town boards, the county planning advisory commission or the board of county commissioners. As a local citizen, you can be involved, but it may be up to you to take the initiative.



⁶ Shorelands of public waters are required by the state to be subject to county ordinances since July 1, 1972. This is to protect the statewide public interest in these valuable natural resources. Even under this program, most of the zoning options are determined by the local county board as they are in county-wide zoning.

⁷ Of course, zoning ordinances, like any legislative enactment are subject to challenge in the courts. Such challenges usually involve specific standards or restrictions rather than entire ordinances.

CHAPTER 2. THE PURPOSES OF ZONING

Knowing the basic features of zoning, this is the point where we need to ask, and have answers for, the most crucial question that can be raised about rural zoning: why? Why should we have zoning in rural areas? Why should a zoning ordinance be adopted in your community, by your board of county commissioners?

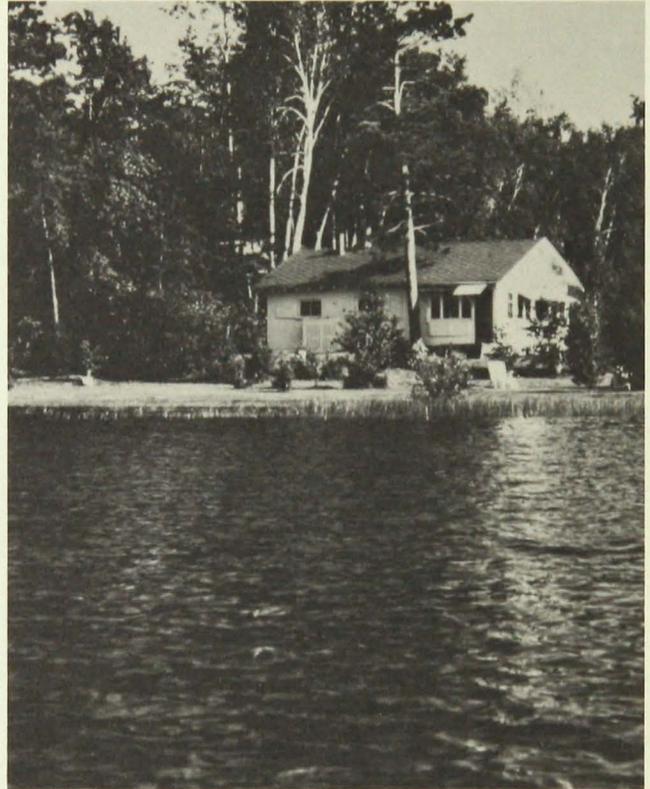
These are especially important questions because if they can't be answered to your satisfaction the rest of this bulletin might as well find its way into the nearest trash can. If there is absolutely no reason to consider zoning in your community, reading on will be a waste of time. The opposite also is true. If there are good reasons for rural zoning in your area, the more you can learn about it the better. As a responsible citizen, under a democratic system where every voice counts, you owe this much to your community.

What could rural zoning do to improve conditions in your county? If you ask those who have given that question some careful thought, you'll probably find no two answers exactly alike. Don't let this be discouraging. All of the slightly different answers may be perfectly legitimate. The fact that there is more than one correct answer points out a basic truth about rural zoning: no one can tell you specifically what rural zoning would mean to your community without knowing a great deal about the community itself. Gathering information and putting it to use in the comprehensive planning process is of paramount importance. It is one of the main reasons for a county planning advisory commission and why the commission gets professional planning assistance.

Why Zone?

This bulletin obviously cannot give you specific answers about zoning for every rural county in Minnesota but it can make some general statements that seem to apply to much of rural Minnesota. And it can dig beneath the surface to help you see how they might apply to specific circumstances in your own community.

Most of the reasons given for rural zoning boil down to one general statement: zoning is needed simply because families and individuals are more interdependent—dependent on each other—than in any previous period. In cities and urban areas, inconsiderate individual activity and a high level of interdependence have caused problems that led to zoning and other controls some time ago. Now similar problems have come to many rural areas, where some of the most striking recent examples of rising interdependence can be found.



More second homes mean more interdependence, more chance for conflict.

Why has increasing interdependence occurred? Except for some counties, usually those with a sizable city or village, increasing rural interdependence has not been due to a larger rural population. The number of people living in the country, including farm families, in nonmetropolitan counties in Minnesota, decreased by 19,000 or 1.8 percent from 1960 to 1970. The number decreased in 52 counties and increased in 25.⁸ Even where the population has been stable, or even decreased, society is more mobile. We drive more cars a greater number of miles. We travel farther for shopping trips. And, farmers sometimes use cropland a considerable distance away from farm headquarters. All of these add up to more interdependence. Where these trends are combined in the 25 nonmetropolitan counties with more rural people, interdependence is rising more sharply.

Increasing rural interdependence is due in part to dramatic increases in the number of city families who have second homes in the country. These are concen-

⁸ This excludes 10 counties classified as metropolitan and is based on population census data.

trated in certain lake-studded counties or those bordering lakes or rivers. In some rural areas summer homes outnumber year-round homes. Their numbers more than doubled statewide from 1954 to 1967.⁹ The degree of interdependence among seasonal residents and between them and local citizens has probably increased even more than that. Conflicts over the use of public facilities, roads, and some natural resources are rampant in such areas.

Increasing rural interdependence is due in part to less easily documented increases in the number of persons visiting or traveling through rural areas. Inter-city travel rose 57 percent from 1950 to 1960, when it was estimated at 738 billion passenger miles. By 1976 it is expected to be more than twice the 1960 figure.¹⁰ Traffic road counts on major highways in Minnesota leading to resort areas have increased anywhere from 17 to 35 percent in the 10 year period ending in 1969. More people, even though transient, mean more opportunities for conflict and a greater chance that you, as a rural resident, will be affected.

