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YOU AND RURAL ZONING

Robert W. Snyder

AGRICULTURAL EXTENSION SERVICE
UNIVERSITY OF MINNESOTA

PART II



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YOU AND RURAL ZONING—

PART II

Robert W. Snyder*

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Introduction

This is the second of a two-part series of Extension Bulletins written to help rural citizens understand zoning as it applies to rural America.

Reading this report and its companion report, Part I,¹ however, is not guaranteed to make you an expert on every aspect of this important and controversial topic. Many details about legal technicalities, administrative procedures, and the step-by-step process of drawing up a zoning ordinance have been left out intentionally. It's not that this information isn't important, but the majority of rural citizens probably would prefer to leave this kind of detail to those who actually need to be experts on the subject.

Many people, like yourself, are wondering how rural zoning will affect them, as landowners and residents of a rural community. They know that it is a widely discussed subject and that their own elected county or township officials have already adopted a preliminary or "final" ordinance or are giving it much thought.

Many also are aware that zoning has been the target of sharp controversies. They probably have heard rumors about zoning and are wondering if they are based on fact or come from someone's imagination.

All of this debate has left many questions unanswered and many people bewildered as to what is best for their own community. Because rural zoning will affect every member of the community, directly or indirectly, it deserves thoughtful attention and study. Every conscientious rural citizen should become familiar enough with zoning to reach a decision as to its proper use in the community. Elected public officials have to make final decisions—that is why they are elected. But they need to have your informed support, or be aware of your informed opposition, since it is your interests that they are elected to represent.

This bulletin is designed to help you make your decision. It will be easier to understand after you have read Part I of *You and Rural Zoning*. Let's review quickly the main points in the four chapters of that bulletin:

Chapter 1. "What is Zoning?" Zoning involves setting up standards for future physical development of a community and enacting laws that regulate the use and development of privately owned land so that those standards are followed. Some regulations are the same throughout a particular jurisdiction, while some vary from one zoning district to another. They involve controls over the use of land, numerous tract development standards, a few structural dimension standards, and performance standards.

Types of zoning districts that may be set up include: 1) agriculture, 2) forestry, 3) recreation, 4) residential, 5) lake-shore residential, 6) commercial, 7) industrial, 8) flood plain, 9) lake surface, 10) special purpose, and 11) planned unit development. The name of the zone does not always suggest the precise

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¹University of Minnesota Extension Bulletin 373 (1972).

restrictions that are applied. The ideal number of zones varies from one rural community to another, according to local conditions and desires.

For various reasons, the county is usually thought to be the proper governmental unit to adopt rural zoning ordinances. But there may be exceptions. An ordinance normally is drawn up by a local county planning commission, with the help of a professionally trained planner, and is adopted by the county board after a public hearing.

Chapter 2. “Purposes of Zoning.” Zoning is being considered in more rural communities because of the many ways in which activities of landowners and land users affect other citizens. These are called externalities or “outside effects.” Because of increasing mobility—rural residents commuting to urban jobs and urbanites visiting rural areas for recreation—the frequency and significance of outside effects are increasing in rural areas. The outside effects of land use practices are both harmful and beneficial, are often long lasting, may influence communities, and may have severe impacts on certain nearby properties. Zoning helps preserve beneficial outside effects while preventing harmful ones.

There are four areas of harmful outside effects that can be restrained by successful zoning. They are: 1) reducing the value of nearby property, 2) lessening the potential for economic development, 3) increasing taxation levels for a given level of public services, and 4) deterioration of the physical environment. Zoning policies should encourage the long-run outlook rather than the short-run, consider beneficial outside effects as well as those that are harmful, and carefully weigh the public gain against the extent of the effect on private property values.

Chapter 3. “What Zoning Can and Cannot Do.” Zoning is more effective in those rural communities experiencing physical change or development, particularly where local jobs and income depend on the use of natural resources, such as in agriculture, recreation, and forestry. Specific accomplishments of successful zoning include:

- Increasing the safety and efficiency of road travel.
- Preserving the character and quality of the residential environment.
- Reducing conflicts between farmers and rural residents.
- Maintaining desirable natural features in lakeshore and vacation home areas.
- Generally improving and maintaining the physical environment of a rural community.
- Reducing conflicts between different land uses and practices.

It is also important to recognize the limitations of zoning. Some of the things zoning cannot accomplish, but which can be accomplished by other public actions, include:

- Making payments to a landowner for giving up certain privileges associated with land ownership.
- Enforcing compliance with more detailed technical standards in the construction of buildings, the installation of sanitary facilities, and private well construction.
- Requiring a residential land developer to provide public facilities needed by future residents of the development.

In addition, many limitations on public regulation of private landowner practices result from legal restraints and procedural requirements. Zoning cannot, for example:

- Force a landowner to use or develop property in a specific way; all that zoning can do is narrow the range of possible uses and set up reasonable development standards.
- Force a landowner to move out of a building or discontinue its use before time elapses to recover the investment.
- Be used to discriminate against any citizen because of race, color, or religion.
- Prevent you from selling your property to whomever you choose.
- Impose unreasonable regulations, such as house painting requirements.

Chapter 4. “Nontruths about Zoning.” Rumors about zoning are rampant. Many beliefs about zoning are in error. Some nontruths about zoning are more prevalent than others. Eight common, but mistaken, beliefs are:

- “Zoning is unconstitutional.” Although there are constitutional restraints on zoning powers, the constitutionality of reasonable, non discriminatory, and carefully considered regulations has been well-established by court decisions.
- “Zoning aims to eliminate certain land uses from a community.” Rather than doing this, zoning sets up separate locations for incompatible uses and imposes physical standards that reduce this incompatibility.
- “Zoning helps the big guy, hurts the little guy.” Those who understand zoning realize that generally the opposite is true.
- “Zoning is immoral and unethical.” Actually, zoning tends to make landowners more considerate of others by outlawing development that would cause harm to others.
- “Zoning will change the assessment level of property tax levies.” Although zoning may have some effect on market values, it cannot by itself give preferential tax treatment for farmland or other properties.
- “Zoning should be decided by referendum. To put zoning to a countywide vote, but not other decisions that affect property values and land use just as much as or more than zoning, would appear illegal. In our system of government, the basic reason we elect officials is to have them make public policy decisions for us.
- “Just passing an ordinance is enough.” It is clear that an ordinance that is not properly administered and enforced will not accomplish much.
- “Zoning will tell farmers what to plant.” In fact, most zoning ordinances don’t mention cropping practices. Those that do only slightly narrow the range of farming activity in suburban areas where many residents may suffer from certain farming practices.

This very brief, to-the-point summary of *You and Rural Zoning, Part I* should serve only as a review. Although you won’t find it hard to understand this report without having read Part I, the two bulletins are meant to be companion publications. You will get more out of each if you read both carefully.

You and Rural Zoning—Part II begins by taking a careful look at some of the details of zoning administration, not from the perspective of the administrator, but from the viewpoint of the rural landowner. What kinds of permits must be obtained?

Under what circumstances? From whom? How much red tape will be involved? How are landowners protected against unfair restrictions or decisions? Although your county may use zoning procedures that are somewhat different from those covered in Chapter 1, the reader will understand generally "what makes zoning work."

The "red tape" that is part of zoning administration is one of several disadvantages or "costs" of rural zoning. Several types of costs, along with a number of offsetting benefits, are presented in Chapter 2. Weighing all costs and benefits is one way to reach a decision. Is zoning truly justified, considering *all* its effects on the people living in your community? Both sides are presented and you are invited to reach your own conclusion.

In contrast to the "scientific" approach of Chapter 2, Chapter 3 demonstrates the result of some of the subjective, sometimes emotional, reasoning that leads to widely differing opin-

ions about the value of and need for zoning. You may recognize the views of many of your friends and neighbors as you read. Many rural citizens tend to take sides on this issue; this chapter should help you understand why.

Whether zoning exists or not, Chapter 4 is one that the concerned citizen will find worth reading. The topic is not zoning itself, but rather many of the *other* ways that private land use decisions are pushed and shoved, encouraged and discouraged, or manipulated in one way or another by public actions. Six other kinds of regulatory measures and 10 nonregulatory policies or activities are included with an almost dictionary-like lack of detail. This chapter will remind you, as the old saying goes, that "there are many ways to shoe a horse." Unlike different ways of shoeing horses, however, public measures affecting land use are usually used in combination.

CHAPTER 1. MAKING ZONING WORK

Zoning does not stop with the adoption of an ordinance by the board of county commissioners. Someone has to be responsible for keeping records, issuing permits, handling complaints, discovering violations, and other administrative and enforcement tasks. Fortunately, most citizens, including landowners, will find that much of the responsibility for making zoning work rests on the shoulders of certain designated individuals or bodies—elected officials, the planning commission, the zoning administrator, and so forth. There are a few ways in which the daily lives of most rural residents will be directly affected by zoning decisions.

There is one major exception to this general observation. If you happen to be a landowner with plans to build on your property, you have a few additional responsibilities. Usually, you only have to go through a relatively simple process of letting the zoning administrator know what you plan to do and getting his O.K. However, if you are planning a major development, such as a campground, trailer court, or an apartment complex, it can become more complicated. This is also true if the type of land use you intend is not allowed by the zoning ordinance or if there are some development standards in the ordinance that you cannot comply with on your property.

We'll cover all of these situations, and others, in the pages that follow. The procedures that apply to a very large percentage of landowners who want to improve (build upon) their property are short and uncomplicated. The longer, more complicated procedures, which affect only a few, are needed to protect the average landowner and still allow some flexibility in how land in the rural community is used and developed for a variety of purposes.

Classes of Land Uses

Before we can talk about permits and procedures, which are the main topics of this chapter, we need to point out one thing. In the

language of zoning, land use practices and all kinds of physical structures are included under the general term "land uses" or simply "uses." These uses are classified by the zoning ordinance.

The classes of uses generally can be described as follows:

Principal Use (permitted use, primary use) means use, structure, or occupancy allowed by law in a particular zoning district if certain specific development standards in the zoning ordinance are complied with. Usually no additional requirements are involved before getting permission to build, use, or occupy. A principal use may exist when the ordinance is passed or may originate afterward. A list of principal uses for each separate zoning district normally is included in the ordinance. Example: a single family home in a lakeshore-residential district.

Accessory Use (secondary use) refers to structure, use, or occupancy allowed by law in a particular zoning district if certain specific standards in the ordinance are observed and if it is to occur in conjunction with one of the principal uses listed for that district. Usually, no additional requirements are imposed. An accessory use may pre-exist the adoption of the zoning ordinance or be started after the ordinance is passed. Accessory uses for each district are normally listed in the ordinance. Example: a garage on the same lot as a single family home in a lakeshore-residential district.

Prohibited Use means structure, use, or occupancy that is not permitted to exist anywhere in a particular zoning district unless it lawfully existed before a zoning ordinance or amendment making it a prohibited use was adopted. Sometimes prohibited uses are listed in the ordinance; often they are defined as all uses not listed as principal uses, accessory uses, and conditional uses (see below). A prohibited use pre-existing the ordinance or amendment that prohibits it is called a "non-conformity." (see below). Example: a gas station in a residential zone.

Conditional Use (special use, special exception, exception, special permit use). A conditional use, which may go by several other names, is a use that is allowed in a particular zoning district only after some kind of decision-making board gives its approval. The approval must be based on the assurance that certain standards or criteria specified in the ordinance will be observed.

Conditional uses are always listed in the zoning ordinance, but they may be found in two or three places in the same ordinance (though normally a particular conditional use is found in only one place). Usually some are listed along with permitted and accessory uses for each separate zoning district, while some are listed in a special section in the ordinance giving more detailed criteria for that specific conditional use. Example: a mobile home court in an agricultural—residential zone.

Nonconformity: A nonconformity is a lawful use, structure, occupancy, or parcel of land that the zoning ordinance does not now allow, but which already existed when the ordinance provisions outlawing it were adopted. Nonconformities include substandard building lots, whether or not developed, as well as land uses that are prohibited or that violate development standards. Example: an unfenced junkyard in a commercial zone where junkyards are listed as a conditional use requiring suitable fencing.

