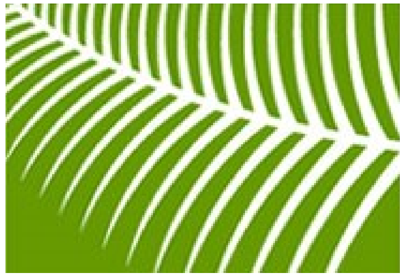

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Resettlement Administration
Land Utilization Division
Land-Use Planning Section

Land-Use Planning Publication No. 10

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PROBLEMS AND SUGGESTIONS IN THE DRAFTING OF RURAL ZONING ENABLING LEGISLATION

JAN 8 1937

By

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Preface

This publication has been prepared for those generally interested in rural zoning legislation as a method of promoting better land utilization. It presents a general discussion of the method of zoning and of some of the problems encountered in the drafting of zoning enabling legislation, and in addition it offers concrete illustrations as to how these problems might be resolved. A discussion of the constitutionality of zoning under the police power forms the content of a separate study, Land-Use Planning Publication No. 11. The economic and social aspects and importance of zoning have been treated elsewhere by Messrs. C. I. Hendrickson, G. S. Wehrwein and W. A. Rowlands. It is suggested that anyone interested in rural zoning become familiar with their publications, 1/ since no adequate knowledge of zoning can be obtained without a study of these economic and social aspects.

This study and Land-Use Planning Publication No. 11 have been prepared under the general supervision of L. E. Pfankuchen. He and Mr. Hendrickson, at whose instance this work was begun, are to be accorded special acknowledgment for their important suggestions and criticisms. Acknowledgment is also due a number of other people, among them H. A. Hockley and V. Webster Johnson of the Resettlement Administration, and P. M. Glick of the Solicitor's Office of the United States Department of Agriculture.

1/ See the list of references at the end of this publication.

PART I - GENERAL

Introductory

Zoning is a legal technique which within the past fifteen years has undergone a phenomenal development in urban areas. Recently it has been thought of in connection with purely rural areas to regulate land use, as one of the legislative measures available to protect the public interest in the land. Zoning is a method of exercising legislative power by which regulations are applied by districts. Within the limits of each district (or zone) created, the regulations applied must be uniform. However, in different districts, different regulations may be applied.

The creation of districts for various purposes is not new. Neither is the application of regulative measures to the land unheard of. Zoning merely institutes a systematic districting procedure to prohibit certain uses of the land deleterious to the public interest. The character of an area which pronounces its suitability for formation into a district (zone) is its homogeneity of condition for the purposes in view. Another area presenting a different homogeneity may call for a different regulation, and may be, accordingly, formed into another district (zone). The mark of zoning, then, is a heterogeneity of homogeneous districts.

Zoning is, furthermore, characterized by the generalness of the regulations applied. They are not particularized. Moreover, as commonly conceived zoning operates prospectively. It has as its object to prevent the recurrence of certain mistakes of the past; and it normally reaches only to preventing the future establishment of the designated misuse.

Zoning is not a cure-all, and does not in itself constitute an entire land-use program; but it is rather one of several regulative measures which together might constitute such a program. In certain instances zoning may be desirably used as a center around which the complete program can be built. In other cases, zoning can be more appropriately used as a complement to other land-use measures. In still other cases, zoning may not be necessary at all, for either one or both of two reasons: either the circumstances do not warrant it, or other more feasible measures might accomplish under the circumstances all that zoning could accomplish. When, to what extent, and how the interest of the public in the use of lands is to be protected depends on what the circumstances call for.

Some situations in which rural zoning may be particularly ap-

propriate are: those of isolated and scattered settlement with the attendant evil of disproportionate public expenditures for public services;1/ those in which isolated settlement constitutes a fire or other hazard; those of sub-marginal land which it is desired to keep out of cultivation; those of areas suitable for only a particular and desirable land use, and from which it is desired to exclude other deleterious and harmful uses. In addition, zoning might aid as a complementary measure in protecting the leasing desires of grazing district associations; or in facilitating the blocking up of public holdings; or in carrying out a relocation program.

Rural zoning as a State Police Power Measure

There are conceivable at least three means through which measures regulating land-use might be effected, namely: (1) subsidy, by the purchase of the land itself or of a particular land-use; (2) eminent domain (taking private property for public use on the payment of compensation); (3) police power (regulation without the payment of compensation). To zone under the first two would entail the outlay of disproportionate sums of public money and might be impracticable. Consequently, zoning will have to be carried out through the third means; and the primary legal question becomes whether rural land-use zoning is a legitimate State police power measure, a question which has not yet been passed upon by the courts.

A completely precise definition of the police power may not be easily given, since the power is flexible and expansive, and develops to meet changing conditions calling for its exercise. However, it has been briefly defined as the power of the State to regulate persons and property and to restrict individual rights in the interest of the general welfare, without the payment of compensation. Like any other governmental power, it must be considered in relation to its constitutional limitation - basically, in this case, the provision, contained in the Fourteenth Amendment, and in analogous provisions of State constitutions, that no person shall be deprived of his liberty or his property without due process of law. This requires, in general, that any legislation must have in view objects or purposes which are permitted by Federal and State Constitutions; that the means employed are calculated to attain those objects or purposes; and that the regulations are reasonable. The content of these criteria is not rigid, but changes as the point of balance between the private

1/ Such a situation may in certain circumstances, however, call for the encouragement of more compact settlement rather than the discouragement of all settlement.

right and the public interest shifts. What may have been an impermissible regulation twenty-five years ago is not necessarily so now, when the necessity for public regulation has become greater and more extensive.

Legal doctrine concerning the police power develops through a process of adding precedent to precedent and of giving new direction and emphasis to the categories in which judges and lawyers think. In demonstration of the thesis that rural land use zoning fully meets the requirements of due process under many of the existing categories, there is available a considerable mass of court decisions and of judicial reasoning. This mass of material has been brought to a point in a separate discussion and can be only alluded to here. 2/

The "general welfare" objects of zoning, which may take advantage of judicial precedent and reasoning as to the police power, are: the conservation of the State's resources in land, forests, grasses, water, game and fish, and natural beauty; flood and drainage control; protection of the food supply; fostering of the State's industries; conservation of land values; strengthening of the tax base; economizing in public expenditures; facilitation of police, fire and health protection, the preservation of the public peace, safety and comfort, and of better recreational opportunity; fostering of a more wholesome community spirit, of family values and good citizenship; promotion of home ownership and a stable population.

The validity of urban zoning was firmly established in 1926 by a decision of the United States Supreme Court. 3/ Suburban zoning, too, is accepted. 4/ The next step for the courts should be the acceptance of rural land-use zoning, 5/ which has a fundamental identity with urban zoning. In each case the basic object is the use of land. Urban zoning merely takes a form appropriate to the circumstance that urban land is primarily used for the erection of buildings. Rural zoning, for its part, takes a form appropriate

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2/ Land-Use Planning Publication No. 11.

3/ Euclid Village v. Ambler Realty Co., 272 U.S. 365.

4/ Western Springs v. Bernhagen, 326 Ill. 100

5/ What would seem a more exact designation of the type of zoning here in mind would be "rural land-productive use zoning", to set it off from urban-type zoning in rural areas. However, it is a cumbersome term, and has unfailingly given rise to objection. The usual term "rural land-use zoning" is hence used in its stead. It is in this sense, too, that the term "rural-type zoning" is used here.

to the circumstance that the principal rural use of land is the production of crops, forests and animals. Furthermore, a given use of land does not have to be a nuisance to its neighborhood in order to justify its limitation or even prohibition in the general welfare. Zoning has come to be a legal technique with a justification and a doctrine peculiar to itself, and distinct from that underlying the law of nuisances. 6/

There have already been, moreover, a number of measures closely similar to zoning applied with judicial assent in rural areas. For example, in Perley v. North Carolina, the U. S. Supreme Court upheld a statute declaring zones of all land within 400 feet of any watershed owned by a city or town for its water supply, and requiring all private landowners to remove therein all waste timber not desired for commercial or other purposes. 7/

Zoning does not deprive anyone of the ownership of his property or destroy it physically. It merely regulates the use of the property in the public interest. This regulation of use, furthermore, does not amount to a complete deprivation. The owner is left in substantial enjoyment of his property. This is fair enough, when the public interest is sufficient. One practical test of reasonableness is the extent to which value is diminished. In city zoning, depreciations of value up to 3/4 or 4/5 have been allowed by the courts. The fact that through rural zoning the long-run value of lands should be conserved ought to be a factor in favor of its reasonableness. Further contributing factors include expertness and objectivity in the developing of the regulations; public hearings and public favor; uniformity and impartiality of treatment; absence of arbitrariness. However, the ultimate test of reasonableness will depend upon the circumstances of its application in a given case; and hence, given a well-drafted enabling act, the burden of preserving reasonableness will rest upon the local authorities who draw up and administer the actual zoning regulations.

Present Statutory Status of Rural Zoning

State acts enabling regulations of a zoning nature applicable in rural areas may be said to be of three sorts: (1) planning measures, relating to the location, etc., of public roads, streets, parks, buildings, etc.; (2) acts authorizing cities to zone a limited fringe of territory immediately surrounding their corporate bound-

6/ See, for example, Jones v. Los Angeles, 211 Cal. 304.
7/ 249 U. S. 510 (1919).

aries; (3) acts authorizing counties (or "towns", as is the case in the northeastern States) to zone. The first of these three categories is of no interest here, for obvious reasons. The second may likewise be dismissed, since zoning is in its case done in a small area by a city government in the interests only of urban development. Accordingly, this discussion is limited to the third category.

Only those acts which permit zoning for purely rural land-uses (i.e., for agriculture, forestry, recreation, erosion and flood control, and grazing) are of significance to the present study. In some of the acts in the third category, such zoning is clearly permitted. In others, it is clearly not permitted. In still others, the matter is in doubt. County enabling acts which clearly contemplate rural zoning for land-use are those of Wisconsin (Statutes, sec. 59.97, as amended); Michigan (Laws of 1935, act 44); Indiana (Laws of 1935, chap. 239). That of Washington (Laws of 1935, chap. 44) is not unequivocal, although apparently it might reasonably be construed to permit such zoning. Mr. John Blackmore of Washington State College, however, believes that a more specific law is needed in Washington. 8/ That of New York, enabling "towns" (i.e., townships) (Laws of 1932, chap. 634, Art. XVI), is not clear; but Mr. Robert Whitten, New York City planning consultant, was of the opinion that it, too, might be construed to permit such zoning. 9/ The usually cited county act of California (1931 Code of General Laws, Act 5211b) is also doubtful, although some authorities believe it to be sufficient for such zoning, when taken in conjunction with the eleventh section of Article XI of the California Constitution. 10/

Zoning for purely rural land uses is a very recent development, much more recent than urban zoning. The first law with such zoning distinctly provided for was adopted by Wisconsin in 1929, and was utilized first by Oneida County (ordinance which went into effect in July, 1933). At present, twenty-three northern Wisconsin counties are zoned under this Act, being the only counties in the entire United States comprehensively zoned for such purposes. They are districted into forestry zones (in which agriculture is prohibited, and residence as well in many instances) and unrestricted zones; and frequently into "recreation" zones in which residence, but not farming, is allowed. In addition, it is said that three counties in Michigan are now preparing thus to zone.

8/ Journal of Land and Public Utility Economics, May, 1936, pp205-06.
9/ Ibid, August, 1936, pp. 313-14.
10/ See, for example: C.I. Hendrickson, County Planning and Zoning: Lists of Enabling Acts and Commissions (Mimeo. Dept. of Agri. 1936), p. 28.

As a general proposition acts enabling zoning in rural territory (with such exceptions as have been noted) seem to have been passed with only the urban-type zoning in mind. That is, they contemplate conditions of concentrated or prospectively concentrated population - - urbanized or semi-urbanized situations which obtain in many areas outside the corporate limits of municipalities, to be zoned with the ostensible object of protecting conditions of residence and commercial and residential property values. Most of them seem to have been passed before legislators had become aware of the possibility of pure rural-type zoning. The act of Virginia (Laws of 1927, ex. sess., chap. 15, amended by Laws of 1936, chap. 355) which may be utilized only by counties having 500 or more persons to the square mile, and that of Maryland (Laws of 1933, chap. 599), which excepts ten agricultural counties from its authorization, typify the urban-bent outlook of these laws.