All of these phenomena are related to many things, among them the exploding interest in and enthusiasm for all forms of outdoor recreation. All of them affect land use and development. All of them have resulted in a rising interdependency in rural areas.

The Nature of Interdependence — Outside Effects: Beneficial and Harmful

Interdependence, in more practical, down-to-earth terms, means that how one landowner uses his own property is of concern to other citizens because it affects their welfare as well as his. These outside effects, called externalities by economists, may encroach only on neighboring property or affect an entire rural community. The important thing to remember about outside effects is that they do not bear directly on the interests of the landowner himself. Because the landowner is not affected, he will not necessarily consider these consequences when he decided how to use or develop his property—and other people may get hurt. By setting and enforcing development standards and land use regulations, rural zoning requires landowners to recognize some of these outside effects, particularly the harmful ones. It once was said that zoning is nothing more than the legal enforcement of the golden rule. There may be much truth in such a statement.

Just to say that zoning causes a landowner to take outside effects into account still leaves a lot of questions unanswered. Why, for example, get so concerned about outside effects resulting from land use and development? The modern world is full of outside ef-

fects. Almost everything we do has some kind of side effect for other people. Even being idle may have the effect of giving someone else a job. Before seeing what is so special about outside effects controlled by zoning, let's consider the basic nature of outside effects in more detail.

Beneficial Outside Effects

Not all outside effects are harmful. A bowling alley in the midst of a residential area has very apparent harmful outside effects. On the other hand, the open space and scenery provided by a farm or a golf course has some obvious attractiveness for nearby residents—a beneficial outside effect.

Mixed Outside Effects

Some land use practices clearly cause harmful outside effects for 'A,' but simultaneously causes beneficial outside effects for 'B.' For example, an auto graveyard could be a handy place to get used car parts, yet quite a nuisance to a next door neighbor. Billboards don't make scenic highways, but they may tell travelers about the local availability of services and restaurants. Off-street parking for restaurants keeps the highway clear for traffic, but indirectly increases the price of restaurant meals.

Beneficial Now, Harmful Later

To complicate the picture further, the same development may have beneficial outside effects in the short run, but harmful effects in the long run. Consider, as one example, lakeshore cabins on lots too small for adequate sewage disposal. At first, most effects on the county community are beneficial. Only part of the total lake frontage is used up and seasonal residents may bring badly needed money into a sagging local economy. Some pollution or nutrient enrichment of the lake may result, but not enough for concern. This goes on for several years. More frontage is developed. More outside money flows into the area. More sewage effluent is leaked into the lake. Finally, one day, the owner of a seasonal home comes to a county board meeting and complains bitterly that the lakewater is turning green with algae. He's unhappy, wants the water tested for contamination, and cleaned up. Nothing is done, largely because what can be done will involve considerable time and expense.

Next year, the same seasonal home owner comes to another county board meeting. Now he represents 50 other owners, organized in what they call a lakeshore owners association. He again demands a lake cleanup. This time, under pressure of numbers, the board acts.

Because of small lots, individual disposal systems cannot be expanded adequately. A public sanitary

⁹ Minnesota's Lakeshore: Resources, Development, Policy Needs, Summary Report of the Minnesota Lakeshore Development Study, John R. Borchert, Director, 1970 (1950-60).

¹⁰ Goldenthal, A. James, "The Future of Travel in the United States," as quoted in the Outdoor Recreation Resources Review Commission Study Report 23. *Projections to the Years 1976 and 2000: Economic Growth, Population, Labor Force and Leisure, and Transportation*, Washington, D.C. 1962.



County boards listen to petitions from taxpayers.

sewer seems to be the only logical answer.¹¹ Because lake frontage is only partly developed at scattered locations, the cost per cottage is high. Many cottage owners have had the expense of investing in costly private disposal systems. Rather than pay the assessment, some owners may sell out, even though the need for sewerage reduces the sales price. Mortgages may be defaulted. The area gets a bad reputation for the way seasonal homeowners have been treated. The flow of outside money decreases. Eventually everyone suffers.

How We Feel Outside Effects

Before we see how rural zoning considers these matters let's look at how harmful (and beneficial) outside effects are eventually felt by community residents. There are at least four different ways a landowner or a citizen can feel outside effects related to land use and development: effect on value of neighboring property; effect on economic development; effect on property taxes; and effect on the physical environment. Each of these is related to the other three.

Effect on value of neighboring property

This is the only one of the four with a direct impact on a particular landowner or homeowner. An ex-



Mixed land uses can cause harmful outside effects for some homeowners.

ample is the lakeshore cabin owner who suddenly finds the place next door has become a 24-hour restaurant. A similar situation develops when a trucking firm, a junkyard, or some other industrial or commercial land use locates in an area of nice year-round homes. Only a few homeowners will be hit by this type of outside effect. You may be one of the lucky ones who isn't. For those who are hit, the result can border on financial disaster. For many, purchase of a home is the largest single investment in a lifetime. There are few ways an individual homeowner can protect himself against this kind of loss. Those that are available, such as ownership of a buffer zone of open space, are often expensive.

Effect on economic development

This has an indirect effect on individual citizens, but some may be affected much more than others. Likewise, in some rural communities this type of outside effect may not be of great consequence, while in others, such as those where a prosperous agriculture is being threatened by extensive residential development, the situation is more critical. For a clear example of a situation where outside effects on economic development are significant, consider any rural Minnesota county that depends heavily on recreation, tourism, and seasonal residents for local jobs and income. Landowner actions that make the roadside less attractive, pollute lakes and streams, threaten the value of lakeshore cabins, create traffic slowdowns and hazards, and reduce in any way the enjoyment of the recreationist and the seasonal homeowner can do substantial damage to the community's ability to sustain economic growth and development. In other areas, where recreation is not an important source of economic growth, sites for manufacturing plants may be chosen with some of the same considerations in mind. In rural counties, more than in urban centers, zoning to prevent harmful outside effects that hinder economic development is rapidly increasing in importance.

