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Rural Zoning In A Nut Shell

Michigan State University Cooperative Extension Service

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RURAL ZONING IN A



NUT SHELL

MICHIGAN STATE UNIVERSITY

COOPERATIVE EXTENSION SERVICE
EAST LANSING

RURAL ZONING IN A NUTSHELL

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WHY ZONE?

Regardless of where you live, you naturally cherish the value of your property. You would like your home, your farm, your place of business, your summer cottage, your undeveloped land—whatever property you own—to be as desirable and worth at least as much tomorrow as it is today. You may even hope it will gradually increase in value as time goes on.

Anything Can Happen

You may live in a community which has used foresight and planned its future. Or you may live in a community which is now exercising only hindsight and regretting it did not act in time to protect its quality and resources.

Without good community planning backed up by zoning, anything can happen. Everyone is virtually free to use his property as he pleases, regardless of the effect upon the neighborhood or community.

The use can seriously injure the value of your property. It can rob you of the enjoyment you have in your home or business. It can pose serious problems for the community. The use may be a health, fire, or traffic hazard, or merely an annoyance to everyone.

Changes in Ownership

Most people show consideration for their neighbors, but not all. Moreover, as property changes hands, do you know what the new owners will do? If heirs, will they continue the former use? Or will they sell to a stranger because they now live elsewhere, or do not care to continue the former use? How will the stranger use the property? Will he be an exploiter? And if there are non-resident property owners in the community, what are their plans? What of the vacant or undeveloped property in your neighborhood?

The Unknown Future

You are proud of your home. You have invested your life savings in a pleasant residential neighborhood. Is it limited chiefly to homes? Or may anyone convert his place to a service shop, or manufacture some product, or collect junk of some kind? The country over, one can see many such jumbled-up residential neighborhoods.

You own a store, an office, a shop or other business in the commercial district of your community. Or you have a nice plant in the industrial district. Are your districts open to any kind of use, *even* regardless of excessive noise, smoke, offensive odor, dust, traffic or fire hazards?

Your farm is located in a good rural community. Can the community be invaded by any and every kind of prop-

Extension Leaflet No. F-271, "What Is Happening In Your Community?" outlines some of the striking changes which are occurring in communities located in the unincorporated areas of Michigan—in farm communities, in suburban communities, in communities bordering a lake or river, in unincorporated villages, and in North Michigan communities (those comprising the northern part of the Lower Peninsula and the Upper Peninsula.)

If you live in one of these unincorporated areas, and are interested in keeping it a good community, this leaflet will tell you about rural zoning—what it means, how it works and what it can do for your community.

erty use? Could any such use depreciate property values? Could it force up taxes and compel farm people to sell out and leave as has occurred in many good farm communities?

You live, or have a summer cottage, or own a good business in one of Michigan's resort areas. Could you have a slipshod trailer camp, a bizarre tourist-attraction enterprise, a late-hour night club with its disturbances, or another unwelcome property use for a neighbor?

No Zoning — No Answer

You won't have a very definite answer to any such questions until your township or county plans its future and enacts a zoning ordinance to guide future developments. Without zoning, you can't be sure what tomorrow may bring, what future uses of property to expect in and about your neighborhood and in your community. You are a "sitting" duck for anything.

Why Zone Now?

Why bother with zoning now? Why not wait until we have a problem?

Because then it is too late. Zoning is not retroactive. It governs changes or new uses only. Any use being carried on at the time an ordinance is enacted may be continued at the option of the property owner. A hurtful use can be carried on indefinitely.

About Restrictions

Not infrequently opposition to zoning is raised on the grounds that to all intents and purposes it is prohibitive and restrictive. This is not a fair appraisal.

It is true that certain limitations are placed on uses of property to achieve the purposes of zoning. For example, uses of property that harm, or are not in the best interests of a neighborhood or community as a whole, are curbed or excluded from areas where they injure. They are directed to the place where they are harmless or less hurtful. Standards of property use are set to prevent fire or fire-spread, improper waste disposal, traffic hazards, or provide common deficiencies.

The matter is similar to traffic controls. To insure safety in traffic, the movement of vehicles is restricted to the right side of the highway, to sensible speed limits, and to the use of proper lights and brakes. But the gain in traffic safety far exceeds the restrictions, and no one spurns the use of motor vehicles because of the limitations that must be imposed upon their use.

A similar situation is the case in zoning. The overall advantages far outweigh the limitations placed on property to achieve the primary objectives and benefits.

Freedom to use property as one pleases is always subject to responsibilities in use.

Zoning Benefits

1. A good zoning ordinance helps preserve and maintain what is good and desirable in each community. Communities erode like unprotected lands unless guarded by guidelines to direct the flow of human activity into and over them.

2. It helps safeguard and protect against undesirable and hurtful conditions. One bad use can hurt an entire neighborhood, and no neighborhood is immune to injury unless properly zoned.

3. It replaces chance, uncertainty and the unknown with surety, purpose and direction. Without restraints anything can happen—overnight.

4. It encourages the use of the lands of each community according to their character and adaptability. It helps conserve the special assets that each community possesses for living, work and play.

5. It promotes orderly growth. Unless given intelligent direction, unguided growth can lead to chaos, waste and distress in the use of property.

