

REPORT OF SUBCOMMITTEE
ON
RIGHT-OF-WAY AND ROADSIDE CONTROL (ZONING)

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This report will endeavor to do three things:

1. Point out the emergence of roadside zoning as a distinct phase of the application of zoning regulations.
2. Discuss the possibility of roadside zoning directly by the State and the relation between zoning regulations thus applied and zoning regulations adopted by local governmental jurisdictions.
3. Suggest a program of research to be pursued by the Subcommittee during the next year.

Much of the material under the first two of these headings is taken from the preliminary draft of "A Planning Manual for Zoning", by Hugh R. Pomeroy, published by the American Society of Planning Officials, Chicago, and from the 1940 report of the Committee on Roadside Development and Control of the American Automobile Association, adopted at the Annual Meeting of the Association, Washington, November 13-15, 1940.

1. The Emergence of Roadside Zoning as a Distinct Phase of the Application of Zoning Regulations.

The forerunners of zoning extend back to Colonial days. As early as 1692 slaughter houses were restricted to certain localities in Boston, Charlestown and Salem, and in 1706 it was required by legislative enactment that a common powder-house for Boston should be located outside the populous areas of the city. Through the following two centuries it became increasingly customary for cities to adopt regulatory measures for protection against structures and uses which were physically dangerous or were for other reasons regarded as nuisances. Such regulations, in the form of building, plumbing, electrical, sanitary, housing and other codes, are in common use today. Out of them grew regulations which were varied according to the conditions of the particular neighborhood, and this application of regulations according to districts was the start of zoning. The first comprehensive municipal zoning ordinance in the country was adopted in 1916. Early zoning ordinances, beginning the exploration of a new field, were usually quite simple in form. The first

expansion of zoning was from this early simple form, usually consisting of one class each of residential, commercial and industrial districts, to a more detailed differentiation among major classes of use. Thus, it is now customary for an urban zoning plan to include districts of the following classes: one-family residential, two-family residential, multiple residential (with further differentiation within these classes of residential districts on the basis of density of population), retail business, general commercial, general industrial and heavy industrial. Many zoning ordinances show still further differentiation, setting up specialized types of retail business districts, or districts in which residential character is modified by low density suburban conditions.

Along with the more detailed differentiation among major classes of use has come a broadening of the scope of the zoning regulations themselves. Thus, some zoning ordinances provide for regulation of the appearance of buildings in certain districts, such as retail shopping centers, or control of the architecture of buildings adjacent to civic centers or in areas of historical significance. Area regulations have been supplemented by the requirement that space for automobile parking or storage shall be provided in connection with multiple residential uses, and in some places in all residential districts; and the requirement that loading and unloading space shall be provided for commercial and industrial uses.

Early in the history of zoning it became evident that an urban area that extended beyond city boundaries into the territory outside could not be completely protected by zoning within the city alone. This "fringe" problem led to the first steps toward zoning by counties, in which zoning of the same general type as that found within cities was extended to adjacent unincorporated areas.

The kind of zoning thus far discussed had its beginning in urban areas; the need for it arose from problems associated with urban concentration and congestion. Within the past few years another type of zoning has appeared from "over the horizon", as it were. Broad studies of the most beneficial utilization of soil, forests, and other natural resources has led to the application of zoning regulations to non-urban land uses. Such zoning undertakes to prevent settlement on lands which can not economically support agriculture; it may also control agricultural practices which destroy the soil through erosion.

In reviewing the extent of the use of zoning of these types we find that over three-quarters of the urban population of the United States now live in zoned cities,¹ that zoned cities are found in all the States, and that nearly 1700 cities are zoned. Municipal zoning enabling acts are found in all the States; in 36 States they apply to all municipalities, in the others either to specified municipalities or to specified classes of municipalities. County zoning of the urban or suburban type is authorized in 16 States, in nine of which the statutes

¹ The term "cities" is used in this report as including all incorporated municipalities, whatever their official designations.

apply to all counties; in the others to specified counties. County zoning regulations are in effect in suburban areas and in areas likely to be urbanized in about 30 counties in 10 States.

The non-urban or rural type of zoning is authorized in nine of the 16 States in which county zoning is authorized. In six of these nine States the statutes apply to all counties; in the others to specified counties. Wisconsin pioneered in this field of zoning and about 35 counties of that State have adopted such regulations. Such regulations are also in effect in two counties of Michigan, and more recently the State of Washington has followed and such regulations are in effect in at least one county in that State.

Roadside zoning must be regarded as lying somewhat between these two types of zoning, i.e., urban and suburban on the one hand and non-urban or rural on the other. Roadside zoning arose from the extension of the urban type of zoning into areas under county jurisdiction. There it frequently found itself faced by problems which had not generally been found in city zoning. For example, a residential area gradually "feathering out" into the open country would frequently find its residential characteristics in the outer areas modified by such agricultural uses as chicken raising. Because such uses do not occur in the more compactly developed inner areas, new types of district classifications were required. County zoning also had to face in a more acute way than had city zoning the problem of controlling the uses which develop along traffic thoroughfares as a result of the traffic first in suburban areas, then in the open country, and has developed new principles of regulation that are beyond the limits of urban zoning formulae. The regulation of the location of roadside business uses and the control of automobile wrecking yards and of billboards, both to prevent hazards to traffic and to protect the scenery, are distinct contributions by county zoning.²

Outside of suburban areas, where the zoning of roadside uses is accomplished as a part of community zoning plans, roadside zoning may be said to be an urban type of zoning in rural areas, in that it deals with intensive types of uses which have intruded into areas which are generally characterized by extensive uses.