How such acts might give a false appearance of permitting rural-type zoning is illustrated as follows. Petty agriculture (such as gardening) often exists in urbanized rural areas and, indeed, within municipal limits. In urban-type zoning such agriculture sometimes finds itself incidentally regulated, as might be expected, along with other situations which affect residential conditions and property values. For instance, the growing of vegetables, fruits, flowers, shrubs and trees for gain is prohibited in a 1930 municipal zoning ordinance of Madeira, Ohio; and in a certain zone of Orange County, California (ordinance of 1935), nurseries and greenhouses would be permitted only for purposes of propagation. However, in such cases, the regulations have a substantial relation to urban-type purposes, and not to rural-type purposes.

Whether the courts would permit such acts to be used for rural-type purposes (that is, in situations of scattered and distinctly rural population, in which the primary land-use is agronomic) is to be doubted. A scattered reference to "use . . . of land" is not necessarily sufficient. There is an urbanized as well as a ruralized "use of land"; and, unless there is evidence to the contrary, such references are likely in such acts to be construed as limited to urban-type use. The whole flavor and appearance of such acts is urban-type, and in view of this, the courts are apt to give them restricted interpretations, since they authorize unaccustomed and extensive regulations of the use of private property. 11/

11/ The fact that both Wisconsin and Michigan deemed it proper to amend county zoning statutes (of the "urban-type") already on the books in order to provide specifically for rural-type zoning is no doubt significant in this regard.

County (or "town" in the case of the northeastern states) zoning enabling acts of the foregoing sort (in addition to those already indicated) include: Connecticut (Laws of 1925, chap. 242; amended 1931, chap. 29-29a: Massachusetts (Laws of 1933, chap. 269); New Hampshire (Laws of 1925, chap. 92, as amended, Laws of 1933, chap. 36); Pennsylvania (applying to certain "townships"; Laws of 1931, no. 331 Sec. 3101-3110); Vermont (Laws of 1931, no. 55); Georgia (Chatham County, Laws of 1927, no. 260). In the following acts, the presumption that the act is intended to extend only to the urban-type seems very nearly unrebuttable. Georgia (applying to Glynn and Fulton Counties; Laws of 1927, no. 272 and no. 399); Kentucky (applying to certain counties and only partially; Laws of 1928, chap. 80); Maine (Rev. Stat. 1930, chap. 5, sec. 137); New Jersey (Laws of 1928, chap. 274); Rhode Island (Code of 1923, chap. 57, amended, Laws of 1925, chap. 643, Laws of 1931, chap. 1762). In the act of Illinois (Smith-Hurd Rev. Stat. 1935, chap. 34, par. 225 (1 - 7)), lands or buildings used or to be used for agricultural purposes are specifically excluded from liability to regulation. The same is true of the Tennessee Act (Laws of 1935, chap. 33), which, moreover, provides further that the "use by any person of his own property" may not be controlled or interfered with.

PART II

PROBLEMS TO BE CONSIDERED IN THE DRAFTING OF ZONING ENABLING LEGISLATION

The first step in rural zoning is the enactment of appropriate State legislation. Such legislation need not itself effect the zoning, and in practice hitherto never has; it merely empowers or "enables" appropriate governmental authorities to zone and to administer zoning regulations. At this point, therefore, it seems appropriate to consider some of the problems to be dealt with in the drafting of a zoning enabling act. Specifically these problems are as follows:

1. Statement of purpose
2. Governmental unit charged with the responsibility of zoning
3. State assistance and supervision
4. Referenda
5. Zoning commission
6. Board of adjustment
7. Non-conforming use
8. Enforcement
9. Recording
10. Conflict with other laws
11. Amendments and changes
12. Zoning in relation to some other measures.

Statement of purpose

Zoning is, broadly speaking, of two types: the "urban", and the "rural". These terms have been explained above. In any act drafted with a view to authorizing zoning for purely rural land uses, such purpose should be clearly set forth in appropriate language, both in the section of the act which contains the grant of power and in that which contains the statement of purposes; and the phrasing of the remaining sections, moreover, should be compatible with such purpose.

In addition, it may be desirable in the same act to provide authority for carrying out the urban type of zoning in incorporated parts of the county. There are situations in which this type of zoning is applicable elsewhere than in cities; and regional planners are often keenly interested in it. It could be utilized in the

instant case to protect urban and suburban development in areas outside the zoning jurisdiction of municipalities, as well as to protect residential and scenic conditions in other unincorporated localities in the county.

Some experts have seen a desirability in certain instances in providing separately, rather than together, for the two types of zoning. One such instance might be that in which a State contained comparatively wealthy, populous counties with considerable non-incorporated area protectable through the urban-type zoning, and at the same time penurious, sparsely-settled counties in which there would be occasion for only the rural-type, and when a degree of State control was desired in the latter, but not in the former.

The government unit charged with the responsibility of zoning

The very term "enabling act" implies that the actual zoning will not be done by the State itself, but by some of its subdivisions. There are a number of reasons for local zoning, among them being: first, the belief that zoning procedure should be as democratic as is consistent with good zoning, and that local procedure is more democratic than centralized State procedure; second, the belief that zoning statutes are more likely to be enacted by state legislatures if initiative and control is not centralized; third, the practical difficulties in the way of zoning by one central authority for a whole State; fourth, the constitutional difficulties, arising from the doctrine of non-delegation of legislative powers, in the way of a legislature's empowering a central State body to regulate individual conduct to the extent which zoning requires; fifth, granted the foregoing, the remaining alternative of the legislature's itself doing the regulating is highly cumbersome and quite impractical.

Accordingly, the legislature's function in the matter will ordinarily consist in enacting legislation which authorizes and empowers designated governmental subdivisions to zone. This is the enabling act. The governmental subdivision so enabled may conceivably be either a newly-created or an already existent unit. Existing units are: (a) counties, (b) townships (or "towns" in the northeastern States), and (c) special districts, such as drainage or irrigation districts.

There would ordinarily be no particular advantage in using existing special districts, for three reasons: first, they are frequently too small for efficacious zoning; second, they are not necessarily logically adaptable to zoning inasmuch as they have been

formed for other and special purposes; and third, zoning seems more properly to be regarded as a general governmental function, performable by a general rather than a special governmental unit.

As between counties and townships (or towns), the former are to be preferred whenever possible. The county is more usually the unit of general local government. Moreover, for economic and practical reasons, zoning should be done on a larger scale than a township makes possible.

Specially-created governmental units could be either smaller or larger than a county. There does not seem to be any point in creating new special districts within or coterminous with a county. There would, however, doubtless be economic advantage in having the zoning unit larger, in order that coordinated zoning might be done on a regional scale. To achieve this, the specially-constituted zoning unit could be formed either through some type of inter-county association, or without any reference to county governments and boundaries. In comparison with the county as a unit, this specially-formed unit would suffer a number of drawbacks of a politico-practical nature, in addition to the consideration that zoning would seem more properly to be, in view of its nature, performable by a general governmental unit. There is first the difficulty of making a satisfactory plan. This difficulty is not insuperable, but it nevertheless exists. In the second place, the formation of what amounts to a supra-county government for certain purposes would be an innovation in local government organization which might be accepted only with the greatest reluctance and delay by a people accustomed to county government. The ill-success hitherto of plans for local governmental reorganization is not prophetic of the ready acceptance of such a zoning scheme. In the third place, assuming the enabling statute adopted, it is a question whether the amount of zoning which would be carried on under it would not be less than under a county enabling act. Nevertheless, it is always possible that the situation in a particular State will minimize these drawbacks and make regional zoning feasible.

Most thinking on rural zoning has hitherto been done with the county in mind as the unit; and all the enabling acts either suggested, introduced into legislatures, or actually enacted are county enabling acts (except for those in the Northeastern States, where the "town" rather than the county, prevails; and here the unit is smaller than the county). This way of thinking is not, of course, conclusive on anyone drafting legislation; but it is entitled to some weight. This thinking would be justified not only

by considerations already outlined, but also by the supposition that the exercise of local legislative or police powers by counties could generally be provided without stipulating a set of standards in the full way necessary for specially constituted districts, thought more generally to be limited by the rules governing the activities of administrative boards than are counties; and thus the task of drafting an enabling act would be rendered more facile.

Aside from all this, political science and administration authorities consistently deplore the multiplication of governmental subdivisions and strongly oppose the creation of any new unit unless a clear case can be made out for its advantages. Particularly, there would seem to be some objection to a unit's exercising a particular police power over the head of an existing unit traditionally accustomed to the exercise of the power. Perhaps in the future the districts set up for soil conservation purposes can be utilized, if they work out satisfactorily; but for the present, it appears that a county enabling act is generally the most practicable solution.

State assistance and supervision

Despite all these considerations, it is possible that ultimately the only way of achieving a thorough-going rural zoning program in many States will be through State control. With the county remaining as the fundamental unit for zoning, however, some of the advantages of zoning on a larger scale can be achieved. There can be inter-county cooperation, by the county governing bodies, by the zoning commissions, or both. There also can be a certain amount of State assistance and supervision. State assistance, which is very valuable and which is indeed considered by some to be indispensable, could come in the furnishing of information, financial aid, surveys, and expert advisers. Supervision by the State can be of various degrees. First, there could be control in the appointment of the zoning commission (q.v., infra), either through subjecting the membership to State approval, or through providing for outright appointment of certain members by the State. Secondly, the recommendations made by the zoning commission could be subjected to the scrutiny and opinion of a State agency; or, even further, they could be rendered eligible for county adoption only after approval by the State. Thirdly, it could be provided that each county which zones should submit an annual report to the State, drawn up according to specification so as to present a clear picture of the status and progress of zoning, particularly if there be State aid. Again, the State could have representation in the Boards of Adjustment or the functions of the

Boards could be centralized, in the interest of uniformity of standards.

It cannot be stated in a general way just which State agency should discharge the functions contemplated. The State Department of Conservation might be the most appropriate body in one State, the State Planning Board in another, the Executive Council in another, and a specially created body in yet another.

Referenda

The referendum is a democratic device, designed to assure public support and approval for a given measure. In zoning, referenda may be appropriate at two points at least. First, there may be a referendum as to whether the county shall make use of the enabling act. This is provided in the ninth section of the Michigan rural zoning enabling statute. 1/ However, since such a referendum is held in connection with an authorization to extend, rather than with an application of, the police power of the established local governing unit, the referendum is not ordinarily thought of at this stage of the zoning procedure. It enjoys, however, a certain advantage. In itself, that is, it does not entail repeated referenda on successive specific measures. Once the authorization to the county is voted, the referendum function ends. The second stage at which a referendum might be held is that at the adoption of specific zoning regulations. For each zoning ordinance and each substantial change in, amendment to, or repeal of, a zoning ordinance there would be a referendum. As ordinarily conceived, such a referendum would be county-wide, inasmuch as the zoning restrictions, although applied directly only to certain designated districts, are of interest to the county at large.

Referenda are of two types: definitive and consultative. In the former, the measure under consideration receives its final disposition -- that is, conclusive rejection or adoption into law -- by vote of the electorate. This type of referendum is not in most States possible, because of constitutional law doctrine, which reasons that since the constitutions set up a republican form of government, providing for the separation of powers, the legislative branch cannot delegate its powers back to the people. Consultative referenda, nevertheless, appear to be everywhere permissible. A consultative referendum seeks merely the opinion, and not the decision, of the electorate; and final action on the measure in

1/ Laws of 1935, Act 44.

question is in the discretion of the governing body. Further than this, moreover, some degree of public control may be achieved by providing that no measure is eligible for adoption by the governing body until it has received a favorable referendum vote. The affirming discretion of the governing body is thus circumscribed, while its negating discretion is left unfettered. 2/

Except for the voting of bonds, the referendum is not in general usage; and whether referenda should be required is best left to the discretion of the State concerned. The matter is disposed of in the illustrative Draft Enabling Act by leaving the matter to the discretion of the counties: not a very positive solution. 3/

Zoning Commission

To assure both its highest effectiveness and the largest probability of its acceptance by the courts, zoning should be done expertly. A long step towards expertness is the provision for a zoning commission, separate from the governing body which adopts the zoning regulations. Such a commission might conceivably be elective; but all existing enabling acts have made the commission appointive, in order to insure the objectivity and competence of its membership. Such a procedure is fully in keeping with American governmental tradition, since the commission functions in an advisory capacity to the legislative body.

