RURAL ZONING IN MISSOURI: BASIS, PROCEDURE, AND EFFECT

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Rural Zoning in Missouri:

Basis, Procedure and Effect

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This is a revision of B855, **Rural Zoning in Missouri: Basis, Procedure and Effect**, University of Missouri Agricultural Experiment Station, February 1967, by Gary Sprick, Frank Miller and Donald R. Levi. Some sections of this revision appear essentially unchanged from the way they were presented in B855. Thus, heavy debt is acknowledged to Sprick and Miller. Debt is also due Robert Simonds, John Croll and Glenn Varenhorst for criticism of earlier drafts of this version.

Summary and Conclusions

The purpose of this publication is to describe the function, nature and character of county zoning ordinances and to outline the procedures that can be used in making and carrying out a land-use plan. Land-use plans and zoning ordinances are instituted for economic, convenience, health, safety and general welfare reasons. Since they have a foundation in law, emphasis is placed on the legal principles upon which they are based. Any rational analysis of the effects of zoning must include some knowledge of its legal framework, for if the law is understood, the nature and purposes of planning and zoning regulations have greater meaning for the people affected by them.

The main observations are:

(1) Zoning is intended to implement public plans which guide land use and which are a response to the increasing intensity of land use. Zoning is based on the concept that fee simple land ownership consists not in ownership of the land *per se* but in the holding of a "bundle of rights" with respect to the land. This bundle does not include certain rights retained by society. Thus, land ownership is not a sovereign right.

(2) The exercise of the police power may have impact on land use. In fact, land use regulation is based on the police power of the state. It has general judicial sanction, but its validity in each specific situation depends upon reasonableness.

(3) Zoning regulations should be preceeded by a carefully developed land-use plan which in turn is based on a master plan. Together, planning and zoning can be used to aid community development and influence its form.

(4) Delaying adoption of a zoning ordinance increases the problems to be overcome in a rapidly developing area. Nonconforming uses are protected by law and cannot be removed immediately.

(5) Farmers, to the extent they are protected from nearby undesirable land use, benefit from county planning and zoning. They gain this benefit with limited restrictions in carrying on traditional farming operations.

(6) Assistance in planning and zoning may be provided by units of state government, regional planning commissions and the University. The most convenient place to initiate requests for assistance is the Area University Extension Office.

(7) Whether the advantages to society of planning and zoning outweigh the disadvantages is a decision which must be made by local citizens. A list of consequences useful for consideration in the making of this decision is presented at the end of the bulletin.

Legal Basis for Rural Zoning

In every time and place, land has played a significant role in the life of man. Both social and economic development depend upon wise and equitable policies and practices in land-use. Land is peculiar in several ways: As space, it is indestructible and cannot be created or destroyed as can other economic goods; as an economic factor of production, it can be made useful for specific purposes such as building sites or production of crops. Each parcel is different from every other in some manner—the location, shape, topography, quality of soil and climate.

HISTORICAL DEVELOPMENT

Because of its importance and its peculiar nature, a special body of law has been developed to define and regulate rights in land. Real property law, as it exists today, is the culmination of many concepts and philosophies that different societies have held in the past. A brief sketch of this historical development may aid in understanding the problem of land-use control and the way in which it is approached.

The Hebrews looked upon land as a gift from God to all of the people. Individual ownership was not recognized. Rather, the land was worked and grazed by tribe members and ownership was vested in the group. Only the tribal boundaries were important enough to be delineated and protected. The land was viewed as community property to be possessed and used by all for their livelihood. If the tribe moved or ceased to use the land, its claim of ownership disappeared. Individual property rights were concentrated in livestock and equipment, not in land.

Feudalism, as it developed throughout Europe in the Middle Ages, changed the concept of land ownership a great deal. In this scheme, ultimate title rested in the King or the state. The King granted large areas of land to those who vowed to be loyal and could furnish him with the services he needed, especially money and men essential for fighting wars. Those who held land rights granted directly by the King split up their holdings among lesser lords who pledged allegiance much in the same manner that the overlords promised to aid the King. The second echelon of nobility divided their holdings still further among trustworthy members of the group. In this manner the feudal chain went on and on until it reached the very lowest group called serfs who actually worked the land.

After feudalism began to die out in England, the common law (which we inherited) began to develop. For the most part, this law was not written into legislative enactments but was made by the judges and courts to fit the needs of particular situations. It drew heavily upon custom, tradition and expediency.

The common law is framed largely in terms of individual rights as opposed to social rights. Conflicts began to be resolved in a judicial arena where one party pressed his claim and demanded his rights against another party. As the rights of individuals were given court approval, the common law took shape. Important changes were made including: (1) the cumbersome feudal tenure system was abandoned; (2) all free men were permitted to hold title to real estate; (3) land became freely transferable by one person to another.

