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Zoning Legislation

NEWMAN F. BAKER*

I. *The Problems of City Life*

Within the past generation there has been a phenomenal growth of American cities. Great cities have flourished in every age but generally they were few in number and were surrounded by vast tracts of land of a rural character. Today we find the greater part of the American people living in cities and the migration from the country to the city is going on at a greater rate than ever before. In 1800 only 3.9 per cent of the people of our country lived in cities; by 1840 it had grown to 8.5 per cent; by 1860, 16 per cent; by 1880 approximately 30 per cent; and in 1920 51.9 per cent of our population was urban.

The cause of this increase in the urban population was the industrial revolution, the change from hand labor to machine labor, which began in the United States in the early Nineteenth Century and has continued to the present day. The factory, train, and steamboat took the place of the spinning-wheel, stage-coach, and sailboat. New means of transportation were used to carry vast amounts of raw material to the factory where it was changed to the finished product by scores of laborers, who became skilled at tending one machine and expert at one process. The finished product in turn was sent out to all parts of the country, eventually to be exchanged for the products of other factories. Workers must have homes, stores, and schools, and must live in close proximity to the place of employment, hence the growth of cities. As municipal sanitation and methods of transportation developed, the limits to the size of cities were removed; they multiplied and grew and the end is not yet in sight. No one can foretell how large American cities will be within another generation and many intelligent people view the future with alarm. "From a simple and certain past we are passing to a future that we know not and cannot forecast by any of the standards of the past."

This change from a rural to an urban civilization has raised many problems that challenge the thoughtful citizen. In the first place a large part of the foreign element in our population drifts to the cities, and it is only natural that they should establish the foreign quarters

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which can be found in every large city. In New York in 1920 the population of other than native origin was 72 per cent and in Chicago it was 76 per cent, and of this number in Chicago almost 30 per cent were born abroad. Nearly every city has the problem of congestion to face, and congested districts breed vice and crime. Public health officers must keep up a continuous warfare against disease and unsanitary conditions. The increased use of the automobile has created a traffic problem undreamed of when narrow and poorly planned streets were laid out and Chicago averages over two deaths per day as a result of automobile accidents. The real estate of some cities is becoming concentrated in the hands of wealthy individuals who have become specialists in land speculation. The percentage of home owners is decreasing to an alarming extent. In a recent book Professor Maxey says:[1]

> "In a word, in the city economic independence does not exist, except as a fiction in the minds of people whom it does not please to admit that the interdependence of modern city dwellers has forever vitiated the old individualistic conception of governmental functions."

Urbanization has added to the difficulties of government and has at the same time caused a vast expansion of governmental functions. In discussing the drift of modern legislative thought Professor Freund points out the historic changes in legislative policy in this order:[2] 1, The recognition of the right of personality; 2, the establishment of freedom of thought; 3, the repression of unthrift and dissipation; 4, the protection of public health and safety; 5, the relief from social injustice. Under the last topic he places factory laws, poor laws, workmen's insurance, regulation of the hours of labor, and the like. Industrialism and the movement toward the city has placed the individual in a helpless position economically, and the government has been forced to assume the role of inspector, guardian, and protector to the individual. The *laissez faire* theory of government is no longer tenable. Most of the great problems that face the government are the outcome of conditions which prevail in urban life, and a large part of the legislation of today is an attempt to solve those problems.

II. Demand for Zoning Legislation

As a result of rapid growth, American cities have grown unplanned and undirected. The average American city of today is composed of a number of communities that have been gradually incorporated as the original town or village has expanded. There has been little

[1] "An Outline of Municipal Government" (1924) Garden City, p. 9.
[2] "Standards of American Legislation" (1917) Chicago, p. 7.

co-ordination of effort in or between these various municipalities or sections to secure continuity or harmonious arrangement of streets or other public property. The streets, parks, and public buildings that happen to be located properly are the result of accident rather than plan. As congestion increases these defects become more and more apparent, and it is only natural that municipal authorities should seek some plan to make corrections, prevent haphazard development, and direct future growth. The increasing "interdependence of modern city dwellers" has led to the zoning movement. Zoning is essentially urban co-operation. It is the exercise of the community right to control the use of buildings and land, the height of buildings, and the space about them for the promotion and preservation of the public health, safety, comfort, or welfare.[3] But the zoning movement came not as a voluntary plan, readily accepted by the city as a whole, but as a necessary step to prevent utter chaos in municipal life; coming after years of unregulated city development.

