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Impact of Rural Zoning on Agriculture

By Edward B. Wilkens

Perhaps the most important function of a discussant on this program will be to underline and re-emphasize some of the major points made by the two previous speakers. This I propose to do. In addition, I will briefly outline some of the elementary and fundamental aspects of zoning control to provide a basis of criticism as well as to clarify our understanding of rural zoning and zoning in general.

CHARACTER OF ZONING

As either a county law or local ordinance, zoning first must be specific. It must clearly state the limits in which it is to operate so that it is as easily enforceable as possible.

Second, zoning must be reasonable. The primary test used by any court which is called upon to review a zoning ordinance is whether the ordinance is in proper scale with the existing conditions in the area where it is to be applied. A minimum lot size in a rural municipality might be outrageously unreasonable in a built-up area of a metropolitan center.

Third, regulations must be reasonable in the general sense that they do not infringe upon the basic rights of a property owner to make use of his property. The extent and type of control exercised must be adapted to the peculiar circumstances which make regulation necessary.

Fourth, zoning must be consistent for all comparable situations. The zoning regulations must be uniform within any single zoning district, although the extent of controls can vary from one district to another in order to meet local conditions.

Fifth, zoning in its essence is a limitation upon private activity. It is an insistence by the majority of the municipality or county where the zoning is to be established that every citizen surrender a right or privilege in the use of his property for the benefit of the community as a whole. While the passage of a zoning law may restrict the rights of an individual, the exercise of reasonable control within the carefully defined specific limits of an ordinance should work materially for his benefit. The ordinance will provide him protection needed to do the important things with his property even though he sacrifices some freedom to do less important things.

LIMITATIONS OF ZONING

The second broad basis upon which we should establish an understanding of the character of zoning regulations is their limitations. Zoning is a tool to accomplish certain things. It is not universally applicable to all conditions and cannot solve all the problems of broad developmental planning in either rural or urban areas. Some of its limitations are as follows:

1. In the sense that zoning is a prohibitive act setting minimum standards for development, its effect can be negative. In setting limits over the activities of the individual in the use of property, it can only encourage, but cannot require, that the property be used for the purposes permitted under a zoning ordinance.

2. The private owner receives no compensation for loss of freedom to use his land as he desires. Zoning control, being equally applicable to all persons rather than directly applicable to a specific parcel of property, does not require compensation for loss of full-scale usage. Legal action under zoning is based on the police power of the municipality, which is the power to regulate for health, safety, and general welfare. Zoning does not involve the power of eminent domain, under which all property rights on certain individual parcels are taken and must be paid for by the government agency exercising the power.

3. A nonconforming original use has a tendency to persist. Zoning sometimes has the effect of freezing uses which are incompatible with the new use established by the zoning ordinance. This freezing of nonconforming uses often grants the owners a monopoly over a local market (for commercial uses) or a privilege which the neighboring properties cannot enjoy. It increases property value and often gives the owners special economic advantages, which cause them to perpetuate the original use.

4. Zoning for direct economic gain, and particularly for the protection of the economic status of some group, is still not readily accepted by the courts. "Snob" zoning, a subject of much discussion in the East, establishes regulations which tend to discriminate against lower economic groups by making it difficult or impossible to enter a zone without buying large lots or large houses. At present this is a controversial matter, and it is not at all clear in which direction the court decisions of the future are likely to go.

5. The necessity for a zoning ordinance to be specific and to be explicit in terms of measurable quantities and dimensions has somewhat discouraged the use of "sliding scale" provisions in some of the more modern zoning ordinances. These provisions leave to the judg-

ment of a zoning board (as administrator or interpreter of an ordinance) decisions as to whether a specific usage is suitable in a particular zone. Also the courts still seem to hold to the older concept of zoning which would permit in the less restricted zone all uses permitted in any zone of higher restriction. This has delayed introduction of some of the newer performance standards in ordinance revisions in New Jersey.

6. Another limitation of zoning is that it is frequently slow in adjusting to meet modern conditions. As is characteristic of other legal devices, zoning has developed through a slow accumulation of favorable court decisions on individual points. In a sense the law is like the building up of a coral reef, bit by bit. Also, the legal process is encumbered by "due process," which calls for public hearing, advertisement, appeal, and review by the court before a new device in zoning can be considered universally applicable.

7. Finally, a limitation may be placed upon zoning by the existing statutes of the state in which it is to be applied. The powers of zoning vary considerably among the states. As we have seen, Wisconsin has the power to exercise county zoning, while in New Jersey a constitutional provision prohibits county zoning.