The zoning commission, on the basis of a thorough investigation and study of the situation in the county, makes recommendations to the county governing body as to what zoning measures are most suitable and desirable. The commission should have access to all the material available bearing on the problem; such as soil maps and other information pertaining to soil character and classification, tax delinquency maps and data, information regarding the location of families and farming units in submarginal areas, etc. 4/

2/ A legal discussion of these points may be found in the appendix to the Standard State Soil Conservation Districts Law (published 1936, by the U.S.D.A.) pp. 53 et seq.

3/ Infra, Part III.

4/ There is a question as to just how much special study should precede any attempt to zone. This question cannot be answered here. It may, however, be suggested that zoning is a continuing process. Not a great deal of research may be necessary for a certain amount of zoning; and a much greater amount to zone completely all areas which should be zoned, and to perfect the zoning which has already been done.

Such items may be furnished by the proper county and State officers and by the Federal government, in supplementing the efforts of the commission itself. The various State officers, departments, bureaus and agencies should be directed to aid as they may; and the State should see to it that experts and other aids are furnished.

The general opinion is that the commission should be composed in part, at least, of private citizens who do not hold other public office. It is thought desirable to provide that half the members be such private citizens. This would bring the diligence and enthusiasm induced by the performing of a single duty in connection with the public service; would open the commission to worthy individuals who do not seek elective office; and would give the general populace an increased feeling of participating in the work. The service of public officials who would bring to the commission the profit of their knowledge and experience is also very important.

The commission should conduct public hearings at appropriate places in the county, of such number and length that all persons having an interest in zoning can have an opportunity to be heard. Such hearings would be useful in gaining popular understanding and support, and in aiding the commission to gather knowledge, ascertain the opinions of people, and improve its own conclusions.

Board of Adjustment

The zones (districts) set up under the zoning procedure cannot be piecemeal, detailed, or particularized to individual cases. As accepted, they must be broad and generalized, their restrictions applying to all individuals alike. But, however carefully the ordinance may be drawn, there is always the possibility that some individual will in a particular case suffer undue hardship, perhaps unreasonable to such an extent that a court might declare the zoning ordinance unconstitutional.

It is never the object of zoning to be arbitrary or unreasonable; and an appropriate procedure which would protect zoning from possible arbitrariness and unreasonableness in individual cases would be of great profit to the cause of zoning. In city zoning, the device of a Board of Adjustment (or of Appeal) has been successfully employed for this purpose.

A Board of Adjustment is an appointive body having a quasi-judicial function. It is important, in view of the nature of its function, that the Board be separate from the body which adopts the zoning ordinances. The confounding of the two might

confuse the amending of ordinances with the making of exceptions to the terms thereof, two matters which in zoning should be kept distinct. Zoning regulations should be as stable as possible, and continual amending should be discouraged. There are also reasons in principle for keeping the Board of Adjustment separate from the Zoning Commission. However, there is nothing to prevent certain members of the latter from being named to serve on the former. Indeed, in counties of small population, the most feasible procedure in many instances may be to recruit the Board entirely from the membership of the zoning commission.

The board's activities would be confined to two: first, it would act as an administrative court for protecting individuals from _ultra vires_ acts committed in the enforcement and administration of the zoning regulations; second, it would make exceptions to the strict terms of the regulations in individual cases to prevent unnecessary hardships. In no case would the board have power actually to amend the zoning ordinances, but only to mitigate their rigour in exceptional cases in the interests of justice.

As ordinarily conceived, the Board of Adjustment is appointed by the local governing body. However, in order to make for the obviation of self-interested local pressures and for a uniformity of standards, some have thought that the State should concern itself in some way with the board's activity. Two possibilities have been suggested, first, that the State appoint a certain portion of the county board's membership; and second, that the activity of the board be centralized, and its membership wholly State appointed. The latter would not seem very practicable until after zoning has got under way in a number of counties. The Board of Adjustment should, in addition, be readily accessible to the scene of zoning. For this reason, probably not many counties at a time could well be served by a single board. Before the State is vested with the care of the Board of Adjustment function, this consideration should be taken into account. A certain step in the uniformizing of standards could be made by providing for joint boards for two or more counties. Moreover, ready appeal from the decisions of the Board to the courts should always be open, and this itself aids uniformizing.

In keeping with the constitutional doctrine relative to the competence of bodies with quasi-administrative functions, there are necessary what are termed "adequate standards" or guides of action for the Board. The activity must be "channelized" and "not vagrant", as Justice Cardozo once said. Although a rigid set of standards does not fit easily into a situation in which so much will be dependent on factors of judgment, as in the case of making exceptions to the

terms of a police power regulation in order to keep it equitable in administration, certain safeguards can be appropriately provided here. It may be stipulated that before action can be taken, a finding of fact must establish the existence of an unnecessary hardship in the application of the ordinance to a particular individual; that all action taken must be in accord with the spirit of the ordinance; and that the action taken must be essential to substantial justice. A further safeguard may be made by providing ready appeals to the courts from any decision of the Board.

The Board of Adjustment as thus envisaged would seem in general acceptable to the majority of the courts. One, indeed, went so far as to assert:

> "It is . . . apparent that the provision for a board of adjustment . . . vested with broad general powers, is important to the validity of the zoning ordinance, and the statutes under which it was enacted. In the absence of such a board vested with power to prevent the inequalities and injustices which might otherwise result from a strict enforcement of the zoning ordinance, there would be grave doubts as to the constitutionality . . ." 5/

Nevertheless, the constitutional jurisprudence of some few States might require a more detailed set of standards than here suggested.6/ Whenever such were true, an effort should be made to give definition to the term "unnecessary hardships." That is, the elements which constitute such a hardship should be listed as well as possible, although the task is a delicate one. 7/ It is not anticipated that

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5/ Freeman v. Board of Adjustment of Great Falls, 34 Pac. (2nd) 534, 538 (Montana 1934).

6/ Jurisprudence on the subject is not in a settled state. Further, see 86 A.L.R., pp. 715 et seq; and the Standard Soil State Conservation Districts Law, pp. 53 et seq.

7/ A definition is not here ventured. Certain considerations may, however, be suggested. The term comprises two elements: "hardships" and "unnecessary". At least two situations in which there would be a hardship can be envisaged: (1) that in which the application of the zoning ordinance would deprive a person of his livelihood; (2) that in which land clearly suitable to a nonconforming use (because of its fertility and other factors) would be restricted to a conforming use only with a marked and substan-

(footnote continued on page 17)

the Board of Adjustment would then in any case be held unconstitutional. But in the event it were, the constitutionality of the zoning act would not be imperiled, inasmuch as the provision for a Board of Adjustment may be considered separable.

Non-conforming use

The question of what to do with the non-conforming user often perturbs zoners. In case the non-conforming use constitutes a nuisance, it can be suppressed. This is sometimes the situation in cities; but in the country, we may anticipate that the cases of a non-conforming user's being a nuisance will be rare. Hence, as a general proposition, existing non-conformers will have to be tolerated. 8/ In order to make this point clear, a provision to the effect should be included in the enabling act. It is, however, always understood that the future establishing of such uses is forbidden.

Although extreme experiments in the suppression of legitimately established non-conformers are to be especially opposed until after the general principle of rural zoning has been well established, there is at least one reasonable measure of legislation which may be safely taken: the voluntary discontinuance of a non-conforming use (for a period, let us say, of two years) should serve to forfeit all right to engage further in such use. Another such measure would be a provision that if the county or State (as the case might be) acquires title to any property by reason of tax delinquency, and it is not redeemed as provided by law, any future use must be a conforming use. A more drastic measure, bordering on suppression, would entail the forfeiture of the right to a non-conforming use whenever the property should have been leased or rented, or its title passed by sale, gift, or otherwise, except by gift or lease to a legal heir or by will. This last-named measure is of such doubtful constitutional status

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(footnote continued from page 16)
tial loss both to the individual and to the State. Unless such hardships were "unnecessary", of course, they would have to remain. In determining what is "unnecessary", the situs of the property with relation to public service facilities and actual or prospective settlement, and the relation of its tax-revenue to public expenditures for the benefit of the occupier, would have to be taken into account. Further, the time-lapse between the going into force of the ordinance and the request for an exception is pertinent in this connection.

8/ See, *infra.*, sub-section 12.

that its employment is not recommended.

The problems connected with non-conforming use are by no means ended here. There remain the questions of determining just what constitutes a case of non-conforming use, and of ascertaining just what non-conforming uses are existent at the time the zoning regulations go into force. A partial solution is to require that the zoning commission draw up a list of all legal non-conforming uses. There is, again, the question of whether a non-conforming use carried on upon only a portion of a parcel of land could be permissibly extended to other parts of the same parcel. Such extensions might be necessary to the livelihood of the non conformer; but, on the other hand, if extensions are promiscuously allowed, both the effectiveness of the zoning regulation and its equitableness in relation to property owners having no non-conforming rights might suffer. One possible solution is to forbid extensions in principle, with the implied understanding that the Board of Adjustment would allow extensions insofar as the necessities of a given situation should dictate. This solution, of course, presumes the constitutionality of the Board of Adjustment setup. It is understood that it is not permissible to engage in a non-conforming use on land (having no right thereto) acquired after the ordinance goes into force. In addition, there is the matter of keeping an accurate check on forfeiture of rights to non-conforming use. A general definitive solution to these and related questions cannot always be made satisfactorily, and, insofar as unsolved here, may better be left to the State or county concerned.

Enforcement

The problem of enforcement and administration is obviously very closely tied in with problems raised in the two foregoing subsections. In addition to the indications there made, are the questions of methods of enforcement and of who will be charged with the duty of general enforcement.

Methods of enforcement should be comprehensive. It should be possible to fine and to imprison an offender as well as to prevent him from engaging in a use contrary to law and to evict him from an illegal occupation.

The agencies primarily charged with administration and enforcement are the county governing body, the sheriff and the State's attorney. However, because of the special conditions involved in zoning, these alone are not sufficient. There is need of an officer with specialized functions -- someone who will perform functions of surveillance as to how the land is being used in

restrictively zoned areas. The difficulty in this is that the counties which are most likely to zone are precisely those which are least able to afford a special enforcing officer. Wisconsin has attempted a solution by imposing on the tax assessors the duty of reporting on land uses in the restricted zones. There is a disadvantage in saddling existing officers with additional burdens, but this may be the only feasible way out. There is here, as in other connections, an opportunity for State aid.

Some safeguard against lax local enforcement may be provided in three ways: (1) by allowing a certain amount of State enforcement, as by permitting the State Department of Conservation to have recourse to the courts against violators; (2) by allowing local taxpayers to petition for mandamus to compel specific performance of duty; (3) by allowing a property owner within the same zone to institute an injunction proceeding against another property owner not conforming to the law. Whatever doubts there may be as to the legality of the latter two provisions are not sufficient to rule them out, inasmuch as they are completely separable from the act.9/

Recording

In the interests of fair play, it is believed that purchasers of land in restricted zones should be made aware of the zoning restrictions. At law, this can be adequately done by requiring an accessible recording of all zoning ordinances and maps, in the office of the county Register of Deeds. 10/

Conflicts with other laws

Urban-zoning statutes frequently provide that in case there is a conflict between the regulations imposed under the zoning procedure and those imposed in any other way, those requiring the higher standard should prevail. It is not believed that the same sort of conflict is likely in rural zoning, and hence such a provision seems superfluous. There should be no conflict -- but, rather, mutual support -- between rural zoning and other land-use measures, such as those involved in "Soil Conservation" and "Grazing District Associations". There may, however, arise in certain instances a conflict of jurisdiction between the county and a munici-

9/ See footnotes to section 9 of the Illustrative Draft Enabling Act. Part III, *infra*.

10 The listing of non-conforming users has already been treated in the discussion on Enforcement, *supra*.

pality lying within it, relative to suburban territory outside municipal limits which the municipality extra-territorially has been authorized to zone in the interests of its own development. Inasmuch as such territory is primarily of municipal concern, it is thought best to resolve the conflict, should there be one, in the municipal favor.