Before the zoning movement became general there were few regulations to prevent the owner of land from using his property in any way that he saw fit. He might erect to any height a building covering the entire lot; he might use this building in any way, short of actual nuisance, and the injurious effect of the lack of restraint upon the property owner would not be recognized by the courts. A few cities had made piecemeal area and use regulations but they were limited to certain sections and were not uniform in operation and hence were of doubtful constitutionality.[4] Building laws treated all parts of the city alike and did not recognize that different regulations must apply in strictly commercial and in residential sections.

Private restrictions in deeds have been used to prevent unsightly buildings and injurious uses, but these restrictions are often defeated in the courts and may be held inoperative through *laches*. They are not recognized by the city in issning building permits and their enforcement can only be secured by the owners of property in the section restricted. Usually there is no one willing to give the time or money necessary to restrain an attempted violation that is not directly injurious, and a few violations may make the restrictions non-enforceable. Moreover, in most cases private restrictions are limited to definite periods of time and as the end of the period approaches home owners will allow their property to deteriorate

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[3]See "Tentative Zoning Plan for Akron, Ohio" (October, 1921); Kansas City v. Liebi 289 Mo. 569, 590 (1923); Williams "Law of City Planning and Zoning" (1922) New York, pp. 197–204, note 14.

[4]See article by the author "Constitutionality of Zoning Laws" (November, 1925) 20 Ill. L. Rev. 213, 216.

knowing that use-protection will no longer be provided. Private restrictions have been of value but cannot afford "sufficient or long-time protection from an all-city point of view. They are incapable of adaptation to the changing needs of the city. They sometimes stand in the way of normal and natural improvements."[5]

The vesting of city officials with discretionary powers to prohibit injurious uses in nnsuitable localities is apt to result in charges of favoritism, and often the disappointed landowner can obtain a mandamus order to compel the building commissioner to issue the permit. Making the permit dependent upon the consent of the adjoining property owners is of doubtful utility and is probably unconstitutional.[6] By employing these methods the city has been unable to prevent blighted areas and wasteful competition in building.

The skyscraper has proved to be unprofitable and undesirable to the community. Although constructed to be fire proof, tall buildings usually are filled with inflammable materials and the elevator wells make flues which aid in drawing the fire upward, and, as a result, an elaborate system of tanks and fire-escapes must be provided. Many skyscrapers have not paid a reasonable return on the investment, for the construction must be heavier than that of ordinary buildings and the number of elevators necessary to serve all parts of the buildings causes the loss of valuable space on the lower floors. These floors must depend upon artificial light and the upper stories use light and air that properly belong to neighboring landowners. High buildings usually cover the entire lot for, if courts were provided, the adjoining owners would erect buildings looking upon these open spaces. Often the owner of a business lot has been forced to build a skyscraper to avoid being pocketed between other skyscrapers and, as a result, business centers became more and more congested, creating in turn street and transit problems incapable of solution.[7]

> "It has been calculated that, even if all traffic were removed, many of the streets and sidewalks of lower New York would hold only from 36.3 to 37.5 per cent of the occupants of its buildings and that to take the inmates of one of them to their homes alone taxes the subway to its capacity for half an hour."[8]

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[5]Bassett "Zoning" (1922) Nat. Mun. League p. 317.

[6]McBain "Law Making by Property Owners" (December, 1921) 36 Pol. Sci. Quarterly 617.

[7]See "Reports of Heights of Buildings Commission" (1913) New York; "Studies on Building Height Limitations in Large Cities" (1923) Chicago; Crane "Height Limitations in Zoning" (October, 1924) City Planning Div. Amer. Soc. Civ. Eng.

[8]Williams, *supra*, n. 3, p. 194.

In regard to uses of land we find that residential neighborhoods has been injured by the constant intrusion of business concerns and factories.[9] In order to get a short cut to the trade many enterprising merchants would leave commercial centers and put up store buildings on corner lots in residential districts, thus blighting the homes there and causing a loss to the district logically arranged for commercial uses. The problem of the nonconforming use has been complicated by the use of the truck in transportation for it is now possible for the wholesale or warehouse concern, or even the light factory to leave the railroad district for the residence section. The neighborhood garage has been particularly offensive and often has caused a loss to adjoining owners several times the amount spent in erecting the building it occupied.