Eventually, the idea of an individual holding title to land against all others became firmly established. Individual ownership which previously had been restricted primarily to chattels (personal property) was generally extended to land. The absence of possessory rights to land under feudalism had fostered in the individual a desire for ownership which settlers brought with them to the New World. This desire and the economic success which accompanied it combined to make private property an institutional cornerstone of American society.

"BUNDLE OF RIGHTS" PROPERTY CONCEPT

The rights to use of land include no right to use it in such a way as to interfere with the rights of others. For instance, it would be declared a nuisance if a property owner ran swill on his neighbor (private nuisance) or blasted rock so as to have it fall on a highway (public nuisance).

Two of the more basic rights that society retains in land are those of escheat and eminent domain. Under escheat, title reverts to the state when a person dies owning land without making any disposition of it by will and without leaving relatives who are eligible to inherit it under the laws of intestate descent.[1] Eminent domain relates to the taking of private property for public use with just compensation to the title holder. Both of these long-established governmental powers are manifestations of the interest that society retains in privately-owned land.

The concept of land as private property has never included an exclusive right to its control and use. The idea that land is a resource belonging, at least partially, to society (through the state) and not entirely to individuals has always been present in Anglo-American legal and economic thinking. It has lead to the adoption of the "bundle of rights" theory of land ownership. Under this concept, land as property is not a single right but a bundle of rights which may be contracted away or shared with others. Important among them are the rights to use, possess, convey, lease and bequeath the land. In addition, some rights are retained by society and can be exercised when needed for the common good. This is the pattern that prevails in the United States: Land is held by individuals as private property with the public retaining latent rights to be exercised when the need arises.

INSTITUTION OF ZONING

Zoning in this country had its beginning in tiny colonial settlements along the Atlantic coast long before the Declaration of Independence was signed. The earliest zoning measures were simple; they consisted of regulations to keep gunpowder mills and store-houses to the outer edges of each settlement. These public safety measures were adopted as a result of frequent experience with explosions and fires at the powder mills.

In 1692, Massachusetts granted Boston, Salem, Charleston and certain other market towns power to influence the location of "offensive" industries. Each was authorized to assign areas within the town where these activities would be least objectionable for slaughterhouses, stillhouses and houses for trying (rendering) tallow and currying leather.

These early zoning laws were passed in the interest of public health and safety. To separate dangerous and offensive activities from the rest of the community, a basic zoning tool, the "use" regulation, was used. These early communities thus exercised a limited degree of control over the uses that owners might make of their land.[2]

In the years since then increasing emphasis has been given to implementing the public right to regulate the use of privately owned land through zoning ordinances. Zoning regulations have come in response to the problems created by industrial development and urbanization.

[1] The inheritance laws of Missouri specify the manner in which the property of a deceased person shall be divided, if the owner does not leave a will. RSMo 474.010, 1969.

[2] Erling D. Solberg, "The Why and How of Rural Zoning," Agriculture Information Bulletin No. 196, ERS, USDA, August 1967, p. 1.

The Industrial Revolution of the 19th century caused city population to increase rapidly and transformed America from a rural to an urban society. As industrialization spread, the cities became great production centers. This change in character and the huge population growth accompanying it created a need for readjustments in the use of land and corresponding need for municipal control. These problems did not lend themselves to easy solution. City authorities were confronted with areas of blight and desolation that could not be regulated directly because the land was, and would continue to be, privately owned. The power of eminent domain was not applicable since it is used for taking land for public use. What was needed was land-use regulation. To solve the problem cities and rural areas turned to the comprehensive zoning code.

FUNCTION OF ZONING REGULATIONS

The basic function of zoning is to prescribe how real property shall be used. Its primary purpose is to protect neighborhoods against uses believed to be deleterious and to provide for the orderly and beneficial development of each area. A zoning ordinance needs to be preceded by a systematic plan of resource use, based upon the natural qualities of the land and the needs of the people. The uses specified are based upon the general nature and character that each area has or will have after it has been developed. If a given section is to be used primarily for business, it is zoned as commercial. On the other hand, if an area is to be residential, restrictions are placed on what will be allowed within its boundaries. Thus, zoning is a form of public housekeeping; it seeks to avoid incompatible mixing of houses, stores, warehouses and factories. Criteria are specified for each type of use or areas are set aside to provide locations for all essential uses.

In seeking the balanced and harmonious development of an area, planners take into account many factors which logically influence the character that zoning laws take. For example, safety, aesthetics, resource utilization, public convenience and the protection of property values are but a few of the diverse factors considered in developing a comprehensive plan for zoning an area.

While zoning has a profound effect upon the individual use of private property, it is not invoked for the furtherance of individual aims. It is a governmental power exercised to serve the common welfare. Zoning laws sometimes cause harm to particular individuals. Balanced against this, however, are public benefits that outweigh any individual harm. The justification for zoning rests upon the assumption that the public good it serves outweighs the harm it causes to particular individuals. For example, an individual merchant or mercantile company seeking locational advantage may be willing to pay a high price for a lot in an area that is zoned for residential use, but may not be able to get the restriction removed because of the traffic hazard that the business would create.