6. It makes possible the development of systems—good road systems, good fire-protection systems, good waste disposal systems—in contrast to stop-gap measures. It makes possible a programmed approach in meeting the needs and services of a community.

7. It promotes compatibility and harmony in the use of property. It reduces conflicts and checks hodgepodge and topsyturvydom.

8. It provides stability. Everyone prefers his home, business, farm, industrial plant, summer cottage in a stable community.

9. It provides a means to fit "objectionable" property uses into their proper place—the noisemaker, dust-maker, odor-maker, eyesores, and other problematic property uses.

10. It helps hold down unnecessary taxes and special assessments for doctoring up scattered, out-of-place, and other illogical developments. It facilitates the use of public funds for positive, constructive programs designed to serve the entire community or area.

In the protective service it provides, zoning has often been compared to insurance. But, in a way, it is even superior because it protects *in advance* of injury. Insurance pays only *after* damage and distress occurs. Zoning, you recall, is not retroactive.

How zoning works, and how to enact a zoning ordinance is described in the following pages.

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Departments of Soil Science and Resource Development Cooperating

WHAT IS RURAL ZONING?

Rural zoning is merely zoning outside of the limits of cities and incorporated villages. This includes suburban, or "rurban," as well as strictly rural territory.

Any township or county in Michigan may enact a rural zoning ordinance. In the event, a township enacts an ordinance either preceeding or subsequent to the county in which it is located, the township zoning ordinance will supersede its county's ordinance.

Township and County Zoning

To date, the chief interest in rural zoning in Michigan has been at the township level, and it appears that this may continue. This folder, therefore describes chiefly the township procedure. Approximately 400 townships out of a total of 1,257 have enacted zoning ordinances, or are in the process. This record indicates an impressive endorsement of the idea of zoning.

At present only 6 counties out of 83 have active county-wide ordinances, although good arguments may be advanced for either type of zoning. *Since the act permitting counties to zone is almost identical with the township act, it may be assumed that the folder is equally applicable to county zoning, unless an exception is noted in a footnote, and there are very few exceptions.* When the term "county" or "board of supervisors" appears in parenthesis following "township" or "township board," it signifies that a similar requirement obtains in county zoning.

Division into Districts

When a township zones, it divides its unincorporated area into "Zoning Districts." In each of these the future uses of land or property are then reserved or limited to certain uses or combinations of uses. All existing or current uses, however, are exempted even

though they may not be in conformity with the ordinance. Zoning is not retroactive.

The zoning districts should be based upon a long-range plan for the township. Existing land uses and trends in land use should be studied. Changes in population should be noted. The resources and opportunities of each community should be analyzed. In brief, whatever is important in guiding future developments should be taken into account in preparing the plan.

The lands recognized as best used for residences in the future may then be zoned as Residential Districts. The natural farm lands are classed as Agricultural Districts, or as combinations of agricultural and residence. Areas adapted to trade are zoned as Commercial Districts. Those best suited for manufacturing are put into Industrial Districts; for recreation into Recreational Districts; and so on for all other kinds of land uses that fit into the particular township's conditions. Some of the land uses included in each of such districts are suggested under the third "step" in zoning beginning on page 14.

Standards of Use

Following determination of the districts, an ordinance is prepared to encourage and support the combination of uses for which each district seems best adapted. Any new or different uses of land not in harmony with these uses may be limited or excluded from the district. Appropriate regulations or standards are then adopted governing future uses of land and property and any changing developments that may take place.

A simple example of such a standard is the minimum lot requirements which are usually adopted for Residential Districts. These include adequate space for homes—enough land for safe water and sewage disposal systems—a sufficient distance between homes to reduce undue risk of spreading fires and to provide reasonable privacy, good light and air conditions—adequate setbacks for safety in entering the street or highway. The ordinance sets only minimum lot, setback and yard requirements.

Good spacing standards are also important in maintaining property values. They help build quality into a community. Neighborhoods of homes too closely

spaced often face declines in property values after their newness wears off.

Whatever standards or regulations are adopted must be reasonable, not arbitrary. On this point Michigan's Zoning Laws are very definite. Regulations must take into account such conditions as the nature of each district, its suitability for particular uses, the conservation of property values and natural resources, the general trend and character of land, building and population development, and similar pertinent conditions.

All farm buildings (barns, silos, etc.) and structures (fences, etc.) are usually exempted from the requirements of zoning ordinances. The chief requirement, if any, is that such buildings be set back far enough from highways so as not to create a traffic hazard.

Like Planning a Home

Planning the use of land, and zoning it for its appropriate use, is like planning and laying out the space in a home for the best use and convenience of its occupants. In constructing a home, one part is selected for the living room, another part for the kitchen. Other parts are set aside for sleeping or other uses.

A township or county is a kind of giant house shared by some hundreds or thousands of people. Some parts are best planned and used as residence districts. Others serve best for trade or industry. Some lands are wisely left chiefly in farming with perhaps a limited number of suburban or nonfarm homes. Some areas may be selected for parks, summer cottages, outdoor sports, hunting (i.e. the wild land in North Michigan) and other forms of recreation.

Zone in, or Zone out?