Apartment houses, built higher than the surrounding homes and extending to the street line, rendered the neighboring homes less desirable. Even on the outskirts of the city a noxious industry might cover a few lots only but prevent the improvement of a large section which would be devoted to homes in the course of normal growth. Residence districts were blighted by apartments and stores; apartment and commercial districts were rendered less desirable by the invasion of junkyards, sweatshops, and factories; waste on a large scale was inevitable and the ownership of real estate became a "colossal gamble." Factories and tenements flourished but the most desirable citizen built his home far from the city in undeveloped regions and commuted daily to his work. Sewers and pavement that were sufficient for one type of neighborhood would be found inadequate for other types of use. For these reasons the city was not as economically sound as it would have been had there been co-operation among the property owners and "if through community action it could have kept its house in order."

Zoning has proved to be a solution for the conditions pictured above. It has been established that municipalities may be empowered to enact regulations that will restrain the owner of property from so using it as to injure his neighbor or the community.[10] But, though

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[9]For interesting judicial opinions see State *ex rel* Civello v. City of New Orleans 154 La. 271, 282, 283 (1923); 97 So. 440; State *ex rel* Penrose Investment Co. v. McKelvey 301 Mo. 1, 33, 34 (1923); 256 S. W. 474 (dissenting opinion); Miller v. Board of Public Works 234 Pac. (Cal.) 381, 386, 387 (1925). Conditions before zoning became general are described by Williams, *supra*, n. 3, ch. III; Bassett, supra, n. 5, pp. 315, 316; Young "City Planning and Restrictions on the Use of Property" (June, 1925) 9: Minn. L. Rev. 593.

[10]The most important cases in accord with this statement are: Zahn v. Board of Public Works, 234 Pac. (Cal.) 388 (1925); Miller v. Board of Public Works, 234 Pac. (Cal.) 381 (1925); Ware v. City of Wichita, 113 Kan. 153 (1923); 214 Pac. 99; State *ex rel* Civello v. City of New Orleans, 154 La. 271 (1923); 97 So. 440;

zoning regulations are imposed under the police power and restrict the owner in the use of his property, it does not follow that the adjustment of rights between property owners takes rights without conferring them. Often zoning increases the value of the property concerned. To illustrate—if a residence district is set aside by a zoning regulation, the exclusion of business usually has the effect of increasing the value of the property for residential purposes. The regulation of the height of buildings in the congested district of a city may take away the right of building as high as might be desired by the owner, but it confers upon him "the equivalent of valuable easements of light and air over neighboring land" which cannot be taken away from him by the owners of adjacent property.

> "In a word, zoning, by its bulk and use prohibitions, does not prevent the construction of buildings or lessen their value or amount, but merely regulates their location; and, if wisely done, increases their usefulness. Inevitably, therefore, such zoning, except in so far as property considerations are sacrificed to more important social demands, increases individual and aggregate money values and returns. These conclusions are in accord with experience, both abroad and in this country."[11]

As a result of the widespread demand for zoning we find that the movement has had a remarkable growth. In spite of the fact that it is recent it is no longer an experiment. During the year 1924 sixty-two municipalities adopted zoning ordinances, thirteen of these having more than fifty thousand population,[12] and by October, 1925 there were more than 360 zoned cities. At the present time more than twenty-six million people, nearly half of our urban population, are living under zoning regulations. The methods employed by the states to secure the effective control by cities of the development of property along orderly and reasonable lines through a comprehensive plan will follow.

Opinion of the Justices, 234 Mass. 597 (1920); 127 N.E. (Mass.) 525; Spector v. Building Inspector of Milton, 250 Mass. 63 (1924) 145 N.E. (Mass.) 265; Lincoln Trust Co. v. Williams, 229 N. Y. 313 (1920); 128 N. E. (N. Y.) 209; Headley v. Fennell, 124 Misc. 886 (1925); 210 N. Y. Supp. 102; State of Ohio *ex rel* Morris v. Osborn, 22 Ohio N. P. (N. S.) 549 (1920); State of Ohio *ex rel* Danzig v. Durant, 21 Ohio L. Bulletin and Reporter 395 (1923); State *ex rel* Carter v. Harper, 182 Wis. 148 (1923); 196 N. W. (Wis.) 451; Holzbauer v. Ritter, 184 Wis. 35 (1924); 198 N. W. 852. See Swan "Law of Zoning" (1921) Supplement to Nat. Mun. Rev. p. 524; Bettman "Constitutionality of Zoning" (May, 1924) 37 Harv. L. Rev. 834; Bassett "Constitutionality of Zoning in the Light of Recent Court Decisions" (September, 1924) 13 Nat. Mun. Rev. 492; Chamberlain and Pierson "Zoning Laws and Ordinances" (March, 1924) 10 Amer. Bar Ass'n Jour. 185; Williams, *supra*, n. 3, pp. 280–292; Baker, *supra*, n. 4, pp. 241, 242.