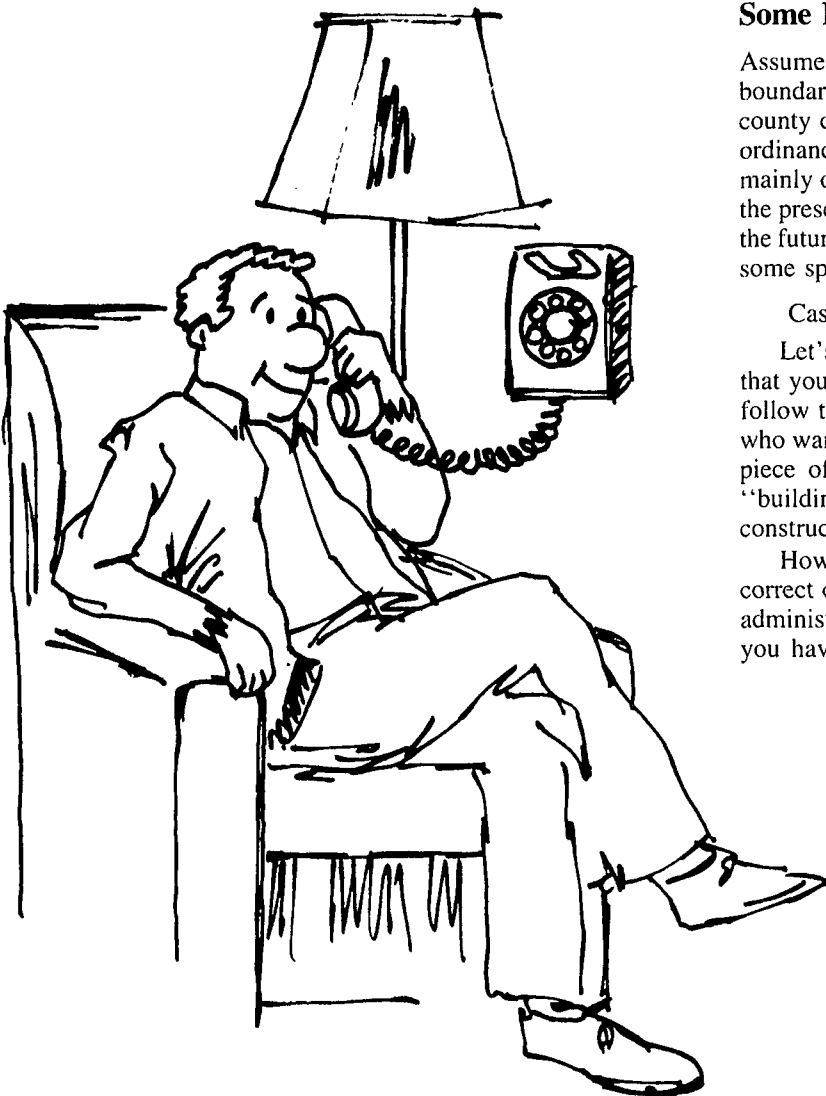
Some Examples:

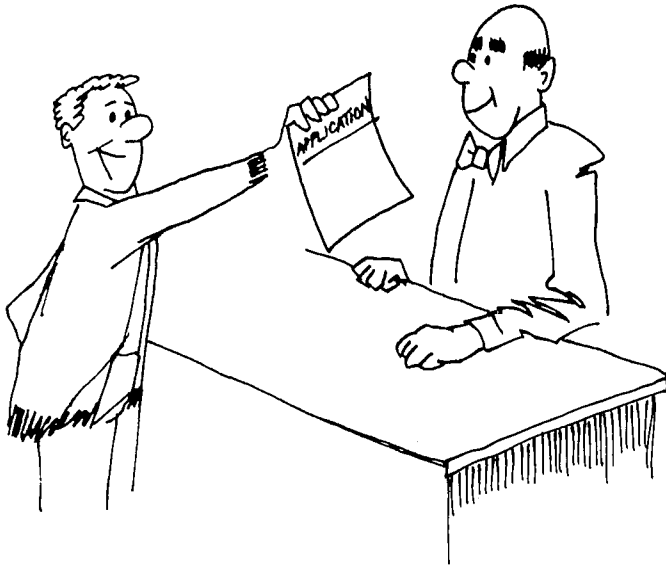
Assume you are the owner of some land located outside the boundaries of any incorporated place in County X. The board of county commissioners of County X has just adopted a zoning ordinance. How this directly affects you as a landowner depends mainly on three factors: (1) how you are using your property at the present time, (2) what you want to do with your property in the future, and (3) what the zoning ordinance says. Let's look at some specific examples.

Case A. You plan to build on your property.

Let's assume that you want to build a residence on rural land that you already own. In this case, you probably will need to follow the same procedure as the vast majority of landowners who want to develop their property. This will involve getting a piece of paper called a "principal use permit" (sometimes "building permit" or "zoning permit") before you can start construction.

How do you find out whether or not that procedure is the correct one? The easiest way is to phone or write your zoning administrator, probably at the county courthouse, and ask. If you have more time or are more ambitious, you can get an





official copy of the zoning map and ordinance and figure it out for yourself. Use the map to find out what zone your property is in. Then check the list of principal and accessory uses for that particular zone. If your intended use is listed, you probably *will* need to get a building permit.

You will not, however, need to get a building permit if there is an exemption clause that would apply in your particular case. Many ordinances exempt some buildings or additions that are very small or require only a small financial investment. Some ordinances exempt farm buildings, although this practice often is frowned on by experts in the field. To find out about exemptions, you probably will need to check the section of your local ordinance labeled "general regulations" or "supplemental regulations." An easier way, of course, is to ask your zoning administrator.

What happens if you do need to get a principal use permit? This usually means you must go to the zoning administrator's office, fill out an application form, pay a small fee, and receive the permit. The application form tells the administrator what you intend to do and where. The fee is to cover a small part of the salary, office costs, and expenses for the administrator and a secretary. The visit to the zoning office gives the administrator a chance to explain to you personally what the zoning standards and restrictions are for your zone and the type of development you are planning. The permit, obviously, is to let you go ahead with the proposed change in land use.

This process is a very important part of the job of zoning administration. It is much like posting a speed limit on the outskirts of town. Direct contact between the landowner and the administrator means fewer mistakes than if permits were issued on the basis of a telephone conversation or a letter. Having to come personally to the administrator's office may be inconvenient for you as a landowner, but it is a practical necessity in making zoning work.² Exceptions sometimes are made for small investments and occasionally for farm properties to keep landowner inconvenience to a minimum. The goal is to make zoning as painless as possible and still make it effective.

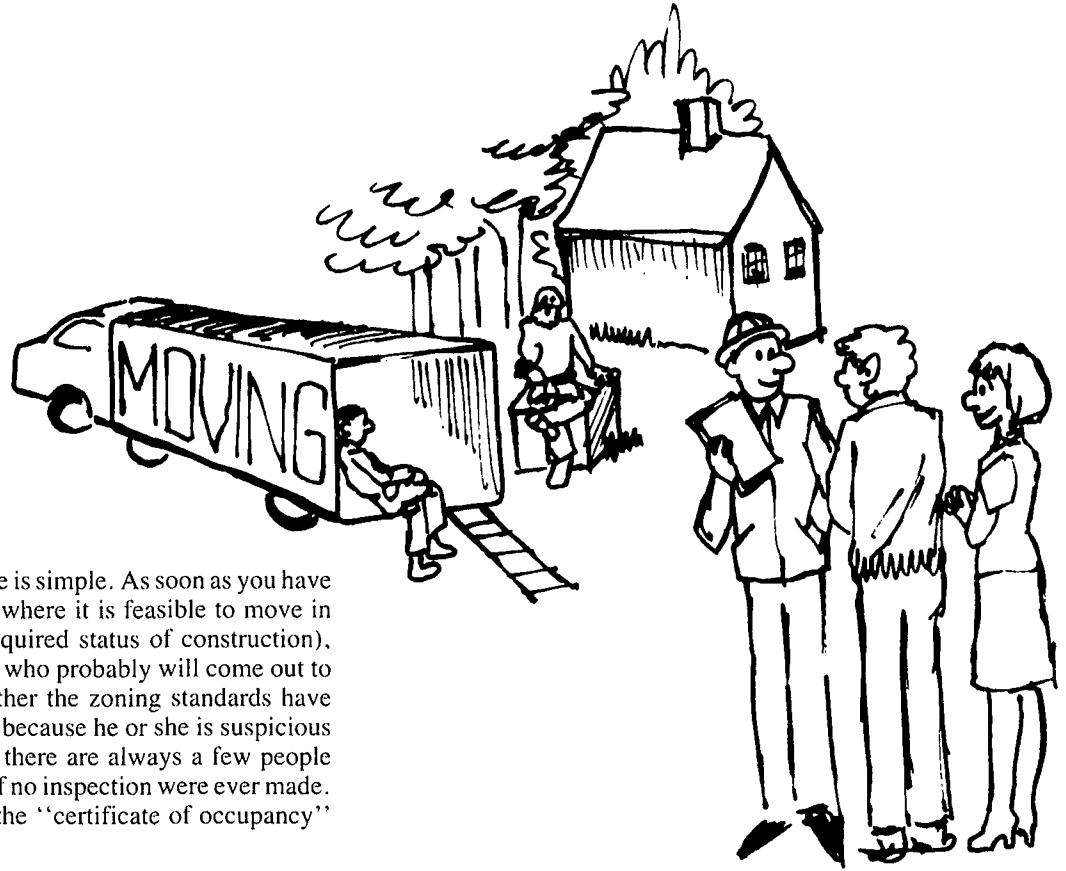
Case B. You are ready to move into a new building.

Now let's assume that you already have obtained a principal use permit and completed enough of a new house (or a store, etc.) so that it is ready for you to move in. Will you need to get any more permits before you can do this? In many counties the answer is "no." It is simply assumed that you have complied with the standards in the zoning ordinance and you can go ahead and move in. A few "spot checks" may be made by the zoning administrator.

In other counties, because of different provisions in the zoning ordinance, the answer is "yes"—you will need to get another permit before you can occupy the premises lawfully. This permit is called a "certificate of occupancy." (sometimes "certificate of compliance"). That's a fancy name for a little piece of paper that authorizes you to move in.



²Sometimes, in large counties, township clerks or other designated individuals may have the authority to issue building permits for some types of structures, such as farm buildings. This can be satisfactory if the job is done conscientiously.



The procedure for getting one is simple. As soon as you have reached a point in construction where it is feasible to move in (the ordinance may state the required status of construction), notify the zoning administrator, who probably will come out to make an inspection to see whether the zoning standards have been complied with. This is not because he or she is suspicious of you personally. It's because there are always a few people who would take advantage of it if no inspection were ever made. If everything is O.K., you get the "certificate of occupancy" and can move in.

Case C. You want to develop your property for a 'high impact' use.

Let's suppose you are one of the few landowners whose intended development falls into a special category in the zoning ordinance—the one labeled "conditional uses." These uses include land use practices or developments that, although needed in the community, are likely to substantially affect neighboring land, public service needs, or quality of the environment and have considerable potential for causing future problems. They are "conditional" in the sense that they are allowed only under such conditions or in such specific locations that adverse effects can be minimized. Trailer courts, campgrounds, junkyards, private schools, and funeral homes are a few examples of these high impact uses.

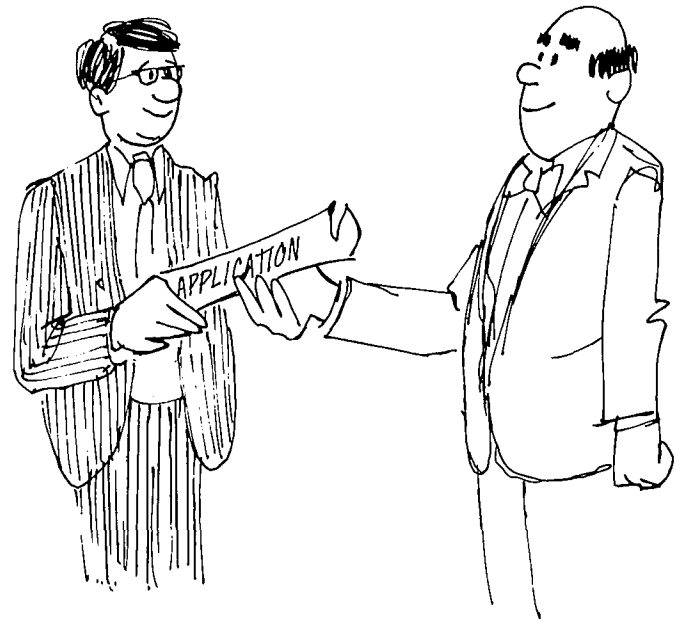
What does all this mean to you, the landowner? It means that you will need to follow a rather detailed and relatively lengthy procedure to obtain a conditional use permit (sometimes "special permit" or "special exception") before you can proceed.

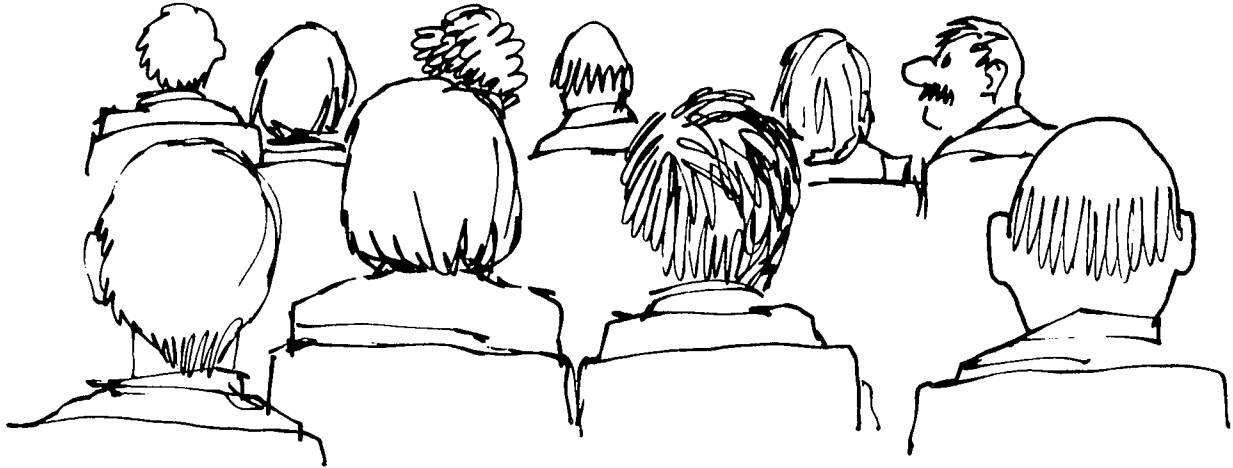
The first step in getting a conditional use permit is to make written application for one. Special forms are usually available.