The purpose of zoning is not to exclude any legitimate or appropriate use of property, but to locate each use in its logical place or part of the township. The aim is best expressed by the well-known saying: "A place for everything and everything in its place." A good zoning ordinance tends more to "zone in" than "zone out" land uses—to invite in or encourage those uses for which a zoning district seems best adapted. Some things may be "zoned out" of some locality into another in the process, but primarily only to consign each to its best or more logical place in the community.

Who Does the Zoning?

Four groups of persons are involved in enacting a zoning ordinance:

1. A Zoning Board,
2. The Citizenry,
3. An Approving Agency,
4. The Township Board.

1. A Zoning Board. Its duties are to study the township, prepare a zone plan and ordinance, and hold hearings on its proposals. This board, which must include at least four persons, is appointed by the Township Board for staggered terms of four years, but may be increased up to seven by resolution of the Board. No less than $\frac{2}{3}$ must be electors residing in and having property assessed for taxes located in the unincorporated portion of the township. No elected officer of the township, nor any employee of the Township Board may serve as a member of the zoning board.¹ For the relation of zoning boards to planning commissions, see Planning Commissions on page 13.

2. The Citizenry. Before submitting its recommendations to the township, the zoning agency must, as stated above, hold a public hearing on its proposals. This enables the citizen to voice his reactions and suggestions. Later, within 30 days following passage of the ordinance by the board, the electorate residing in and owning property in the township may also petition for a referendum on the ordinance.² This gives them the final say so, if they wish to exercise it.

3. An Approving Agency. This agency reviews the proposed ordinance to see if it is in harmony with the law, and with the ordinances of other units of government having a common boundary with the township. (For details of this, and also the corre-

¹When a county zones, the zoning agency is called the County Zoning Commission. It must be composed of at least five members, but may also be increased, up to eleven, by resolution of the Board of Supervisors. As in townships, at least $\frac{2}{3}$ must be electors residing in and having property assessed for taxes located in the county outside of its incorporated cities and villages. No elected officer of the county nor any employee of the Board may serve on the commission, although one member may be a supervisor. Appointments are for staggered terms of 3 years.

²In county zoning, the electorate must file the petition within 30 days following the effective date of the ordinance.

sponding requirement for county ordinances, see Step 5 below).

4. The Township Board. The Township Board enacts the ordinance. Everything preceding is preparatory. The zoning and approving agencies are primarily only study and advisory agencies. They have no legislative power. This rests solely in the Township Board.¹

The part which each of these groups plays is more fully outlined in the following "steps." To assure itself of precise conformance with the law, a township in process of zoning should consult Act 184 of 1943, as amended, for complete details of procedure, as this folder outlines only the principal requirements.²

EIGHT MAJOR STEPS

1. Adoption of a Resolution to Zone

Before a township may zone, the Township Board must first adopt and publish a resolution declaring its intent to zone. Legal public notice of the passage of the resolution must be given in a newspaper having general circulation in the township within 10 days of passage.³

The Board may adopt such a resolution on its own initiative. Or it may be prompted by a petition signed by 8% of the persons who are residents and property owners residing in the unincorporated portion of the township.⁴

2. Preparation of a Basic Land-Use Plan

Preparing the zoning ordinance is the chief responsibility of the zoning board. Since the ordinance is primarily concerned with future changes, it should, as previously stated, be based upon a sound land-use plan. This is not only common sense, but the zoning

act itself requires the zoning board to "adopt and file with the township board recommendations as to a zone plan . . . based upon an inventory of conditions pertinent to zoning in the township . . ." (County zoning commissions have a similar responsibility.)

THE INVENTORY

Many facts are needed before a good plan can be formulated. The zoning board should know the township from top to bottom—what it is like, what changes have taken place, and what changes are likely to occur. Aerial, topographic and geologic maps, if available, are very helpful. The following are some of the important facts usually worthy of study. Whenever possible, they should be placed on a good base map, even if only in a rough way, and a separate map, as a rule, used for each item.

1. The nature of the land—the location of level and hilly land, well-drained and poorly-drained soils, including those with low percolation rates, and valuable sand, gravel, muck and peat deposits.

2. The existing use of every lot or parcel of land, whether for farming, idle, nonfarm residence, trade, industry, recreation, forestry, and so on. Separate maps showing past uses, where information is available, help to show trends.

3. The area and width of all lots including the setback, and width of side yards and rear yards of all existing buildings.

4. The general quality and approximate size of all dwellings and other main buildings.

5. The types of private water supply and sewage disposal systems. The location of any existing public service plants, water mains, and public storm and sanitary sewers.

6. The location of schools, school districts and bus routes.

7. The location of drainage districts, drainage lines and their condition.

8. The location of transportation and power facilities—i.e. railroads, bus routes, landing fields, power lines, gas lines, and the like.

9. The location of public and semi-public buildings and grounds, including hospitals, churches, parks,

¹Board of Supervisors in county zoning.

²Counties should consult Act 183 of 1943, as amended.

³Counties must publish the resolution in a newspaper published in the county, or an adjacent county, if the county has no such newspaper.

⁴In counties, the signers must be qualified and registered voters residing outside of the limits of the incorporated cities, and the number of names must be not less than 8% of the total vote cast outside of the incorporated cities for all candidates for governor at the last preceding general election.

playgrounds, golf grounds and similar recreational and public properties.

