The Nebraska State Zoning Agency

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• THIS is a discussion relating to a zoning program carried on by the State of Nebraska during World War II. One may ask why such a program carried on for war emergency purposes would be of interest today. As we all know, vast investments are being made by the federal government and the state in the construction of new highways. They are now spending more money than ever before to improve and expand our road network. President Eisenhower has proposed a $101-billion highway program over a 10-year period. These expenditures, representing one of the greatest efforts of transportation advancement in history, clearly should do much to bring our highway system up to date, obsolete though much of it is now.

However, it is imperative to recognize that new highways can become inadequate long before they should unless construction is accompanied by highway zoning and other measures to protect the roadside. Without such zoning and protection, the nation could well dissipate billions of dollars and soon find itself again in a highway crisis. In anticipation of huge highway expenditures, both current and proposed, highway zoning and roadside protection are more urgent than ever.

State and county governments should take steps through legislation and regulation to protect the roadside from uncontrolled commercial development and unlimited access from side roads and business establishments. So far as our more important roads are concerned, action is most needed at the state level. Highway zoning at all levels of government, particularly at the state level, has proven unpopular. Although most states have some type of enabling legislation which permits local governing bodies to adopt zoning regulations, no state to date has state zoning legislation that permits the state itself to do the job. Even the picture so far as nation-wide enabling state and county legislation is concerned is fragmentary.

Only a fourth of the states have enabling legislation that permits all counties to adopt adequate laws for general zoning. Some state enabling legislation permits all counties to adopt limited types of zoning; other state legislation permits only certain counties to adopt adequate laws for general zoning, and still other legislation permits only certain counties to adopt limited types of zoning. Most states have enabling legislation permitting cities of certain classes to zone.

Under the present structure, there is little opportunity for a comprehensive, uniform plan for the development of roadside zoning. The need is for state zoning or some authority whereby the various governmental units that can now zone under state enabling legislation can be consolidated in one zoning district for highway zoning purposes.

Maryland has proposed legislation for the consideration of the state legislature. There is considerable optimism among those who are sponsoring the bill that Maryland may be the first state to have state zoning provisions.

Now let us return to the wartime skeleton which we have dragged out of the Nebraska closet and see where this program might fit into current developments. It was a device whereby zoning districts were consolidated.

The 55th Session of the 1941 Nebraska State Legislature, recognizing the impact
that war industry and army and navy installations would have on land use in the vicinity of these activities, adopted an act relating to health, public welfare, and public safety to provide for the consolidation of cities, villages, or counties, or portions or combinations of them into state zoning districts under the general control of a state zoning agency, an executive department of the state functioning under the governor and composed of the Nebraska Advisory Defense Committee. The bill provided that when a federal fort, airport, manufacturing plant or assembly plant for the construction or assembly of military equipment or the manufacture of explosives, arms or munitions is or is about to be located within or near the corporate limits of cities, villages or counties, or portions or combinations of them, that the establishment of state zoning districts embracing territory used or to be used for the activities described is a matter of general state concern and subject to the zoning provisions as set up in the act.

The state zoning agency was empowered to regulate the height, number of stories and size of buildings and other structures; percentage of lot or land area that may be occupied; the size of yards, courts and other open spaces; the density of population; the location of buildings, structures, automobile trailers, house trailers and land for trade, industry, residence or other purposes; setback building lines in residential districts; redistricting location of trades and industries and the location of buildings designed for specific uses when such are dangerous to the health, safety, morals, general welfare, and prosperity of the entire state and its people. The legislature invoked the police powers inherent in the state and in any and all of its branches of government for the enforcement of this act.

The Nebraska State Zoning Agency is one of a few cases where such an attempt has been made to consolidate zoning done by local governing bodies into one governmental district. Although it is recognized that this system is a poor substitute for state zoning laws, it certainly is a step in the right direction toward a means to obtain uniform zoning regulations between governmental subdivisions.