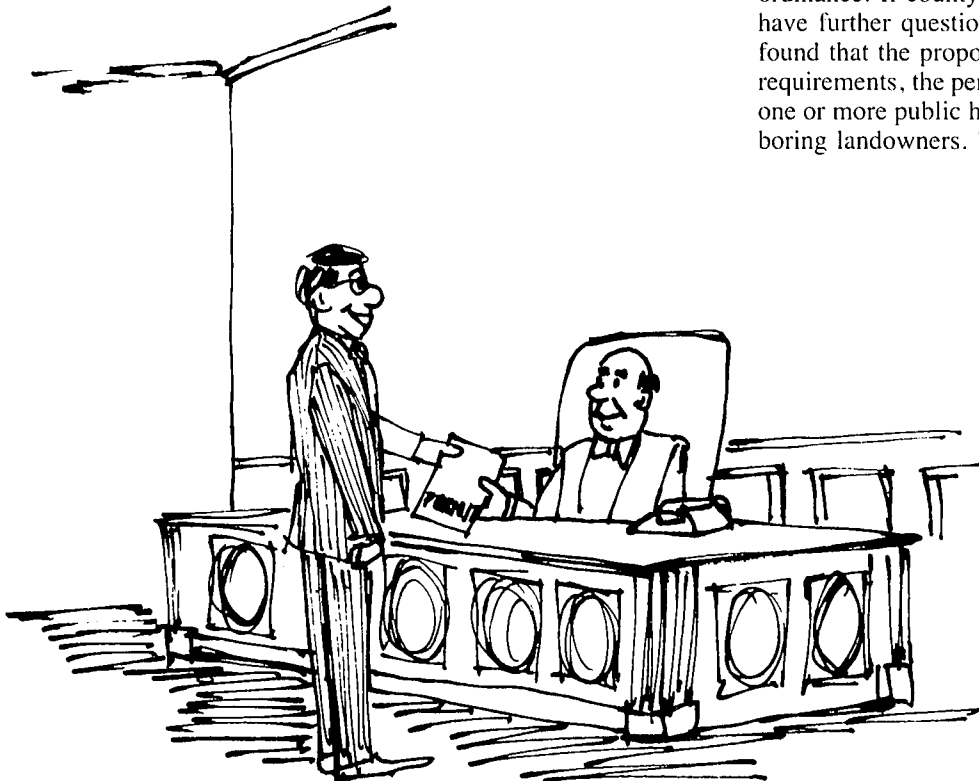
Depending on the type of intended development, certain information must be included with the application, such as where and how large the property is, the intended use, how it will affect public utilities, schools, parks, streets, natural resources, and the surrounding property; maps of the planned layout or building location; description of any structures; the general character of the area, and so forth.

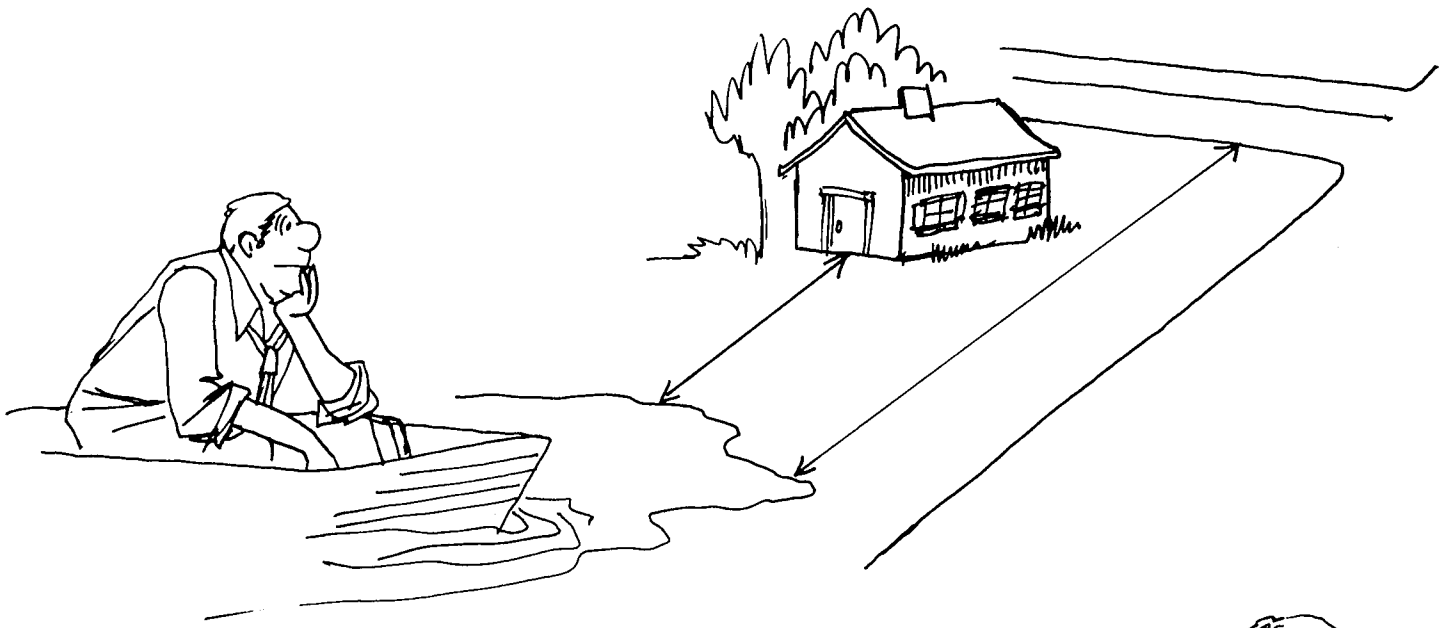
The application with this information is submitted to the planning commission, usually through the zoning administrator. The planning commission probably will ask you or your representative to appear before it to answer additional questions. Its job is to decide whether certain standards and criteria listed in the zoning ordinance will be satisfactorily met if your development is approved.





The board may ask you to make some changes in your proposal, such as adding fencing or increasing the amount of open space. If they are convinced that the standards and criteria will be satisfied, they may either: (1) grant the conditional use permit themselves or (2) recommend to the county board of commissioners that they consider your request favorably. The procedure used depends on the provisions in the specific zoning ordinance. If county board approval is needed, that body may have further questions and may add other conditions. If it is found that the proposed development will meet the ordinance requirements, the permit is granted. Somewhere along the way, one or more public hearings must be held with notice to neighboring landowners. This also may cause some delay.





Case D. You can't meet development standards.

You may find yourself in still another situation in a zoned community. Imagine that you own a plot of land located in a zoning district where a particular use, say second homes, is one of several permitted uses. Assume that your personal plans are in fact to build a second home. Fine so far. But the hitch is that your lot is between a lake and a public road only 140 feet deep while the ordinance calls for a minimum lot depth of 150 feet. Under those circumstances, the zoning administrator cannot issue a building permit because you cannot meet the development standards in the ordinance. Does this mean you are out of luck?

In most cases, probably not, but you will need to follow a longer procedure to get permission to build. When something like this happens, the zoning administrator probably will suggest that you apply for what is known as a zoning "variance." A variance grants legal permission to deviate from the specific development standards in the zoning ordinance. It can be obtained only from a special three- to seven-person board appointed by the board of county commissioners. This board, known officially as the board of adjustment, must be created when the zoning ordinance is passed. One of its main functions is to issue variances in situations like this one.

Variances are not given automatically. The board of adjustment listens to your reasons for wishing to have the development standards waived. They may request testimony from the zoning administrator and other witnesses. Based on all this information, they may decide that there would be a genuine hardship if zoning standards were strictly enforced. If reducing these standards won't cause problems in the use of nearby property, your request probably will be looked on with favor. Once a variance has been granted, perhaps with specific conditions attached, the zoning administrator will issue you the necessary permit.

One thing should be made clear. A variance can be granted only when there is a hardship in the use of a particular piece of property caused by imposing zoning restrictions. If the hardship

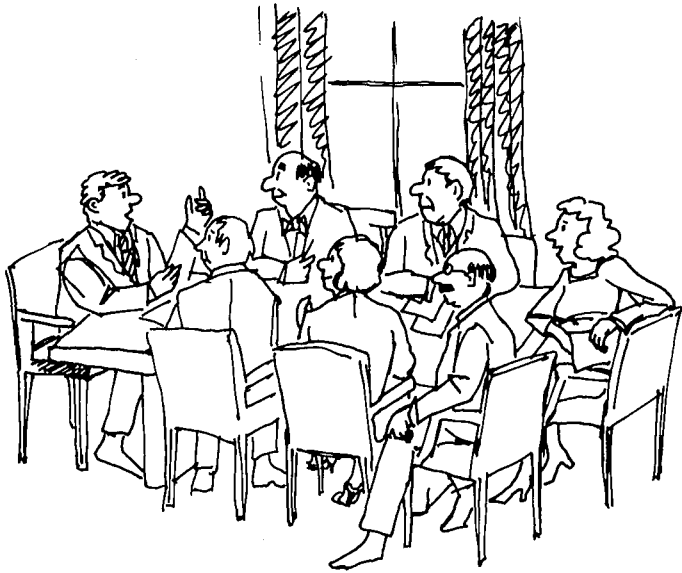


is one that the property owner caused, such as voluntarily selling off property that left the residual too small to develop, no variance can be issued. Moreover, no variance should be issued only for the sake of convenience or higher profits when no hardship exists, since to do so would be to discriminate against those who complied with zoning standards without asking for special favors. State law requires that a variance be denied if it cannot be justified truthfully.

Case E. You and zoning administrator disagree.

This is similar to Case D because it involves the board of adjustment. In this instance the board acts to decide whether or not the zoning administrator made the correct decision in granting or denying a building permit. The zoning administrator normally has very little discretionary power and must issue a permit if zoning standards are met. But on some occasions, his or her authority is not always clear-cut.

An example might be a permit for a commercial building to be constructed on land located in two zoning districts—one that allows commercial uses and one that prohibits them. If the permit is denied, the property owner may appeal to the board of adjustment. If the permit is issued, another property owner who objected might appeal the decision. In either case, the board of



adjustment studies the zoning ordinance and the particulars of the case at hand and decides if the administrator acted correctly.

The board of adjustment must review any decision of the zoning administrator that is challenged by a local citizen. It is often called a "quasi-judicial" body. This means that it acts to judge the legality of a particular decision or action without the formality and cost of the regular court system. Having a board of adjustment makes it easier for you to have legal protection from possible unreasonable, capricious, or discriminatory decisions by the zoning administrator. Its role is a very important one in protecting your rights under zoning.

There are times, however, when it is desirable to carry a zoning controversy beyond the board of adjustment or any official non-judicial decision-making body or individual to a court of law. The process is roughly similar to that used in any legal dispute. Normally, suit is brought against the public offi-

cial or body, attorneys representing both sides argue the case in district court, and the presiding judge renders a decision. If the losing side wishes, it may appeal the judicial decision to a higher legal authority and perhaps eventually to the U.S. Supreme Court. But only a small number of zoning disputes find their way into the court system, and appeals even to the state Supreme Court level are rare. Courtroom procedures are costly and time-consuming, so most differences of opinion are ironed out at the local level and without judicial involvement.

Case F. **Your plans are at odds with the zoning use restrictions.**

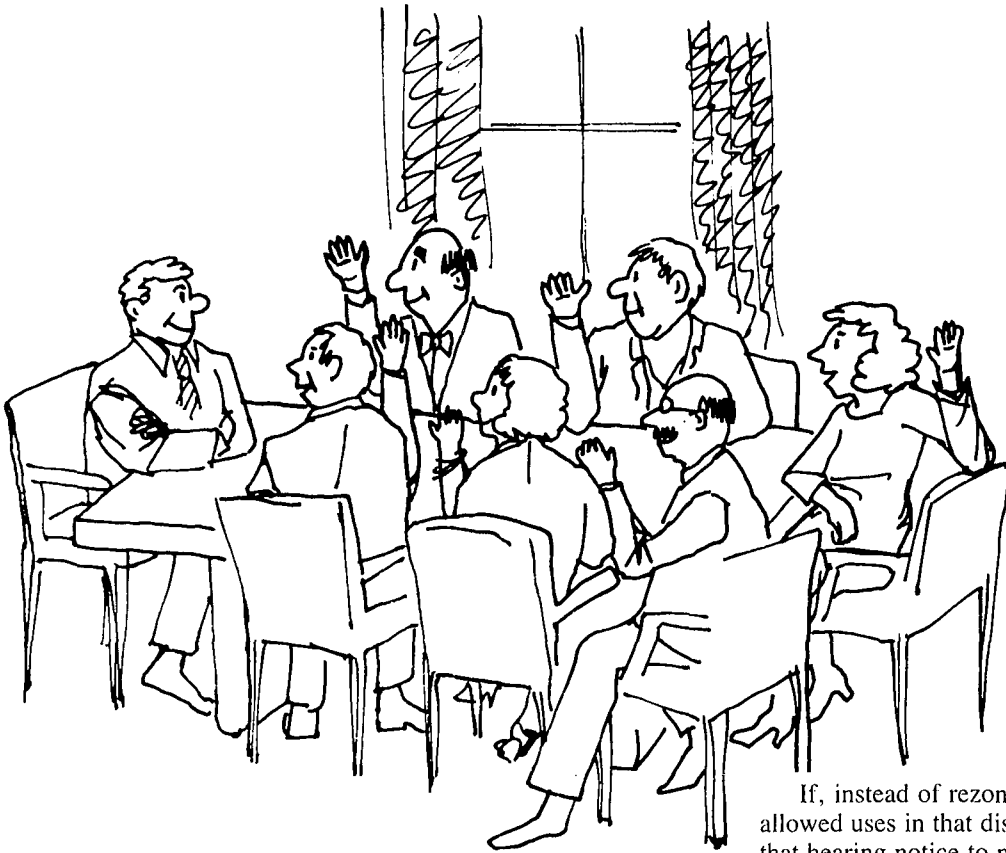
You own 5 acres of land in a lakeshore residential district of a zoned community and want to use the site to build a restaurant and tavern. This type of structure is a prohibited use in that zoning district. Is there a way you can get approval of your development plans?