10. Population growth and changes which are occurring in the number of people in each community, including the number that have recently moved into an area and where they came from.

11. The location of areas which are undergoing rapid change, and of those likely to change materially in the future.

12. The location of "problem" areas—where uses of land or resources are unwise or substandard.

13. Plans for development in or near the township or county by local, state or federal agencies.

14. Vacant land (other than agricultural land) and the unused or undeveloped resources if any—i.e. good water frontage, good residential, commercial, or industrial sites, water power, minerals, wildlife lands, recreational lands.

THE LAND-USE PLAN

The stage is now set to prepare a land-use plan—to determine how each part of the township is best used. A careful study of the data collected will reveal what has occurred to make each community what it is today. It will show what may take place if the future is left to chance, what uses and combination of uses are good, what uses need correction, adjustment or improvement. It will suggest what zoning districts will best serve the township.

The plan should be as complete as possible for it is really a projection into the future. It should show the best uses for all lands as far ahead as good judgment may be exercised. It should include whatever is needed to make each community make the best use of its resources and opportunities. Care should be taken not to classify areas for uses for which facilities are lacking or are too costly to supply. These might include lack of water for industry, or soils for residence with percolation rates too low for satisfactory operation of septic tank systems.

A copy of the same base maps used in inventory will be found useful for showing the projected land-use districts.

The time and effort spent in preparing a land-use plan will vary. Townships that are chiefly rural may need only a simple or roughed-out plan. Whether simple or complex, the plan will prove invaluable in helping shape decisions as to what zoning districts shall be created, and the standards or regulations that should be adopted for each district.

The land use plan will serve many purposes other than zoning. It will be a useful guide for other public or private projects in the township, such as the location of new roads, schools, churches, playgrounds, traffic control installations, water and sewer lines. When used for these purposes, their location is best shown on separate maps.

USE OF ADVISORY COMMITTEES

The creation of a good land use plan is a big responsibility. A wise zoning board will surround itself with unofficial advisory committees to assist it in gathering information and interpreting it.

The cooperation of property owners' associations should be sought in suburban and resort areas. If none exists their formation should be encouraged. In the farming areas, farm organizations can be helpful. Business organizations and service clubs should be consulted regarding commercial and industrial locations. Since unincorporated villages are included in zoning ordinances, their residents should be invited to create committees to counsel the zoning agency. Public officials and agencies can furnish information and counsel. The planning commission of a city in the area may be asked to cooperate.

PLANNING COMMISSIONS

Michigan's laws permit any township to also create its own official planning commission to study its conditions and formulate a "master plan" which may be used as a basis for zoning.

Townships may choose between two acts in creating such a commission, Act. 285 of 1931, or Act 168 of 1959.

Act 285 is primarily Michigan's city or municipal planning act. It was opened to townships in 1952 by merely inserting the word "township" into the defini-

tion of "municipal." No other change was made. Some of the terms employed by the act must accordingly be interpreted when applying them to townships, such as supervisor for "mayor," township board for "council," and so on. The act permits the creation of a commission by ordinance of the township board without a referendum.

Act 168 was primarily designed for townships. The township board may create by resolution a planning commission with power to make a basic plan for the development of the unincorporated portions of the township. The action of the board in creating such a commission is subject to a petition for a referendum within 60 days of the publication of the resolution.

An important feature of both of these acts is that the planning commission may also become the township zoning agency, automatically under Act 285, and by resolution of the township board under Act 168. In either case, the commission then acquires all of the duties and powers of the zoning board in addition to broad planning functions.

Most townships in the state have zoned directly through the agency of a zoning board. As problems increased and the need for more comprehensive planning developed, some have changed to planning commissions.¹

3. Preparation of the Zoning Ordinance

Because of the long-range character of the plan, the ordinance will not necessarily fully reflect all of its projections or determinations.

Population may not as yet have increased to the level which it seems destined to reach, and therefore less land may be zoned for residential or commercial use than may be called for in later years. Perhaps a public water or sewer system must first be put in, or highway improvements made. The ordinance will reflect mainly the practical land uses for the more immediate future. Later amendments may then bring the ordinance more completely in line with the plan,

¹Counties may create planning commissions under Act 282 of 1945. The act does not provide, however, that this commission automatically becomes the county's zoning commission, nor that it may be so converted by resolution of the board of supervisors. It can, of course, work cooperatively with the zoning commission in developing plans as a basis for the zoning ordinance. But it can only act in an advisory capacity.

or with new conditions that may not have been apparent when the plan was prepared.

A zoning ordinance is generally made up of two parts, (1) a map showing the location and boundaries of each zoning district, and (2) an accompanying text which specifies the zoning requirements. A zoning map is not required by law, but is very serviceable. The location of each district can be described in the text by sections, or metes and bounds, or other delineation.

The same kind of base maps used for the inventory and land-use plan will be useful for the zoning map.

The zoning districts may be of any number, shape, size or kind that best serve the needs of the township (or county). The following are merely illustrations. The boundaries should be carefully described or clearly shown on the map. Where boundaries on the map do not follow roads or other established lines, their location should be carefully scaled and appropriate dimensions or enlarged insets entered on the map.

RESIDENTIAL DISTRICTS

Various kinds of Residential Districts may be provided for. They may be strictly residential, i.e. chiefly only dwellings or they may be combinations of homes and other property uses, such as handicrafts, or professional offices. Each township and county makes its own decisions.