Amendments and changes

Although stability is a desideratum in law, no law (zoning in particular) is eternal. There must be change and alteration as circumstances demand, and as the interests of perfecting make desirable. Hence the same power to amend as to enact should be given the county governing body, but subject to the same procedural safeguards as in enacting the original ordinances, in order that amending be done with equal circumspection. As a safeguard to stability, furthermore, it is thought desirable to require an extraordinary majority for amending in case there is a protest from the owners of as much as 20 percent of the property directly affected by the change. An analogous provision is found very generally in urban zoning enabling acts.

Zoning in relation to some other measures 11/

There are, on the one hand, measures which are desirable supplements to zoning, to give it its highest effectiveness; and, on the other hand, zoning itself may be a helpful supplement to other directional measures, in the carrying out of a full land-utilization program.

Since zoning reaches only to the prevention of future misuses, there is a very real need for supplementary measures looking to the discontinuance of already established uses which are contrary to the objects of the zoning restriction -- that is, to liquidate legitimate non-conforming uses. In cities it has sometimes been possible to suppress non-conformers through the nuisance-abatement procedure. But such a procedure is not feasible in purely rural areas, for reasons already indicated. Measures distinct from both zoning and outright

11/ This subsection pertains to matters not necessarily to be included in a zoning enabling act, but which are nevertheless germane to the legislative zoning program. At any rate, constitutional usage relative to the singleness of subject matter in one act may in some States prevent the matter here discussed from being put in the same act with zoning.

suppression will have to be employed. There have been proposals for forcing out legitimate non-conforming users through denying them public services. But such a procedure would in general be highly questionable. It is the art of persuasion rather than the science of compulsion which should be utilized. There are at least two concrete methods -- purchase and exchange. Eminent domain proceedings might compel sale, and may be considered a type of purchase. But both eminent domain and free-willed purchase seem impracticable, for financial or other reasons. However, the method of exchanging publicly-owned lands lying in an agricultural or unlimited zone for the lands of a non-conforming user in a restricted zone might have a considerable potentiality. The publicly-owned lands to be exchanged could be those acquired either through tax delinquency or through any other channel. A statute enabling such exchanges apparently will require a constitutional amendment in many, if not most, States. In this regard, the following word of caution may be injected: to wit, that it will be illusory to count on exchanging tax delinquent lands unless the titles to such lands (known as "tax titles") are clear, and special legislation may be necessary to make them so.

Other methods of dealing with non-conforming users are indicated in the text of the Illustrative Draft Enabling Act, and in its supplement (sections 10 and IV, respectively). 12/

A primary desideratum of rural zoning is a thoroughgoing study of the situation in which it is to apply. Some provision is made for this in the Illustrative Draft Enabling Act (and supplement). However, in addition, it would no doubt be advantageous, although not indispensable, to have carried out a comprehensive classification of the lands of those parts of the State wherein zoning is contemplated. Any zoning necessarily implies some sort of classification; and the more comprehensive and scientific the data which a zoning commission has at its disposal, the easier and the more accurate can its work be. Classification might take into account, for example soil type and soil productivity; soil cover; adaptability of land; topography; water and moisture conditions; pattern of occupancy; data on the size, type and profitableness of farms; location of roads and schools; tax delinquency; local governmental finances; the distribution and relation of tax collections to expenditures for public services; marketing facilities. The factors which are most profitably to be taken into account for the purposes of

12/ *Infra*. Part III.

zoning depend upon the conditions of the particular State. 13/

A revision of the tax structure in certain respects might be desirable in connection with rural zoning. For example, if zones are set up in which forestry must be practiced to the exclusion of agriculture, it may be only just that there should be some tax differential to prevent the tax burden from being too heavy on the land-owner during the profitless period of tree growth. A nominal tax might, for instance, be imposed up until the time of maturity of the trees, and then a stumpage tax might be imposed which would satisfactorily recompense the government. The "forest crop" law of Wisconsin may be cited as an example of what is here alluded to. In most States, a constitutional amendment would, however, be a necessary prerequisite to any differential taxing scheme.

Such matters as the public services to be rendered in restrictively zoned areas, too, should be thought out and provided for. For example, on the one hand, there should be the assurance of fire protection in forestry zones; and, on the other hand, the extent to which roads will be maintained in such a zone should be understood.

Zoning, as already mentioned, implies no interference with other land-use measures, such as soil conservation or grazing district acts. To the contrary, zoning might be a useful complement to such measures. In the case of soil conservation, zoning might constitute a frame within which the more specific, positive and flexible "soil conservation" measures would operate. Under the zoning procedure, for example, there could be set up a zone within which agriculture would be prohibited. Zoning would not reach beyond broad uses. It would then be the task of "soil conservation" to prescribe positive measures of internal manage-

13/ In one Michigan county, the following data are being assembled and mapped, in preparation for zoning: (1) the location of farms, both operating and abandoned, and the location of year-round non-farm houses; (2) the location of recreational lands showing summer homes, hunters' and trappers' cabins, and other recreational developments; (3) the location of tax delinquent land, classified by stages of tax delinquency; (4) the location of publicly-owned lands, including Federal, State, and county lands; (5) the location of roads, classified by types; (6) the location of schools, school children, school district boundary lines, and school bus routes; (7) data showing the costs of roads, schools, and other governmental services in different sections of the county.

ment to be taken in specific instances to conserve the soil and prevent erosion. 14/ Something of the same remark can be made in the case of grazing districts. Zoning, for example, could close a grazing area to general agriculture, and thus both assist the grazing associations in their efforts and protect them from an uncertainty connected with short-term leasing arrangements; but zoning would not go so far as to apportion rights or prescribe the number of cattle permitted to the acre.

A few States, as Indiana and California, have made rural zoning one part of a planning statute. Zoning, viewed comprehensively, implements and concretizes planning as against private individuals. It may hence be very logically considered a phase of planning, and provision for it properly incorporated into a planning act. However, the idea of zoning must not be confused with that of planning. Planning does not involve the exercise of the State's powers as against individuals, whereas zoning does. The one is a process of study and of systematization of designs. The other is a procedure by which the power of the State is employed to regulate land use. Planning without zoning may be sterile, and zoning without planning blind, and zoning may necessitate a degree of planning. However, this does not necessarily require that zoning in distinctly rural areas be preceded by the labors of a special planning agency. The work done by an intelligent zoning commission should _ipso facto_ bring with it the amount of planning appropriate.

The effective carrying through of a zoning program, or of any far-reaching land-use program for that matter, involves problems not only of governmental and economic technique but of public understanding as well. Some degree of public enlightment will be achieved through the activity of the zoning commission, in its public hearings, as provided for in the zoning enabling act. Nevertheless, this is likely not sufficient. A more ambitious program of education both in the public schools and elsewhere could be desirably planned and executed. In large part, perhaps, reliance for this will be upon the unconstrained activities of interested individuals and agencies. However, the task can be strengthened and broadened by legislative enactments. For example, some State bureau or agent, either existent or newly-created, could be charged both with carrying on an educational program and with performing tasks in the work of administering zoning, as well as of a more comprehensive land-use program, and there are no doubt other steps which might be taken.

14/ In some situations, the Standard State Soil Conservation Districts Law might achieve results desired to be achieved through a zoning enabling act in the same situation.

Part III

ILLUSTRATIVE RURAL ZONING ENABLING ACT

Introduction

What follows is a series of possible solutions to problems which arise in drafting enabling legislation for rural zoning. For convenience, these suggestions are arranged in the form which a legislative act would take. But these suggestions are not to be regarded as an act ready for submission to the legislature of any State, despite the form in which they appear. Persons interested in drafting such legislation for a particular State would find it necessary to study closely such matters as the powers of, and delegation of powers to, counties, and constitutional limitations on the exercise of the police power in the particular jurisdiction, to take only two instances; and base particular acts on the results of such research. Moreover, the frequent inexperience of counties in matters of this nature may make it desirable in many instances to stipulate with more detail certain of the procedures herein suggested. The draft as it now stands, too, lacks such items as title, enacting and repeal clauses, and date of taking effect.

The illustrative draft herein submitted has been drawn up after a study of acts which have been proposed by various persons for, or are actually in force in: Wisconsin, California, Washington, Virginia, Minnesota, New Mexico, Massachusetts, Michigan, Illinois, Indiana, Rhode Island, North and South Dakota, Ohio, New Hampshire, and Maryland; and of the model act of Mr. Alfred Bettman.1/ The basis has been the "Standard State Zone Enabling Act" (for cities),2/ which has been followed in part or in whole by the urban zoning acts of some thirty-nine states and has been passed on favorably by the courts. This procedure is in accord with sound general legal technique, which utilizes and follows what is already firmly established and accepted. The same logic of construction, of first establishing the grant of power and of then describing the procedure, is here followed; the same wording is retained, except where another wording has been more appropriate to the designs of zoning for rural land uses. The changes and additions which have been made are to be regarded as the minimum consistent with sound rural zoning.

1/ In: Model Laws for Planning Cities, Counties and States, Harvard City Planning Studies, Vol. VII.

2/ First issued by the United States Department of Commerce in 1922. It was prepared by a committee of experts.

No definitions of terms are included, since the terms used are so commonly understood as to make defining serve no positive purpose. Moreover, no declaration is made to the effect that the holding of one section unconstitutional shall not affect the remainder of the act, since the principle thereby enunciated is anyhow an established canon of interpretation. Explanations of various phrases and provisions are given in the footnotes.

This draft is believed to be a minimum, the essential fabric of rural zoning. In any State in which it is found feasible, its content can be broadened and intensified. Some examples of how this may be done are contained in the footnotes and in Appendix A -- consisting of a series of alternative proposals, with indications as to how they may be fitted into the frame of the draft. Appendix B contains selected excerpts, of especial interest, from various proposals and bills elsewhere drafted.

ILLUSTRATIVE DRAFT:
MINIMUM CHANGES IN THE STANDARD STATE ZONING ENABLING
ACT IN ORDER TO ADAPT IT TO RURAL LAND-USE ZONING

Section 1. Grant of Power. For the purpose of promoting health, safety, morals or the general welfare of the community,[1/] the governing body[2/] of any county[3/] is hereby empowered to regulate and restrict[4/] the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the location and use of buildings and

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Sec. 1.

1/ The four categories into which all exercise of the police power falls are health, morals, safety, general welfare. Nothing is to be gained by adding "prosperity", "comfort" or other expressions to the enumerations, and certain tactical advantages might be lost thereby. The qualifying adjective "public" has not been inserted before "health, morals, safety or general welfare", in order not to place unnecessary fetters on the grant of power. It is to be noted that "or" and not "and" is used, in order to make it certain that the power may be exercised for any one or all of the four objects enumerated.

2/ "governing body": By this is meant the central county governmental body which performs functions of a local legislative nature for the county at large (as, for example, enacting ordinances). In many States, it is termed the Board of County Commissioners. However, the terminology varies; and it is for this reason that the comprehensive phrase "governing body" is here used. In any particular State adopting the enabling statute, the appropriate term should be substituted.

3/ "county": In New England, the unit would be rather the town, and in Louisiana the parish. The extent to which a county can be empowered to exercise the police powers here granted, and to what extent they must be subjected to standards, will have to be studied for each particular State. The wording of the present draft is, however, thought to be sufficient for most States.

4/ "regulate and restrict": This phrase is considered sufficiently all-embracing. Nothing will be gained by adding such terms as "exclude", "determine", etc.

structures, 5/ and the use, conditions of use, or occupancy of land for trade, industry, residence, recreation, agriculture, grazing, water conservation, forestry, or other purposes; 6/ and to establish set-back lines for buildings and structures along the streets and roads. 7/

Sec. 1

5/ "the height, number of stories, and size of buildings and other structures the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population and the location and use of buildings and structures": This phrase, or an analogous one, specifies the grant of power in urban-zoning enabling acts. It is included here in order to permit the counties to carry on the same type of zoning in areas where, because of an actual or prospective concentration of population (such as suburban developments), it may be deemed desirable to have such zoning. State legislation thus far enacted permitting territory outside corporate limits to be zoned includes a similar grant of power.

6/ "the use, conditions of use, or occupancy of land for trade, industry, residence, recreation, agriculture, grazing, water conservation, forestry, or other purposes": This phrase is largely designed for the so-called "rural-type" of zoning for land use. The expression "use, conditions of use, or occupancy of land" is thought to be sufficiently comprehensive to cover all degrees of zoning regulation desired. The expression "or other purposes" is a catch-all which may on occasion be found useful. "Grazing" may be omitted in States in which stock-raising is not important.