In the Nebraska plan, counties and cities did not lose their zoning authority. When the property regulation map and written report were received from the state zoning agency, the local governing bodies of the several governmental subdivisions making up the district could approve the map and report in its entirety or, in their discretion, change or alter the boundaries of the use areas when in their respective corporate limits and proceed to zone their governmental subdivisions according to law.

The technical staff of the agency, at the request of the local governing body, of any governmental subdivision composing the district, after the submission of the property regulation map and the written report, could continue to assist the local governing body of the governmental subdivision composing the district in an advisory capacity until the zoning in each such governmental subdivision was completed. In other words, the state zoning agency, in the main, constitutes only a guiding hand toward the end of establishing a uniform comprehensive zoning regulation among the various governmental subdivisions.

However, it can be seen that because of the highly technical aspects of comprehensive zoning, that the technical staff of the state zoning agency could wield a potent hand in the matter of uniformity. Furthermore, such agency would be in a position to encourage local governing bodies to take advantage of the state zoning enabling legislation and, after such legislation had been adopted, insure its enforcement through a continuous sales program.

The Nebraska State Zoning Agency had a productive existence during the war years. It developed comprehensive zoning plans in 13 out of its 98 counties and any number of cities. A vigorous sales program was neces-
sary from beginning to end. In a farming state, such as Nebraska, comprehensive zoning was the farthest from the people's thoughts. Meetings were held jointly and individually with various governmental subdivisions included in zoning districts. Each governmental agency was led by the land from its application to be included in the district to the holding of hearings and final publication of zoning resolutions and zoning ordinances.

Following the war, the work of the agency was forgotten. Comprehensive zoning regulations and plans are still in effect in many of the counties and cities. Many of the counties and cities, however, have forgotten that they have such legislation on their docket. They are not fully aware of the importance of proper land use and other comprehensive zoning regulations. However, a staff at state level could be effective in keeping such regulations alive.

The regulations as developed for the counties and cities in Nebraska gave special attention to land use along highways. Most of such land was included in "agricultural" districts.

Agricultural district use provisions included: (1) any use permitted in residence districts; (2) the agricultural use and uses customarily incidental thereto; (3) forestry, lumbering, mining, quarrying, rock-crushing, gravel pit, borrow pit; (4) fur farming, dog kennels, animal hospitals; (5) cemeteries; (6) sales pavilions and stands for retailing farm produce, commercial greenhouse and nursery salesrooms; (7) driving and archery ranges, riding academies and similar outdoor recreational activities; (8) tourist homes in which overnight accommodations provided are offered for transit guests for compensation; (9) subject to special use permit: trailer camps and cabin camps; (10) outdoor advertising signs and structures, provided that no such sign shall be placed or displayed and no such structure shall be erected within 200 feet of any residence district, entrance to a public park, or right-of-way of any highway which is designated on the state zoning plan as a parkway; (11) subject to special use permit: dumps, provided that such permit shall not be required for disposal of such refuse or material originating from the same premises.

These provisions are not nearly so restrictive as they should be for the proper protection of our highway investment on the more important roads. There is little reason, however, why the zoning police powers could not be extended to provide the type of control needed on state routes where justified because of heavy traffic volumes.

Incidentally, in some of the counties future right-of-way lines were adopted on the main highways as recommended by the state highway department and the county engineer. Although such future right-of-way lines have no effect upon present usage, they are a great help in minimizing the payment of damages resulting from non-conforming usage between the time that the future highway right-of-way lines are established and final acquisition of rights-of-way for highway purposes.

Until such time as state zoning laws are accepted and have been adopted by the states, the use of state zoning agencies, such as was employed by Nebraska during World War II, might provide an interim device that could be sold to the public. Such an agency, under the governor and composed of outstanding citizens of the state, with the aid of trained technical personnel could provide a semblance of comprehensive zoning regulations that would do much to safeguard our present highway investments, to say nothing of the benefits that would accrue from the many other features of a comprehensive zoning plan.

The experience of the Nebraska State Zoning Agency may be worthy of further consideration as an interim device to obtain greater protection of our highway investment from indiscriminate marginal land use and development.