Effect on property taxes

This is a category of outside effects that is particularly easy for local government officials to recognize. When property is developed that is more costly to serve with roads, water, sewer, schools, police and fire protection, and other government services, the taxpayer eventually feels the pinch. If lakeshore values go down because of lake water pollution, taxes on other property must go up or the level of public services must be reduced. When a new highway has to be built because an existing one has become useless for rapid through travel, public costs go up — and so do property taxes. These also hit the seasonal homeowner — when taxes go up, he starts to cast a wandering eye at other areas.

¹¹ Another possibility may be the use of holding tanks, which are pumped out periodically. Technology and cost factors are changing continuously.



Development along this county highway means the public must accept restricted speeds or use tax dollars to build more roads.

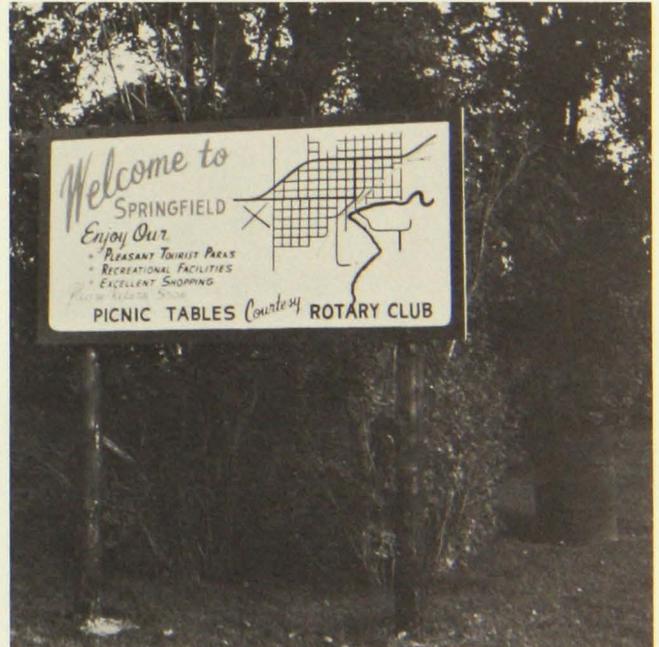
Higher property taxes don't affect any one homeowner nearly as much as having a dance hall or a bowling alley built next door, but they indirectly affect everyone in the community. In a time when property taxes seem to be a universal problem, tax increases due to the outside effects of unwise land use and development cannot be discounted as inconsequential. Careful zoning can help keep these at a minimum.

Effect on the physical environment

Many of the physical features of every community depend heavily on how privately used land is used and developed. A drive through the countryside will show anyone that some places are more attractive than others. Certain land use practices clearly do not contribute to a pleasant environment. Accumulations of junk and trash, hodgepodge roadside development, the billboard alley, the cluttered up lakeshore, the polluted lake or stream, and the road congested with weekend traffic may all become part of the physical environment of your home community, if they haven't already.

The outside effects of land use and development decisions made by you and your fellow citizens play a large part in determining whether your community is one you can be proud to live in, one you can show your visiting friends or relatives with pride — or one you have to make excuses for. Unfortunately, the most dissatisfied and conscientious landowner can do very little about this by himself. The outside effects themselves may be almost impossible to measure. But in a time when society is getting more and more concerned about the "quality of life," the physical living environment can no longer be ignored.

It is well to admit that some harmful outside effects simply don't amount to enough to worry about, or are just a matter of personal preference. You may, for



A study in contrasts: shop in Raymond (above) and Welcome to Springfield.

example, not like the color your neighbor painted his house; or you may feel that everyone should mow his lawn more often. But this is really just being "pernickity." Zoning is not intended to control items that are simply matters of personal preference.

Let's also admit that some harmful outside effects probably are inevitable if we are going to use our resources intelligently. Some agricultural odors are almost unavoidable in farm country, for example, and we can't enjoy water skiing without making waves and noise. Sometimes we adjust to harmful outside effects temporarily, knowing that they will last only so long. We put up with many harmful outside effects simply because the American way of life provides that, within reason, everyone is free to pursue his own happiness in his own way.

But many harmful outside effects relating to land use and development have certain distinctive characteristics. First, they are long lasting — once land has been developed for a particular use it continues in that use for an extended period of time, regardless of its damaging effect on others. Second, as we have seen, land use may undermine sizable investments representing a lifetime of savings for innocent citizens who just happen to be unfortunate enough to get caught. Third, they often bear indirectly on large numbers of people — sometimes entire communities. Fourth, they result from activities that are not necessary for the livelihood or the happiness of those who undertake them. Fifth, and perhaps most important, they are often the result of activities that prudent, respectable, and thoughtful landowners would not engage in anyway, simply because of their adverse effects on fellow citizens.

It is the harmful outside effects due to these types of land use and development activities that zoning seeks to keep to a minimum. Landowners who engage in such activities are unconcerned with their effect on fellow citizens, because they don't care or because they are unaware of the problems they are causing for others. Many times it is both.