This phrase contains elements permissive of urban-type zoning, just as the phrase discussed just above in (5) contains elements permissive of rural-type zoning. It is highly difficult, if not impossible, to distinguish the two types entirely, so inextricably similar are they ([illegible])

7/ "to establish set-back lines for buildings and structures along the streets and roads": This can be used, for example, to afford safety protection to traffic (and for highway aesthetics), and to protect residential development.

Section 2. Districts. For any or all of said purposes the county governing body may [1] divide the unincorporated [2] portions of the county into districts of such number, shape, and area, as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings and structures, and the use, conditions of use, or occupancy of land; and in that case shall adopt an official map or maps indicating the districts and regulations established. [3] All such regulations shall be uniform for each class or kind of land or buildings throughout each district, [4] but the regulations in one district may differ from those in other districts. The chairman of the county governing body shall within fifteen days of the adoption of any regulation or map cause publication to be made thereof in an official paper, or a paper of general circulation, in the county.

Sec. 2

1/ "may": Zoning is not mandatory.

2/ "unincorporated": This act is intended to authorize zoning only outside of the limits of municipal corporations. Other acts already on the statute books provide for city zoning.

3/ "adopt an official map": A map portrays graphically and simply the districts established, with an indication of the regulations in force in each. It is especially desirable in case the area of action is a whole county, as here. In this act, the adoption of an official map is made mandatory whenever zoning regulations have been adopted.

4/ "all such regulations shall be uniform for each class or kind of land or buildings throughout each district": This is in part to insure "equal protection", but even more to reassure property owners that the act will be applied without improper discriminations.

Section 3. Purposes in View. 1/ Such regulations shall be made in accordance with a comprehensive plan 2/ and designed for the purpose, among other purposes, 3/ of lessening congestion in the streets and roads; protecting the development of both urban and non-urban areas; securing safety from fire and other dangers; providing adequate light and air; promoting the health and general welfare; 4/ encouraging such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate economical and adequate provisions for transportation, roads, water supply, drainage,

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Sec. 3

1/ "Purposes in view: Such a section is ordinarily included in acts of this nature. When it is included, the necessity of a long preamble is obviated. This section does not have the element of the arbitrary fiat in it, as frequently do the so-called "declarations of policy". This section is different from the statement at the beginning of the first section. That defined the powers conferred by the State Legislature on the county under the police power. This gives explanation and direction to the exercise of the powers so conferred and defined. It may be said to constitute the "atmosphere", so to speak, in which zoning is done.

The enumeration which shortly follows designedly includes many purposes. Although the list has been carefully studied through, the purposes enumerated may not be the only conceivable ones. The object was to make them as concise as possible, while at the same time giving a fairly full picture of what zoning would aim at. It is not necessary that any particular zoning ordinance seek to accomplish all these purposes.

2/ "comprehensive plan": No zoning should be done haphazardly, but only in accordance with a logical scheme.

3/ "other purposes": This is a catchall phrase and is included in order to provide for contingencies, and in order that no unnecessary fetters be placed on the exercise of the powers granted.

4/ "health and general welfare": A comprehensive expression. It has both a specific connotation and one which gives "tone".

sanitation, education, recreation or other public requirements; conserving and developing the natural resources; 5/ fostering the State's agricultural and other industries; protecting the food supply. Such regulations shall be made with reasonable considerations, among other things, to the character of the district and its peculiar suitability for particular uses, 6/ and with a general view to conserving property values, 7/ including the tax base, securing economy in governmental expenditures, and encouraging the most appropriate use of land in the county.

Section 4. Method of Procedure. The governing body of such county shall, subject to provisions which follow, provide for the manner 1/ in which such regulations and restrictions and the boundaries

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Sec. 3

5/ "natural resources": The resources in soil, grasses, forests, water, fish, game and natural scenery are what are uppermost in mind. They are not here enumerated since their addition would add nothing. Other natural resources protectable through zoning are conceivable.

6/ "character of the district and its peculiar suitability for particular uses": This is included as a reassurance to the property owners, as well as to the courts, that zoning will be carried out in a sane and practical way.

7/ "conserving property values": This particular phraseology is found in the Michigan and Illinois rural zoning enabling acts. Zoning will serve not only to conserve the intrinsic value of agricultural lands, but in the long run might even enhance them. The fact that the market price might at a given moment be temporarily lessened for a given piece of land would not at all be contrary to the general scheme that over a period of time the values are conserved.

Sec. 4

1/ "provide for the manner": The phraseology of the "Standard State Zoning Enabling Act" for cities.

of such districts shall be determined, established and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing 2/ in relation thereto, at which parties in interest and citizens 3/ shall have an opportunity to be heard. At least 15 days' notice 4/ of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such county. Such governing body may 5/ conduct consultative 6/ referenda to aid it in determining the desirability of adopting any

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Sec. 4.

2/ "public hearing": At least one public hearing is made mandatory before final adoption of a zoning regulation. The type of hearing in mind is a general county-wide one. As a matter of policy, several hearings could be had, sufficient to allow all parties who have something to say to be heard. As well as a central hearing, other hearings in various parts of the county could be held. The working out of such details is left to the county governing body.

3/ "parties at interest and citizens": This permits any person to be heard, and not merely property owners whose property interests may be adversely affected by the proposed ordinance. It is right that every citizen should be able to have his say on such a measure which involves the general welfare and best interests of his county.

4/ "notice": More than one notice may be provided for, and the time limit may be changed to accord with local usages. As it now stands, the county governing body would itself have power to arrange such details. However, it might be desirable to stipulate them more fully in the act.

5/ "may": The holding of referenda is here made permissive. However, in many states, it may be desired to make it mandatory, as well as to provide in detail the procedure to be followed.

6/ "consultative": That is, the outcome of any referendum is not binding on the local governing body. The referendum is of an advisory character only.

such contemplated regulations, restrictions or boundaries. 7/

Section 5. Changes. 1/ Such regulations, restrictions, and boundaries as adopted by the county governing body may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 percent or more of the area of the land 2/ included in such proposed change, such amendment shall not become effective except by the favorable vote of three-fourths 3/ of all the members of the

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Sec. 4.

7/ The provisions for notice, hearings and referenda are all for the purpose both of discovering flaws and of ascertaining the state of public and individual opinion concerning the proposed ordinance. Zoners and planners in general are of the opinion that no zoning ordinance can be effective unless it is favored by public opinion. Such details as the area in which any given referendum is to be held, voting eligibility and the weight to be given the results, is here at the judgment of the local governing body, although it may be desirable to specify these matters in the act itself. For constitutional reasons (delegation of powers), the final adoption of an ordinance cannot normally be made absolutely dependent on the outcome of a referendum, although in a few states it may. It is, however, everywhere permissible to require that a certain majority be a sine qua non of final adoption: that is, that no proposition may be adopted unless it has received a favorable vote in a referendum.

Sec. 5.

1/ "Changes": It is obvious that provision must be made for changing the regulations as conditions change or new conditions arise. Otherwise zoning would be a "straight-jacket" and a detriment to a community instead of an asset.

2/ "area of the land": This is a modified form of the provision in the "Standard State Zoning Enabling Act" (for cities), and is particularly designed for "Rural-type" zoning, although it can be used also for the "urban-type". Apropos the latter, it has been found that frontage stipulations have proved unsatisfactory.

3/ "vote of three-fourths": The practice has been rather generally adopted of permitting ordinary routine changes to be adopted by a majority vote of the local governing body, but requiring a three-fourths vote in the event of a protest from a substantial proportion of property owners whose interests are affected. This has proved in practice to be a sound procedure and has tended to stabilize the regulations.

governing body of such county. The provisions of the foregoing section relative to public hearings and official notice shall apply equally to all changes or amendments. The governing body shall ask and receive the advice of the zoning commission (hereinafter provided) before taking definite action on any contemplated amendment, supplement, change, modification or repeal herein provided for.

Section 6. Zoning Commission. 1/ In order to avail itself of the powers conferred by this act, 2/ such governing body shall appoint 3/ a commission of three to five members, to be known as the County Zoning Commission, to recommend 4/ the boundaries of the various districts and appropriate regulations to be enforced therein; and such governing body shall not hold its public hearings or take action until it has received the final report of such commission. 5/ Such commission is directed to

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Sec. 6.

1/ "Zoning Commission": Study is essential to zoning. To carry on such study demands some body separate from the governing body itself. This would not, however, prevent members of the governing body from being appointed to the Zoning Commission.

2/ "In order to avail itself of the powers conferred by this act": This act is an empowering act. Hence it is required that zoning commissions be appointed only in counties intending to zone.

3/ "appoint": Such commissions, which function in an expert advisory capacity to the governing body, should be appointed rather than elected. However, the membership should be such as would enjoy the confidence of the local citizens.

4/ "recommend": The commission does not adopt ordinances. It makes thoroughly studied recommendations to the governing body, which alone has the power of enactment.

5/ "and such governing body shall not hold its public hearings or take action until it has received the final report of such commission": This is a proper safeguard against hasty or ill-considered action. It is to be noted that this is in no sense a delegation of its powers by the local governing body, since the latter retains the right of taking such final action as it deems proper.

make use of expert advice and information furnished by appropriate State and federal officials, departments and agencies; 6/ and all State officials, departments and agencies having information, maps and data pertinent for county zoning are hereby authorized and directed to make such available for the use of the zoning commission, as well as to furnish such other technical assistance and advice as they may. 7/ Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. 8/ At its public hearings, such commission shall have power to summon witnesses, administer oaths and compel the giving of testimony. Any individual, whether in private or ex officio 9/ capacity, may be appointed to serve on such commission; but at least half the members thereof shall be individuals who do not hold other public office. Provided, however, that membership or any planning or land-use commission shall not, for the purposes of this section, be deemed the holding of a public office. In case a county, State or region-

Sec. 6

6/ Under this clause the zoning commission remains independent of any State control; but it is at the same time directed to make use of such aid as State, Federal and local officials and agencies (for example, the county farm demonstration agent, or the State Conservation Department) may have to offer. Thus the work of the zoning commission is facilitated and rendered more scientific.

7/ More specific provisions regarding the aid the State should furnish can be made, perhaps preferably in a separate section.

8/ In Wisconsin such hearings are held in every township, and the greatest possible public interest in the making of regulations is sought.

9/ "Ex officio": This is included in order that particularly competent persons in public office may be appointed to the commission, either ex officio or in individual capacity. Often certain public officials have at their disposal a fund of knowledge and of expertness which make their assistance invaluable. However, the commission's membership should be at least half non-office holders.

al planning body, or a county land-use committee, already exists, it may 10/ be appointed as the zoning commission. Furthermore, the governing bodies of two or more counties may arrange and provide for a joint or common zoning commission.

Section 7. Cooperation. 1/ In the exercise of powers conferred by this act, the zoning commission of any county shall have authority to cooperate with the zoning commissions of other counties, cities, villages or other municipalities, 2/ either within or without such county, and with municipal and state authorities, with a view to coordinating and integrating the zoning program; and to appoint such committee or committees, and adopt such rules, as may be thought proper to effect such cooperation. 3/

Sec. 6

10/ "may": Note that this is not mandatory, although it may be made so. It may be desirable for the body which acts as zoning commission to have functions beyond the recommending of regulations, simply. These functions may be relative to zoning, or to things germane.

Sec. 7

1/ "Cooperation": This section is included in the interest of coordinating zoning development in two or more counties, and of giving aid to the effectuation of regional and State planning.

2/ "other counties, cities, villages, or other municipalities:" Plans can thus be worked out not only as between counties, but also as between a county and a city, for example to regulate suburban development.

3/ The cooperation will be to the degree and under such conditions as is worked out locally. Each county governing body remains the final enacting body for any ordinances enforced in its own county.

Section 8. Board of Adjustment. 1/ The governing body of any county which adopts zoning regulations under the authority of this act shall provide for a board of adjustment of three or five members, and for the manner of the appointment thereof. Such governing body shall fix the compensation 2/ and terms of the members of such board, which terms shall be of such length and so arranged that the term of at least one member will expire each year. Such governing body may remove any member for cause, upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Such governing body may appoint associate members of such board, and in the event that any regular member be temporarily unable to act owing to absence from the county, illness,

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Sec. 8.

