

What's So Bad About Zoning?

by Edward McMahon

“Whatever you do, don’t use the ‘Z’ word.” I sometimes get this advice before speaking to groups in small towns and rural areas throughout America. I typically follow the advice, but it’s worth asking – *what’s so bad about zoning?*

By some estimates over 9,000 cities, towns, and counties, big and small, in every region of the country and representing at least 90 percent of the nation’s population have some form of zoning in place.

Zoning is the basic means of land use control employed by local governments in the United States. Zoning has been around since 1916 when New York City enacted the nation’s first comprehensive zoning ordinance to protect the health, safety, and welfare of residents packed into crowded urban tenements.

Despite longstanding criticism from some academics and property rights advocates, zoning is here to stay.

Does this mean that every zoning decision made by a local planning commission is a good one or that zoning has produced the beautiful, high quality living and working environments that we all care about? No – zoning has not always lived up to its promise and it is sometimes misused. For example, in some places, zoning is used to exclude low-income families or keep out minorities. In other places, zoning is used to give every landowner and developer exactly what they want, regardless of the cost to the community or the impact on adjacent landowners. Want to build a shopping center in a floodplain or a race-track next to a residential area? No problem – we’ll just rezone the property.

Zoning is merely a tool. It can be used constructively as a positive force for community good or it can be misused. Zoning is what you make of it. It works

best when it is based on a vision and closely tied to the comprehensive plan. At its best, zoning can provide landowners and the marketplace with predictability and certainty. It can protect critical resources and it can increase property values. However, conventional zoning, by itself, will almost never create a memorable community.

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This is because conventional zoning is a limited tool. It is good for protecting what’s already there and for preventing nuisances. It is not as good for shaping the future or for improving the quality of new development. This is because most zoning codes are proscriptive in nature. They try to prevent bad things from happening without laying out a vision of how things should be.

Successful communities think beyond conventional zoning. They use education, incentives, and voluntary initiatives, not just regulation. They also use design standards, incentive zoning, overlay zoning, density bonuses, and other innovative techniques. They allow for walkable, mixed-use neighborhoods.

Today’s communities face complex issues, ranging from dealing with mixed use development to coping with a proliferation of billboards. These issues require solutions going beyond conventional zoning’s focus on the regulation of use, bulk, and intensity.

DEALING WITH THE “Z” WORD

So what about those folks who think zoning is a dirty word? Why do they get so upset whenever zoning is proposed in a previously unzoned municipality or county, or whenever a community wants to strengthen its zoning ordinance?

In my experience, the most common objection to zoning is a perceived loss of control. Zoning opponents say “if you own a piece of land, you should be able to do what you want with it.” Related to this is a pervasive fear that regulation of any kind will reduce property values. Overcoming these objections is not easy, but it can be done, particularly if you separate the facts from the myths.

MYTH #1 – Zoning is un-American.

Fact: A county commissioner from a western North Carolina county once told me how he was called a Communist at a public hearing on a proposed zoning ordinance. He replied that while he was a Methodist, he was certainly no Communist.

Zoning disputes often inspire inflated rhetoric. Perhaps this is because zoning does mean that the interests of individual property owners must sometimes yield to the interests of the public. But this is as American as baseball or apple pie. In fact, for more than 150 years our courts have consistently held that the Constitution allows for the public regulation of private land.

To understand this, consider the old principle of law that says “your right to swing your fist ends where my nose begins.” This principle applies to real estate as well. It means that with rights come responsibilities. Even political philosopher John Locke held as a basic assumption that “free men would never exercise their rights without recognizing the obligations that the exercise of those rights implied.”

MYTH #2 – Sparsely populated rural areas don't need to control uses of land.

Fact: It is true that some places grow much faster than others, but change is inevitable every place in America. Technology, immigration, new roads, the global economy, and many other factors are changing communities whether they are prepared for it or not. There are really only two kinds of change in the world today: managed change and unmanaged change. Land use planning is one way to mitigate and manage change. Rural communities that want to preserve the status quo have no real choice except to plan. The old-timers who most abhor change are often the first to realize that without sensible land use controls, everything they love about a place will ultimately disappear.