This is one example of situations where a property owner and the zoning ordinance may disagree. These cases are not necessarily common, but a few always come up in the zoned community. The chances of getting approval are probably rather slim, but not beyond further consideration. Your first thought may be to try to get a variance (see Case D). This won't work. State law says that granting a variance that will allow any use that the ordinance prohibits is unlawful.

Further, because the planned use is not listed as a principal accessory, or conditional use, none of the procedures in Case A or Case C applies. What you will need to do is attempt to get the zoning ordinance amended so that the property is in a zoning district that allows the intended use. Two kinds of changes in the ordinance will do this: (1) getting the zoning district boundaries relocated so that your property is in a different zone (rezoning), or (2) getting the list of principal and conditional uses for the present district expanded to include the intended use.

How is rezoning accomplished? This generally involves four steps: (1) application to the planning commission, (2) public hearing with notice to neighboring landowners as well as the public, (3) recommendation by the commission to the board of county commissioners, and (4) official amendment of the zoning ordinance by the board.





If, instead of rezoning, you request a change in the list of allowed uses in that district, the procedure is the same, except that hearing notice to neighboring landowners is not required.

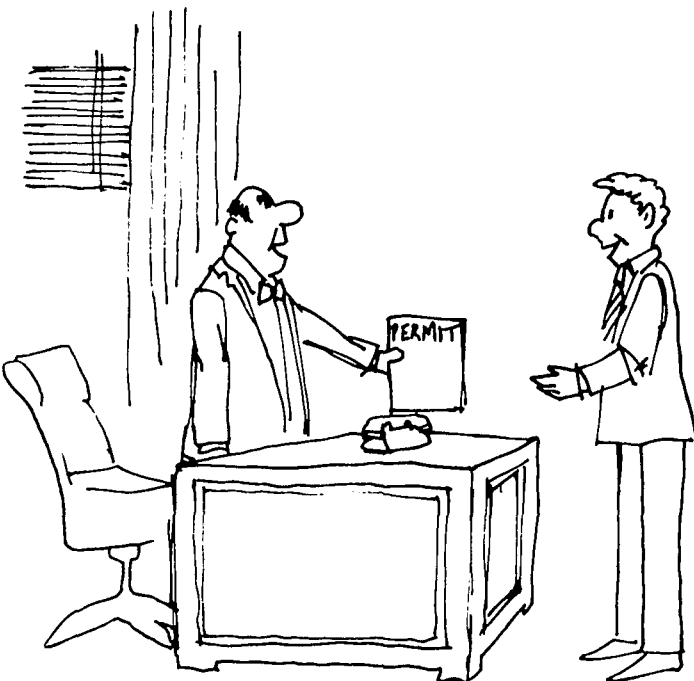
You can expect that amendment will not take place in many instances. If the zoning ordinance was considered carefully in the first place, there was and is a good reason for not allowing your intended use in that location. In some cases, however, the exclusion of that use may have been an oversight. In others, conditions may have changed and an excellent original ordinance now needs to be updated. You probably can estimate your chances of success by asking local officials or planning commission members a few questions.

Case G. **You were there first.**

In every case so far, we've assumed that a change in land use was desired after a zoning ordinance had taken effect. But what if you just want to continue a land use, without major changes, after the ordinance has passed? More particularly, what if the use you want to continue is prohibited in that location by the zoning ordinance? This is not an uncommon occurrence and some special arrangements have been devised to deal with these kinds of situations.

We use the word "nonconformity" to describe a land use, occupancy, or parcel of undeveloped property that, although made unlawful under terms of an ordinance, is already present when such terms are adopted. The most serious type of nonconformity is a use of land or buildings located in a zoning district where such a use is prohibited. At the other extreme, a single family home that is nonconforming only because it fails to meet a highway setback standard by a few feet is of little consequence.

In between is a great variety of situations that because of some circumstances are not fully in accord with the ordinance. They may include, among others, an unfenced junkyard, a restaurant with too few parking spaces, a lakeshore cottage on a substandard lot, or a billboard too close to another billboard on the highway—any use or practice that is both nonconforming and "was there first."



The important thing to remember about nonconformities is that, for the immediate future, zoning regulations are legally almost powerless to prevent their continuation, no matter how much they conflict with nearby land uses.³ How these nonconformities eventually will be affected by zoning depends on how a local ordinance is written. Often, if nonconforming structures are somehow destroyed beyond the point of reasonable repair, reconstruction will have to be in accordance with the ordinance. Also, if a nonconforming use is discontinued, it often cannot be commenced again.

For some uses, and some standards, compliance may be required by a specific period of time. Examples may include junkyard fencing and setback, billboard setback or spacing along the highway, screening of mobile home courts, and the elimination of billboards and signs from the residential zone. With these exceptions, nonconformities generally are not affected by the adoption of a zoning ordinance. They cannot legally be eliminated before their owners have had sufficient time to get their money's worth out of their investment, which in some instances may be a very long time.

In the case of nonconforming undeveloped parcels (substandard lots), an owner may be required to join them with one or more adjacent parcels if they are in the same ownership. If they are owned by someone else, the substandard lot owner will need to be accommodated somehow, probably by issuing a variance allowing construction on the lot despite its deficiencies.

The status of nonconforming uses, occupancies, structures, and parcels is misunderstood by many people who believe that zoning will immediately or in short order do away with some of the problems that have resulted from undesirable land development and practices. As you can see, because of the legal protec-

tion given to owners of all types of nonconformities, this cannot happen.

The existence of nonconformities should be considered even before the zoning ordinance is passed or amended. Zoning districts with concentrations of nonconforming uses and structures are certainly illogical and probably illegal. Mapping nonconformities is a natural and very important part of the comprehensive planning process that should be done before zoning. Too many times this step is overlooked. Almost inevitably it will lead to problems. Among other things, neighboring owners in areas where nonconformities are concentrated often can use this fact to give convincing arguments for rezoning or granting a variance to allow developments similar to those already existing. These complicate the job of the zoning administrator, and all the zoning boards and commissions, as well as the governing body.

Summary

These seven cases illustrate "what makes zoning work" in the rural community. They look at zoning as it affects the landowner and the developer. As you reconsider the rather detailed information in this chapter, keep in mind that only a very few citizens will find themselves in the situations illustrated by cases "C" through "G"—the complicated ones. A larger number will be affected as in Case "A" (and "B" where it is required). An even larger number, those who are not landowners or who do not wish to change the way they are using their property, will not even need to go through these simple procedures. All seven situations were included here because they are part of zoning and often are misunderstood. It's really not as confusing as it seems. Here is a table that summarizes most of the administrative forms and related items:

Item	Obtained from	Purpose
Principal use permit	Zoning administrator	Permission to build on property for a principal use. Learn of zoning requirements and standards.
Accessory use permit	Zoning administrator	Permission to build an accessory use. Learn of zoning requirements and standards.
Certificate of occupancy	Zoning administrator	Permission to occupy developed property. Inspection for compliance with proper standards.
Conditional use permit	The planning commission OR the board of county commissioners after recommendation from the planning commission. Always a public hearing.	Permission to develop property for listed conditional uses. Make sure development will not damage the neighborhood or overload public facilities.
Amendment	Board of county commissioners after recommendation by the planning commission and a public hearing.	Change ordinance to allow different uses or standards for the location of your property.
Variance	Board of adjustment after a public hearing.	Allow variation from zoning standards that would result in a hardship in the use of a specific property.

³A truly offensive land use may be halted by court action if it is found to be a public or private nuisance. This method is distinctly different from, though somewhat related to, zoning.

CHAPTER 2. THE BENEFITS—AND COSTS—OF RURAL ZONING

Introduction

Before we decide to buy something, whether it's a new hat, a new car, or a fancy hairdo, there are always two considerations. First, obviously, what we will have to pay for the article or the service, and second, almost as obviously, what we expect to get for our money. The first of these we can label "cost;" the second we can call "benefit."

Costs might be looked on as the disadvantages of making a particular purchase. Besides money, costs include the time spent in shopping, the cost of traveling to and from one or more shopping areas, and other nonmonetary considerations, such as "what will my wife (or husband) say?"

Benefits is another word for advantages. In contrast with costs, many benefits cannot be valued easily in money terms. They include personal comfort, satisfaction from personal or family appearance, or life in a better neighborhood. Some benefits are thought of in money terms, often with an eye to the future. For example, one of the benefits of a good education is the higher lifetime earnings that are expected to result from it.

Almost every consideration in deciding whether or not to buy a particular item could be labeled "cost" or "benefit." Without perhaps realizing it, we subconsciously compare one side of a ledger, the costs side, with the other side, the benefits. If benefits exceed costs, we proceed. If costs exceed benefits, we do not.

Although this seems like a simple process, it is complicated by the fact that many costs are immediate and can be stated in dollars and cents, while many benefits will occur in the future and cannot be assigned a specific dollar value. Thus, someone whose position may be identical to our own may decide to buy something that we have decided to pass up simply anticipating a higher value to its future benefits than we anticipate.

In the case of community decisions, such as whether to spend money on a new park, or whether to enact a particular rural zoning ordinance or amendment, there are further complications. Many of these occur because neither the costs nor the benefits of a specific public action are evenly distributed among the people living in the community.

Bill Johnson may stand to gain more than any of his neighbors. John Jones may have to pay no "costs" except those thrust upon him by taxes. Jim Brown may have few benefits but have to accept some more personal costs in one form or another. Thus, each individual will have a slightly different cost-benefit comparison.

One step toward estimating costs and benefits for the entire community is to try to calculate the sum total of those for

individual citizens. In addition, there are always community costs and benefits that cannot be assigned to anyone in particular. A community cost-benefit analysis must consider both of these factors in their totality. Although making such a comparison is difficult, responsible elected officials attempt to do this when a rural zoning decision is before them.

Since no two communities are alike, cost-benefit comparisons differ, mainly for two reasons: (1) different circumstances (level of economic activity, patterns of resource use, population growth, etc.) and (2) different community values that place a greater or lesser weight on various costs and benefits, particularly benefits. Because of these differences, we will not consider specific costs and benefits from rural zoning. That would be an endless, and probably futile, task.

What we *can* do is consider the various *categories* of costs and benefits that should be taken into account in any rural community that is seriously considering adopting or amending a zoning ordinance. These categories are covered in the next two sections. The first has to do with zoning benefits, the second with zoning costs.

Categories of Zoning Benefits

Six categories of zoning benefits are discussed here, not necessarily in order of importance. In many respects they represent a summary of the accomplishments of successful zoning that were given in Chapter 3 of *You and Rural Zoning, Part I*. You may want to re-read that chapter first.

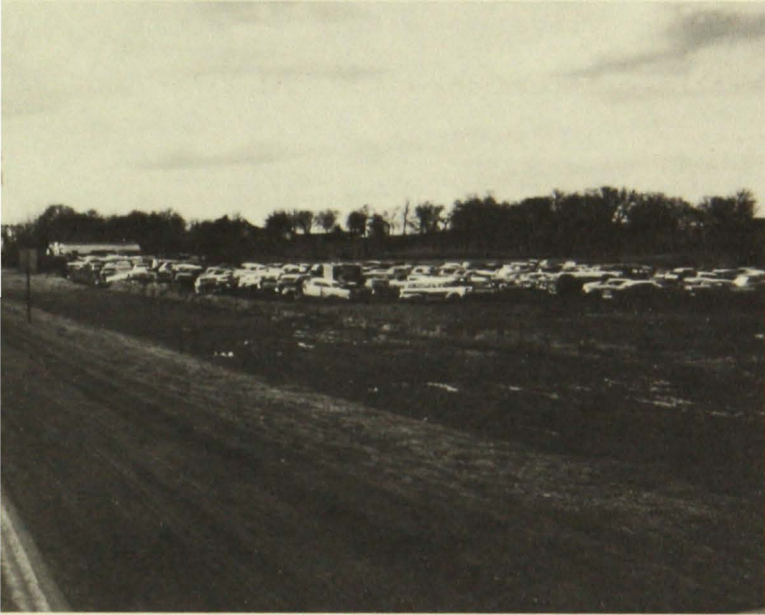
1) **An improved physical and natural environment.** Residents of rural communities that have had a suitable zoning ordinance long enough for it to be effective enjoy a more pleasant living environment than residents of unzoned communities. This is often due to the impact of zoning on what we can call the "aesthetic" characteristics of a community, defined as including any part of our environment that we see, hear, feel, or smell. Successful zoning can provide for fewer, better-spaced, smaller, and more attractive signs and billboards, screened junkyards and less cluttered lakeshore frontage, cleaner air, less polluted lakes and streams, and more scenic highways.

Another aspect of the physical environment is what we might call the "mobility level." In zoned communities, off-street parking requirements, highway setback, and restricted highway entry result in less congestion on streets and highways. Development can be guided away from areas with inadequate roads. Higher "mobility levels" save time, provide for greater safety, and generally improve the disposition of motorists.