1/ "Board of Adjustment": It is important to make provisions for such a body. It does not have the power of making substantive amendments or changes in the ordinance itself, but only of watching over its enforcement in order to insure that in any individual case an injustice is not committed. Mr. N. F. Baker in his work entitled Legal Aspects of Zoning (1927), has this to say: ". . . The Board of Appeal has been rendering a valuable service to zoned cities. It has preserved the constitutionality and popularity of the zoning ordinances, and more than that, it has made the law capable of being enforced. The hope for the zoning of the future lies largely in the work of the Board of Adjustment". (p. 106). Further, see Section 6 of Part II of this publication, supra.

Although it is desirable to keep the Board of Adjustment distinct from the Zoning Commission, there is nothing to prevent counties of small population from having members of the one body serve on the other.

2/ "compensation": If more than nominal compensation is accorded, it perhaps ought to be on a "piece work" basis. Because of the frequently poor financial condition of counties in which zoning is most needed, State aid might be appropriate in this particular. If such is desired, this section should be phrased with this in mind. Provision for State aids should in general be in a separate section.

interest in a case before the board, or any other cause, his place may be taken during such temporary disability by an associate member designated for the purpose. The governing bodies of two or more counties may arrange and provide for a joint or common board of adjustment of five members. 3/

The governing body may provide and specify general rules to govern the organization, procedure, and jurisdiction of such board of adjustment, which rules shall not be inconsistent with the provisions of this act; and the board of adjustment may adopt supplemental rules of procedure, not inconsistent with this act or such general rules. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the board of adjustment may be taken by any person or persons aggrieved or by any officer, department, board, or bureau of the county affected by any decision of an administrative officer or agency.

Sec. 8.

3/ "joint or common board": The creation of regional boards would be in the direction of uniformizing standards.

Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the actions appealed from, unless the officer or agency from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him or it that by reason of facts stated in the certificate a stay would, in his or its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer or agency from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county governing body, have the following powers. --

1. To hear and decide appeals where it is alleged by appellant

that there is error in any order, requirement, decision, or determination made by an administrative official or agency in the enforcement of this act or of any ordinance or regulation adopted pursuant thereto.

2. To authorize upon appeal in specific cases such variance from the terms of such ordinance or regulation as will not be contrary to the public interest, where, owing to special conditions fully demonstrated on the basis of the facts presented, a literal enforcement of the provisions of the ordinance or regulation will result in great practical difficulties or unnecessary hardship, and so that the spirit of the ordinance or regulation shall be observed and substantial justice done. 4/

In exercising the above-mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer or agency from whom the appeal is taken.

Sec. 8.

4/ The standards herein provided seem adequate for at least most States, being even somewhat tighter than those of the widely-sustained "Standard State Zoning Enabling Act" (for cities) (issued by the Department of Commerce, 1922). The courts in a few States, however, have held unconstitutional Boards of Adjustment, the activities of which were not to their satisfaction limited by a sufficiently adequate set of standards. For a discussion of this matter, see the Standard State Soil Conservation Districts Law (U.S. Dept. of Agr. 1936), pp. 58 et seq. If itis feared in such States that the standards here established are insufficient, the delicate task of giving definition to the term "great practical difficulties or unnecessary hardships" should be undertaken. See further, sec. 6 of Part II of this Publication, supra.

The concurring vote of four members of the board, in the case of a five-member board, and of three members in the case of a three-member board, shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified

or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Section 9. Enforcement and Remedies. 1/ The county governing

Sec. 9.

1/ "Enforcement and remedies": Such a section is thought to be vital. Without it the local authorities might be powerless to enforce the ordinance effectively, particularly against some individual who might derive considerable profit in disobeying it. Under the provisions of this section the local authorities may use any or all of the following methods in forcing compliance to the regulations adopted: they may arrest the offender and have him put in jail; they may have a fine inflicted; they may stop work on a new building, or any use of the land which is prohibited, and prevent its continuance; they may prevent the occupancy of land or of a building and keep it unoccupied until such time as the conditions complained of shall have been remedied; they can evict the occupants of land or a building when the conditions are contrary to law and prevent reoccupancy until such conditions have been cured.

body may provide by ordinance or otherwise for the enforcement of this act and of any ordinance or regulation made thereunder. A violation of this act or of such ordinance or regulation is hereby declared to be a misdemeanor, and such county governing body may provide for the punishment thereof by fine or imprisonment or both. 2/.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or occupied in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorites 3/ of the county, as well as any owner or owners of real estate 4/ within the district affected by such regulations, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, mainten-

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Sec. 9.

2/ It may be desirable to specify in the enabling act the amount of fine and the term of imprisonment liable to be inflicted in given circumstances.

3/ Here can be substituted the designations of the authorities meant.

4/ "owner or owners of real estate": This is a check against lax enforcement by the public authorities. Although at equity private individuals who cannot show imminent or actual special damage to themselves cannot bring such action as here provided, it is nevertheless thought that the right can be created by statute. An analogous provision is contained in the Wisconsin Statute and in Section 8 of the model rural zoning ordinance drafted in the office of the Attorney-General of Wisconsin. Essential Steps in the Enactment of County Ordinances Zoning for Agriculture . . . etc. (Madison, June 1933, mimeo), p. 9. The ordinances so far adopted by the counties under the Wisconsin Rural Zoning Enabling act have all contained such a provision. Wehrwein, in Journal of Farm Economics, Vol. 18, p. 520.

ance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may furthermore institute proceedings, 5/ to compel specific performance, by the proper official or officials, of any duty which has been stipulated in the ordinance or ordinances adopted under this section to enforce the present act and the regulations and ordinances adopted pursuant thereto.

Section 10. Non-Conforming Use. 1/ The lawful use or occupation

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Sec. 9.

5/ "proceedings": The ordinary rule of the courts is that a private individual is entitled to have mandamus issued to compel official performance only of "ministerial" acts, and not of "discretionary executive" acts such as the general enforcement of a penal law. However, the courts may issue mandamus to compel specific enforcement of the law. For example: State v. Police Board of Columbus, 10 Ohio, Dec. 256 (1888); Goddell v. Woodbury, 71 N. H. 378 (1902); People ex rel Bartlett v. Dunne, 219, Ill. 346 (1906); Huey v. Waldrop 141 Ala. 318 (1904). See 38 C. J. 689 et seq. The requirement is that the performance prayed for be not only specific, but of the nature of a clear duty prescribed by the law, (thus approaching the nature of a ministerial function). Traditional rules on the subject are modifiable by statute. See, for example: Hatch v. City Bank, 1 Rob. (La. 1842) 470; McDonald v. Judson, 97 Ill. App. 414 (1901); Funck v. Farmers' Elevator Co. 142 Iowa 621 (1909).

Sec. 10.

1/ "Non-conforming use": Zoning is a legal technique which seeks to forestall prescribed uses. It is not its peculiar province to suppress presently-engaged-in uses. For this reason it is provided that non-conforming users" have the right to continue until such time as they have forfeited their right to such non-conforming use. Indeed, it is thought that the allowance of established non-conforming use (not amounting to a nuisance) is essential to the constitutionality of rural zoning. Suppressions (or abatements) belong to the realm of nuisances, and where suppressions have been permitted in urban zoning cases it has been on the grounds that the use suppressed constituted a legally-recognized nuisance, in the congested conditions of city life.

of any building, land or premises existing at the time of the adoption by the county governing body of the zoning ordinance or regulation, although such use or occupation does not conform to the provisions thereof, may be continued; but if such non-conforming use or occupation is discontinued for a period of two years, 2/ any future use or occupation of such building, land or premises shall be in conformity with the provisions of the established ordinances and regulations. The county governing body may adopt such further regulations and amplifications, not contrary to law, as it may deem desirable or necessary to regulate and control non-conforming uses and occupations. 3/

Immediately after the adoption of any zoning ordinances or regulation by the county governing body, the County Zoning Commission shall prepare and publish a complete list of all non-conforming uses and occupations existing at the time of the adoption of such ordinance or regulation. Such list shall contain the names and addresses of the owner or owners of such non-conforming use, and of any occupant other than the owner, the legal description or descriptions of the land, and

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Sec. 10.

2/ "two years": a lapse of two years in a non-conforming use would serve to forfeit the right to engaga further in such use. Two years is not an essential lapse of time. It is a common one, but another may be set.

3/ There are a great many questions involved in the problems of non-conforming uses. Examples would be: - Who is to determine when a non-conforming use has been abandoned, and by what method? What constitutes a non-conforming use? If only a part of the property is devoted to a non-conforming use, should an extension of such a use to other parts of the same property be permitted? The solution and regulation of such matters is here left to the local governing body. There is a certain danger in attempting to give a rigid and universal solution in the enabling act, although in many cases it may be desirable.

the nature and extent of land use. After any necessary corrections have been made, under a procedure prescribed by the county governing body, copies of such list shall, when approved by such body, be filed for record in the offices of the Register of Deeds and of the county clerk in the county in which the lands are situated, and shall be corrected from time to time as the county governing body may prescribe. 4/

Section 11. Filing. 1/ Upon the adoption of any zoning ordinance or regulation, map or maps, the chairman of the county governing body shall file the originals with the County Clerk and a certified copy of each in the office of the County Register of Deeds, which copies shall be accessible to the public. The Register of Deeds shall index such ordinances and regulations as nearly as possible in the same manner as he indexes instruments pertaining to the title of land.

Section 12. Finances. 1/ The county governing body is empowered

Sec. 10.

4/ A correct and up-to-date list of non-conforming uses is almost a necessity to the proper enforcement of the ordinance. A more definite procedure may be substituted for the one here given.

Sec. 11.

1/ "Filing": This section is included to afford protection to buyers who might be unaware of zoning encumbrances on the property they are planning to acquire.

Sec. 12.

1/ "Finances": Provision is made for the financing of studies and the other work of the zoning commission, for expert assistance, and for enforcing the law, wherever it may be found necessary to make such expenditures. It is not thought that the members of the commission itself should receive recompense for their time. Public-minded citizens would not expect pay for performing services in the public interest; but it is only just that such items as stenographic and technical service and traveling expenses should be paid. It is not particularly (cont'd).

to appropriate out of the general county fund such moneys otherwise unappropriated as it may deem fit to finance the work of the county zoning commission and of the board of adjustment, and to enforce the zoning regulations and restrictions which are adopted; and to accept grants of money for these purposes, from either private or public sources, State or Federal.

Section 13. Conflict with other laws. 1/ In the unincorporated portions of the county in which any city or other municipality is empowered to enact and enforce comprehensive zoning regulations and restrictions, the county governing body shall not exercise the powers conferred by this act, except to the areal extent that such city or other municipality does not exercise its own power in that regard.

Sec. 12. (Cont'd.)

1/ (Cont'd): desired that zoning should prove any burden on county finances; and accordingly no authority is given for special levies. There is need of State appropriations.

Sec. 13.

1/ "Conflict": No provision is here made relative to general "conflicts with other provisions". It is not anticipated that zoning regulations, generalized and essentially negative in their character as they are, could interfere with, or be interfered with by, land-use regulations of other sorts, such as, for instance, those envisaged by the "Standard State Soil Conservation Districts Law". There is, however, included a provision to prevent conflict with zoning by municipalities in suburban areas, in case such exists.

Part III - Appendix A

Examples of Alternative Provisions for an Enabling Act*

1.

In some States it may be desired to give the State some control in zoning. In fact, some State control may be recommendable, where feasible. In such a case, changes would have to be made, particularly in Section 6. The changes necessary would depend on the degree of the circumscription desired to be made upon the autonomy of the county governing body.

First degree: To make the designation of an existent planning body as the zoning commission mandatory, instead of permissive as it is now. This can be accomplished by changing "may" in the next to the last sentence (of Sec. 6, of course) to "shall".

Second degree: In order to make the governing body's action more dependent on the advice of the zoning commission, an added sentence may be inserted after the first sentence, to the following effect;

> "In adopting zoning regulations, such governing body shall follow the recommendations of such zoning commission, except with the consent of such zoning commission; provided, that such governing body may by a 3/4 vote adopt regulations which depart from such recommendations, without the consent of such commission."