[11] Williams, *supra*, n. 3, p. 209.

[12] "Zoning Progress in the United States" (March, 1925) Bulletin of Department of Commerce.

III. *The Enabling Act*

The city is by law the creature of the state legislature—a corporation created to exercise subordinate governmental powers and administer the public affairs of a community. Having no inherent powers of its own, it is necessary that the city obtain the consent of the legislative body of the state before attempting to zone.[13] Some cities have assumed that the powers contained in a home rule charter are sufficient to enable a municipality to zone, but practically all the cases adverse to the constitutionality of zoning involve ordinances adopted without express grant from the legislature.[14] In some states zoning may be upheld without an enabling act but experience shows that it is safer to begin with the express delegation of that power from the state.

Enabling acts have been adopted in forty-three states. These acts contain varying provisions and it is impossible to give the details of each act. However, we are fortunate in having a Standard State Zoning Enabling Act, prepared by the advisory committee on zoning for the Department of Commerce. This Act has been followed in whole or in part by twenty-five states and the Act embodies most of the features commonly found in the other state enabling acts. Hence, a review of the provisions of this Standard Act will show the usual method of delegating the power to zone to the state's municipalities.

1. *Grant of Power.*[15] The Standard Act states at the outset that the purpose is to promote health, safety, morals, *or*[16] the general wel-

[13]Two states have constitutional amendments which provide for the passing of zoning statutes, but this is generally considered unnecessary, the state legislatures having that right under the police power. See (1921) La. Const. Art. 14 sec. 29; (1922) Mass. Const. Art. 60. The latter provision is very short: "The General Court shall have power to limit buildings according to their use or construction to specified districts of cities and towns."

[14]See Spann v. City of Dallas, 111 Tex. 350 (1921); 235 S. W. 513; Goldman v. Crowther, 128 Atl. (Md.) 50 (1925); State *ex rel* Penrose Investment Co. v. McKelvey, 301 Mo. 1 (1923); 256 S. W. 474; City of St. Louis v. Evraiff, 301 Mo. 231 (1923); 256 S. W. 489; State *ex rel* Better Built Homes and Mortgage Co. v. McKelvey, 301 Mo. 130 (1923); 256 S. W. 495; State *ex rel* Ignaciunas v. Risley, 98 N. J. L. 712 (1923); 121 Atl. (N. J.) 783, appealed 125 Atl. 221 (1924). The N. J. enabling act was a patchwork of various enactments. See the following N. J. Laws: (1917) ch. 215; (1920) ch. 240; (1921) ch. 82; (1922) ch. 234.

[15]Several enabling acts are merely grants of power containing one paragraph only. For examples see (1922) Va. Acts ch. 43; (1921) Texas Acts ch. 87; (1923) Ala. Acts No. 443.

[16]Purposely *or* instead of *and*. The California Act, (1917) Sts. p. 1419, (1923) Gen. Laws No. 994, provides for the grant of power in these words: "For the public interest, health, comfort, convenience, preservation of the public peace, safety, morals, order, *and* the public welfare, the city council. . . ." (1921) Ind. Laws ch. 225 includes the promotion of adequate light, air, and access. The Congressional enabling act for the city of Washington states that the purpose is to "protect the public health, secure the public safety and protect property in the

fare. This is an express delegation of the police power to the municipalities and can receive no other interpretation. The legislative bodies of the cities are empowered to—

> "regulate and restrict the height, number of stories, and size of buildings and other structures,[17] the percentage of the lot that may be occupied, the size of the yards, courts, and other open spaces,[18] the density of the population and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes."

This grant of power provides for the regulation of the height, bulk, and use of buildings which is necessary for successful comprehensive zoning.

2. *Districts*. For the above purpose the Standard Act declares that the local legislative body can divide the municipality into districts (zones) and provide regulations for the erection, repair, and use of the buildings, structures, and land within the districts.[19] All such regulations are to be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. The committee declares that this is the "essence of zoning."

District of Columbia," omitting the general welfare. See 41 U. S. Stat-at-large 500 (approved March 1, 1920). Cf. (1914) N. Y. Laws ch. 470 sec. 242-a. One of the most recent enabling acts has this interesting statement as to purpose: "It is recognized and hereby declared that the beauty of surroundings constitutes a valuable property right which should be protected by law, and that this is particularly true of residential sections, where people have established their homes. See (1925) Ark. Acts No. 6 sec. 1. Sec. 2 authorizes the establishment of "zones" on the above basis. Although the above grants of power may be held legal it is much easier to defend the grant of power when it is limited to the simple words of the Standard Act.