Zoning is unique in its approach because it deals only with restrictions on use and does not interfere with other rights that a person has in land. As pointed out above, under traditional concepts of private property, ownership is the exclusive right to control and use an economic good. However, the advent of zoning coupled with the "bundle of rights" concept has led to a modification of this right. Use and ownership are now regarded as separable. The public can control use of land through zoning regulations. A person's ownership or legal title is not affected, but the use he makes of his land is limited. Yet the property owner is given a right which did not exist before the zoning ordinance was adopted. It gives him the right to prevent use forbidden by the ordinance.

BASIS OF ZONING POWER

Zoning regulations are grounded in the police power of the enacting body. The police power is broad and exists to meet all types of problems. Although vague, it is commonly described as power to impose regulations for the protection of the health, safety, morals, convenience and general welfare of the people. Missouri law says. "The master plan shall be developed so as to conserve the natural resources of the county, to insure efficient expenditure of public funds, and to promote the health, safety, convenience, prosperity and general welfare of the inhabitants."[3] To be legally valid, the regulations must reasonably relate to one or more of these purposes.[4] The burdens they impose must be reasonable in relation to the objectives they accomplish. The entire process is a balancing of the social gain of a particular governmental action against the harm that it may cause to affected individuals. If the gain to society does not outweigh the harm, the action is unreasonable and void on constitutional grounds.

The police power is not inherent in local units of government but is vested originally in the state. Both counties and municipalities can apply police power only as it has been granted to them by the state. In order to have power to zone, local units of government must be the recipients of enabling laws passed by the state legislature. The regulations which they impose must be consistent with this legislation

NUISANCE AND EMINENT DOMAIN

Another doctrine which deals with land-use and should be distinguished from zoning is the law of nuisance. A nuisance arises when one person uses his property so that it unreasonably injures or annoys another by violating his legal rights.[5] Nuisance law differs from zoning in that it is concerned only with those uses that are strictly harmful and which should be prohibited. A comprehensive zoning plan, on the other hand, may regulate all uses and keep each of them in its most desirable place. Zoning is a governmental power exercised for the common good, while nuisance law is a method whereby one individual can protect himself against other individuals. The power to remove nuisances is part of the common law and does not depend upon statute. This legal remedy is available to a complainant (when the facts warrant it) whether or not there is a zoning code. The two concepts are quite different and exist independently of each other.

Zoning also should be clearly distinguished from eminent domain.[6] Under the power of eminent domain, governmental bodies can take private land or tear down private buildings to serve a public need. It differs from zoning in that it is more than regulation and involves the actual taking of land by the public or an agency serving the public such as a pipeline company. For this reason, compensation is necessary; a fair price must be paid for the property in order to fulfill the due process of law requirements of the Fifth and Fourteenth Amendments. Since zoning is a regula-

[3] RSMo 64.040, and 64.550, 1969.

[4] *State ex rel. Cadillac Co. v. Christopher,* 317 Mo. 1179, 1192 (1927).

[5] Donald R. Levi and John C. Holstein, "Stockmen's Liability Under the Missouri Nuisance Law," UMC Guide, March 1970.

[6] John C. Holstein, Donald R. Levi, Coy G. McNabb, "Your Rights Under Condemnation in Missouri," UMC Guide, May 1969.

tion, it does not require compensation. It satisfies the due process of law requirement merely by being exercised in a reasonable manner. The problem is distinguishing between those situations where the government has *taken* property under eminent domain, thereby necessitating compensation, and those where it has *regulated* its use under the police power. There is no sharp line clearly delineating the point where regulation ends under the police power and further taking of property rights requires compensation. The difference is largely a matter of degree and depends upon the facts in each situation.

EARLY COURT CASES

The basic constitutional question concerning zoning was settled by the United State Supreme Court in 1926 in the landmark case of *Euclid v. Ambler Realty Co.* For the first time, the court upheld a comprehensive zoning plan that excluded all businesses and industries from a residential area. The court stressed that new regulations once considered oppressive were now upheld in the light of dire need for regulation. In upholding zoning as a legitimate exercise of the policy power, the court stated that:

> ". . . segregation of residential, business, and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life; greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections; that it will decrease noise leading to mental disturbance....."[7]

The presence of these beneficial factors convinced the court that zoning was sufficiently related to the health and welfare of the people to make it a reasonable exercise of police power. The court also stated that power to regulate must always be examined in connection with specific circumstances and the existing locality and not be exercised in abstract. Zoning is not discussed in terms of absolute right or wrong; whether it is constitutional or not depends upon each set of facts. It might be reasonable in one community and unreasonable in another. The principal accomplishment of the Euclid decision was to put zoning under police power and make its consitutionality hinge upon a reasonable exercise in each instance.