2) **Higher health and safety levels.** There are many ways rural zoning can contribute toward making your community a healthier, safer place to live or visit. Zoning standards for the spacing of houses and other structures make it easier to fight and

contain fires. Minimum lot size requirements may be instrumental in keeping sewage effluent out of neighborhood wells and adjacent lakes and streams. Regulations controlling junkyard and dump location keep these hazards with their insects and vermin away from children at play. Highway setback, restricted entry, and off-street parking raise levels of safety in highway travel. Lake surface zoning reduces the possibility of accidents involving boaters, waterskiers, swimmers, and fishermen. Flood plain development controls may prevent unnecessary personal tragedies.

This city scene often dots the countryside, too.



3) **Fewer conflicts between landowners and different land uses.** Few of us appreciate having a honky-tonk next door to our private home or summer cottage. It's hard to be good neighbors when houses or cottages are too close together on small lots. Farming and rural residents get along up to a point, but eventually too many homes in farming areas will cause disputes that are difficult to resolve. Noisy and dusty land uses, such as sand and gravel excavation, next to a school, a hospital, an apartment house, or a park are not welcome. Many conflicts such as these can be prevented in the rural community that enacts a zoning ordinance in time.

4) **Economic development, jobs, and income.** With soaring interest in recreation-tourism and dramatic increases in numbers of second homes or vacation cottages, many rural communities are beginning to depend heavily on recreational

An aerial view gives planning clues not obvious from the ground.



visitors and part-time residents who bring "outside money" into the cash registers of local business. Zoning that provides the other categories of benefits also makes an area more attractive to recreationists and part-time residents. Thus, there is a direct link between zoning and the amount of money spent in the local community. Some of this outside money stays in the local economy. Nearly all of it results in more local jobs available.

Other kinds of development, such as manufacturing establishments, also may be more easily attracted to a community having the benefits of an effective, well-conceived zoning ordinance. In some places, zoning can be used to protect forestry and agriculture from the intrusion of incompatible development that could lower their profitability and, in some instances, drive them out.

5) **Lower property taxes for equal public services.** Providing roads, school transportation, police and fire protection,

water and sewer lines, and other public services to a sprawled-out community costs more than the same level of services in a compact, orderly development. Tax dollars are saved, or spent more effectively, if zoning is based on a carefully developed comprehensive plan to encourage orderly growth, prevent traffic congestion, and protect the public investment in other facilities, such as parks and recreation areas.

Tax dollars also are saved when zoning guides development toward those parts of the community best equipped to handle additional demands on schools, roads, water and sewer facilities, and parks. Sometimes these savings are small, but high tax levels make even small savings important. In some instances, substantial sums of money may be involved.

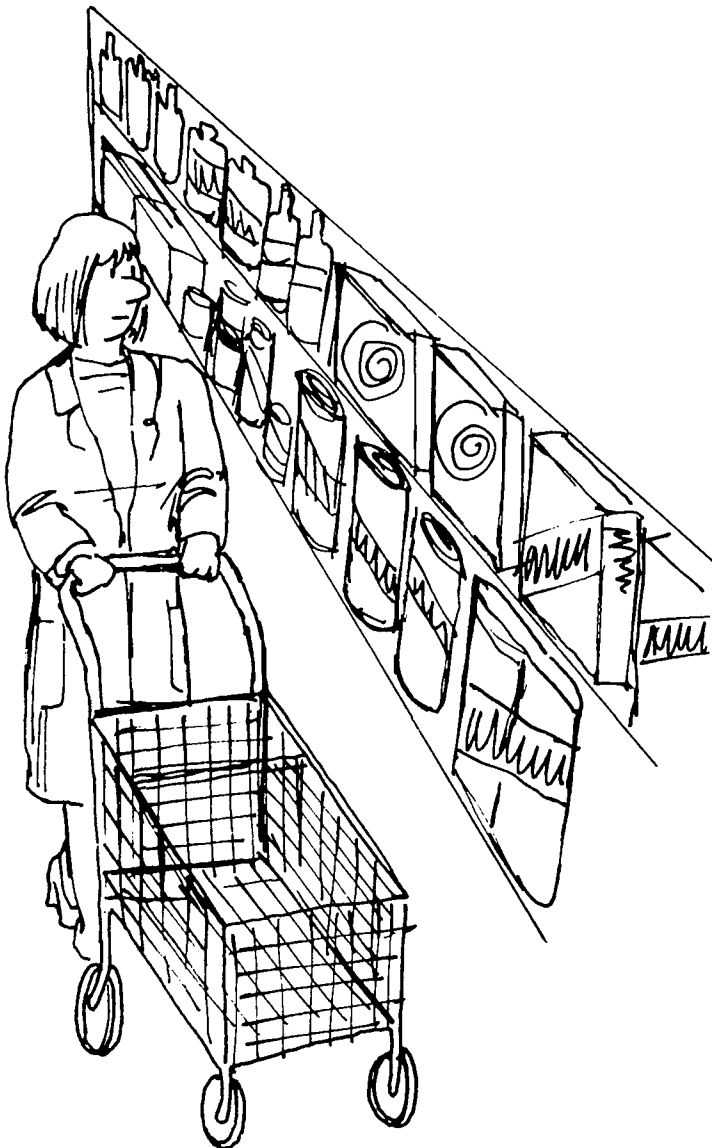
6) **Stabilized or increased property values.** Preserving and increasing property values are benefits that indirectly include all of the benefits listed above. Lower taxes for equivalent services, a nicer community environment, faster economic growth, and higher health and safety standards all have a positive effect on property values. Zoning also has much the same function as insurance, since it protects the property owner from losses that could result from the peril of undesirable use or development of adjacent land.

Categories of Zoning Costs

Everything has its price. Zoning is no exception. In contrast with zoning benefits, many of the costs of zoning can be expressed easily in dollars and cents. There are also costs that simply make life less enjoyable as well as costs in terms of hours and minutes: both are difficult to estimate. The list of cost categories is somewhat shorter than the list of benefits. This does not mean that total costs may not exceed total benefits.

1) **Cost of developing, adopting, and amending the zoning ordinance.** If you expect to have effective zoning in your community, zoning provisions should be based on careful study and planning—what we usually call a comprehensive land use plan. This costs money. Many counties have spent upwards of \$30,000 for a comprehensive land use plan, with a significant portion coming out of local property taxes and the rest received from federal and state agencies. Although there are other uses for a comprehensive land use plan, and not all of the cost should be counted against zoning, a plan is necessary for zoning to reach its full potential. Questions about (1) the number of zoning districts, (2) the location of district boundaries, (3) types of regulations, and (4) the need for zoning must be answered before a suitable ordinance can be developed and adopted. Comprehensive land use planning is one of the best ways to do this.

The tax dollar costs of developing a comprehensive plan and adopting or amending a zoning ordinance are a far cry from total costs. Time costs actually may be a more significant item. Some citizens donate many hours of their personal time serving without pay on the planning commission. The county attorney, the board of county commissioners, the county highway engineer, the extension agent, and township officials usually become involved at various times in the planning-zoning process. Their time is taken away from other pressing matters. Public hearings and education meetings on zoning require a time input by large numbers of interested citizens. All of these "donations," although voluntary, are essential if zoning is to be a successful venture.



Although many of these costs are incurred before a zoning ordinance actually is adopted, later updating and revision will impose additional similar costs.

2) **Costs of administration.** Having an ordinance that is ignored may be worse than having no ordinance at all. Effective zoning administration is essential in making zoning work. Maps and records have to be kept; building permits issued; inspections made; and many other tasks performed in a careful and responsible manner. It may cost \$20,000 a year or more to hire a full-time trained administrator, pay traveling expenses, and provide office space and secretarial services. Unless a community is prepared to assume this financial responsibility, zoning, no matter how well intended, is likely to fail.

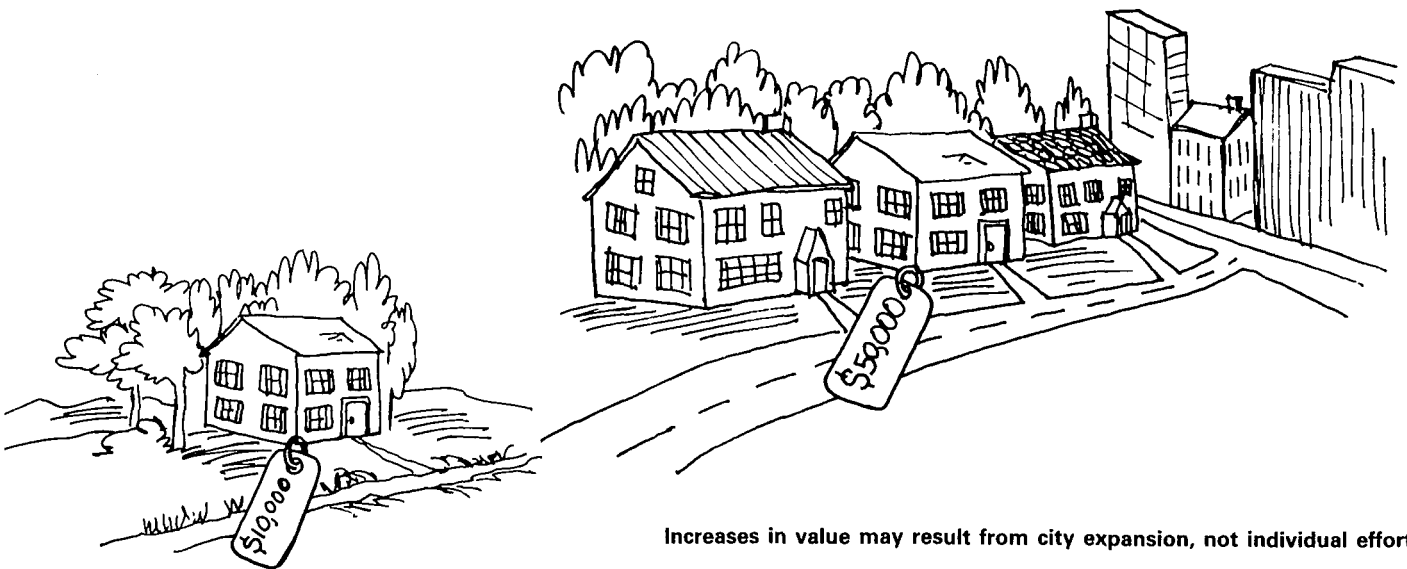
Of course, the cost of zoning administration may vary considerably from one place to another. It is usually higher where the potential benefits from zoning are greater because this is where greater growth, changes in land use, and population increases are occurring. Where population growth is rapid, summer cottages are multiplying, tourism is on the increase, or new industry is cropping up—in other words, where zoning can be most useful—the costs of zoning administration may be a

sizable addition to the county budget. In some counties, an existing official may be able to add zoning administration to current duties on a part-time basis. In others, the county and cities or township cooperate to hire a single full-time administrator.

3) **Red Tape.** Another cost of zoning might be labeled simply “red tape.” The cost of “red tape” is directly related to the cost of administration, except that it represents the other side of the coin—the cost to the private citizen. Landowners who want to build on their property will need to go personally to the zoning administrator or a representative to get a principal (or accessory) use permit. Before homebuilders can move in, they may need to get a certificate of occupancy, which could mean another trip and an inspection of the premises. Someone who wants to develop a mobile home court or a summer resort will need to obtain a conditional use permit before proceeding. This will require going to the zoning office, filling out an application, appearing before one or more boards or commissions, and attending a public hearing, adding up to several weeks of delay. Such a delay could be costly, especially since some seasons of the year are more favorable for construction than others.

Although there is usually a charge for the various types of zoning permits, it is normally small. The greater share of the cost of red tape is the time and the bother—what some have called the “psychic cost,” that sometimes seems inflated because many of us tend to resent being required to wait for public permission before we do something. This cost can be minimized by making permit procedures as simple and short as possible and by exempting certain construction, such as some farm buildings and small inexpensive structures from some of the permit and inspection requirements.

4) **Loss of Development Rights.** Without zoning, there are almost no restrictions on how landowners use and develop their property. With zoning, a small portion of these “development rights” are given up for the sake of the common good. In return for giving up part of these rights, the landowner receives some



Increases in value may result from city expansion, not individual effort.

land protection and benefits as a member of the community. In many cases this may, in the longrun, amount to an even exchange.

For some, however, giving up certain development rights may mean the loss of substantial opportunities, such as the chance to develop property for a particularly profitable business, or to sell land at a high price for certain purposes. Thus, a real financial loss may be involved.

Two points on the loss of unusually valuable development rights need to be understood. First, zoning, when properly used, only prevents development that would have adverse effects on the welfare of the rest of the community. In other words, landowners who consider the community's interest would not exercise these rights even if zoning were absent.

The second point is that the value of the development rights given up under zoning may be a value that the landowner has not earned individually. The development opportunity may have come into existence as a "gift" from the community. It could, for example, be due to a new, improved, or relocated highway; the development of a nearby public recreation attraction; or the normal growth and expansion of a city or village.

Increases in land value resulting from development opportunities originating through such factors are known as "unearned increments." Requiring a landowner to give up all or part of this unearned increment, which might be viewed as fruits of speculation, may not be truly unjust or unfair, even if it is sizable. Of course, if a property has been purchased recently at a high price reflecting a speculative value, the new owner may suffer severe financial losses from regulation. In those cases, it may be more appropriate and fair to use some other method to prevent an unwanted development.