[17]Note that the term "other structures" will include fences and billboards. Zoning has proved to be the best solution for the billboard question because billboards may be excluded from residential districts as being business structures, or the city may draw up a special ordinance zoning the city as to advertising, e. g. Los Angeles (No. 38, 315, N. S.) and San Francisco (No. 4059, N. S.)

[18]The power to regulate "open spaces" allows the fixing of setbacks. Setbacks are provided by statute in California and Arizona. See (1917) Cal. Sts. p. 1421, (1923) Cal. Gen. Laws No. 995 and (1925) Arizona Laws ch. 80 sec. 1.

[19]The Alabama Act, (1923) Gen. Acts No. 443, provides for the division of the territory of a municipality into "business, industrial, and residential zones, or districts, and to provide the kind, character, and use of structures and improvements that might be erected or made." The Massachusetts enabling acts do more than furnish a delegation of the police power to the cities. They provide for a detailed system of building laws. See, for example, (1923) Mass. Acts ch. 462, thirteen pages in length. Minnesota by (1925) Laws ch. 122 sec. 1 allows cities to create districts upon petition of fifty per cent of the "owners of real estate in the district sought to be affected." Minnesota is the only state that has made successful use of eminent domain in zoning, but for a long period the constitutionality of zoning by that power was questioned. As a result the status of zoning in Minnesota has been unsettled for some time but should be unquestioned after the recent decision of the supreme court in State of Minnesota *ex rel* Beery v. Houghton, 204 N.W. (Minn.) 569 (1925). This case holds that zoning can be accomplished under the police power. See Chamberlain and Pierson "Further Comments on Zoning" (April 1924) 10 Amer. Bar Ass'n Jour. 245.

3. *Purposes in View.* In order to constitute the "atmosphere" under which the zoning is to be accomplished,[20] the Standard Act provides that the zoning regulations shall be adopted to—

> "lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements."

Such regulations are to be made suitable to each district with a view of conserving the value of buildings and to encourage the most appropriate use of land in the city.[21]

4. *Method of Procedure.* The Act provides that the city's legislative body is to draw up the zoning ordinance and to change the ordinance when necessary. It should be noticed that the Act declares that the ordinance shall not become effective until after a public hearing has been held for the parties interested on fifteen days notice. The time of the notice varies in the different states but fifteen days is the usual provision.[22]

5. *Changes.* The ordinance can be changed or amended by the ordinary routine of the legislative body by a majority vote. But in case of protest the change is not so easy. To quote from the Act:

> "In case, however, of a protest against such change, signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending —[23] feet therefrom, or of those directly opposite thereto extending —[23] feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of three-fourths[24]

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[20]This section should be kept distinct from the statement of purpose in section 1 above. That was to delegate the police power to the city. The section quoted here is to direct the city in the manner in which it shall undertake zoning.

[21]The committee states that the purpose of zoning is not to enhance the value of buildings but to *conserve* that value, i. e. to prevent the depreciation concommitant with "blighted" districts. See the "Standard State Zoning Enabling Act" (1922, 1924) Department of Commerce, p. 6 note 25.

[22]Ten days notice is required by (1924) N. J. Laws ch. 146 sec. 4. Thirty days notice is required by the following statutes: (1924) Ga. Laws No. 331; (1925) Me. Laws ch. 209 sec. 3; (1923) Nev. Laws ch. 125 sec. 4.

[23]—number of feet which is the prevailing depth of city lots. The number, of course, varies in the separate states. One hundred feet is the distance set by the following enabling acts: (1923) N. C. Laws ch. 250 sec.5; (1925) Ut. Laws ch. 119 sec. 5; (1924) N. J. Laws ch. 146 sec. 5; (1923) Del. Laws ch. 114 sec. 5; (1925) N. H. Laws ch. 92 sec. 5. (1923) N. D. Laws ch. 175 sec. 5 sets the distance at 150 feet. It is ten feet more by (1924) Miss. Laws ch. 195 sec. 5 and is three hundred feet by (1925) Idaho Laws ch. 174 sec. 5.

[24]If the owners of twenty per cent of the frontage object, unanimous consent is required by the Congressional statute, 41 U. S. St. at L. 500. (1921) Ill. Laws p. 182 provides that if a proposed amendment fails to receive the approval of the board of appeals it shall not be passed except by a two-thirds majority of the

of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments."