To prevent nonresidential uses from creating nuisances, traffic hazards or other problems, the ordinance may require a "special permit" approving their specific location or operation. The conditions under which such permits will be granted should be spelled out in the ordinance.

AGRICULTURAL-RESIDENTIAL DISTRICTS

While most good farm communities prefer having their community remain primarily in farming, many land owners also wish to retain the privilege of "selling off" land for nonfarm homes, especially when located within commuting distance of towns or cities having some kind of employment. Provision is therefore generally made for some combination of rural residence or subdivision uses with farming. Other uses more or less compatible with farming, or deemed not particularly objectionable to other residents if properly located, may also be included. They may

be admitted without limitations as to location or operation, or be subject to "special permit" in some cases.

Such associated uses may include processing and storage plants for crops of the area, sale and service of agricultural machinery and farm supplies, landing fields, trailer parks, junkyards, and so on.

It should be noted when land is zoned "agricultural" that this includes all land making up the average farm—woodlots, pasture, etc. as well as cultivated.

It should also be noted that zoning does not, as is sometimes supposed, regulate what crops are to be grown or how the land is to be managed, or other operations of a farm. Each land owner is free to make these decisions for himself, just as he would be without zoning.

COMMERCIAL DISTRICTS

Commercial Districts are combinations of business, commercial and service enterprises. These may include stores, restaurants, offices, personal service shops, gasoline service stations, garages, lumber yards, motels, banks—any enterprise commonly associated with what are known as business centers. They may be "shopping centers." Various "light industries" may be permitted.

Overzoning for business in any one area should be avoided. Only a small proportion of any community is ever needed for this purpose. Strip zoning along arterial highways is especially poor practice. It causes traffic congestion, increases accidents, and in time may destroy the highway as an arterial. If provided at all, it is better limited to service roads abutting the highway, with safe exit from and entry to the highway.

Business clusters at highway intersections are also often accident makers and cause congestion.

INDUSTRIAL DISTRICTS

Good industrial districts have available power, good rail or highway transportation, suitable conditions for waste disposal, good water supplies and ample space for buildings, yards, parking and expansion. Good access to pleasant residential districts, and location in a well-planned and zoned community help maintain happy and contented employees.

Until a few years ago, most suburban and rural communities objected to having industries and zoned against them. They were thought of as dirty, smoky,

unsightly and depreciative of property values. If admitted at all, they were often relegated to the unwanted lands of the area.

Today most industries build plants and maintain landscaping as attractive as the suburban home owner. Many modern industries, in fact, are becoming as choosy in site location and neighbors as the home owner. They may even refuse to go into an area not zoned against homes or other land uses which may object to their presence, or which may pose nuisances insofar as the industry is concerned. They prefer districts zoned primarily in their interests.

Overzoning for industrial uses should be avoided the same as overzoning for business purposes.

RECREATION DISTRICTS

As the name implies, lands suitable for summer homes, parks, playgrounds, sports, and other recreational activities may be zoned as Recreational Districts. Lake and stream borders, attractive wooded areas, and lands having some unusual natural or historical feature may also be included in such districts.

Any community possessing these attractions has natural resources of the first order that should either be properly conserved and protected by zoning against misuse and exploitation, or moved into public ownership. They are permanent assets, virtually indestructible, invaluable, and capable of serving untold generations.

An area within commuting distance of city employment and suitable for all-year residence as well as summer cottages could be zoned as a Recreational-Residential District.

Stores, shops, boat liveries, skating rinks, night clubs, dance halls and other places of amusement or service usually associated with recreational areas are best grouped separately, and not mixed with residential lands to avoid conflicts and traffic hazards. They may be zoned as Recreational-Commercial Districts.

FORESTRY OR FORESTRY-RECREATION DISTRICTS

Such districts occur chiefly in northern Michigan, where the chief use of land is for production of trees, various forest products, and wildlife. Since most forested areas are also desirable for various types of

recreation, they may be zoned as either straight forestry, or recreation-forestry districts.

Land use in forestry-recreation districts may provide for summer camps, resort lodges, hunting, fishing, trapping, parks, camp grounds, summer homes, winter sport areas, motels, cabin courts, and restaurants, in addition to lumbering, pulp wood cutting, and other forest industries.

TEXT OF THE ORDINANCE

Following determination of the districts into which the township (or county) is to be divided, the text of the ordinance is written. The text

- states the purpose of the ordinance;
- indicates the zoning districts and itemizes the future uses of land and property that will be permitted in each;
- sets forth the standards or conditions under which permitted uses may be carried on, such as minimum lot sizes to insure safety for sewage disposal;
- provides for administration of the ordinance, penalties for violations, a Board of Appeals, and for amendments.

In brief, it details the conditions to which future use of land and property will be subject, to the end that each persons property may enjoy equal protection and rights, and the overall objectives of planning and zoning are carried out, reasonably and fairly.

People sometimes murmur over the length of zoning ordinances. "Can't we have just a short ordinance?" is a common question. The answer, of course, is "Yes." An ordinance may be as long or as short as desired. A "short" ordinance, however, governs no more than it includes. If too abbreviated, many things are left largely to chance, and the exploiter and don't-care land owners are left free to use their property in any way in which the ordinance does not limit them, regardless of how their actions may hurt the community.