Third degree: It may be provided that all regulations may be adopted only after approval by the State Planning Board (or some other State body, such as the Department of Conservation or the Conservation Commissioner). The county governing body retains

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* For further indications see the footnotes to the text of the draft, supra. Neither the suggestions in the draft and its footnotes nor the ones in this appendix pretend to exhaust the subject of rural zoning legislation. Moreover, legislation of a supplementary nature, such as land exchanges is not here treated. The material in this appendix is complemented by that in Appendix B, infra.

the power to adopt or to reject. In this case, the last clause of the first sentence would be deleted; and a second paragraph would be added to the section, reading:

> "The recommendations of such commission shall be first submitted to the State Planning Board (or other designated State agency), which shall without unreasonable delay signify its approval or disapproval of them. Only such recommendations as have received the approval of both the County Zoning Commission and the State Planning Board shall be submitted in the final report of such commission to the county governing body. Such governing body shall not hold its public hearings or take action before it shall have received such final report. Such governing body shall not adopt any regulations which are not in conformity with the recommendations properly submitted as herein stipulated: provided, that such governing body may by a 3/4 vote adopt regulations which do not thus conform with such recommendations."

Fourth degree: It may be provided that the membership of the Zoning Commission must be approved (or appointed) by some State agency (such as the State Planning Board). For example, an additional sentence could be inserted after the first sentence, to the following effect:

> "Such zoning commission shall not enter into function until after its membership has been approved by the State Planning Board (or other State agency as the case may be)."

Or, the first sentence might be entirely changed:

> "In order to avail itself of the powers conferred by this act, such governing body shall utilize, as hereinafter provided, a commission composed of five members, to be known as the County Zoning Commission, two of the members of which shall be appointed by the State Planning Board (or other state agency as the case may be) and the remaining three by such governing body. Such Commission shall recommend the boundaries . . . etc . . ." (The remainder as in draft.)

In this eventuality, the next to the last sentence of the present draft of Section 6 would be superfluous.

If any of the foregoing changes are made to Section 6, further changes should be made also in Section 5.

For the <u>first degree</u>: No change necessary.

For the <u>second degree</u>: The last sentence should be deleted, and in its place substituted:

> "No change, amendment, supplement, modification or repeal, as herein envisaged, shall be made without the concurrence of the County Zoning Commission, unless by 3/4 vote of such governing body."

For the <u>third degree</u>: Same as for the second degree, except the concurrence of both Zoning Commission and State Planning Board would be necessary.

For the <u>fourth degree</u>: No change necessary.

A change may also be made in Section 9, to give the State Planning Board (or other agency) jurisdiction in enforcement. This could be done by inserting in the second paragraph after "proper local authorities 3/":

> ". . .the State Planning Board (or other authorized agency, as the case may be). . ."

2.

It may be desired to make a State appropriation to finance the research and study necessary to good zoning. The money could be appropriated to the State Planning Board (or other State agency), for example, for the purpose of collecting the data and formulating the advice which it would give to the County Zoning Commission, and for reimbursing technical advisers and assistants which such commission might employ. Appropriations could be made for the use of

the counties directly, not only for the objects already mentioned, but for aid in moving out non-conforming users and in enforcing the zoning regulations; but all such expenditures of state moneys by counties should be closely subjected to the surveillance of the State Planning Board (or other state agency).

Such State aid could be provided in an additional section to this act, or (perhaps preferably) in a separate act, according to usage or constitutional requirements in this regard.

3.

It may be desired to require an annual report from the counties making use of the Enabling Act. This would be especially pertinent in case there is State aid, since the State has a just right to be informed of the progress of that which it assists financially. This could be done by putting in an additional section, after Section 12 (in which case the present Sec. 13 would become Sec. 14), such as:

> "(Sec. 13). The legislative body of each county adopting regulations or ordinances under the authority of this act shall on or about the _____ day of __________ of every year submit to the State Planning Board (or the governor or some other designated state agency) a written report, which shall contain the following:
>
> (1) A copy of every ordinance regulation, amendment and map adopted;
>
> (2) A copy of all recommendations made by the zoning commission;
>
> (3) A general description of the land in which zoning restrictions have been applied;
>
> (4) Information as to the number and location of non-conforming users, together with a description of the nature and extent of non-conforming use, and of what action or steps if any have been taken to reduce such non-conforming use;
>
> (5) Information as to the land which may have lost its right to non-conforming use;
>
> (6) A description of action taken to enforce the law;

(7) An itemized summary of cases disposed of by the Board of Adjustment;

(8) A discussion of the general zoning situation, with reference to such matters as the state of public opinion, the ease or difficulty of applying and enforcing the regulations, the prospects for the future, legislative recommendations, and so on; and any other information as may seem pertinent or desirable."

In case there has been State aid, an item covering a report on the expenditure thereof should be included.

4.

Section 10, of the draft, relative to non-conforming use, can be tightened by the addition of one or both the following provisions:

First, by inserting after the phrase ". . . for a period of two years 2/" the following clause: "or the property in or upon which it is conducted is leased or its title transferred or passed by sale, gift, or foreclosure, except to a legal heir. . ."

Second, by inserting a sentence, as follows, before the last sentence of the first paragraph: "If the county (or State, as the case may be) acquires title to any property by reason of tax delinquency and it is not redeemed as provided by law, any future use of such property shall be in conformity with the provisions of the established ordinances and regulations."

A possible solution to the problem of whether extensions of a non-conforming use to other portions of the same land should be permitted is as follows. -- To add after the first sentence:

"The right to engage in a non-conforming use or occupation shall be in respect to only those portions of the land or premises which are in lawful use or occupation at the time of the adoption of the zoning ordinance or regulation."

This solution prohibits extensions. The Board of Adjustment would have the task of preventing this restriction from being inequitable; and the existence of a Board of Adjustment is presupposed.

As it appears from a reading of the first section, as well as others following, the act is designed to enable zoning of both the two so-called types: i.e., "urban-type" and "rural-type", both applied to land outside the corporate limits of cities and towns. The "urban-type" would be employed specifically to protect urban and suburban development and in general to protect the conditions of residence (and trade) in closely settled areas or areas likely to become closely settled. It could be used also to protect de-development along highways according to plan. All the general rural zoning enabling statutes thus far adopted for counties provide for the urban-type even when the rural-type is unprovided.*

In the event, however, that this type of zoning be not wanted in any particular state, or if it is desired to provide separately for it, the act can be changed, by making certain omissions, so as to render it applicable essentially to "rural-type", although the two so-called "types" are closely interrelated. <u>Section 1</u> would be pared so as to read:

> "For the purpose of promoting health, safety, morals or the general welfare of the community, the governing body of any county is hereby empowered to regulate and restrict the use, conditions of use, or occupancy of land for residence, recreation, agriculture, grazing, water conservation, forestry, or other purposes."

<u>Section 2</u> would be changed to read:

> "For any or all of said purposes the local governing body may divide the unincorporated portions of the county into districts of such number, shape, and area, as may be deemed best suited to carry out the purposes of this act, and within such districts it may regulate and restrict the use, condition of use, or occupancy of land; and in that case. . . etc . . ." (The remainder as in draft.)

<u>Section 3</u> would have its first sentence shortened to the following form:

> "Such regulations shall be made in accordance with a comprehensive plan and designed for the purpose, amongst other purposes, of securing safety from fire and other dangers; promoting the health and general welfare; en-

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* See, Part I, Section 3, *supra*.

couraging such distribution of population and such classification of land uses, and distribution of land utilization as will tend to facilitate economical and adequate provisions for transportation, roads, water supply, drainage, sanitation, education, recreation or other public requirements; conserving the natural resources; fostering the state's agricultural and other industries; protecting the food supply. . ." (The remainder of the section would stand as it now is in the draft.)

<u>Section 9</u>: The second paragraph would be changed and shortened:

"In case any land is used or occupied in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the county, as well as the owner or owners of land within the district affected by such regulations, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful use, to restrain, correct or abate such violation, to prevent the occupancy of such land, or to prevent any illegal act, conduct, business, or use in or about such premises."

Third paragraph: "The unlawful use or occupation of any land existing at the time. . . etc. . .; but if such nonconforming use or occupation. . . etc. . . any future use of such land shall be in conformity with the provisions. . . etc. . ." (The remainder of the paragraph as in draft.)

The rest of the sections and paragraphs would remain unchanged.

Illustrations from certain Drafts and Acts

The object of this section is to summarize or reproduce provisions of especial interest found in drafts of rural zoning enabling acts, either now on the statute books, or proposed but not adopted. Four items particularly are in mind: land classification in relation to zoning, state supervision over zoning, enforcement of zoning regulations, non-conforming use.

Minnesota. (Bills Introduced in Both Houses of the Legislature, but not Passed, 1935) (S.F. 1035 and H.F. 1693): Herein there is created a State Land-Use Committee composed of the Governor, the Chairman of the Conservation Commission, the Commissioner of Conservation, the Commissioner of Agriculture, and the Chairman of the Tax Commission. The duty of this Committee is to classify all public and private lands in each county of the state covered by the Act, as to: (1) the character of the soil and its suitability to agriculture, forestry and other uses; (2) the present cover, stone, topography, and similar factors affecting land use; (3) expense of clearing, stoning and drainage, where needed for contemplated uses; (4) water supply, drainage, rainfall, growing season, and related factors; (5) location with reference to existing land uses, settlement, schools, trade centers, and other factors; (6) nearness to market, transportation facilities, and costs; and (7) need for additional land in various uses. It is made the duty of the State Department of Conservation to collect and compile necessary data for making such classifications.

Further provision is made for the setting up of County Land Zoning Committees composed of the County Auditor, Chairman of the County Board, the County Treasurer, the County Surveyor, and the County Superintendent of Schools. This County Land Zoning Committee is directed to prepare a tentative land zoning map and ordinance for the county, upon the basis of all facts concerning the classification of public and private lands submitted to it by the State Land-Use Committee. This tentative zoning map and ordinance is submitted to the State Land-Use Committee for its consideration and alteration or approval. If the State Land-Use Committee and the Zoning Committee agree, this tentative ordinance and map is then transmitted to the State Executive Council. If approved by the latter in turn, it is referred to

the County Board for official adoption. However, if the Land-Use Committee and the Zoning Committee fail to agree, there is a procedure set up for reaching a solution on the disagreement.

Michigan. (Laws of 19 5, Act 44):

> Sec. 3. The County and Regional Planning Committees shall with the aid and cooperation of the State Planning Commission formulate a tentative zone map and county zoning ordinance for submission to the County Board of Supervisors. The State Planning Board shall assist in determining the validity of the land classifications and zoning proposals submitted by the County Planning Committee, shall suggest if necessary, such additional data and inventory as may be needed to provide adequate basis for effective and valid land classification and zoning, and shall assist with its own facilities and other facilities or agencies available in carrying out necessary inventory essential to sound zoning procedure.

The County Planning Committee is in this case the Zoning Commission. It is further provided that every zoning ordinance, before it becomes effective, must be approved by the State Planning Commission. Under Section 6, the Board of Appeals consists of the Planning Board of any county and an equal number of members of the State Planning Commission or representatives designated by it.

New Hampshire. In one draft which has been recently proposed (but not enacted), the recommendations of the Zoning Commission (i.e., the local Planning Board) have to be based on a comprehensive classification. This classification is provided for as follows.

> Sec. 5. Basis of Classification. Such classification of rural lands shall be based, among other things, upon adequate investigation and study of soil factors, conditions of tax delinquency, sub-marginality in respect of existing uses; location and condition of farms and the extent of farm abandonments; potential recreational values because of location in proximity to lakes, ponds, streams, rivers, the sea or mountains; economic ill effects of improper timber cutting, extent of scattering of population, fire

> hazards, attendant upon human habitation in remote districts, trend in forest land use and agricultural developments; school locations, school district boundary lines, school bus routes in sparsely settled sections of the municipality and school costs per capita; tax burdens in the form of road maintenance and other unnecessary costs imposed upon the community by uncontrolled and unregulated settlement on or occupation of rural lands; the location, desirability, and necessity for continuing or improving existing roads or constructing others that may be needed and the provision of transportation, water, sewerage, lighting and other public requirements.
>
> Sec. 6. Approval of Classification. Before such classification of rural lands shall be submitted to the local legislative body or become effective, it shall be approved by the State Planning and Development Commission. Upon approval by the local legislative body, such recommended classification shall become a public record.