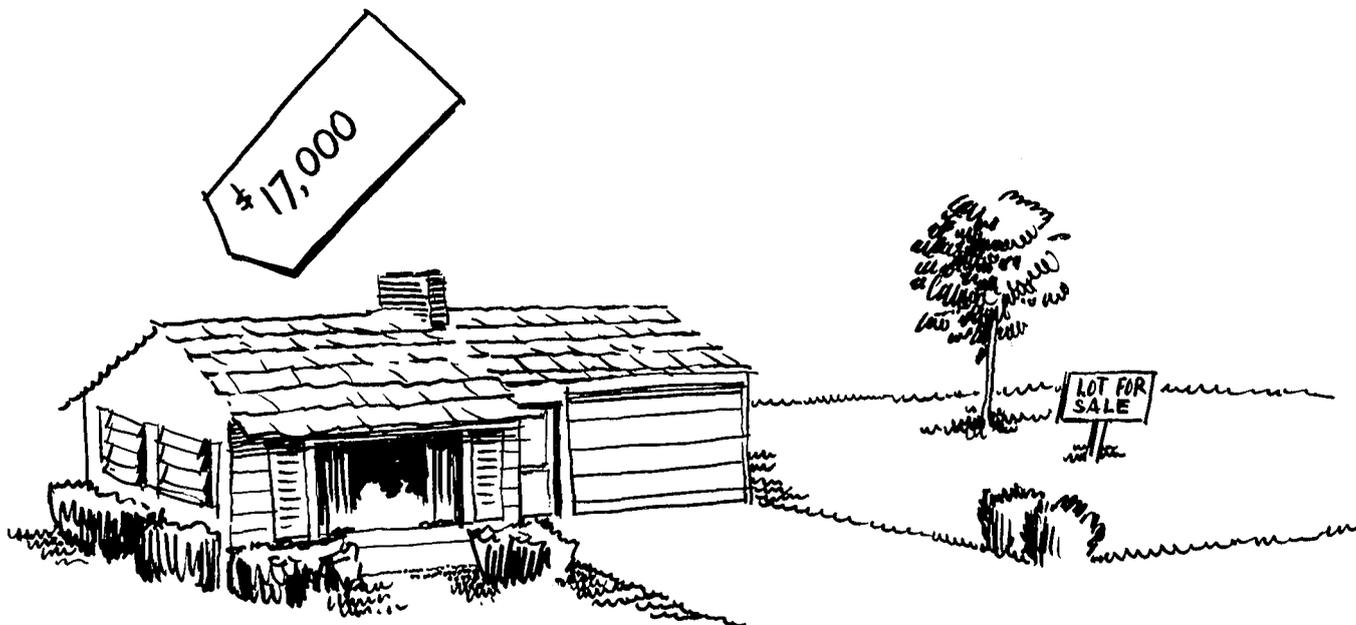
Outside Effects and Zoning

What can zoning do about these kinds of harmful outside effects? Obviously, not as much as some overzealous promoters of zoning claim. Zoning is not going to create an ideal world because, for one thing, everybody's concept of an ideal world is different. But zoning doesn't have to solve all the world's problems to be worthwhile. Carefully considered zoning ordinances can be used to make a more pleasant life, provided certain principles are followed.

Look to the long run. Zoning standards and regulations must reflect concern over the long run development of the community. Zoning can be used to avoid situations in which the chances for short run gains are seen, but the equally large chance of long run losses are overlooked. In this context, zoning is a close relative of conservation. It opposes unwise, shortsighted exploitation. It favors the wise use of resources over time.

This concept is not without difficulties in a changing society. If zoning standards and regulations are based on a well done comprehensive plan, the chances for mistakes are reduced, but some are probably inevitable. The problem is that we'll probably make even more mistakes if we rely entirely on our natural tendency to concentrate on the present and let the future take care of itself. Zoning, taking the longrun perspective, looking at the future based on the present, should help us to counter-balance such shortsighted and human tendencies to err.

Recognize both harmful and beneficial outside effects. Successful zoning has to recognize beneficial outside effects as well as harmful ones. If we are



Without zoning protection a vacant lot next door can pose a threat to this homeowner. See page 19.



Mobile homes can provide a very attractive housing alternative.

smart, we can have our cake and eat it as well. Lakeshore cottage owners find it convenient to have shopping and entertainment places nearby, but don't want them next door. So we can set up several separate zones within fairly small areas, (one for cabins, another for commercial uses, etc.) and we can allow small convenience stores in residential zones, but require them to provide parking spaces and screening from neighboring cabins or residences. Rather than eliminating junkyards, depriving the community of their convenience, we can set aside areas where other "higher" uses, such as rural residences, are not suited and require that all junkyards observe certain setback and screening requirements. We don't simply outlaw billboards, but we do set certain standards as to location, spacing, size and, where appropriate, color and shape. We allow mobile homes, so that this housing alternative is available to local residents, but require them to be properly located on adequate-size, landscaped lots or in well laid out and attractive mobile home parks.

Zoning, correctly used, should not narrow the range of social and economic opportunities that are available in any given rural community. What it can and should be able to do is guide the nature and location of specific land use practices so that any damaging outside effects are kept to a minimum.

Balance public gain against private loss. Some harmful outside effects clearly should be eliminated, such as the pollution of recreation waters by the private dumping of sewage wastes. Sometimes, however, the private cost that would have to be sustained (or, just as often, the private gain that would have to be given up) if a particular zoning requirement were enforced is considerable. Unless the public benefit from enforcing such a restriction is large enough to offset the private cost, zoning may be properly charged with being unreasonable and unfair to individual landowners. Under these circumstances, an ordinance with such zoning requirements might be hard to justify and have difficulty getting political support. Rather than letting these kinds of circumstances threaten the public support of zoning, it is better to use some other method to achieve the desired results.



Billboards can mar a pleasant approach to a small town.

CHAPTER 3. WHAT ZONING CAN — AND CANNOT — DO

As with many public issues, people tend to take extreme positions on the value of zoning. Those favoring it may make claims that are way beyond reasonable expectations. Those opposing it may deny that zoning can do anything to make your community a better place to live. Both claims need to be moderated to be realistic.

Rural zoning is not going to resolve all of the land use problems already apparent in your community. Neither is it going to prevent all of your future problems. In fact, not done properly, zoning can be a waste of time.

On the other hand, there are many ways that zoning, intelligently applied and properly administered, can be useful. How useful depends on the character of the rural community itself. The presence or

absence of certain characteristics are fairly accurate indicators of the value of zoning. Most of these indicators can be easily observed by anyone who is a local resident. Let's consider a few of them.