The Euclid case acted as a mandate to those interested in instituting zoning codes. A Standard Zoning Enabling Act was prepared by the Department of Commerce and served as a model for zoning statutes in many states. Enabling statutes were passed by legislatures and zoning ordinances soon appeared in many American cities.

St. Louis adopted a zoning ordinance in 1926, based on an enabling statute passed by the Missouri State Legislature in 1925. This ordinance was challenged as being unconstitutional but was upheld by the Missouri Supreme Court in *State v. Christopher* decided in 1927.[8] In this decision, the Missouri Court generally went along with the Euclid case and held that a zoning ordinance which is reasonably calculated to promote the public health and welfare is a valid exercise of police power. In addition, the Missouri Court discussed compensation in light of a Missouri Constitution provision saying that "private property shall not be taken or damaged for public use without just compensation." The court felt that compensation for zoning would be impracticable and was not necessary because of the large number of persons affected. Practically speaking, if a valid zoning code is adopted, there is no right on the part of landowners to receive compensation.

[7] *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

[8] *State ex rel. Cadillac Co. v. Christopher*, 317 Mo. 1179 (1927).

Zoning Law in Missouri

Planning and zoning both are authorized for Missouri municipalities and counties.[9] The purpose of planning is to develop a guide for orderly change. Planning provides the opportunity for the systematic development of procedures, logical in content and sequence, to help a community become what it wishes and has the ability to become.

Cities and counties plan in order to improve their ability to:

- adapt to the unexpected
- create the desirable
- avoid the undesirable

In the course of planning, attention is usually given to land use, traffic and transportation, community services and facilities, recreation and other aspects as decided by local people.

The enabling legislation, in addition to providing for planning, gives cities and counties a number of tools to help in the making of plans. Among these are high-way set-back lines, sub-division controls and zoning.

Zoning is an important tool in aiding land use plans. The form that a city or county zoning ordinance may take depends upon the circumstances of each case and the limits set by state law. One of these limits provides that zoning must be done according to a "comprehensive" plan.[10] This means that it must be done in a rational and integrated way, not on a piece meal basis.

MUNICIPAL ZONING

Under the municipal zoning laws the legislative body of a municipality has power to set up and enforce zoning regulations in the community. If the city council wishes this power, the first step is to appoint a planning commission. The commission draws up a preliminary plan with recommendations concerning boundaries for the various districts and the regulations applicable in each. Before the commission makes its final report to the council, it must hold public hearings where all interested parties and citizens have a chance to speak. The commission's final report is sent to the city council which holds its own public hearings on the proposed plan. At least 15-days' notice of the time and place of such hearings must be published in an official paper or a general circulation paper. After the hearings conclude, the council can take final action on the commission's report. If the vote is favorable, the regulations become effective.

[9] RSMo 64.010-64.905, 1969 and RSMo 89.010-89.490, 1969.

[10] RSMo 64.630 and 89.040, 1969

COUNTY ZONING

The procedure for instituting zoning on the county level varies according to the classification of the assessed county valuation. In first-class counties ($300 million or more), the county court initiates action much like a city council does for municipal zoning. A county planning commission (which may also be the zoning commission) is appointed to make a preliminary study. The commission holds public hearings in each township so that all interested parties can voice their opinions. After listening to the people and studying the extent, type and quality of available resources, the commission submits a proposed plan to the county court. The county court may, without further hearings, enact the order, refer it back to the commission for further consideration or decide to reject zoning entirely. A public election is not necessary for zoning in a Class One county.

Class Two ($70 million up to $300 million) and Three ($10 million up to $70 million) counties of Missouri can adopt zoning under the statutory provisions set forth in sections 64.510 to 64.690.[11] Additional provisions are made in sections 64.800 to 64.905 which also authorize planning and zoning in Class Four (less than $10 million) counties.[12] Under both provisions the county court must submit, at either a general or special election called for that purpose, a proposition for the establishment of county planning and/or zoning regulations. If the majority votes in favor, the county court is authorized to name a planning commission. The commission holds public hearings in each township affected by the terms of the proposed order and drafts a preliminary plan to be presented to the county court. The court may adopt the entire plan or parts of it. send it back to the commission for further study or reject planning and zoning.[13]

ADMINISTRATION OF COUNTY ZONING

The chief administrative officer of a zoning ordinance is appointed by the county court after the plan has been adopted. It is his duty to see that the provisions of the plan are enforced. After the zoning administrator has been designated, no building or other structure, except those built for farm use,[14] can be constructed, altered or repaired so as to prolong its life without first obtaining a permit from him.[15] A permit must also be obtained to change the use of any land which lies within the bounds of the zoned area. In applying for a permit, a builder gives a description of the structure, its site and its contemplated use. The zoning administrator studies this application and determines whether or not the use is permitted under the zoning code. If the regulations are met, a permit is issued upon the payment of a reasonable fee and the applicant can proceed with construction. If the permit is denied, the applicant must either abide by the decision of the zoning administrator or appeal it to the board of adjustment. Good administration by the zoning administrator is essential if the zoning plan is to function smoothly and efficiently. But it is also important that zoning be based upon a good plan and that the board of adjustment adhere to the spirit of the plan.