TECHNICAL ASSISTANCE

Since members of planning and zoning agencies are chiefly laymen in these fields, the enabling acts permit them to engage technical assistance. Various kinds of aid are available—professional planners and consultants, planning firms, engineers, and the like, al-

though the number of persons trained in rural planning and zoning is still limited.

Assistance may also be obtained from educational institutions in the state through the county's cooperative extension office or directly. Such expert assistance can be very helpful. Any township is at liberty, however, to plan and zone without employing such assistance, and many have proceeded largely on the popular "do-it-yourself" basis.

4. Public Hearing on the Proposals

After working out the zoning proposals, the zoning agency must hold a public hearing before submitting its recommendations to the governing body for action. Two newspaper notices of the hearing must be given in advance, the first not more than 30 days nor less than 20 days, and the second not more than 8 nor less in advance. The notices must include the places and times at which the proposed ordinance and maps may be examined before the hearing, so that anyone that wishes may inform himself of the proposals.

In addition to the public notice, not less than 20 days notice must also be given by certified mail to each railroad, and to each electric, gas, pipeline, and telephone public utility within the township (or county) that registers its name and address with the zoning agency.

However, experience has shown the value of first holding informal neighborhood hearings in advance of the legal hearing. These meetings provide opportunities to explain the proposals "on the ground," to seek local advice, and to see how well the proposals meet the conditions of each neighborhood. They are the time-tested manner of obtaining good government by democratic means. Issues that may be difficult to settle at the legal hearing are often more easily resolved in informal meetings.

5. Submission of Zoning Proposals to Approving or Coordinating Agency

Following the public hearing, township zoning boards must submit their zoning proposals to their county zoning commission for approval. (Counties follow a somewhat reverse order in this and the next step. Note footnote). If the county does not have such an agency, then the board of supervisors is required

to appoint a "coordinating zoning committee" of three persons to review the township's proposals. This committee may be made up of private citizens, or supervisors, or both. As the name indicates, the chief responsibility of this committee is to coordinate the ordinance with the zoning ordinance of any township, city or incorporated village having a common boundary with the township.¹

Approval may be conclusively presumed unless the clerk is notified of disapproval within 30 days of receipt by the zoning commission, or coordinating committee.

6. Enactment of Zoning Ordinance by Township Board

Following approval of its coordinating agency, the zoning board transmits the zoning proposals to the township board. The township board may, of course, make any changes it considers desirable, provided the changes are first submitted to the zoning board for a report.

After receiving the report, the township board must grant a hearing on any proposed provision of the ordinance to any property owner who files a written request to be heard, and request the zoning board to attend the hearing.

Thereafter, at any regular or special meeting called for the purpose, the township board may adopt the ordinance with or without any amendments that have been previously considered by the zoning board or at the hearing, and give immediate effect to the ordinance, if it desires to do so.²

¹Counties must submit their ordinances to a state agency for approval. The Michigan Department of Economic Development at Lansing is the agency at present charged with the responsibility of approving county zoning ordinances. Before submitting an ordinance to the Department, however, it must first be adopted by the County Board of Supervisors, and then submitted to the Department by the county clerk.

²Before adopting a county ordinance, the board of supervisors may also make changes in the proposals submitted by the zoning commission if first referred to the commission for its advice or suggestions. However, the board is not required by the zoning act to grant a hearing to any person requesting it, as township boards are, although it is good practice to do so, nor is the board empowered to give the ordinance "immediate effect." The ordinance becomes effective on the date following its approval by the Department of Economic Development.

7. Publication of Ordinance

Township ordinances must be published in full within ten days after adoption in a newspaper which circulates in the township. A newspaper having general circulation is not mandatory.

Unless given immediate effect upon adoption, the ordinance may not become effective until 30 days after publication, but will not automatically do so. The effective date should therefore be specified.¹

8. Optional Referendum or Vote on Ordinance

There is a popular belief that rural zoning ordinances must be voted on before they become effective. This is not true.

Voting is entirely optional. If eligible voters petition for a referendum within 30 days of passage², then the ordinance must be put to a vote; otherwise not. A simple majority can sustain or reject it.

Persons signing the petition must be 15% of the qualified electors residing in and having property assessed for taxes located in the unincorporated part of the township.³

The ordinance will remain operative until rejected by a majority of the eligible electors who vote. Voting may take place at either the next regular election, or at any special election called for the purpose.⁴

The privilege of petitioning for a vote on an ordinance places zoning on a strictly "home rule" footing. It provides direct democratic action. In the last analysis, the decision of how people prefer living together, and under what standards, may rest with the electorate. They may have the "last word"—not the zoning body, or the coordinating agency, or the governing body.

¹County ordinances need not be so published. A certified copy, however, must be kept available in the office of the County Clerk for public use and a copy filed with the Secretary of State. Counties usually print their ordinances voluntarily in booklet or leaflet form as a public convenience. Most townships also make printed copies in booklet form available for public distribution.

²Within 30 days following the effective date in counties.

³In counties, the number must be equal to 15% of the total vote cast for all candidates for governor at the last preceding election in the unincorporated portion of the county.