Summary

Before we leave the subject of zoning costs and benefits, let's review the items on both sides of the ledger. Categories of benefits include:

- Improved physical and natural environment
- Higher health and safety levels
- Fewer conflicts between different landowners and land uses
- Economic development, jobs, and income
- Lower property taxes for equal public services
- Stabilized or increased property values

The major categories of costs are:

- Costs of developing and adopting the zoning ordinance
- Administrative costs
- Red tape
- Loss of development rights

Most, but probably not all, of the specific costs and benefits of rural zoning in your community will fit into one of the ten categories just listed. Keep in mind that we have assumed throughout this chapter that rural zoning was used properly. This means that a careful study was conducted, that the zoning ordinance accurately reflects the goals and needs of the rural community, and that zoning administration and enforcement is wisely and efficiently carried out, without playing politics or practicing discrimination. Where these conditions do not prevail, zoning has fewer benefits and more costs.

Some costs, such as costs related to political favoritism or administrative inefficiencies, are not included in the list given earlier. These are not unique to zoning, but may occur when ever any public function is not done well. The solution to the problem of inept government is found through the exercise of voting rights in choosing elected officials, not in the elimination of a public service or function.

A final note about zoning costs and benefits is in order. Rural zoning is an investment in the future. Many benefits will accrue 5 or 10 years or longer after the first zoning ordinance is enacted. Costs, however, begin immediately; some are "front end" costs that may never have to be repeated, and some may tend to lessen with the passing of years. As a result, there is a natural tendency to overestimate costs, and to underestimate the more distant benefits. This tendency should be guarded against.

Zoning can do little to correct past mistakes. It may be able to do much to prevent mistakes in the future. One of the handicaps that zoning has to overcome is the fact that future generations, or at least future residents, are the major recipients of its benefits. Those who may not share in those benefits are sometimes reluctant to accept their share of the costs. From the community point of view, however, the timing of costs and benefits is less important. What is important is that future benefits from zoning can never be achieved fully unless steps are taken before undesirable development occurs. Whether or not those benefits are great enough to overcome costs and make rural zoning an intelligent investment in the future is a question that must be faced carefully, and sometimes courageously, by every rural community.

CHAPTER 3. ATTITUDES TOWARD ZONING

Zoning is the type of government activity that many people take a stand on. You yourself may not yet have decided whether rural zoning in its entirety or a certain proposed zoning amendment would or would not be a good thing for your community. But you surely will meet a great number of people who do have their minds made up. Certain kinds of people, in certain circumstances, nearly always oppose zoning. Others, in different circumstances, usually favor it. To understand why, let's look at some of the reasons that are often the basis for different attitudes toward rural zoning.

Why the Opposition?

a) **Don't See the Problems.** Some people are too busy and involved in their own jobs and personal matters to take an interest in community public affairs. If your neighbor is like that, he may not see what future problems zoning is supposed to prevent.

Commentary. Zoning, as you know, is not done just for the sake of zoning itself. It is done to prevent future problems—

problems that may not be easy for everyone to see. Zoning is a long-term proposition. You have to look ahead, "down the pike," to appreciate what it might be able to do in your community.

b) **Fear for Business or Financial Interests.** Some members of your community fear zoning because of the effect it could have on their own business or financial affairs. It might, for example, reduce the speculative gain on some investment property, or place tight restrictions on certain land uses.

Commentary. This is not an uncommon reason to be against zoning, and business men and investors, who may be opinion



leaders in your community, should be listened to carefully. Each of us is expected to protect our private interests. But we are also members of the community. Zoning has to recognize both private interests and the public welfare. If someone plans to make a profit at the expense of the rest of the community, curtailment by zoning may be quite justified. Still, if zoning will greatly restrict some legitimate profit-making opportunities, it may be unfair to certain individuals.

c) **Lack of Understanding.** Those who do not understand what zoning is—what it is supposed to do and how it works—may have a strong tendency to be against it. They are likely to be particularly afraid of how zoning might affect them personally.

Commentary. It's only natural to be afraid of the unknown, and zoning is no exception. But this is not a justified reason to oppose it. A more logical reaction would be to take steps to become better informed.

d) **Lack of Involvement.** If certain groups or local factions have not been represented in the planning-zoning process, you can expect them and the people they represent to be against it. Their attitude is that since zoning decisions affect everyone in the rural community, everyone's point of view should be considered.

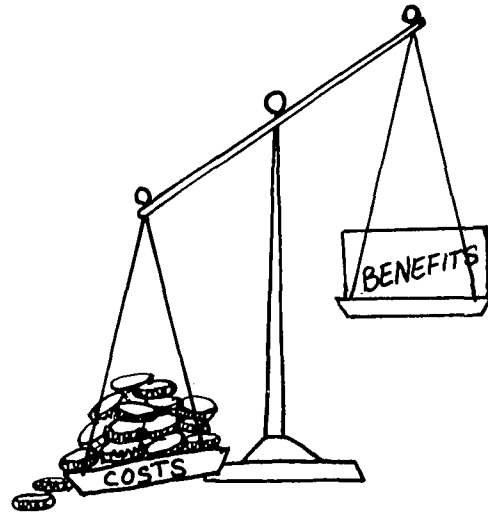
Commentary. Lack of involvement is a common reason for opposing rural zoning, especially for out-of-office political leaders, other local government officials, such as school board members, and representatives of private interest groups, such as sportsmen's clubs and farm organizations.

Sociological research has shown the need to involve people in early planning stages or expect opposition from them at a later stage. In the case of county zoning, city and village residents may dominate the county board and the planning commission. This might be of great concern to township officials and residents of the rural areas since county zoning generally takes effect only in the unincorporated areas outside cities and villages.

This is an argument against how the zoning process is being carried out—but not a very good argument against zoning itself. And this brings out a very important point. We all should realize that zoning is not going to work well unless all local interests have a chance to take part in it. This often means both urban and rural people since both have a stake in what happens in rural areas. Consider rural lakeshore residents and village tourist-related business operators. Both suffer if rural lakes become polluted and unattractive.

e) **Belief that Costs Exceed Benefits.** Some perhaps very knowledgeable and well-informed, civic-minded residents of your community, may have reached the conclusion that rural zoning will cost the community, in time and money, more than it's worth. Thus, they will oppose it, perhaps suggesting some other form of governmental or private action to achieve some of the same results.

Commentary. All things considered, this is the most commendable reason to oppose rural zoning. This does not necessarily mean that someone holding this view is correct. Everyone's attitude comes from educational and occupational background, personal characteristics, and how much weight he or she attaches to certain advantages and disadvantages of rural zoning. Also the benefits and costs of zoning, especially the latter, may



depend heavily on provisions of a specific zoning ordinance. Small changes in the ordinance may tilt the scales in the opposite direction.

f) **Fear of Discrimination.** Some of your neighbors may note that it is possible for zoning decisions to favor one landowner at the expense of another. They may feel that zoning will result in discrimination based on personal likes and dislikes and whether or not a person votes "right." They would rather take their chances with no controls than to have to play politics.

Commentary. This argument shows a careful insight into the real world. It may be too pessimistic, however. There is, of course, always a chance that some discrimination will take place. Opportunities to be discriminatory are diminished, however, by the fact that so many different persons—those on the zoning board of adjustment, the county commissioners, the planning commission members, witnesses at public hearings, etc.—are involved in the zoning process. And don't forget that the absence of zoning may tend to discriminate against the "little guy" who doesn't have enough money to protect self or property.

Opportunities for discrimination may depend on how a particular ordinance is written. The more clearly the ordinance states exactly what is required of landowners under all circumstances, the fewer opportunities for one to be favored or discriminated against by later decisions. Keep this point in mind when you read your own ordinance.

g) **Dislike for Red Tape.** Nobody likes red tape. Some dislike it so much that they are opposed to anything connected with it. They feel it makes life more complicated than it needs to be. The word "permit" always reminds them that zoning involves red tape. Zoning without red tape is O.K. they say. But!

Commentary. Only a very wide-eyed optimist would believe that zoning will work without a certain amount of red tape—principal use permits, public hearings, conditional use permits, etc. Regulations that are not enforced are practically useless. It is still true, however, that red tape associated with zoning, like red tape everywhere, is unpleasant. So, those who oppose it have a point. Administrative and enforcement procedures are pretty much set by the provisions in the zoning ordinance. Sometimes a few small changes can cut down considerably on this bothersome part of zoning.



Zoning could offer needed protection for privacy of lake housing and purity of the lake as well.

h) Interference With Free Enterprise. This is another argument that is common among those who think governmental powers are expanding too much. It goes like this: the free enterprise system is based on the allocation and use of resources, including land, by private owners motivated by the prospect of financial profits; this allocation results in the greatest overall productivity of our resources; zoning interferes with this process and thus reduces productivity.

Commentary. Although the free enterprise system is basically sound, we have learned over the years that there is a place and a need for some governmental intervention, primarily because some costs of production, such as pollution of the environment, are not paid by the producers. We operate today under a system in which government and business are essentially in partnership in many ways. Keep in mind the fact that although zoning is a governmental function, it is designed to help business interests as well as the rest of the community. Intelligent zoning can improve the allocation and use of land resources in your community. But intelligent zoning demands careful study and good judgment. Those opposed to zoning because it interferes with free enterprise have an important message. The message is that poor or unrealistic zoning may be worse than no zoning at all.

i) Desire for Stability. Some of your friends and neighbors, especially those in their more mature years, will oppose zoning because it is something new—one more change in a world that is already changing too fast.

Commentary. It is easy to sympathize with this point of view. We need to remember, however, that zoning actually helps inject more security and stability into the future. Perhaps the “good old days,” when we didn’t need zoning, were better days in some respects. Neither zoning nor a failure to zone is going to bring them back, however.

j) Dislike for Interference with Private Lives. It is not unusual to find a few people in a community who dislike having anyone or anything interfere with how they live or how they use their land. They don’t like speed limits or compulsory educa-

tion. They don’t like fishing and hunting licenses. And they don’t like zoning. They feel that it is an unnecessary infringement on their rights as free citizens, just as other government-imposed rules, regulations, and requirements are.

Commentary. This point of view is based on a person’s ideology, sometimes to the exclusion of common sense. There may have been a time in the past when we all could take a devil-may-care attitude toward the rest of the world. But “rugged individualism” doesn’t fit quite so well in modern times. Too much regulation doesn’t make sense, but our complex society simply can’t function without a certain amount of it. Look at this argument carefully. It may have some merit if your community is going overboard with a zoning ordinance with a lot of unnecessary detail and too much restriction.

k) Organization Pressure. Members of organizations that have taken an official position against zoning will often accept the organization’s position as their own. They have confidence in their leader’s ability and judgment and would rather support their organization than take time to learn to understand zoning themselves.

Commentary. It is customary for “pressure groups,” whether officially organized or not, to represent private citizens with common interests or beliefs. This is usually more effective than individual action. Belonging to such a group does not excuse the member from thinking individually, however, and careful questioning may reveal how informed or misinformed this person is. If a sound argument is presented against zoning, listen carefully. If a position is based on a blind following of the organization “party line,” it may not deserve much of a hearing.

Why Do People Favor Rural Zoning?

Rural zoning has many supporters with a variety of reasons. Some of them are:

a) Benefits to Property Owners. The person who owns land, particularly land with buildings, will probably favor zoning if it will increase or maintain the value of this property. This category includes owners of lakeshore property, who think that zoning will help keep the lakes from being polluted or overfertilized from new cottages on small lots. It also includes the homeowner and the owner of open land that might become a nice residential section in the future. Both want protection from “dirty” industries, shacks, junkyards, and other “undesirable” developments whose appearance would lower property values.

Commentary. Landowner benefits are the basis for a great deal of the support for zoning. It sounds like a self-centered reason, and to some extent it is. But it also is a benefit that is widely distributed in the community. And it is hard to argue that a *lowering* of property values would be a good thing. Some landowners may gain more than others under a zoning ordinance. In fact, that is almost inevitable. But if certain landowners *and* the community at large both gain, it’s nothing to get too concerned about. You should be more concerned when certain landowners gain at the expense of community welfare, which also could happen as a result of zoning.

b) Feeling That Benefits Exceed Costs. Civic-minded citizens tend to think of the whole community rather than only their own personal interests. Careful, well-informed, and knowledgeable consideration of the many aspects of zoning may lead



them to regard it as beneficial to the community, even though they may recognize that certain costs are involved.