[11] RSMo 64.510 to 64.690, 1969

[12] RSMo 64.800 to 64.905, 1969.

[13] For an excellent explanation of Missouri planning law see Robert C. Simonds, "Handbook for Planning Commissioners in Missouri," Governmental Affairs Program, UMC, March 1969.

[14] The limits of what is *farm use* have not been adjudicated.

[15] RSMo 64.620 and 64.890, 1969.

BOARD OF ADJUSTMENT

Every county or city embarking upon a zoning program must establish a board of adjustment. This board is appointed by the county court or city council. Missouri's statutes state it is to consist of five freeholders (property owners) except in first class counties where it is made up of the three judges of the county court.

The board of zoning adjustment is the second echelon in the administrative hierarchy. It has the following powers and duties: (1) To hear and decide appeals where it is alleged that the enforcement officer has made an error in judgment or has abused his authority; (2) to issue special permits under certain circumstances specified in the zoning ordinance; (3) to grant variances from the strict application of the zoning regulations where their literal application would result in unnecessary hardship.[16]

Basically, the board acts as a review agency to which dissatisfied persons may appeal when they feel the zoning laws have been interpreted incorrectly or applied so as to cause unduly harsh and unintended results. Under the first power listed above, for instance, a person denied a building permit by the enforcement officer can appeal. He can argue that the enforcement officer misunderstood his application, incorrectly determined the applicable zoning law or willfully abused his authority. In any event, a dissatisfied person has the right to take his case to the board and have it made an independent decision on the merits of his position. This right of appeal exists in all cases for any person adversely affected by a decision of the zoning authority.

EXCEPTIONS

The second power given the board of adjustment includes consideration of special exceptions based on provision in the zoning ordinance authorizing specific uses of land in particular districts. The exceptions are included when the specified use is not objectionable but would not otherwise be allowed because of the general classification of the district. The purpose of a special exception is to make certain uses of land possible without changing a district's general classification. for example, a certain area might be zoned as exclusively residential. However, a special exception could permit a hospital building there.

For an exception, a special permit must be obtained from the board of adjustment when all ordinance requirements have been met. There is generally no need to show financial hardship but the board must find that the exception, if granted, will serve the public welfare and not merely the needs or desires of an individual.

Special exceptions must be in harmony with the general purposes of the zoning ordinance and should be granted only under the conditions, facts and circumstances set out in the ordinance. They usually relate to matters of public convenience and necessity like hospitals, cemeteries and airports. Provision for them in an ordinance is completely optional. They are zoning aids that can be used as desired and are not required by statute. However, if they are included in the ordinance, the power to grant them is statutorily given to the board of adjustment.

[16] RSMo 64.660, 1969.

VARIANCES

A variance permits use of land in a manner forbidden by the zoning regulations. Unlike exceptions, variances are not specifically set out in the zoning ordinance, but are granted wholly at the board of adjustment's discretion. The variance acts as a safety valve to the zoning ordinance. It is available to avoid the harsh results of a literal application of zoning provisions to every parcel of land disregarding particular problems or situations.

A typical variance situation could arise because of the peculiar shape or topography of a lot. For example, a person in a residential area might not be able to meet the specific yard-size requirements of a residential classification because of the irregular shape of his lot or because it borders the edge of a steep ravine. Rather than prevent use of the land in any capacity (which would follow from a strict application of the zoning code), this property owner can take his problem to the board and ask for a variance. If the request is granted, he can use the land for residential purposes even though he cannot meet the yard-size requirements.

Variances give additional flexibility to the zoning ordinance and allow it to operate reasonably in peculiar situations. A variance does not act as a general mandate giving a person authority to build any type of structure anywhere within the zoned area. It is given to a particular person for a particular piece of land and applies only to the specified land. Changes in allowed land use should come through rezoning, not variance.

The power to grant variances must be exercised impartially. The courts will not allow a board of adjustment to treat different individuals according to different standards. A famous court decision has established the following principles as guides in granting variances: (1) that the land in question cannot yield a reasonable return if used only for the purposes allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to general conditions of the neighborhood; (3) that if the variance is granted, the authorized use will not alter the eseential character of the locale.[17]

In general, to obtain a variance a person must demonstrate financial hardship and a reasonable necessity peculiar to him alone. Intangible factors such as the person's own persuasive power, the general character of the board, and the opinion of neighboring landowners will play an important role in deciding whether or not it will be granted. These factors cannot be measured abstractly and, in the last analysis, a variance depends solely upon the adjustment board's discretion.