One indicator is the rate of change in land use and development. If such things as population, land use, traffic flow, resort activity are stable, and continue that way in your rural community, gains from zoning may be quite small. If these factors are changing rapidly, zoning can help make the transitions smooth. Changes may be occurring without your noticing them. How many new homes are being built, especially in the country? How many lakeshore summer cottages? How many billboards and junkyards are there today compared with 5 years ago? How much more traffic is there on streets and roads? How many

new businesses and industries do you have?

This does not mean you should simply forget about zoning if changes in your community are slow. It may be that even gradual change will eventually result in problems that zoning can prevent, and the rate of change in the future could be higher. But in localities with rapid change, zoning is a more urgent matter. If it isn't done soon, it may be too late to be truly effective. In many communities, part of the damage is already done.

Another indicator of the need for zoning in a rural area is the extent to which local businesses and wage earners depend on natural resources for their income and jobs. Zoning can protect farming from harmful outside effects, but if farming isn't important to your economy, the gains will be small. Zoning can make your community more attractive to tourists and outdoor recreationists, but if tourism, outdoor recreation, and summer cottages don't bring much money into your area, gains from zoning may not be significant. But where farming is important, natural resources are vital, and the number of tourists, recreationists, and seasonal residents is increasing, the case for zoning gets very strong indeed.

Finally, zoning is more worthwhile if several land uses are mixed over the landscape. Where forestry, recreation, agriculture, and rural residency are all present, zoning can help to keep things in harmony. Many times several different recreational uses conflict and cause problems. Different land uses within agriculture also may be in conflict. Remember the song in the Broadway musical, "Oklahoma," about the farmers and the ranchers needing to be friends. In a rural area characterized by the dominance of one specific land use the value of zoning may be limited.



Trap shooting is one recreational land use that doesn't mix with residences.

What, Specifically, Can Zoning Accomplish?

Remembering that rural zoning will be more effective under some circumstances than others, let's look at some of the specific potential accomplishments of

rural zoning. Grouped according to categories of landscape features, adequate zoning, used properly and under the right conditions, can do the following:



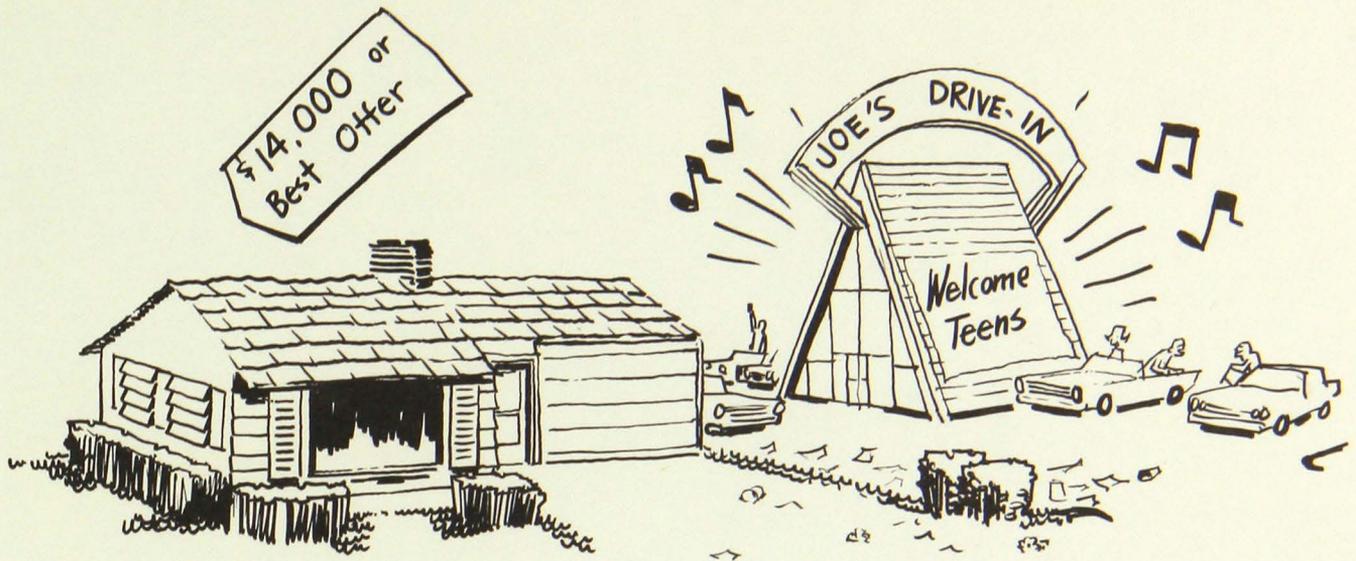
Farms

- Discourage nonfarm development in farming areas.
- Protect farmers from limitations on spraying, machinery operation, and manure disposal by limiting the number of future nonfarm rural residents.
- Reduce local traffic on roads used by farmers to transfer field machinery.
- Keep rural water tables from being lowered due to new wells for nonfarm purposes.
- Reduce problems of theft, trespassing, and liability suits for farmers in areas where future mixtures of farms and rural residences and subdivisions might occur.
- Protect farmers from having to pay excessive property taxes or assessments to finance public services to new rural residents.
- Prevent junkyards, rural slum developments, and offensive industries from locating near farmland ripe for development as a residential area.

Lakeshore Areas and Summer Cottages

- Keep enough space between cottages to insure privacy.





- Keep noisy drive-ins, taverns, teenage dance halls, and other incompatible land uses out of quiet cottage areas.
- Preserve the shoreline scenery by requiring setbacks for cottages and other structures.
- Set aside certain lakes for motor boats and water-skiing and others for fishing and quiet enjoyment.
- Set time limits for or prohibit certain surface water activities, such as waterskiing, on parts or all of specific lakes.
- Lessen the chance of lake pollution or excessive nutrient enrichment by requiring lots large enough for adequate septic tank systems.
- Keep animal feedlots far enough away to prevent lake pollution.
- Require large enough lots and adequate spacing so well water will not be polluted by septic tank effluent.
- Discourage some developments where the cost of providing adequate access roads is excessive.