⁴Counties may choose any regular election, as well as call a special election.

AFTER ENACTMENT

Existing Uses May Be Continued

What occurs to uses of land being carried on when an ordinance becomes effective, and to buildings and structures that are contrary to the ordinance? Does zoning force their discontinuance?

No. The use of any "building or structure and of any land or premises as existing and lawful at the time of enactment of a zoning ordinance . . . may be continued although such use does not conform with the provisions of such ordinance" is written right into the state's zoning acts.

In other words, zoning is not retroactive. The privilege of continuing a "nonconforming use," as this is called, may be exercised by the owners of the property (whether heirs or other persons) provided the use existed at the time of enactment of the ordinance. Should a nonconforming use be abandoned or discontinued, or vacancy occur for a period of time, however, then ordinances usually require that all future uses of property conform with the ordinance. The general thought behind this limitation is this:

Nonconforming uses are generally not in harmony with other uses in the district. This does not necessarily mean they are bad in themselves. They may be legitimate, useful and desirable. But they may be in a wrong or poor location, and fit better into other districts. Or they may create unnecessary problems, or be in the nature of nuisances where located, or hazardous to surrounding property, or depreciate its value or enjoyment.

Ordinances therefore seek the elimination of such property uses, or their transfer to districts where they are more compatible with other uses. The fairest time, it is generally agreed is when such uses are discontinued or abandoned. Ordinances usually set a time limit—six months or a year or so—following abandonment or discontinuance after which the privilege of resuming a nonconforming use is forfeited.

Enforcement and Penalties for Violation

To carry out the purposes of the ordinance, the legislative body appoints some person as its administrative agent. The "zoning administrator," or "building inspector," as he may be called, is sometimes a select-

ed member of the township board, sometimes a person especially employed for that purpose.¹

Persons planning to erect a building are then usually required to file an application declaring their intention with the administrative official. They fill in some form stating their purpose and intent to comply with the ordinance. If the intent conforms with the ordinance, the applicant is issued a "permit" or "certificate of approval." The fee charged, if any, is left to the decision of each township. It must be a reasonable fee. The administrator usually follows through to check on conformance, and issues a "certificate of compliance" upon satisfactory completion.

Failure to comply with the ordinance is considered a "misdemeanor" by general state law, and is punishable by a fine up to \$100.00 or imprisonment up to 90 days, or both. Each township (and county) decides the limits for violations of its ordinance within these limits, as for example no more than \$50.00 or 30 days' imprisonment. The exact amount in any case is then fixed by the court upon conviction. Action for violation may be initiated in either justice or circuit court by any citizen as well as any official or agency of the county or township.

The requirements of most ordinances are usually easy to comply with. They include most of the common-sense things that people would do anyway. Violations occur chiefly on the part of persons unwilling to "go along with" the community.

Boards of Appeal

Zoning ordinances sometimes work unintentional hardships on individuals since they are generally designed to meet average conditions and to benefit the community as a whole. An individual may find himself unable to meet some "letter" of the ordinance and yet be able to act within its intent and purpose.

The Zoning Acts therefore require each township (or county) that zones to appoint a Board of Appeals to serve as a kind of simple court made up of the individual's own fellow citizens from whom he can seek exceptions or justice.

¹Counties generally engage individuals who are not members of the board of supervisors.

A township board of appeals consists of three members: the chairman of the zoning board; a member of the township board selected by the township board; and an elector residing in the unincorporated portion of the township selected by the first two members. The elector may be neither an elected officer of the township nor an employee of the township board.¹

Boards of Appeal are empowered to act upon four kinds of matters:

(1) All questions arising in the administration of an ordinance, including interpretation of the zoning maps.

(2) All matters which an ordinance may properly refer to the Board for determinations.

(3) Appeals from actions of the administrative official, should an applicant disagree with his decisions. If an administrative official refuses to issue a "permit" for some purpose which an applicant feels is not justified, he may appeal the decision to this Board.

(4) Vary the strict letter of the ordinance in some degree so that substantial justice is done and yet the spirit of the ordinance is observed. It should be noted that the word, "vary," means only alter or modify but, not change or amend. If, for example, an ordinance requires erection of all future dwellings on lots no less than 75, 100 or other foot width and a property owner finds himself with a lot of lesser width wedged in between other land owners, the Board of Appeals may vary the specified requirement and permit construction of the dwelling on his lesser lot. But the use of the lot must still be only for a dwelling.

A Board of Appeals does not have power under the guise of a variance to either disregard or amend the ordinance under which it functions. The Board cannot change its fundamental terms nor rezone land for other uses, as is sometimes believed (and as such boards sometimes illegally do.) Only the Township Board, or the County Board of Supervisors, may amend or change any part of their respective ordinances. A Board of Appeals is primarily a quasi-

¹County boards of appeals may vary from 3 to 7 persons. They are appointed by the board of supervisors for staggered terms of 3 years. One must be a member of the county zoning commission. All others must be electors residing in and having property assessed for taxes located in the unincorporated portion of the county. They may include no elected officer of the county, nor any employee of the board of supervisors.

judicial and administrative agency. It has no legislative powers, nor may any such powers be delegated to it by the zoning ordinance.

Decisions of the Board of Appeals may be appealed to the Circuit Court on questions of law and fact.