REVIEW BY THE COURTS

Any owner, lessee or tenant aggrieved by a decision of the board of adjustment may prosecute an appeal to the circuit court of the county in which the property is located. In reviewing the action taken, the court may inspect the data and records that the board acted upon and appoint a referee to take additional evidence in the case. The court can affirm, reverse, or modify the decision brought up for review. After the circuit court enters its judgment, any party to the controversy can appeal to an appellate court in the same manner that other civil judgments of the circuit court are appealed.

Missouri courts have generally taken a liberal approach to the question of who may sue in zoning matters. Both the property owner who is objecting to some phase of the application of zoning regulations to his land and other persons who feel

[17] *Otto v. Steinhilber*, 282 N.Y. 27, 76; 24 N.F. 2d 851, 853 (1939).

that they would be injured by a failure to enforce them normally are permitted to seek judicial relief.

The court's power to hear zoning appeals is statutory and its jurisdiction is limited by statute to correcting illegal board decisions. This means that the court is without power to supervise the board's general discretion. The courts have consistently restated the principle that the findings of the board, when made in good faith and supported by evidence, are final. The decisions of this group are subject to remedial court action only for errors of law and to give relief against orders which are arbitrary, oppressive or represent abuse of authority. If the reasonableness of the board's action is debatable, its decision will likely be upheld by the court.

In addition to reviewing actions of the board of adjustment, courts are often called upon to determine the constitutionality of a zoning ordinance. Generally, if one asserts that the zoning regulations are unconstitutional or otherwise invalid in their application to his property alone, he cannot obtain judicial relief until he has exhausted his administrative remedies.[18] However, if, as in the Ambler case, the entire ordinance is attacked as unconstitutional, then it is not necessary to exhaust all remedies. The usual administrative remedy, of course, is an appeal to the board of zoning adjustment. In either case, there is a legal presumption that ordinances duly enacted by a legislative body are valid, and the party attacking the ordinance must show that it is arbitrary and unreasonable.

Violation of a zoning ordinance constitutes a misdemeanor in Missouri and is punishable by fine. However, the usual method of enforcement is through an injunction. Under an injunction, a person must follow the provisions of the zoning ordinance or be held in contempt of court.

AMENDMENTS AND REPEAL

Amending a zoning ordinance is similar to adopting it initially. Amendments can be made by the county court only upon recommendation of the zoning commission. The commission holds public hearings on the proposed amendments, makes recommendations, and sends them to the county court where they are adopted or rejected. Those adopted become an enforceable part of the zoning plan.

Any county that has adopted a zoning program must submit its continuance to a vote if requested in a petition signed by 5 percent of the voters casting ballots at the last election for governor. If a majority of voters favor termination, the county court shall declare the program terminated and discharge any commissions or employees appointed to carry out the zoning plan.

[18] *Scallet v. Stock* 253 S.W. 2d 143 (Mo. 1952).

NONCONFORMING USES

In any discussion of zoning, an important problem for consideration is that of prior, nonconforming uses. A nonconforming use has two important characteristics. First, it is the use being made of land when the zoning ordinance comes into existence. Secondly, the existing use does not conform to the zoning plan provisions for that particular area.

Since noncomforming uses, often representing substantial economic investments, have preceded the passage of the zoning ordinance, they are viewed as vested rights and allowed to continue despite their conflict with the zoning plan. A majority of American courts have said that they must be allowed to continue in order to have a valid zoning ordinance. If no provisions are made for their continuance, the ordinance can be attacked as an arbitrary and unreasonable deprivation of property violating either the Fifth or Fourteenth Amendment. The regulatory range of the police power, applied without compensation, does not extend to the elimination of nonconforming uses. The constitutional safeguards of due process of law prevent this procedure. In Missouri, nonconforming uses are specifically protected by statute.

However, because they threaten effective regulation by not being in harmony with the zoning plan, nonconforming uses are not favored in the eyes of the law and reasonable restrictions upon them are upheld. For example, the zoning ordinance may state that no repairs or additions can be made on a nonconforming use structure. It may also prohibit one nonconforming use from being replaced by another.[19] In this way, the nonconforming use is eliminated by deterioration, dying a natural death.

One method used by some zoning ordinances to eliminate nonconforming uses is to set up amortization provisions. Here the owner is allowed a "grace" period after which he must terminate his use. The owner thus has an opportunity to amortize his investment and make future plans. The length of grace period varies according to the nature of the use and the amount of investment it represents. While amortization provisions are held valid in some jurisdictions, the Missouri Supreme Court has rejected them as being a deprivation of private property which would require compensation.[20]

[19] *Women's Christian Association v. Brown,* 354 Mo. 700, 190 S.W. 2d 900 (1945).

[20] *Hoffman v. Kinealy,* 389 S.W. 2d 745, (Mo. en banc 1965).