In section 13, it is provided that no zoning ordinance, regulation or amendment may be adopted by the local legislative body without the approval of the State Planning and Development Commission.

In Indiana, zoning is tied in with planning. Under the laws of 1935 (Ch. 239), authority is given to the counties to create a Planning Commission, charged with drawing up master plans for the physical development of the county, showing the Commission's recommendations for the development of the county, and including, among other things "the general location and extent of existing and proposed forests, agricultural areas and other development areas for purposes of conservation, food and water supply, sanitary and drainage facilities for the protection of urban and rural development; also a land utilization program, including the general classification and allocation of the land within the county amongst mineral, agricultural, soil conservation, water conservation, forestry, recreational, industrial, urbanization and other uses and purposes." The Planning Commission may recommend zoning regulations for adoption by the County Board.

Under Ch. 33, Tennessee Laws of 1935, the regional planning commission of a planning region defined and created by the State Planning Commission acts as the Zoning Commission for the counties

within its territory. No regulation which covers more or less than the area covered in the plans certified by the Planning Commission, and no regulation which departs from the zoning recommendations of the Planning Commission, may be adopted without the latter's consent, except by a two-third vote.

New Hampshire. Proposed Amendment (not enacted) to Existing Zoning Law:

> 51. In any town where it is desired to regulate the uses of land for recreation, agriculture, or forestry, such regulations, restrictions, boundaries, or so much of such regulations, restrictions, boundaries as pertain to that portion of the town in which the uses of land for recreation, agriculture, or forestry are to be regulated, shall be submitted to the State Land Board for approval and if disapproved shall not become effective except by the favorable vote of three-fourths of the members of the legislative body of said town.

Minnesota. Bills Introduced in Both Houses of the Legislature, but not Passed, 1935. (S. F. 1035 and H. F. 1693):

> Sec. 9. In case the Board of County Commissioners shall fail to adequately enforce the provisions of the county zoning ordinance then the State Department of Conservation shall have authority and is hereby authorized to enforce such ordinances.

In connection with enforcement, a number of drafts have provided for building inspectors for urbanized zoning duties. However, a system of licensing has never been attempted for purely ruralized zoning for productive land use.

Sec. 18 of the Virginia Law, ex. sess. 1927, Ch. 35 as follows:

> The said Board of Supervisors shall have power and authority to appoint an administrative officer who shall be charged with the enforcement of said regulations, for and on behalf of said Board, and who is empowered to cause any building, structure, place or premise to be

inspected and examined, and to order in writing the remedying of any condition found to exist therein or thereat, in violation of any provision made under authority of this or any of the preceding sections of this Act.

In addition see subsection 18 of section 59.07, Wisconsin Statutes; section 7 of ch. 33, Tennessee Laws of 1935; section 4366-26 of a bill unsuccessfully introduced into the 1935 Ohio Legislature by Mr. Metzenbaum; and section 7 of Mr. Bettman's draft.

Wisconsin. Amendment to Sub-section 4 of Section 59.97, Chapter 403, Laws of 1935:

> Compliance with such ordinances may be also enforced by injunctional order at the suit of such county or the owner or owners of such real estate within the district affected by such regulations.

Minnesota. Bills Introduced in Both Houses of the Legislature, but not Passed, 1935. (S. F. 1035 and H. F. 1693):

> Sec. 9. Compliance with such ordinances may be also enforced by injunction or mandamus at the suit of the Board of County Commissioners, or the owner or owners of real estate within the district affected by such regulations.
>
> Sec. 10. The assessor of real estate shall certify to the county land zoning committee all non-conforming uses which have been discontinued since the previous assessment. Upon certification by the assessor that such non-conforming use has been discontinued, the name of such non-conforming use shall be deleted from the official record which is filed in the office of the Register of Deeds.

Wisconsin. County Zoning Law, Subsection 7 of Section 59.97, Wisconsin Statutes:

> (a) Immediately after the publication of a county zoning ordinance, it shall be the duty of the board

of supervisors of such county to cause to be made a record of the present use of all buildings and premises used for purposes not in conformity with the regulations of the district in which such buildings and premises are situated, such record to contain the names and addresses of the owner or owners of such non-conforming use, and of any occupant other than the owner, the legal description or descriptions of land and the nature and extent of land use. Such record shall be published for three successive weeks in a newspaper having general circulation in the county. Within sixty days after such final publication, upon presentation of proof to the county board, errors or omissions may be corrected in such record. On expiration of such sixty-day period such record shall be filed in the office of the county clerk and a certified copy thereof in the office of the register of deeds. Such record shall constitute prima facie evidence of the extent and number of non-conforming uses existing at the time the ordinance became effective.

(b) Errors or omissions in such record shall be corrected by the county board upon petition by any citizen or by the board on its own motion. Its decision in such matters shall be final.

(c) The county clerk shall furnish to each town assessor immediately after the filing of the record of non-conforming uses, a record of the non-conforming uses lying within the assessment district of the said town assessor. After the assessment of the following year and after each succeeding assessment thereafter, the town assessor shall file a written report certified by the board of review with the register of deeds listing all non-conforming uses which have been discontinued between the assessment period. The register of deeds and county clerk shall record discontinued non-conforming uses as soon as reported by the assessors.

North and South Dakota. (Draft proposed by Messrs. Hull and Steele):

Sec. 5. Non-conforming uses, Recordation. As soon as any ordinance shall have become effective, it shall be the duty of the board of county commissioners to cause to be compiled a list of all non-conforming uses of lands and buildings and

publish the same to permit appeal on errors or omissions and such corrected list shall be filed in the office of the register of deeds. A copy of such compiled list shall be furnished to all assessors within such restricted areas, said assessors to inspect and determine if any violations and report same to the State's attorney who shall investigate and proceed as in other violations. Said assessor shall also record and report to the register of deeds the discontinuance of any non-conforming usos as defined in the county ordinance.

Wisconsin. There is a provision (with urbanized rather than ruralized zoning in view) of the Wisconsin Statutes (Sec. 59.97, subsec. 4) which recites:

> Such (zoning) ordinances shall not prohibit the continuance of the use of any building or premises for any trade or industry for which such building or premises are used at the time such ordinances take effect, but the alteration of, or addition to, any existing building or structure, for the purpose of carrying on any prohibited trade or new industry within the district where such building or structure are located may be prohibited.

And a further provision (subsec. 7c) that:

> If a non-conforming use has been discontinued, any future use of such building, land or premise shall be in conformity with the provisions of the ordinance regulating land uses in the district.

Nothing more specific on the point is contained in the Wisconsin law.

The draft proposed by Messrs. Dull and Steele for North and South Dakota, however, is more specific:

> Sec. 5. Existing non-conforming uses may be expanded within any ownership unit as constituted at the date of the county ordinance, but new non-conforming uses may never be started. For the purposes of this Act an ownership unit shall be any contiguous tract in a single ownership or separate tracts of a single ownership and

which are managed and controlled by one farm operator. If any part of an ownership unit be sold or leased subsequent to the enactment of said ordinance, and on which a non-conforming use has not been established, it shall be unlawful for any non-conforming use to be established.

Minnesota. (Bills Introduced in Both Houses of the Legislature, but not Passed, 1935). (S. F. 1035 and H. F. 1693):

> Sec. 9. The lawful use of any building, land or premises existing at the time of the official adoption by the Board of County Commissioners of a zoning map and zoning ordinance, although such use does not conform to the provisions thereof, may be continued and may be extended throughout such building, land, or premises, provided, however, that such lawful use shall be extended only to contiguous lands and premises and only to lands and premises owned by the party extending such use at the time when the zoning plan was adopted; but if such non-conforming use is discontinued for a period of more than 2 years, any future use of said building, land or premises shall be in conformity with the provisions of the established zoning map and zoning ordinance.

New Mexico. (Draft Proposed by Mr. DeBoer): The proposal made by Mr. DeBoer for New Mexico is also specific, but adopts a contrary solution to the foregoing two: i.e., extensions of non-conforming use are prohibited.

> Sec. 11. Whenever any land owner has the right to non-conforming use of land in a restricted district, such right shall apply only to the actual land so used at the time of the passage of the zoning ordinance and shall not be interpreted to apply to other land not then devoted to such non-conforming use. Whenever lands entitled to non-conforming use * * * shall have been abandoned for such non-conforming use for a period of five years such right to non-conforming use shall be considered abandoned and the said land shall not again be put to such non-conforming use.

New Hampshire. (Proposed Draft):

Sec. 9. Limitations. A regulation made under the terms of this act shall not apply to the existing use of any rural lands, nor shall it apply to existing structures or to the use of any building, but it shall apply to any alteration of a building to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration.

Massachusetts. (Zoning Laws in force in State of Massachusetts. This law is cited as Laws of 1933, Chapter 269):

Sec. 26. Such an ordinance or by-law or any amendment thereof shall not apply to existing buildings or structures, nor to the existing use of any building or structure, or of land to the extent to which it is used at the time of adoption of the ordinance or by-law, but it shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent. Such an ordinance or by-law may regulate non-use of non-conforming buildings and structures so as not to unduly prolong the life of non-conforming uses.

In a miscellaneous category, three further items are included, since they are interesting as statements of purpose.

A Suggestion by Robert Whitten. (Suggested "Grant of Power" Clause for Use in a Combined Planning and Zoning Enabling Act):

The council of any municipality is hereby authorized and empowered to provide for the preparation and enforcement of coordinated plans for the physical development of such

municipality. For this purpose such body may, in such measure as is deemed reasonably necessary in the interest of health, safety, morals, or the general welfare, regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes; the height, number of stories, size, construction, and design of buildings and other structures; the size of yards, courts, and other open spaces on the lot; the density of population; the setback of buildings along streets, highways, parks, or public waters; the subdivision and development of land; the erection of buildings within the lines of streets, highways, or parks shown on an official map; and the erection of buildings on lots abutting on unapproved streets.

For the purpose of any such regulations such council may divide the municipality or any portion thereof into districts of such number, shape, and area, or may establish such official map or maps or development plans of the whole or any portion of the area of such municipality, as may be deemed best suited to carry out the purposes of this Act.

All such regulations shall be worked out as parts of a comprehensive plan for the physical development of such municipality, and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality; to lessen traffic accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to promote a wholesome and agreeable home environment; to prevent the development of unsanitary areas for housing purposes; to secure a well-articulated and adequate street and highway system; to preserve the integrity of officially approved plans; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve natural beauty and other natural resources; and to facilitate the adequate provision of transportation, water, sewerage, and other public utilities and requisites. (Harvard City Planning Studies VII, pp. 124-125).

North and South Dakota. (Draft Proposed by Messrs. Dull and Steele):

> Sec. 3. PURPOSE. This Act is designed to enable counties to more adequately plan and direct the future development of the territory within their bounds. Any county desiring to take advantage of this Act shall draw up a comprehensive plan for the future development of the county designed to foster and control the development of successful farm and ranch units and thus protect the tax base and reduce tax delinquencies resulting from establishment of unsuccessful farm and ranch enterprises and assure that all lands and other property shall contribute its just share of the public revenue; to encourage more compact settlements in the better land areas of the county and resultant advantages of social intercourse, as well as thereby controlling public expenditures for schools, roads, police protection, and other public services; to promote the proper use of rural lands and buildings, thereby preventing waste of natural soil fertility through erosion and other causes, and to prevent excessive exploitation of the land; and such other purposes as shall best promote the health, safety and general welfare.

Indiana. (Laws of 1935, Chapter 239):

> Sec. 3. For the purpose of providing that healthful, convenient, safe and pleasant living conditions may be assured, in situations throughout the county and state, affording abundant opportunity for the preper utilization of natural resources and the talents and ability of all individuals in a manner profitable to each; and in order that the people of the county and the state of Indiana may realize the greatest possible benefit from the natural, agricultural, industrial, and other resources of the county and state, including minerals, soils, lands, forests, fisheries, wildlife and recreational facilities, water resources, rivers and harbors, manufacturing and mechanical industry, wholesale and retail trade, educational and institutional facilities and communication and transportation facilities, including highways, and including such distribution of

population and of the uses of the land within the county and state as will tend to reduce the wastes of physical, financial or human resources, which result from either excessive congestion or excessive scattering of population * * *

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