6. *Zoning Commission.*[25] The boundaries of the zones and the regulations therein are to be recommended by a zoning commission appointed by the city's legislative body (or mayor). This commission is to gather evidence and make a preliminary report which is to be discussed in public hearings, and then the commission is to submit a final report, which is to be subject to the hearing referred to in section 4 above. This final report is to be acted upon by the legislative body of the city.

7. *Board of Adjustment [or Appeals].*[26] This board consists of five members, appointed for three years, and their chief duty is to make special exceptions to the terms of the ordinance "in harmony with its general purpose and intent." As the board of appeals is the "safety-valve" in zoning and since the work of the board is extremely important once the zoning ordinance is put into operation, it is well to note the powers granted to the board by the Standard Act:

"1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done."[27]

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city's legislative body. The same majority is required in case of protest by twenty per cent of the adjacent owners. (1921) Neb. Laws ch. 116 art. III sec. 67 requires a five-sevenths majority while (1923) R. I. Gen. Laws requires a three-fifths vote. The Ohio statute, (1919) Vol. 108 part II secs. 4366–11, provides that proposed changes must be submitted to the planning commission for approval, disapproval, or suggestions. (1924) Nev. Laws ch. 125 follows the Standard Act except for the omission of several paragraphs notably the one in regard to *changes.*

[25]It is desirable that the zoning system be part of the city plan and it is usual to find that the city plan commission is entrusted with the preparation of the zoning plan along with the recommendation of new streets, preservation of historical landmarks, and the location of statuary etc. See (1922) Ky. Laws ch. 99 sec. 1; (1923) Wis. Sts. No. 62.23; (1924) Miss. Gen. Laws ch. 125 sec. 6.

[26]This board is called a "Zoning Board" in (1925) R. I. Laws ch. 746. (For the town of Westerly.)

[27]The Colorado statute, (1923) Col. Laws ch. 182 sec. 1, exempts buildings from the zoning ordinance when satisfactory proof is presented to the board of appeals "that the present or proposed situation of such building or structure is reasonably necessary for the convenience or welfare of the public." By (1921) Ill.

The decisions of the board of appeals may be reviewed by a writ of *certiorari* after petition to a court of record by any party aggrieved by a decision of the board. The procedure for this review as well as that for the presentation of appeals to the board is set out in detail.

8. *Remedies*. The city authorities are empowered to "institute any appropriate action or proceedings" to prevent violation of the ordinance or enabling act. This makes possible the following methods: suit for a penalty in a civil suit; jailing the offender; stopping construction work in the case of a new building; prevention of occupancy in the case of an illegally constructed building; eviction of occupants and prevention of reoccupancy until conditions have been cured. The local authorities should be authorized to do all these things if zoning laws are to be effectively enforced.[28]

9. *Conflict with Other Laws*. Regulations, made under the authority of the enabling act, which have a higher standard than existing housing laws and building codes are to govern. But existing statutes and ordinances, imposing a higher standard than those employed by ordinances drawn up under the enabling act, are to prevail. This provision insures the maintenance of the higher standards whenever the new zoning ordinance comes into conflict with previously adopted regulations.

The Standard Act does not declare that the zoning ordinances shall not be retroactive. It is stated by the committee that this is the "almost universal practice"[29] but the committee recognizes that local conditions may arise of a "peculiar character" which might make it necessary to use retroactive provisions.[30] A few piecemeal

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Laws p. 181 the board of appeals was empowered only to review the action of the enforcing officer to see if the acts done were in accordance with the terms of the zoning ordinances and to *recommend* necessary changes. The Illinois board of appeals was given much more power and its procedure was set forth in detail by (1923) Ill. Laws p. 268. While the act does not follow section 7 of the Standard Act in all details we find that the Act had great influence, several paragraphs being exactly alike. Compare (1921) Ind. Laws ch. 225 with (1925) Ind. Laws ch. 125. The latter act follows the Standard Act in the main but is much longer and the language is not so clear. A number of enabling acts make no provision for a board of appeals. The Idaho act, (1925) Idaho Laws ch. 174, makes no provision for a board of appeals although it follows the Standard Act in other respects. See (1924) Miss. Laws ch. 195; (1925) Me. Laws ch. 209; (1924) Nev. Laws ch. 125. It was quite common to find that no board of appeals had been provided in the acts passed several years ago, e. g. (1919) Ohio Laws ch. 300, but in most cities the success of the ordinance has been so dependent upon the work of the board of appeals that it is difficult to find a reason for the omission of provisions for the board in later statutes.

[28]"Standard State Zoning Enabling Act," *supra*, n. 21, p. 12 note 46.