In zones designated for agricultural use, agriculturally related buildings can be constructed or repaired and improvements made without getting a zoning permit. This provision permits farmers to carry on their normal activities without getting permission from the zoning authority. However, if the use is changed from agricultural to some other, such as recreational, then the land must be rezoned. This requires getting the approval of the zoning commission and the county court.

Zoning Law in Practice

EFFECTS OF ZONING ON FARMERS

Farmers are among the beneficiaries of zoning. Without it, they would be unprotected because any type of business, no matter how objectionable, could be set up as long as it was not so obnoxious as to become a legal nuisance. In an unzoned countryside, since there is no regulation of land use, owners can make any use of the land they wish, restricted only by the bounds of legal nuisances.

Even under zoning, land given an agricultural classification is given limited protection for commercial structures are allowed in all but residential or recreational zones.[21] To use the land for purposes not allowed in an agricultural zone requires rezoning, the approval of the zoning commission and the county court and acts as a safeguard against indiscriminate, harmful land uses in rural areas.

The statutes direct that zoning ordinances shall not extend to the regulation of crops to be grown or the construction or repair of farm buildings. The statutes, however, are not clear as to what will be considered a farm use. Most existing Missouri zoning ordinances include as a farm use most things farmers do. At least two ordinances appear to define some commercial feeding operations as nonfarm use. In most instances farmers may carry on after zoning just as before. In the event a farmer wants to change his land to another use or sell it to a third party for a non-agricultural use, he can request it be rezoned. The request may be granted if it is based on valid grounds and is reasonable in relation to the land-use plan.

[21] RSMo 64.560, and 64.890, 1969.

EFFECT OF ZONING ON INDUSTRY AND RESIDENTIAL DEVELOPMENT

While zoning controls business development in rural areas, it does not inhibit it. Counties with land use regulations are favored by industrial companies looking for new plant locations. there are several reasons for this. Providing areas zoned industrial gives industry the assurance that the people want industry. It increases the chance a plant can be located in an industrial area where it has access to the necessary services.

Another advantage of zoning lies in the control of water and air pollution. these growing problems are held somewhat in check by a zoning program. When industries are concentrated in one place, the harmful wastes they generate may be controlled at less cost. Zoning and pollution control programs complement each other. A county plan should integrate them to achieve optimal county development.

The protection offered to residential development is much like that offered industry. Zoning limits where housing can go but it sets aside areas for this use. The individual householder is always interested in what happens within the range of his sight, smell and hearing. Zoning removes some of the otherwise existing uncertainty as to what will happen around him. It can be used to preclude housing from flood prone areas or areas of unstable soils and can complement pollution control efforts.

NONCONFORMING USE PROBLEM

The impetus for a zoning ordinance usually comes from citizens who are disturbed by the increasing number of undesirable land uses that they see appearing. Suppose these are shanty towns. They cannot be eliminated immediately by zoning because they are in existence when the ordinance is passed and come under the nonconforming use provision. This illustrates the need for adopting a zoning ordinance before undesirable uses are established. Zoning is a preventive measure and cannot undo with one stroke undesirable resource uses that have accumulated over many years.

Most counties have to accommodate some nonconforming uses in their zoning scheme. However, they can control them and keep them from increasing or lasting beyond their normal life. Unless permission is given by the zoning authority, a nonconforming use structure that is destroyed cannot be replaced; and one that is deteriorating cannot be repaired. Thus, the nonconforming use is left to wither away but the conditions it creates may get worse before they are improved. Some nonconforming uses, however, are more durable than these and will last much longer. The number that must be tolerated increases as zoning is delayed.

ASPECTS OF COUNTY ZONING

ADMINISTRATION

The key figure in making a zoning ordinance effective is the enforcement officer. He issues building and land-use permits, sets up appeals that are taken to the board of adjustment and handles all of the general administrative chores. Into his office come the farmers, contractors and businessmen who are directly influenced by the zoning ordinance. As a rule, his job is one of explaining and interpreting the ordinance to interested landowners. Sometimes he has the unpleasant task of persuading a disgruntled citizen to accept an adverse zoning decision or of informing him that he is making an unauthorized use of his land. It is a position where much good is accomplished by tact, patience and understanding.

Because the zoning code is made flexible to cover all situations, many problems arise that can lead to differences of opinion. While the zoning code may clearly state the uses permitted in a particular area, there still exists the possibility of appeal to the board of adjustment, a request for a variance or an exception or a legal action on constitutional grounds.

The planning commission is appointed by the county court and all members serve without pay. Its duties are to prepare the original plan and hold hearings. After the zoning ordinance is formally adopted, the commission acts as an advisory body to the county court. It studies and makes recommendations on proposed amendments and rezoning petitions and acts as a sounding board for public opinion. It has general responsibility to keep abreast of changing conditions so the ordinance can be updated when necessary by the county court.