Commentary. It is difficult to take issue with zoning proponents whose stand is based on this kind of analysis. There is no question of selfishness or personal interest. Civic-minded zoning proponents expect to gain primarily because the community gains and through whatever sense of self-satisfaction is achieved from having their own ideas accepted by their fellow citizens. They can usually give the most convincing and objective arguments for zoning when called on. Their greatest fault may be that they expect too much from zoning and fail to accept

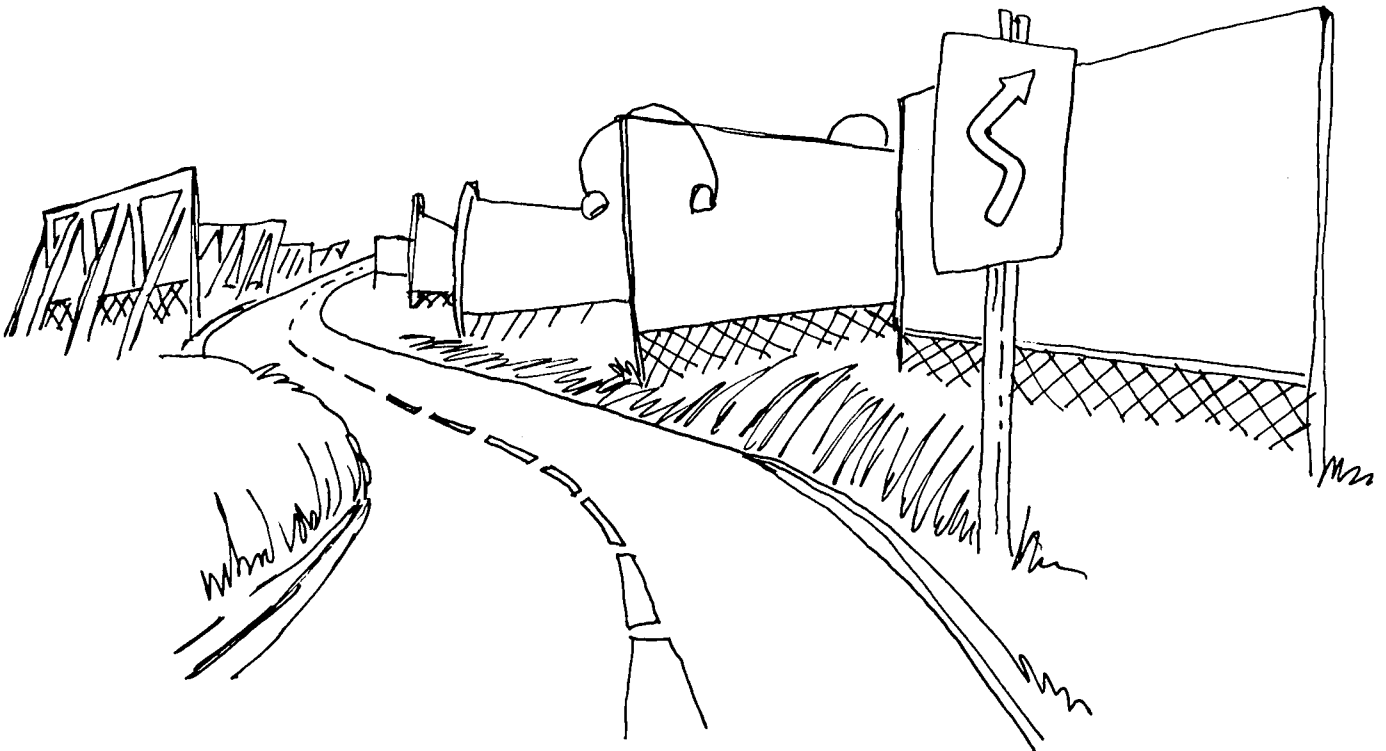
some of the arguments against zoning, even when they appear logical to others. There may be something of the missionary zeal in this type of zoning proponent. Sometimes, when they are convinced they are right, they can be expected to persist beyond temporary setbacks that would discourage the less devoted.

Keep in mind that civic-minded zoning proponents may not always be right. Their judgment is based on the situation as they see it. In part, this is determined by their own backgrounds, education and occupations, and personal ideologies or philosophies. Remember also that small changes in a specific ordinance may change the "cost-benefit" ratio considerably.

c) **Keeping Taxes Low.** Everyone is interested in taxes, especially lower taxes. Some citizens may see zoning primarily as a way to keep taxes down. They are interested in what it can do to (1) protect the public investment in roads by controlling roadside construction, (2) keep residential development concentrated so that long, expensive water and sewer trunk lines won't be needed, and (3) generally encourage a development pattern that will keep down the costs of providing public services and make the tax dollar stretch farther.

Commentary. Everyone gains if taxes are lower, provided the reason they are lower is not fewer or poorer public services. This argument can get out of hand, however. There is some tendency to take a rather short-sighted position and look at low taxes as the primary purpose for zoning. Let's not forget other community values besides low taxes. We also need good schools and roads, convenient places to shop, a pleasant physical environment, a choice of residential areas, and so on. Sometimes we can't have all of these things without also paying higher taxes. Don't misunderstand. Keeping taxes low is a good reason for zoning. Probably zoning can help lower your tax bill. But good judgment demands that we remember that we may need higher taxes regardless of whether or not zoning is present.

d) **Efficiency in Public Services.** "Leave taxes where they are, but use zoning the right way, and we can have better roads,



schools, police and fire protection, and other services for the same cost.” This is the argument you may hear from many public officials and civil servants. It is much like the lower taxes argument because it means more and better services for the tax dollar. “Control residential development, keep roadsides open, and concentrate lakeshore development and we can do our jobs better,” say the highway and sanitary engineer, the sheriff and the fire chief. “Zoning can help us serve you.”

Commentary. This can often be the reason individuals responsible for public services support zoning. The more dedicated they are to doing a good job, the stronger their support. Their reasoning is logical. But they may be expecting too much. No doubt there have been cases where zoning has done much to facilitate efficiency, and some gains can be expected in every community. But many other things also affect efficiency. And zoning **only** for the sake of efficiency in providing public services might not be a good enough reason in your particular community. It **is** one reason, though.

e) **Business Gain.** People in certain business positions often will favor rural zoning because they think it will increase their profits. The resort owner, the filling station operator, the retail merchant, the restaurant owner, and others like them may have a sizable stake in the outcome of a zoning controversy, especially if they live in a recreation or resort community.

Commentary. Charles Wilson, former head of General Motors, was reported to have said when he was Secretary of Defense, “What’s good for General Motors is good for the country.” We seem to have about the same situation here. Those in business may have self-centered, profit-motivated reasons for their interest in zoning. But increased retail sales or resort business is not normally damaging to a community. This is one of the stronger reasons to favor zoning where the local economy depends on attracting the tourist and the recreationist. Other factors are involved, obviously. But, in recreation communities, zoning to preserve an attractive physical environment can bolster retail sales and the local economy.

f) **Organization Pressure.** Citizens with common interests often organize into groups to be more effective in pressing their point on a political or policy issue. Members of these organizations often accept its position on an issue and give it as their own. Thus they will favor rural zoning if the organization does.

Commentary. The comments given for those opposing zoning apply here for the same reason. The member who hasn’t thought things out as an individual may be supporting an opposing position if the issues involved were understood.

g) **Past Experience.** Talk to someone who has owned or lived in a house where a lack of zoning permitted an incompatible development next door, such as a late hours restaurant, a tavern, or a teen-age drive-in. Chances are this person will favor zoning to prevent a repetition of this.

Commentary. This is a good example of how we learn from our experiences. Although persons who have had such misfortunes are in the minority, they may be in the forefront of the group promoting zoning in your community. This is especially likely if they moved to their present home to escape their previous problems. If they are financially able, they may buy an oversized house lot to protect themselves until zoning can do it for them.

h) **Interest in Keeping Up-to-date.** Even the traditional “keeping up with the Joneses” can play a part in the zoning

controversy. There are always some who tend to grasp at something simply because it is new. Some such people may be found among the supporters of rural zoning. They are eager for their community to keep up with modern times.

Commentary. This, by itself, is obviously not a very good reason to support rural zoning. If rural zoning is popular, no doubt you should take a “hard look” at it. But if the shoe doesn’t fit, don’t wear it just because it is stylish.

i) **Meticulousness.** Those who are well-organized and meticulous in their own lives may be concerned about the helter-skelter development and appearance of their community. Any lack of organization conflicts with their own ideas about how the world should be. If zoning is perceived as contributing to the orderliness of the community, it receives their favor.

Commentary. Although this is a narrow view, it points out something often overlooked. A well-organized community generally is a nicer place to live; there is a positive relationship among logic and order and beauty. A mixed-up world is a frustrating place to live. Perhaps rural zoning can reduce some of this frustration.

j) **Desire to Control or Discriminate.** Some individuals, for a variety of reasons, may scorn certain elements in the rural community, such as certain business interests, property owners (especially if they are thought of as speculators), non-farm industry, certain socio-economic classes, and so forth. Zoning may appeal to them because they view it as a way to control or discriminate against groups or individuals they don’t like.

Commentary. It is a human trait to harbor personal likes and dislikes and to look for ways to express them. Such feelings should not be the basis for adopting a zoning ordinance, however. A zoning ordinance that is discriminatory is illegal by virtue of the requirements of the Federal Constitution. Further, if a community follows the desirable practice of having broad representation and participation in the planning-zoning process, discrimination against specific elements is unlikely.

Summary

Let’s review the reasons that underlie attitudes toward rural zoning. Those you will be likely to find among members of your community zoning:

- Don’t see the problem
- Fear for business or financial interests
- Lack of understanding
- Lack of involvement
- Belief that costs exceed benefits
- Fear of discrimination
- Dislike for red tape
- Interference with free enterprise
- Desire for stability
- Dislike for interference with private lives
- Organization pressure

On the other hand, those who support rural zoning often do so because of the following reasons:

- Benefits to property owners
- Feeling that benefits exceed costs

- Keeping taxes low
- Efficiency in public services
- Business gain
- Organization pressure
- Past experience
- Interest in keeping up-to-date
- Meticulousness
- Desire to control or discriminate

No one can claim that this is a complete list for either side of the rural zoning controversy. But if you use this information wisely, it can be helpful. Use it to understand what other members of your community say about zoning. Use it to decide which arguments will be most effective in discussing zoning with a particular individual or in a particular situation. Use it in weighing the importance of opinions expressed by your friends and neighbors and other members of the community. Perhaps most important, use it to make up your own mind about zoning.

Notice the different kinds of reasons for supporting or opposing zoning. Observe that some are more worthy of your

attention than others. Quite a number, from both sides, result from an incomplete understanding of the zoning process itself—what it realistically can accomplish and how it will affect the daily lives of the people in the community. Some reasons stem from ideological beliefs or personality traits. Others reflect a careful civic-minded objective appraisal of the value of zoning. Many are based on business or financial interests, usually coupled with concern over the broader economic life of the community. A few represent a concern with the manner in which zoning is being developed and carried out, and with the details of the ordinance itself.

If your community is typical, each of these reasons will be used by at least one local citizen to formulate his or her opinion. No matter how illogical it may seem, each person's opinion is important. A community is more than a collection of individuals whose goals and aspirations may differ widely. But only as community decisions adequately reflect the range of these goals and aspirations do they enhance the social welfare of the people who live there. Only as rural zoning is considered in an atmosphere of understanding, well-considered judgment, and intelligent weighing of costs and benefits will it be successful in your community.

CHAPTER 4. OTHER LAND USE GUIDANCE DEVICES

This chapter is not about zoning, but it is just as important as the chapters that are. So far we've generally assumed that the chief way that landowner decisions about private land use and development are affected by public policies is through the zoning process. This is a logical conclusion because rural zoning is relatively new and widely misunderstood. But there are two good reasons for knowing about what we might call "other land use guidance devices."

The first reason is that it is easy to confuse zoning with other regulatory devices. This is particularly easy to do, when a number of different kinds of regulations, including zoning, are all made part of a single local ordinance. The ordinance may even be labeled and referred to as the "zoning ordinance." No wonder people get confused. By pinning labels on these other kinds of regulations, we can separate them from zoning and get a clearer notion of zoning itself and how it fits in the total picture of regulatory devices.

The second reason for knowing about other land use guidance devices is that many of them are overlooked by public officials. This is unusually true for those devices that do not involve regulation. There are many reasons for this. The main one may be our tendency to concentrate on only one or a few things at a time. Non-regulatory devices can be an important part of a land use guidance program.

The success or failure of zoning may rest on how well the different parts of a total land use guidance program fit together. If they support each other, zoning will be more effective as a



result. If they pull in opposite directions, neither zoning nor the total program will accomplish all that it could. Many of the errors that confound public decisions today are the result of laws and policies that tend to cancel each other out.

Other Regulatory Devices

1) **Subdivision Regulations.** Subdivision regulations apply to situations where large parcels of land are broken up in smaller building lots. They are very common in and around cities and villages that are expanding into the countryside and in many lakeshore areas. Because subdivision activity often occurs beyond the jurisdictional limits of cities and villages, county action is important. Subdivision regulations are made law by action of the board of county commissioners, following a public hearing and recommendation by the county planning commission. They are enforced by a system of permits, public review of subdivider or developer plans, and on-site inspections.

In addition to requiring the proper recording of a carefully drawn map of the area subdivided, properly called a subdivision plat, subdivision regulations deal with four kinds of considerations:

(1) The physical layout—the shape of building lots, the location and types of streets and intersections, points of traffic entry into a public street or highway, and other design features. Usually the size of building lots is regulated, but only in keeping with minimums established by a zoning ordinance.

(2) The provision of any necessary streets, sidewalks, curbs, gutters, water supplies, storm and sanitary sewers, hydrants, street lights, and other utilities by the developer. Engineering standards, sometimes in considerable detail, are set by the community and must be followed.

(3) The donation of land and easements to the community to be used for schools, parks, open space, and other public purposes as needed by the residents of the new subdivision. For small subdivisions this may be left out, or a money donation may be substituted for a donation in land.

(4) Preventing any subdivision into building lots of areas with steep slopes, unstable soils, high water tables, or other unsuitable physical characteristics.

2) **Building Codes.** Building codes are complicated control devices. They are best understood if strictly *building codes* are distinguished from what are called *mechanical codes*. Mechanical codes deal with such things as electrical wiring, plumbing, and heating equipment. Building codes, more narrowly defined, have to do with construction features and materials for the building itself. They may apply to all buildings or only to certain categories, such as public or commercial places.

Building codes are another way for a rural community to set physical development standards and then live up to them. Except for special situations, such as buildings constructed on a flood plain, they are the same everywhere in the county and are made into law by the county board after public hearings and recommendation by the county planning commission. Standard codes, developed by national associations or by a state agency, may be adopted by a local public body by reference.⁴

The purpose of building code standards is to reduce chances of fire damage, to protect future buyers from poorly built homes or buildings, and to prevent premature physical deterioration of structures in a community. Permits and inspections by a “building inspector” are used to enforce building codes. Because the permits are called “building permits,” confusion is caused when a zoning ordinance also uses that term rather than the more appropriate principal (or accessory) use permit. A zoning administrator with the needed technical training can also serve as a building inspector, but it is more desirable to have a separate specially trained person if possible. A problem in many rural areas is that few people have the technical training necessary to properly inspect for compliance with detailed engineering requirements.