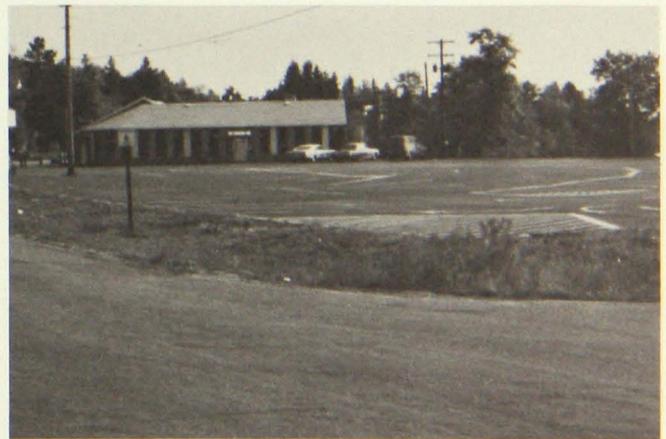
Residences

- Prevent your neighbor from building so close to your property or so high that his buildings cut off your light and air movement and reduce your privacy.
- Insure that side yards are large enough so that fire fighting equipment can get in.
- Keep tiny shacks and small mobile homes out of areas with homes which represent a larger investment.
- Require that mobile homes outside mobile home parks be some minimum size and located on adequately landscaped private lots.
- Prevent the use of cellars as residences for an unreasonable and extended period of time.

- Keep incompatible uses, such as industries, taverns, and filling stations, out of designated residential areas.
- Require houses under construction to be completed within a specific, reasonable period of time or vacated.
- Keep new signs and billboards out of residential areas and set a deadline for eliminating existing ones.

Roads and Streets

- Help to keep traffic moving through commercial sections by requiring business establishments to have enough offstreet parking space and loading facilities.
- Encourage traffic generators, such as shopping centers, entertainment places, and drive-ins to locate where roads are adequate and traffic won't disturb residential areas.



Tract development standards can require parking arrangements that don't involve backing into highway traffic.



- Discourage development along major travel routes that would cause traffic congestion.
- Space out entrance points to major roads to keep interferences with traffic to a minimum.
- Make streets and highways safer and snowplowing easier by requiring setbacks for residences, businesses, and other structures.

General Physical Environment of the Community

- Require junkyards to use appropriate locations, be set back from the road, and screened by a fence.
- Limit the location and size of signs and billboards.
- Make special provisions for protecting the scenery along roads leading to parks and tourist attractions.
- Reduce the accumulation of junk and trash along roadsides.
- Keep noisy activities away from hospitals, rest homes, churches, and schools.
- Help to keep land available for industrial and commercial developments.
- Require private campgrounds to be located and developed so that nearby properties and public facilities do not suffer as a result.
- Discourage or prevent structures on land frequently flooded.
- Insure that mobile home parks observe standards of density and layout, are properly screened, and have adequate facilities for the use of residents.
- Keep unwanted stores in residential districts and houses in commercial and industrial districts from being rebuilt after they have been destroyed by fire or otherwise eliminated.

So much for what rural zoning might accomplish under favorable conditions. Naturally, not every community will use zoning for all of these purposes. These are just examples.

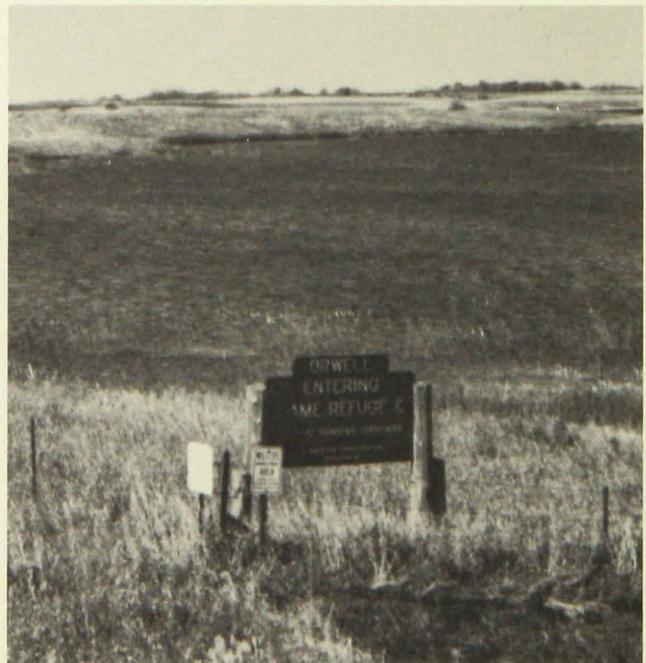
What Zoning Cannot Do

It is easy for zoning enthusiasts to overlook its limitations or to confuse zoning with other regulatory devices, such as subdivision regulations and sanitary codes. It's also common for zoning critics to sincerely believe zoning controls will be used in ways that are clearly beyond legal boundaries established by the constitution and elsewhere. The following lists include two kinds of specific accomplishments that are beyond the reach of the rural community that relies exclusively on rural zoning.

Group A includes achievements that a government unit can realize only through nonregulatory measures, such as the acquisition of property rights, or through other kinds of regulatory codes and ordinances. Group B consists of items that cannot be achieved through zoning because of legal limitations flowing from federal and state constitutions, court decisions, and statutory laws or because of the nature of zoning as a public decision needing political support.