[29]*Ibid.*, p. 2 note 9.

[30]For provisions against retroactive measures see: (1923) Kan. Rev. Sts. ch. 13 art. 11; (1921) Mass. Gen. Laws ch. 40 sec. 29; (1919) Ohio Laws Vol. 108 part II No. 4366–7; (1917) Wis. Laws. ch. 404, (1923) Wis. Sts. No. 62.23 sec. 5-d; (1920) 41 U. S. St. at L. 500 sec. 6; (1921) Ill. Laws p. 180; (1925) Me. Laws ch

ordinances have been made retroactive and have been upheld in the courts[31] but the practice would cause many cases of individual hardship if tried in a comprehensively zoned city which would result in raising the issue of the constitutionality of zoning in general.

Some of the state enabling acts have provided that it is not intended by the acts to "confer or enlarge any authority or power to establish any restriction based upon race or color."[32] Other state acts have provided for the segregation of races.[33] Of course, the Standard Act has no provisions in regard to this kind of "zoning."

IV. The Success of the Standard Enabling Act

The Standard State Zoning Enabling Act has proved to be a great success. Framed to direct the legislatures along the safest and wisest channels in the course of zoning, it was adopted by eleven states within a year of its issuance in 1922. Today we find that over half of the states in our country have used it in drawing up their enactments and it is safe to say that practically all the states which have provided for zoning have felt its influence. The advisory committee on zoning, appointed by Secretary Hoover, includes a lawyer, a realtor, a housing consultant, a consulting engineer, a municipal engineer, a master printer and civic investigator, a landscape architect, and a housing expert. With the exception of the one lawyer, Edward M. Bassett, counsel for the zoning committee of New York City, this committee, appointed to frame a model legislative act, is composed of laymen. Nevertheless, the work of this group has accomplished a great deal in developing a uniform state law on zoning. One is led to ask why the movement for a standard state zoning law has had so much success while the movement for uniform state laws in other fields has met determined opposition?

Of course, zoning is a recent movement and there were no old standards to be torn down before adopting the new. And zoning is

209 sec. 6; (1922) Va. Acts ch. 43; (1925) N. H. Laws ch. 92 sec. 3. The last act follows the Standard Act closely except for the provision in regard to retroactive measures. The public service commission is given power to exempt buildings used by a public service corporation from the operation of the zoning ordinance. A like provision is found in (1924) N. J. Laws ch. 146 sec. 10.

[31]E. g. *ex parte* Hadacheck, 165 Cal. 416 (1913), affirmed, Hadacheck v. Sebastian, 239 U. S. 394 (1915).

[32](1924) Col. Laws ch. 182 sec. 10. See (1921) Kan. Laws ch. 100 sec. 8.

[33]Segregation is allowed by (1924) Ga. Laws No. 342 sec. 1. In fact that seems to be the chief purpose in passing the act, which was applicable to the city of Manchester only. An act of the same legislature applying to the city of Albany follows the Standard Act more closely. See (1924) Ga. Laws No. 331; (1922) Ga. Laws No. 402. Cf. (1924) La. Laws Act 118. These segregation statutes are probably unconstitutional: Carey v. City of Atlanta 143 Ga. 192 (1914); Buchanan v. Warley 165 Ky. 559 (1915), reversed 245 U. S. 60 (1917). Cf. Tyler v. Harmon 104 So. (La.) 200(1925).

popular and has proved to be a solution for a crying evil. The growing complexity of city life has forced the acceptance of some such system in order to prevent the breakdown of municipal government. The Department of Commerce has presented a 'Standard Act,' framed by experts at a time when most states were vitally interested in zoning legislation, and this Act, presumably showing the best way to enable zoning to be done, has been of great interest.

There is no doubt that the work of the Department of Commerce has been a great help to education in zoning. This is shown by the tendency displayed in several states to make later acts conform with the Standard Act wherever possible. This tendency can be illustrated by the case of New Jersey. Altogether New Jersey has passed nine different statutes concerning zoning but, as a result of adverse decisions made in regard to the earlier statutes, the status of zoning is still unsettled[34] in spite of the fact that New Jersey finally adopted an act which follows the Standard Act closely.

