Land Use Regulation: Construction Permits
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Daniel A. Bronstein, Department of Resource Development
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Daniel A. Bronstein
Dept. of Resource Development

This is one in a series of publications designed to acquaint the interested Michigan public with recent concepts in land use guidance and management. The series covers outdoor advertising, junkyards, historical districts, zoning ordinance administration and implementation, and construction permit qualification systems.

Some of these concepts have been used in only one or two places in the U.S. and others have been used in parts of Michigan. In no case should it be assumed that any of these systems can be validly applied in any given locality. Before adopting one of these systems, public officials should consult with the attorney for their governmental unit.

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Introduction

Construction permit qualification systems are, perhaps, the newest concept in land use guidance or control. The purpose of such systems is to determine the manner and sequence in which residential development will occur on land already zoned residential. Known variously as "time-phased", "time controlled" and "growth controlling", these systems work by specifying conditions for the issuance of building or construction permits. In the two leading cases, considered below, no changes in statewide laws were necessary for such systems to be valid.

The Ramapo Plan[1]

Ramapo Township, New York, was extremely concerned with the way in which new residential development was outrunning the township's ability to provide governmental services such as paved roads, sewers, water, schools and parks for the residents. The township proceeded to adopt a "capital improvement plan" which would, over an 18-year period, provide all these services to the entire township. If land were developed before the services were scheduled for installation, the new residents would either be without them or have to be given them out of sequence with the capital plan. So, Ramapo enacted a special permit system for residential development.

The permit system is applicable to residential development only and thus is supplementary to the general zoning ordinance. This means that only land zoned residential is subject to the permit system and that, as in any zoned community, if the land is not zoned residential it cannot be developed for housing. Under the permit system, a developer has to submit information on the availability of 5 types of public services with his permit application: (1) sewage disposal system, (2) drainage facilities, (3) parks and recreational facilities, (4) road system, (5) fire houses.

The information submitted by the prospective developer is then evaluated by the township and each of the five services rated on a scale of 0-5. For example, a paved state road with curbs, storm

sewers and sidewalks would rate 5, an unimproved dirt road 0. The points in each category are then totalled and if there are 15 or more, the permit for development is issued.

The Petaluma Plan[2]

The city of Petaluma, California decided that it was developing much faster than the residents desired, and was, as a result, losing its "small town character" and becoming a simple suburb of San Francisco. To effect "the preservation of Petaluma's small town character and the avoidance of the social and environmental problems caused by an uncontrolled growth rate" Petaluma enacted a "Residential Development Control System" (RDCS) as a supplement to its zoning scheme.

Under the RDCS, the city states that it will issue only 500 development permits each year. The permits are issued on the basis of a point system similar to the Ramapo system. In addition to the items considered in the Ramapo system, however, the RDCS gives points for geographical location, environmental design, architectural design, and inclusion of low and moderate income housing. After all applications for a given year are filed, they are assessed and given point totals, and permits are then issued from the top of the list down until all 500 are awarded.

Comments

Neither the Ramapo nor the RDCS system applies to individuals proposing to build residences for themselves on their own property. Both systems are designed solely to avoid the problems of large-scale uncontrolled residential growth, and deal only with subdivisions, apartment complexes, condominiums and trailer parks.

Both the Ramapo and RDCS systems are completely separate from the zoning ordinances, although both pre-suppose the existence of zoning. The zoning ordinances still designate which land is available for residential development; these new statutes merely define the sequence and limitations of development.

Note that despite the similarities of the two schemes, there are considerable and significant differences. Under the Ramapo scheme, a developer always has the option of providing the needed public services himself and, once he has accumulated 15 points, he can go ahead no matter how many other developments are underway. Under the RDCS system, a developer could have an excellent plan, but if there are 500 units of superior plans pending, he will still be unable to proceed. In this sense, RDCS is much more restrictive than is the Ramapo system.

These differences, of course, follow directly from the different aims of the two plans. Ramapo, an underdeveloped township, was faced with a capital outlay problem which had to be solved in order to provide new residents with a specified minimum "quality of life". Petaluma, an incorporated city, found itself running out of undeveloped land and undergoing the change from rural center to suburb. So Ramapo mandated minimum "quality standards" to be met before construction would be permitted while Petaluma limited the rate at which it would permit its population in increase. Note, however, that Petaluma's RDCS does **not** create problems of discrimination against minorities and the poor since one of the ways to get RDCS points is to specifically provide for such groups. This sensitivity for the poor helps to avoid many otherwise sticky legal issues.

Application in Michigan

There have been no Michigan cases in which localities have attempted to apply such concepts. In the absence of an authorizing statute, the probable fate of such an attempt, would be court-mandated invalidity. This is not certain, however, as a system similar to Petaluma's might eliminate many of the objections raised by Michigan courts to other types of zoning limitations. Certainly, the validity of such a system would be stronger if specifically authorized by statute, but no such statute exists in Michigan. Of course, no such statute existed in New York or California, either. Nevertheless, it is the author's opinion that persuading a Michigan court to uphold such a system would be extremely difficult, especially in the absence of a statute.

Conclusion

The Ramapo and Petaluma plans are merely two of many types of construction permit qualification systems that can be created. Depending upon the problem faced, a community can tailor the point allocation system best designed to its own needs. Of course, not all communities have problems that can be solved in this way, but with some thought and ingenuity, this type of system can be adapted to many types of problems. All in all, the point allocation system is probably one of the most important developments in land use control in recent years.

FOOTNOTES

1. *See: "Zoning Program for Phased Growth: Ramapo Township's Time Controls on Residential Development", 47 N.Y.U.L. Rev. 723 (1972); Golden v. Ramapo, 30 N.Y. 2d 359, 285 N.E. 2d 291 (1972)*
2. *See: Construction Industry Assn. v. City of Petaluma, -F. 2d. - 8 E.R.C. 1001 (9th Cir. 1975); reversing 375 F. Supp 574, 6 E.R.C. 1453 (N.D. Cal 1974)*

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