EXPENSE

Neither planning nor zoning come without expense. Their initiation cost will be high relative to maintenance costs. Both initiation and maintenance costs are dependent upon how complex a plan is made and implemented. Some counties need very complex work; others can manage with much more general plans. Thus, generalization about cost is not possible.

The direct local tax cost may be reduced by getting a federal grant, but usually there are more requests than money. Costs of administration of zoning may be partially covered by fees for services rendered, but it is poor practice to make a zoning agency heavily dependent on the collection of fees. To do so is to encourage the agency to do those things for which fees are collected even if it violates good planning.

ANNEXATION

All land lying in an unincorporated area is subject to a county zoning plan. However, the possibility of annexation by a municipality having its own plan exists in those areas lying around towns and cities. A city which takes land that was zoned as agricultural by the county may change the classification to suit its own plan. Other classifications set up by the county however, such as manufacturing or commercial, are not subject to change when taken over by the municipality if the area is in the designated use. This procedure prevents a person who relies on the couny zoning laws from being put out of business in the case of annexation by the city. A good county plan that is carried out effectively by a zoning ordinance lowers the cost of correcting undesirable land use and reduces urgency for annexation.

Assistance in Planning

If a county wishes to explore the possibility of planning and zoning or go ahead and utilize its power to plan and zone there are many units that can offer help. Those with a substantial and continuing interest in planning and zoning include:

Regional Planning Commissions
Department of Community Affairs, Jefferson City
Agricultural Economics, UMC
Governmental Affairs Program, UMC
Regional and Community Affairs, UMC

EDUCATIONAL

Requests for help may be made directly to any of these units, but a suggested procedure is to make a request for assistance to the Area University Extension Office. This office has expertise in developing information and learning situations custom made to the always unique county situation. It also has access to both state and university units whose resources might be needed in answering local questions.

A minimum educational design would include:

- The nature of planning and zoning under Missouri law
- How elections on planning and zoning are held
- How planning and zoning can and should be implemented
- How and where financial assistance may be available.

FUNDING

The Missouri Department of Community Affairs administers limited federal funds available to help local governmental bodies finance planning. Grants may be up to two thirds the cost of preparing a plan.

Counties that receive these federal funds must develop a comprehensive plan for development. A zoning ordinance alone does not qualify for federal funds, unless it is part of a general community plan. To qualify for federal funds it is also necessary to utilize in the development of plans the services of a consulting person, firm or agency approved by the State Department of Community Affairs. This is a realistic requirement since the unpaid members of the county planning and zoning commission cannot be expected to undertake the type of thorough study that is necessary to set up an effective plan. In general, the restrictions on granting funds are not stringent. They are designed to insure that the plan will be workable.

Funds are also available for regional planning commissions which cover areas that are larger than a single county. These commissions are advisory and without power to enforce their suggestions or to institute zoning ordinances. However, they can work with local governments and encourage them to adopt parts of a comprehensive regional plan.

Should Your County Zone?

The people of each county decide whether or not they want a zoning ordinance. The nature of the resources and the needs of the population influence this decision. Counties located close to expanding metropolitan areas and those that expect to grow in the future should consider adoption of zoning.

Zoning has generally been instituted by rapidly growing communities. Change from agricultural to residential, industrial and commercial uses makes the need for some sort of land use policy more obvious. Zoning may provide one of the means for implementing some of the needed guidance.

Counties that want to develop recreational facilities or to control pollution of air and water supplies should consider zoning. In fact, many observers believe zoning is so closely associated with growth that it can be ignored only by those areas that expect to remain undeveloped.

In summary form, what are the more important consequences of developing a good planning and zoning program?

(1) Objectionable land uses can be excluded from future development in areas that are set aside for specific types of activity.

(2) A landowner will be unable to establish a specific type of business on his land if it does not conform with the zoning regulations.

(3) The people in each area of the county can participate in determining the uses they want to make of their land, the facilities they need, such as type of roads and water supply, and can cooperate in the orderly development of the area.

(4) Residential and industrial areas can be segregated to reduce traffic hazards and to control water and air pollution.

(5) Permits are required for construction of buildings (most farm buildings excluded).

(6) The law provides that farm land use and building activity are not subject to regulation. However, ordinances vary as to what is included in farm use. For instance, some would not classify a large scale animal feeding operation as a farm use.

(7) The builder of a residence in a residential area knows that the area is set aside for that use.

(8) Buildings in residential areas can be made uniform as to lot size, side yards, front yards and set back from the streets.

(9) Factory owners and merchants know that they are located in areas set aside for business purposes.

(10) Areas of natural beauty can be preserved and their recreational potential enhanced.

(11) Trash and garbage disposal places can be disignated and "waste" areas (i.e. abandoned strip mining pits or stone quarries) can be used for these purposes.

(12) Uncertainty may not decrease but may even increase if the plan and the zoning ordinance are changed too often or if there is poor and unpredictable enforcement of the ordinance.

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