However, within these limitations, which are in many instances applicable to all regulatory laws, a wide range of zoning powers can still be used for sound development of rural areas.

TRENDS IN ZONING

The third fundamental aspect of zoning which we should have in mind in considering rural zoning is its capacity to expand in the future. Zoning has already become broader than simple nuisance control, based upon the prevention of annoying or dangerous conditions through the exercise of police power. Many recent court decisions have broadened the interpretation of welfare beyond this to include protection of neighborhood character and the implementation of comprehensive planning.

Second, zoning will increase in effectiveness when it is combined with other regulatory or developmental devices. Both Dr. Penn and Mr. Alcorn have illustrated how this can be done by combining zoning with some of the other "tools" available to implement a comprehensive planning operation.

Third, zoning techniques are continually improving. We are using better and more scientific standards upon which to base our regulations. For example, some recently adopted ordinances minimize the nuisance from noise by providing for the use of scientific measur-

ing devices to see that the number of decibals produced by a manufacturing operation are kept within an established maximum.

Obviously, much progress will be made in rural zoning in the future as scientific measurements specifically adapted to rural zoning procedures are developed as they are needed.

Fourth, with these newer standards and with a more liberal attitude on the part of the courts, the old subterfuge of broad interpretation of minor provisions may be largely abandoned. Such subterfuge is always accompanied by the danger of misinterpretation or of sanctioning by the court of an attempt to usurp or distort a regulatory power through some devious legal procedure.

Fifth, we will certainly be able to anticipate wider use of zoning with greater understanding. As it continues to prove successful, it will be used more frequently to solve problems in rural areas. In fact, the challenge for its use in rural areas is greater, as this is the field in which the maximum expansion in zoning may be anticipated in the next few years.

A BASIS OF EVALUATION

First, it seems to me that we must evaluate any zoning proposal on the basis of benefits derived. This evaluation must weigh the benefits derived by the community and the state against those derived by the individual controlled by the regulation. The example of rural zoning in Wisconsin given by Dr. Penn is perhaps one of the most encouraging illustrations of the capacity of a soundly conceived plan implemented by zoning to benefit all concerned—both the community and the individual.

A second measurement of the desirability of rural zoning is its legality. Are the regulations sound? Will they stand up in court? Are they fairly conceived and justly applied, or do they protect special interests at the expense of others? Is the law enforceable? Is it so drafted that a relatively inexperienced individual can administer the law without recourse to elaborate technical measuring devices or complicated procedures for the review of the merits of an individual case?

A third measurement of the value of a rural zoning proposal is its economic effect. Could it create a privileged or even a subsidized class, whose existence may depend entirely too much upon the zoning ordinance, which if suddenly removed would result in economic collapse of the area? Do the benefits derived or the restrictions imposed apply equally to the various economic groups in the community, or do the burdens fall mainly upon only a small segment of the population?

Should the law result in economic benefit to present residents to the partial detriment of prospective residents, or should the ordinance promote the benefit of citizens not yet residents in the area? Recognizing that zoning is apt to be a restrictive rather than a promotional force, will it work best as a device for restraining rapid development and maintaining existing balances among various land uses to effect what Mr. Alcorn has called an "orderly retreat" to a new economic base?

Another measuring stick for evaluating a proposed rural zoning ordinance is the adequacy of the standards applied. Are the measurements to be used scientific and up to date? Do they clearly implement the objectives of a sound developmental plan for the area? Too often zoning ordinances in their early stages are duplications of ordinances developed elsewhere, containing, in many instances, obsolete or improper regulatory standards already abandoned by others.

One of the problems facing drafters of new ordinances is whether to use standards already accepted by the court as legal devices instead of introducing new methods not yet tested by court action. A study of the actions of the highest legal court in the state in which the ordinance is to be passed may offer some hint as to the likelihood of the acceptance of new ideas and broader interpretation in terms of constitutionality and reasonableness. This would help in choosing between "progressive" and "conservative" elements in your zoning ordinance.

Finally, any evaluation of a zoning ordinance should consider the extent of its acceptance by the persons affected. Does it really represent the desire of the community itself? Are those to be regulated willing to conform to these regulations which presumably they themselves have created and are willing to support? Without this acceptance, understanding, and future support, even though all the technical considerations clearly show that zoning is needed in a community, the community is not ready for zoning.

PART V

*Effective Methods for
Public Policy Education*