Keeping Up-to-Date—Amendments

Zoning ordinances may be changed or improved like any other law. Amendments may be petitioned for by any citizen as well as proposed by the zoning agency or governing body.

Starting with the zoning board, the same procedures—step-by-step—are required as were employed in enacting the original ordinance except that an individual property proposed for rezoning must be posted at least 8 days in advance of the public hearing (step 4.)¹

Following adoption of any amendment, it may also be voted upon by petition, as in step No. 8. Thus no individual, group or governmental body is in a position to, as it were, play fast and loose with an ordinance.

It is important to amend an ordinance from time to time. Human judgment is limited, new conditions arise, and changes which an ordinance was designed to guide may take new directions. The basic land-use plan should be constantly studied and brought up to date, and the zoning ordinance amended accordingly.

To help keep ordinances up to date, the zoning acts provide that zoning agencies be continuing bodies. They must hold a minimum of two regular meetings a year at which any persons having interests in any matter that should properly come before the agency must be heard. The township zoning board must give newspaper notice of the meeting not more than 15 days nor less than 8 days in advance of the meeting.²

The zoning board is also required to file periodic reports with the township board on how the ordinance is working out, including recommendations as to changes, if any, that should be made.

¹Such posting is not required in county zoning.

²Counties not more than 20 days nor less than 8 days.

NOT A BUILDING CODE

Many people confuse zoning with building regulations—the manner of construction and the types of materials of which buildings must be erected. It is also often assumed that costs are included. However, the construction of buildings is the particular business of building codes, and neither the zoning act nor the building-code act empower the imposition of price requirements. These are matters of private deed or subdivision restrictions but are often confounded with zoning.

The confusion usually occurs because many ordinances require “building permits.” These permits, however, are more in the nature of property-use certificates. They certify that the kind of building proposed for erection, and its use and location (setback, etc.) conform to the requirements of the ordinance.

Moreover zoning ordinances and building codes should be enacted as separate ordinances. Regulations governing the construction of buildings should not be included in zoning ordinances, nor vice versa. The legislature has provided separate acts under which regulations governing each may be adopted (Act 185, P.A., 1943, as amended, for townships; Act 62, P.A., 1943, as amended, for counties). Zoning ordinances which include such regulations are in jeopardy of being found unconstitutional since the state’s constitution declares that “No law shall embrace more than one object” (Article V, Section 21.) However, the provisions of a building code and zoning ordinance may be coordinated, similar to those of any other laws.

INTERIM ZONING ORDINANCES

In order to protect the use of its lands and resources and the well-being of its citizens during the time required to prepare a regular, well-thought-out ordinance, townships and counties may enact interim or “short-term” ordinances. The time required for enacting such an ordinance is considerably shorter since the zoning acts permit the reduction or elimination of certain procedures required for a regular ordinance.

First, of course, the zoning act must be made operative (step 1) and the zoning board (or commission) appointed. The township board (or the county board of supervisors) may then authorize its zoning agency to submit recommendations for an interim ordinance

without consideration for the detailed studies and public hearing required for regular ordinances.

Before submitting its recommendations, the zoning agency must present its proposals to its approving or coordinating agency, similar to step No. 5. However, to shorten the procedure, the township (or county) clerk must be notified of disapproval within 15 days following receipt of the ordinance.

The ordinance may be given immediate effect upon adoption. It is not subject to petition for a referendum. It is limited to one year from the date it becomes effective, but may be renewed for two additional years by resolution of the board.

Following adoption, the township (or county) must publish the text of its interim ordinance in a newspaper within 10 days following adoption. Amendments to the ordinance may be adopted following the same procedures involved in its enactment.

An interim ordinance thus provides a township (or county) with a quick method to protect itself against impending conditions or developments that may leave indelible marks or handicaps upon its future while more thorough studies are under way.

WHEN TO ZONE?

The answer—Before it is too late.

Zoning is often dismissed or put off on the grounds that the township or county is as yet relatively free of problems or unwanted situations. Therefore, it is argued: “Why zone until such problems occur?”

No thinking citizen or responsible government could indulge in greater self-deception.

The belief that a bad or wrong condition can be corrected by zoning after it occurs is a false assumption. Zoning is not retroactive. It cannot recapture the quality of a neighborhood hurt by actions of an indifferent property owner. It cannot readily restore the hodgepodge of a community to good order.

The time to zone is before problems arise, or before more problems occur, if a community is already afflicted.

The best use of zoning is to employ it constructively, to use it to build better, more solid, sound and well-

ordered communities, and to protect the quality of a township or county.

Forward-thinking citizens are coming more and more to believe that the township or county which leaves its future to chance, and which is not conserving the basic things upon which its well-being is founded, is failing in its duty to its citizens, both of the present and future. It is permitting its resources and particular advantages for living, work and play to be wasted, exploited and even destroyed. The result is to impose unnecessary and sometimes all-to-costly handicaps upon its people and their descendants.

No township or county need grow like Topsy and become a hodge-podge of conflicting land uses. Most of our rural and suburban communities are still virtually unspoiled. However, it is shortsighted to believe that they will somehow remain so. One day a parcel of land will change hands. Then another, and yet others. What kind of uses will be made of them? This is a decision which the people of the community may make in advance.

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