Group A. Can be done by other government actions, (sometimes indicated in parentheses) but not by zoning. Zoning cannot:

- Pay a landowner to compensate him for a loss in property value because of restrictions on land use and development.
- Give a local government representative the right to enter private property except for purposes of inspection.
- Force an immediate cessation of a land use practice that is a public nuisance. (court order)
- Leave wetlands or a slough in private ownership, but give a governmental unit the exclusive right to drain it, thereby preventing drainage and providing waterfowl habitat. (easement)



- Give the public the right to use land next to a public stream or lake for access to public waters. (purchase of access rights)

- Assure a landowner that his property will not be assessed for taxing purposes above its value for uses permitted by existing zoning regulations. (special state law required)

- Require a developer to dedicate land in a new development for public schools, parks, streets, or lake access. (subdivision regulations)¹²

- Assure that buildings are constructed in accordance with recommended fire protection standards or standards of structural soundness. (building code)

- Force homeowners to install septic tank systems that are adequate for existing soil and water table conditions. (sanitary code)¹³

- Prevent buildings from being constructed on privately owned land desired later for roads, schools, parks, or other public purposes. (official map, not the same as an official zoning map).

- Give a public body the right to build a drainage ditch across your property. (easement)

- Force you to allow the crossing of your property by pipelines and utility lines. (condemnation and eminent domain)

- Keep the water level in your lake from fluctuating.

- Require that you give the government first refusal rights if you decide to offer your property for sale. (purchase option)

- Prevent you from filling or otherwise improving wet marshy areas bordering a public lake or stream. (easement)

- Restrict the use of property to public recreation, such as hunting, camping, fishing, or picnicking.

- Prevent unscrupulous builders from constructing and selling cheaply built homes. (building code)

Group B. Cannot be accomplished through zoning because of legal, political or practical limitations. Zoning cannot:

- Prevent mineral or petroleum exploration and withdrawal by someone owning mineral or petroleum rights to your land.

- Make a private owner open his land for hunting if he posts his land properly, informing hunters that no trespassing will be allowed.

- Force landowners to stop using buildings and other fixed location investments before they have had a reasonable time to recover their investment.

- Prevent land from being developed for a certain use unless there are alternative ways that the land can be used or developed to provide a reasonable return.

- Stop plans for a highly profitable development of a particular piece of property unless the damage to the community as a result of harmful outside effects is great enough to justify preventing the development.

- Effectively control the location of public uses, such as highway equipment sheds, sewage treatment plants, sanitary land fills, public schools, and other public buildings.

- Assure that land will be developed in certain ways. Zoning can only prevent other incompatible development.

- Keep land in farming for a long period when it is close to a rapidly expanding city.

- Prevent you from selling your property to anyone you choose.

- Enforce residential standards that are beyond the financial reach of all but a small proportion of local citizens.

- Be used to exclude ethnic minority groups from a community.

- Be used capriciously to satisfy grudges against particular landowners.

- Do anything really worthwhile if haphazard rezoning and administration carelessly allow unnecessary deviations from the original plan.

- Be enforced effectively unless all citizens are kept informed and up-to-date on zoning requirements.

- Force people to paint and repair their own buildings.

- Keep land use and development from changing to "keep up with the times,": it can't stop or rollback the clock.

- Guarantee the success of well drilling in areas zoned for residential development. (It can increase the probability of success.)

- Prevent counties, cities or townships adjacent to your county from putting a heavy industry zone next to an area you have zoned for single family homes.

- Tell farmers what to plant or what livestock to keep except in extreme cases in built-up urbanized areas.

These lists should help you to develop a perspective on the value of zoning in your community. Keep in mind that zoning's accomplishments depend primarily on the regulations and standards in a particular ordinance, as determined by local people. The achievements listed here simply reflect some of the possibili-

¹² Subdivision or platting regulations may be contained in the same ordinance as zoning regulations. This does not change the fact that subdivision controls and zoning are two different kinds of regulatory controls.

¹³ Local laws, labeled zoning ordinances, often stipulate that a sanitation code, which does regulate private sewage disposal systems, must be observed. Such a stipulation, although part of the total regulatory picture, is simply a reference to another type of control and should not be considered zoning. Sometimes sanitation codes and zoning regulations are contained in a single local ordinance, causing considerable confusion.

ties under zoning, if relevant regulations and standards are enforced. Remember also that zoning does not have to be used all by itself. Zoning usually will be

much more effective if it is combined with other measures, permitting the combination to accomplish some of the things on the cannot list.

CHAPTER 4. NONTRUTHS ABOUT ZONING

Nontruths about zoning run rampant. They are surely responsible for part of the opposition to rural zoning; they are also common among zoning supporters. They create a great deal of the misunderstanding that makes it difficult for the democratic process to function effectively.

You've already been exposed to some 50 nontruths about zoning. Anytime you hear someone say that zoning is going to achieve something on one of the cannot lists in the preceding chapter, you are hearing a nontruth. Anytime someone claims zoning cannot accomplish any of the items on the can-do list, you may be hearing a nontruth, depending on provisions in the local ordinance. Misconceptions about zoning don't stop with confusion about what zoning can and cannot do in a rural community. Many other nontruths are widely accepted even though they are in error. Some of the more common ones are discussed in this chapter.

Nontruth Number 1

"Zoning is unconstitutional."

This was settled a long time ago in a now famous U.S. Supreme Court decision: *Village of Euclid, (Ohio), v. Ambler Realty Company (1926)*. The Supreme Court said every state could give its local government units the power to regulate the use and development of private land and that local units could exercise those rights as long as it was needed to protect the public health, safety, morals, and general welfare. Although this sounds simple enough, it has been complicated by the fact that the fifth and the fourteenth amendment to the U. S. Constitution prohibit depriving any person of private property for public purposes without "due process of law," which is interpreted to mean some form of compensation or payment. Some have claimed that zoning, by limiting how property is used, has the practical effect of reducing its value and is therefore a partial "taking" for which payment should be made.

Not so, the courts have said, as long as it is necessary to protect the public from the undesirable consequences of unplanned growth and unrestricted land use practices. Although excessive, severe, arbitrary, and discriminatory restrictions are unconstitutional, hundreds of court decisions at the state level have almost unanimously upheld zoning as constitutional. There seems to be no question that zoning, properly

used, is legal and constitutional except in instances where it was clear that zoning powers were being used capriciously, for political reasons, for purposes that had no practical connection with the public health, morals, safety or welfare of the community, or simply to avoid proper compensation to a private landowner.