MYTH #3 – Land use controls will increase taxes and reduce property values.

Fact: It is sprawl – not zoning – that increases taxes. Haphazard, inefficient land uses require taxpayers to pay more and more for roads, sewers, schools, utilities, and other public infrastructure. As for property values, every day hundreds of decisions are made by public bodies that affect someone's property values; however, these decisions are just as likely to increase the value of property as to diminish it.

Sensible land use controls almost always enhance rather than diminish property values. If you don't believe this, visit any historic district and compare property values in the district to property values outside the district. On the other hand, try selling a home next to an asphalt plant, junk yard, or other noxious use. Nationally known real estate appraiser Don Rypkema says, "sensible land use controls are central to economic competitiveness in the 21st century."

MYTH #4 – Planning is a bad idea.

Fact: The truth is virtually every successful individual, organization, corporation, or community plans for the future. Failing to plan simply means planning to fail. Try imagining a company that didn't have a business plan. They would have a

hard time attracting any investors and they would be at a huge disadvantage in the competitive marketplace. The same is true of communities. A comprehensive plan is like a blueprint. It allows a community to define and accomplish its objectives. Even the Bible recognizes the importance of planning. As the book of Proverbs says, "Without vision, the people will perish."

Planning provides the essential bedrock on which zoning should be founded. In fact, communities that engage in zoning in isolation from planning are setting themselves up for failure – as their zoning regulations will often appear arbitrary and without any consistent, or long-range, purpose.

SUMMING UP:

This year marks the 75th anniversary of the landmark United States Supreme Court case *Euclid v. Ambler Realty*, which upheld the basic constitutionality of local zoning. Zoning's original supporters included both progressives and conservatives who shared a belief in the power of planning to improve people's lives. In fact, it was former President Herbert Hoover, who as U.S. Secretary of Commerce, chaired the commission which drafted the first model zoning enabling act. As Hoover noted in a foreword to the model act: "the discovery that it is practical by city zoning to carry out reasonably



One of the nation's earliest advocates for zoning was then Secretary of Commerce Herbert Hoover.

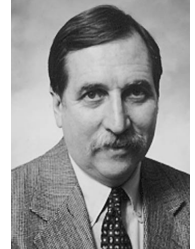
neighborly agreements as to the use of land has made an almost instant appeal to the American people."

Perhaps the most important reason why zoning has flourished, despite its imperfections, is that it gives citizens a voice in local government. Without zoning, citizens have no voice when out-of-town corporations or big developers run roughshod over local values and traditions. It also makes land

use decisions public. This is important because the more a community understands how decisions are made, the better future decisions will be.

Zoning is really about balance. At its best, zoning can help strike the elusive balance between quality of life and economic vitality. ♦

Edward McMahon is a land use planner, attorney, and Vice-President of The Conservation Fund. He is former president of Scenic America, a national non-profit organization devoted to protecting America's scenic landscapes.



On-Line Comments

"Staff here is still marveling over the correlation between this article and an informational meeting we had Wednesday night concerning proposed zoning amendments. I was asked by a 'tyranny response team' member what gave me (i.e., the government) the right to have zoning. I think he was quite surprised when I discussed many of the points outlined in McMahon's article; especially the fact that the U.S. Dept. of Commerce had been requested by business interests to develop a model zoning enabling act; that the courts have upheld zoning since 1926; and that the corollary of the right to hold property is a duty to not cause harm to the community."

– Marilyn Ryba, AICP, Senior Planner, Town of Queensbury, New York

"The importance of the relationship of zoning to the comprehensive plan and capital improvements cannot be stressed enough. Zoning is simply an implementation tool that cannot be successful without a driving vision. In fact, as any practitioner would agree, taken in isolation it generally does not foster good design or enhance a sense of place.

Linkage of vision and planning to zoning is what enables the creation of a community."

– J. Wayne Oldroyd, AICP, Director, Community Development, City of Maryland Heights, Missouri