3) **Sanitary Codes.** Sanitary codes may be even more important than zoning ordinances for preventing water pollution. Zoning sets a minimum lot size so that each homeowner has enough land to install an adequate soil absorption waste disposal system far enough away from a private well. The sanitary code ensures that the right size septic tank and drainage tile are put in properly. This means matching the system to soil and ground water conditions and the effluent load to be placed on it.

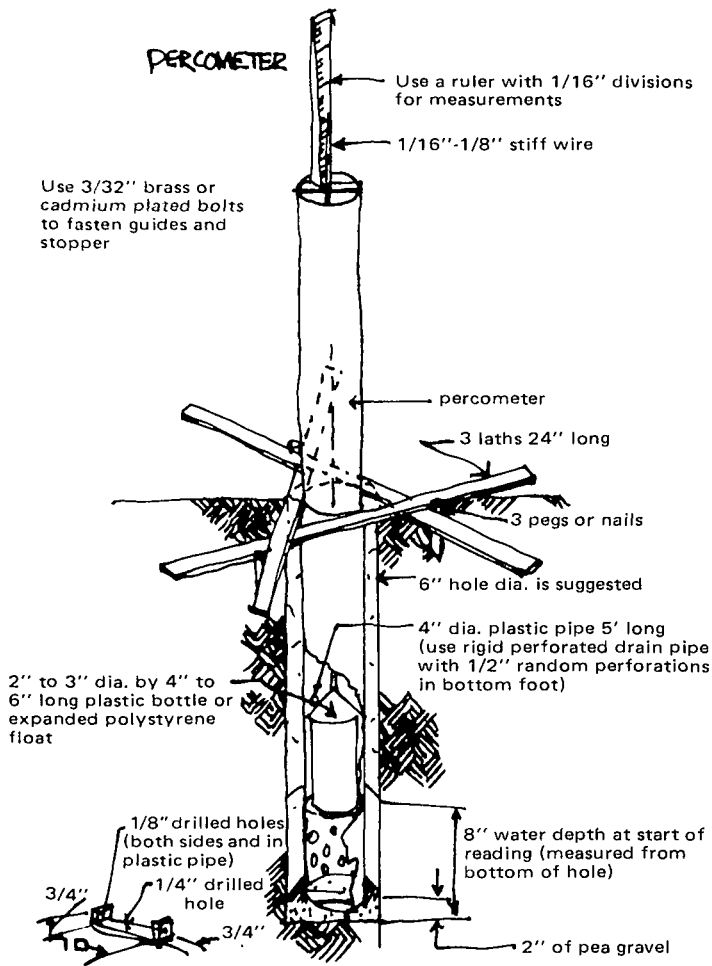
A “percolation test” is a common method for scientifically determining what type of installation is needed. Sometimes test results will suggest an alternative to the usual septic tank system. Sanitary codes also regulate water well construction.

A sanitary code is adopted by the county board and enforced by a system of inspection, testing, and permits. A standard septic tank code from the health department may be adopted by reference. A separate county “sanitary inspector” may be in charge of code enforcement, or a specially trained zoning administrator can add this to his duties, if he has enough time and office support.

4) **Housing Codes.** The most important thing to remember about housing codes is that they are *not* the same thing as building codes. Housing codes were enacted to combat crowded and unhealthy living conditions in tenement houses. They cover such factors as light, ventilation, amount of floor space per inhabitant, the number of persons using common toilet facilities, and other physical features that affect living conditions. Housing codes are enforced by a system of inspection and permits. They are rarely used outside urban areas and have their greatest impact in the older residential areas in the central cities or our larger metropolitan areas. Smaller cities or villages with urban renewal projects may be required to enforce a housing code as part of the total program.

5) **Single Purpose Ordinances.** Zoning ordinances include many standards or controls that do not vary from one zoning district to another. Many of these types of regulations could be made into law by single purpose ordinances, even where zoning itself does not exist. Single purpose ordinances can provide some of the benefits usually associated with zoning. Special laws that control junkyards, billboards, or mobile homes are examples. These ordinances, after being adopted by the county board, are enforced by a system of permits coupled with inspections. Since there are no zoning districts, regulations do not vary from one part of the county to another and they cannot restrict certain land uses or developments to designated areas.

⁴Adoption by reference involves placing a copy of a code developed by a professional association or promulgated by a state agency (as two common examples) on file in the court house and a decision by the governing body to make such a code part of local law.



Single purpose ordinances are not as effective as complete zoning ordinances, but they may fit the needs of your community. Like zoning, they are usually more effective at the county level. Where a zoning ordinance is adopted, the regulations of the single purpose ordinances should be incorporated into it.

6) **Official Map.** An official map is not the same as a "comprehensive plan" (or "master plan"). A comprehensive plan is a generalized plan for the physical development of a community, including private and public lands, and proposed structures. It may include public policy recommendations of various kinds. It is used as one basis for a zoning ordinance and other types of regulatory and non-regulatory measures that can be taken, but it has little legal power by itself.

In contrast, an official map is a detailed (not generalized) map of future public lands or investments, such as highways, reservoirs, and public buildings. It does have the force of law in prohibiting the construction of buildings on these designated sites or rights of way by private landowners prior to purchase by the public. An official map can be adopted by a local unit of government after a public hearing and usually on the recommendation of the planning commission. If a landowner suffers a hardship because of being specifically refused the right to build

on his property, the public must purchase the property within a designated time. Official maps have not been widely used in Minnesota, but they are more common in other parts of the U.S.⁵

7) **Licensing.** Periodic licensing can be coupled with an inspection or certification program to ensure compliance with stipulated standards and conditions. Licensing is common at the state level, often for some types of commercial establishments, but can also be used by local jurisdictions. Annual permits for specific land uses or structures, such as billboards, are essentially a form of licensing.

Non-Regulatory Powers

1) **The Spending Power.** The power to spend public funds for new and improved roads, public housing projects, the development of parks and recreation areas, the installation of public sewer and water and similar projects is vested in several levels of government. Often such expenditures greatly influence the use and development of privately owned land. This is particularly true for improvements made before an area develops instead of those installed to serve already built-up areas. New public facilities can be used very effectively with zoning to implement a comprehensive plan for physical development.

2) **Property Taxes.** Much could be written about the effect of property taxes on land use and development, particularly a classified property tax such as we have in Minnesota. High taxes on industrial plants encourage communities to compete for new development. Reduced taxes on farms and open space in metropolitan fringe areas reduces the pressure on landowners to sell or develop land for more intensive non-farm uses. The prospect of higher taxes dampens the incentive of homeowners and landlords to spend for remodeling. Higher taxes on housekeeping cabin resorts hasten their conversion to vacation cottages, which are taxed lower. Lower taxes on homestead property encourages home ownership and discourages apartment living.

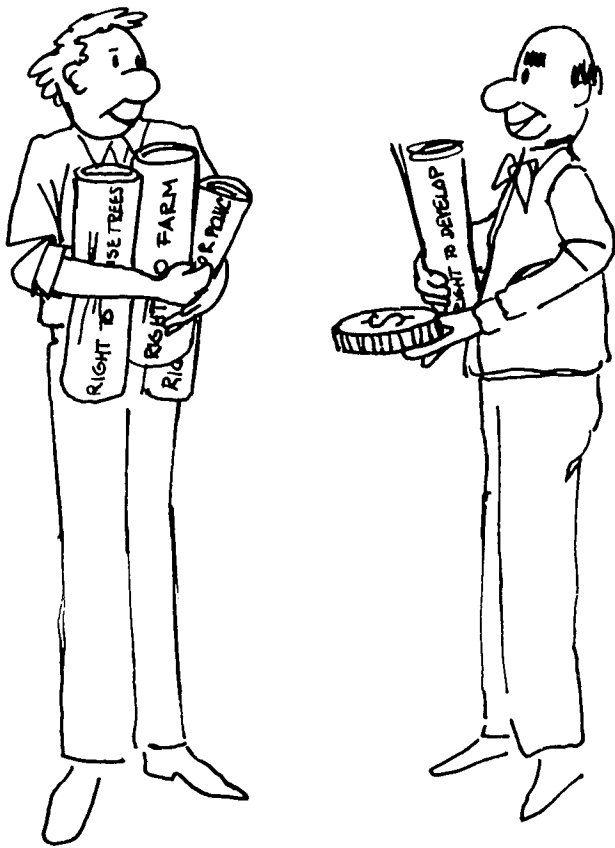
These are some of the many ways property taxes influence the decisions of private landowners. Property taxes are a source of revenue only to local units of government, but most of the features affecting land use and development decisions are determined by the Minnesota legislature.

3) **Property Ownership.** The most effective positive way to control land use is to own it. Public bodies use this device sparingly because of its high cost and because many citizens object to public ownership unless it is for a specific public purpose, such as a public building or park. Special opportunities occur when needs for park and recreation land are expanding since land subject to flooding may be adapted to this purpose, and purchase by the public may prevent unwanted development by a private landowner.

Roadside areas where commercial, industrial, or residential development would destroy a scenic view or the entrance way to a local tourist attraction also can be purchased and made into a public park or recreation facility. Cost-sharing by state and federal agencies may reduce the local cost significantly. Sometimes land is received as a public gift from a benefactor.

4) **Acquisition of Easement.** The buying of an easement by the public can be just as effective as buying full rights to the

⁵An official map should not be confused with an "official zoning map," which identifies zoning districts and their boundaries.



property in some circumstances. It also may be considerably less costly than full ownership. This type of device is coming to greater use in many parts of the country.

“Scenic easements” can prevent unsightly roadside development and still leave the property in the hands of a private owner, who may use it for farming, forestry, or similar open space uses.

“Drainage easements” can be purchased to prevent the conversion of wetlands that provide habitat for water fowl. “Development rights,” if bought by the public, could keep buildings from being constructed where they were not wanted. Property subject to publicly owned easements is taxed appropriately lower, and private owners receive full value for property rights that are given up. Landowners also may present easements to a public agency as a tax deductible gift and receive the benefit of lower taxes.

5) Purchase and Resale with Restrictions. Public agencies involved with urban renewal use this device extensively. Sometimes it is used in connection with highway construction, where it is referred to as “excess condemnation,” because more land is taken than is actually needed for highway construction. In both instances, what it amounts to is temporary ownership of land by the public with resale to a private citizen subject to certain “deed restrictions.” Since land with deed restrictions (sometimes called restrictive covenants) is worth less on the market, there is a cost to the public. Private owners also may sell property with deed restrictions attached. As in the case of publicly owned easements, deed restrictions affect the taxable value of the property.

6) Purchase and Leaseback. This is another device used by some public agencies, notably for concession stands in parks and cabin sites on recreation land. Long and short term leases

can give private citizens certain exclusive rights to a specific piece of publicly owned property. This assures public control and can reduce the cost of public ownership significantly.

7) Public Service Policies. A declared public policy to give certain geographic areas priority in providing public services can also assist zoning in guiding development. Certain services, for example, might not be made available to areas subject to flooding. More of the costs of street improvements might be shifted to the homeowner in locations where additional residential development is unwanted. Lake cottage development could be diverted from a congested area to a lower density location by a policy of more adequate police and fire protection, better road maintenance, and perhaps even the providing of street lighting at lower landowner cost. Where a carefully thought-out plan for physical development has been adopted, differential service policies usually can be justified and be an effective force in guiding private landowner decisions.

8) Information. Many landowners make decisions that are against their own best interests, as well as the best interests of the community, simply because of a lack of information. Think of investors who have bought underwater lots in Florida. Providing information to such landowners is such an obvious solution that it is often overlooked. Posting signs at known flood plain boundaries is one example. An alternative would be to require all realtors to display a map showing areas subject to certain flooding frequency. Information on soils or subsurface water table levels may cause those considering the purchase of a building lot with unfavorable characteristics to think twice. Many other examples could be cited. The practice of “let the buyer beware” may be producing results that easily could be avoided by supplying more information.

9) Loans and Grants. Loans and grants have long been used by federal agencies, such as the U.S. Department of Agriculture, to influence land use and management. Since many builders and developers depend on loans for financial underwriting, any restrictions on the use of funds for structures in areas considered undesirable for development can strongly influence private decisions. One example is public sewerage requirements for government agency loans for buying homes in certain areas. Differential interest rates can have a similar effect. Although there are many obstacles to extensive use of this device, it should not be forgotten. Even a minor application may tip the scales in some circumstances.

10) Insurance. Landowners wanting to construct buildings on land especially subject to a peril of some kind, such as flooding, could be required to carry insurance covering property damage. This informs the landowner of the danger and indirectly forces him to accept the financial burden when damage occurs. In the absence of insurance, public agencies are expected to provide financial aid in times of natural disasters. Some economists consider this method preferable to flood plain zoning since it permits use of a flood plain without incurring large unnecessary public outlays.

11) Public Nuisance Laws. If a land use practice is clearly damaging to other citizens, they can bring suit to have it declared a public nuisance and halted by court order. Such a process has its roots in common law and pre-dated zoning by hundreds of years. It is a time-consuming and costly process that is too cumbersome for widespread use in the modern world. Still, under certain circumstances, it can produce results that justify the time and expense.