Nontruth Number 2

"Zoning is a way to keep certain developments, such as mobile home courts and junkyards from locating anywhere in your community."

This is a fairly common misuse of zoning, especially for small units of government. All this usually does is create problems for someone else by making nearby unzoned areas the dumping grounds for so-called undesirable land uses. What zoning should do, and does when it is used intelligently, is to provide a place for every kind of land use wanted in a community. This well-balanced but zoned community will contain uses that are incompatible with others, but will cause them to be located separately to avoid conflicts. There are advantages as well as disadvantages to having junkyards, dumps or landfills, mobile home parks, and camp grounds in your community, especially if zoning laws enforce reasonable standards of development and require buffer zones or screening to protect the interests of nearby landowners.

When this issue has been taken to the courts, judicial statements are decisive in saying that zoning cannot be used for purposes of unreasonable exclusion of particular land uses from an entire jurisdiction. If a broad view is taken, common sense reaches the same conclusion. Only when exclusion of a land use is obviously related to the health, safety, morals and welfare of the community, such as excluding slaughter houses from a village almost completely built up with residences, is the exclusion valid.

Nontruth Number 3

"Zoning helps the big guy—hurts the little guy."

Here is a charge you will often hear about zoning; it is frequently based on false reasoning or malicious rumors. The big guy doesn't need zoning. He can protect himself from losses on his residential investment by buying the surrounding land. If he does suffer

financial damage due to the use and development of nearby property, he has the money to take it to court. And any reduction in property taxes due to zoning means less to him because they are a smaller proportion of his income.

Not so for the little guy. He can't afford to buy enough land to protect his investment in a house, which is a larger proportion of his lifetime income than it is for the more wealthy. He can't afford the time and expense to take damage suits to court. And he is hurt more by higher property taxes in communities that have inefficient public services because of the absence of zoning.¹⁴

Zoning does often help out the owner of underdeveloped land, who may turn out to be a big guy. But it may be a little guy as well. And protecting property values may have substantial benefits for the whole community, which nearly always has a majority of little guys.

The little guy who believes that zoning hurts him and helps his wealthy neighbor is only kidding himself. Zoning gives him some of the advantages that the big guy can readily afford to get for himself.



Zoning's sideyard requirements would have protected this home owner from the big guy.

Nontruth Number 4

"Zoning is immoral and unethical."

A belief that zoning is immoral and unethical is usually held only by people who have a very strong personal bias against zoning. As should be clear by now, zoning, rather than being immoral or unethical

itself, protects the average citizen and the community from what might be called the immoral or unethical acts of careless or unscrupulous landowner neighbors. In our legal system no landowner has ever had the right to completely disregard the welfare of others in the way he uses his own property. Without zoning, a citizen who suffers from a neighbor's land use practices can bring suit to have a land use declared a nuisance, thus forcing it to be discontinued, with the possibility of collecting damages. But this has to follow, not precede, the actual damage. It is a costly and very cumbersome way to resolve land use conflicts that could have been prevented if zoning had been adopted earlier.

Nontruth Number 5

"If zoning laws restrict land in a certain zoning district to uses for farm purposes, property taxes will be based only on the land's value for farming."

This has been used as an argument for zoning in the past, but it normally hasn't worked out that way. Most of our experience with exclusive agricultural zoning of land near urban centers has been in California. The assessors there said: no dice, zoning is too easy to change. The present market value of land in a farming zone is higher where the chance for a change to a nonfarm use is greater, regardless of current restrictions. Unless zoning is combined with other arrangements, such as the special laws for taxing farm property, it will have little or no effect on the level of assessment of either farm or nonfarm property.¹⁵

Nontruth Number 6

"Zoning affects everybody, so everybody should get a chance to vote on it."

This is a nontruth about zoning that seems logical to fair numbers of people. What they forget is that rural zoning is just one of many local government decisions that affect everyone in the community. Local government could not function if everything had to be voted on by all the eligible citizens. Just because zoning is new doesn't make it that much more important than many other decisions. Property values are affected by zoning, to be sure. But they are affected just as much or more by extending or improving a county road, providing superior fire protection service, or having an outstanding public school system.

Straw votes on zoning can be taken if they are requested by the public. The results are only advisory to the county board, however.

¹⁴ Property taxes usually take a larger percentage of the income of lower income citizens than of those who are wealthy.

¹⁵ Minnesota law permits preferential tax treatment for farm property but makes no provision for linking it to local zoning practices.

Nontruth Number 7

"If we get a zoning ordinance passed in time, our troubles are over."

That this is a nontruth should be evident to anyone who has been reading this publication. Passing the ordinance is just one step. If rural zoning is not enforced, it will do nothing for your community except give honest citizens a false sense of security.

Nontruth Number 8

"Zoning will give the zoning administrator the right to tell farmers what they can and what they can't plant in their fields."

It's hard to understand how this rumor got started. Most rural zoning ordinances place no restrictions on agriculture except highway setback standards. Some even exempt farming from observing this simple requirement. Farmers are probably the people least affected by zoning.

There are exceptions. When farming is continued in an area already built-up with homes, zoning may attempt to keep farm activities and odors from disturbing nonfarm residents. In some instances farmers who have sold off acreage for a good price are the main offenders.

In most instances, zoning places no restrictions on farm operations and only small restrictions on the setback of farm buildings. The reason is simple. Farmers, because they own large tracts of land, do not create harmful outside effects from using their property for farm purposes. If everyone were a farmer, rural zoning would not be the issue it is today. It is because so many rural people are not farmers, do not own large tracts of land, and do engage in land use practices that create harmful outside effects for other citizens that we have turned to rural zoning to keep the members of our mixed urban-rural society living together harmoniously.

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