The first act[35] enabled cities of the first class to regulate and limit the height and bulk of buildings and the area of yards, courts, and open spaces, but was defective in that no board of appeals was provided. The next act[36] applied to cities of the second class as well as to cities of the first. The third act[37] supplemented the first one passed by empowering the regulation of use in New Jersey cities, and then this supplementary act was still further supplemented by an act[38] providing for a method of changing the regulations drawn up and establishing a board of appeals. The fifth act[39] made zoning possible in cities of the third and fourth classes. Still another supplement to the first act was passed in 1922[40] which provided for the restriction of tenement districts, public hearings, regulations for use zoning and so forth. In the same year a third supplement was added to the original act and in this statute[41] the purpose of the act was stated to be to secure safety, public health and welfare, adequate light, air, and access and so on. This was inserted at this time to combat decisions in New Jersey courts that zoning was an uncon-

[34]State *ex rel* Ignaciunas v. Risley, 98 N.J.L. 712 (1923), 121 Atl. 783, appealed, 125 Atl. 121; New Jersey Land Co. v. Scott, 122 N. J. Eq. 611 (1924), 126 Atl. 113; Vernon v. Westfield, 98 N. J. L. 600 (1923), 124 Atl. 248; Ingersoll v. South Orange, 126 Atl. (N. J.) 213 (1924); Sarg. v. Hooper, 128 Atl. (N.J.) 376 (1925); Becker v. Dowling, 128 Atl. (N. J.) 395 (1925); Falco v. Kaltenbach, 128 Atl. (N. J.) 394 (1925); Union Co. Dev. Co. v. Kaltenbach, 128 Atl. (N.J.) 396 (1925).

[35](1917) N. J. Laws ch. 54.

[36](1918) N. J. Laws ch. 146.

[37](1920) N. J. Laws ch. 240.

[38](1921) N. J. Laws ch. 82.

[39](1921) N. J. Laws ch. 276.

[40](1922) N. J. Laws ch. 162.

[41](1922) N. J. Laws ch. 234.

stitutional use of the police power. Another act[42] has been passed applying to the boroughs which shows the influence of the Standard Act in provisions and terminology.

In spite of these efforts on the part of the legislature to foster zoning, things were in an unsettled state in 1924 when the legislature finally adopted an act which parallels the Standard Act,[43] all other acts being repealed. New Jersey's unfortunate experiences in zoning cases before the courts led to the inclusion of the following provision:

> "And in construing the provisions of this act all courts shall construe the same most favorable to municipalities, it being the intention hereof to grant to the municipalities of this state in the fullest and most complete manner possible the police powers of the state for the regulation within the boundaries of the respective municipalities of all matters related to the subject matter of this act."

It is generally believed that New Jersey might have avoided her chief difficulties by adopting an enabling act like the Standard Act at the beginning of the movement. In view of such experiences it is natural that other states should be greatly influenced by the Act prepared by the Department of Commerce, which was designed to be a sufficient delegation of the zoning power but still be strictly constitutional.

Even in New York, where comprehensive zoning had its origin, we find that a recent act,[44] which is a grant of power to the villages of the state, uses the words of section 1 of the Standard Act. In Pennsylvania, the first zoning act was passed in 1915[45] but the act of 1923,[46] which provided a board of appeals, contains several paragraphs taken bodily from the Standard Act. The tendency in state zoning laws is to conform to the Standard Act and we are rapidly approaching standardization in zoning legislation.

In conclusion, we might say that this interest in state legislation on the part of a department of the national government is unique and so advanced a type of social legislation on the part of the states is uncommon as well. How far will the state and national governments go in protecting the homes of the individuals? In view of the rapid and steady growth of cities it seems that zoning legislation marks only the beginning of a new era of governmental regulation. It has been said: "Our congested urban areas, business and residential,

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[42](1922) N. J. Laws ch. 279.
[43](1924) N. J. Laws ch. 146.
[44](1924) N. Y. Laws ch. 492. See also (1925) N.Y. Laws ch. 394.
[45](1915) Pa. Laws Act 175.
[46](1923) Pa. Laws Act 93. Altogether Pennsylvania has passed eight enabling acts.

are in large measure the result not of need but of unthinking continuance of old habits of mind."[47] It is necessary that we should plan today for the city of tomorrow. A city of twenty-five million inhabitants or more is predicted for the future and preparations for the control of future growth must be made now. It is said that the special air mail service of Philadelphia is delayed because of the lack of provision for a suitable landing place, the plane being forced to land several miles away from the center of the city. It may be that the cities of the future will not be dependent upon water or rail transportation and their prosperity may depend upon their position on the air routes. At any rate, whatever the future might hold in store, regional planning will surely follow city planning and zoning, governmental functions will continue to increase in importance, and the value attached to "individual" rights seems sure to decline.

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[47]Address of John Ihlder before National Conference on City Planning, 1921.