It has come to be recognized that there are three major things which should be accomplished by roadside zoning in non-urban areas. These are:

1. To confine roadside commercial uses to designated commercial districts, leaving the remainder of the highway frontage for the uses which are characteristic of the general area through which the highway passes (e.g., agriculture or forestry).
2. To encourage that roadside buildings be set back from highway right-of-way lines.

² The material to this point in this section of the report is taken, with some modifications, from "A Planning Manual for Zoning", Pomeroy, American Society of Planning Officials, Chicago, 1940.

3. To establish control over the appearance of roadside commercial buildings, including limitation of their display of signs.

Distinction should here be made between zoning and regulations which are applied to specific uses. Many States have applied regulations to such uses as ³ "automobile wrecking yards, billboards, or trailer camps, and sometimes to such uses as slaughter houses or the storage of large quantities of inflammable fluids. Such regulations usually require a license for doing business or a permit for the specific use (or both) and impose restrictions as to the manner in which the use shall be conducted. Examples of such restrictions are the requirement of sanitary facilities for trailer camps, fences around automobile wrecking yards and dikes around gasoline tanks, structural safety standards for billboards, and the requirement that no billboard shall be located on the inside of a curve or in any other place where it would constitute a traffic hazard".

"These examples indicate the scope of, and the limit of, this kind of regulation. Since such regulations deal with individual types of uses, they can not establish the comprehensive control over roadside uses which the protection of traffic safety and of roadside appearance require. Likewise, since any such regulatory measure does not cover all roadside uses in a general system of regulations, it has no opportunity to relate roadside uses in general to broad considerations of the public welfare, and is thus limited to dealing with some characteristic of the specific use which may actually concern the public safety, the public health or the public morals. Thus, such regulations can not adequately protect traffic safety: to attempt to designate locations for establishments of the specific use being regulated, on the ground of preventing interference with traffic, would leave unregulated various other uses which might cause the same or greater interference with traffic (for example, attempting to regulate the locations of automobile wrecking yards, but not of gasoline stations). Regulations applied to billboards for the purpose of protecting the scenery would leave the job only partially done if they were not also applied to the control of shacks and of the display of signs by roadside business establishments. In fact, any such selective application of regulations going much beyond the prevention of some acute hazard to safety, health or morals would undoubtedly be regarded as discriminatory, and thus invalid."

"Regulations applied to specific uses may be necessary and they may be greatly beneficial within the scope of their limited application, but they can not solve the roadside problem. What is required is comprehensive regulation of all roadside uses which have a bearing on traffic safety and roadside appearance. Such regulation, including control of the locations of such uses, is a form of zoning."

³ The quoted material from here to the end of this section of the report is taken from the 1940 report of the Committee on Roadside Development and Control of the American Automobile Association.

"Zoning does not replace, but supplements the regulation of specific uses. Thus, a law licensing some type of business, requiring permits for specific establishments of that type of business, and applying safety or health regulations to the conducting of that business, is not replaced but is supplemented by zoning regulations which designate districts where business uses of that type and of other types may locate, and which make certain requirements as to the location and appearance of the structures in which those business uses are conducted."

2. Possibility of Roadside Zoning Directly by the State and the Relation Between Zoning Regulations thus Applied and Zoning Regulations Adopted by Local Governmental Jurisdictions.

The widespread need for roadside protection through zoning and the exceedingly slow progress in the provision of such protection by zoning under county jurisdiction leads to the question as to "whether such zoning might not better be applied directly by the State. There is not here any fundamental question of governmental theory such as is involved in questions relating to the proper respective functions of the Federal government and the State government. In matters of internal regulation the State is sovereign and the localities possess only those powers which are granted to them by the State government. The question becomes one of whether roadside zoning regulations can be applied more effectively by the State itself or by its political subdivisions.⁴

"On the one hand, it can be said that strong local governments and an alert and responsible citizenry are interdependent, and that governmental matters which are intimately and primarily related to the affairs of the localities should be handled by local governmental agencies, with direct responsibility to the people in the localities. It can also be said that local governments may be expected to have a more intimate knowledge of local conditions, thus making it possible to adjust regulatory measures closely to local requirements.

"On the other hand, such a generalization may lead to the impairment of the interest of the people of the State as a whole, by making that interest subject to possibly narrow or selfish local viewpoints. What is sought is a proper balance between the interest of the State and a somewhat more intimate interest on the part of the localities. The time is long past when the roads and highway within a State could be considered as being primarily appurtenant to the localities through which they pass. To the traveler on the highway, the highway is a unit from his point of origin to his destination, regardless of the number of local governmental jurisdictions through which it passes. The local government should undoubtedly have the responsibility for any regulation of a strictly community nature. So far as highway travel is concerned, the State as

⁴ Or towns or townships where these are empowered to adopt zoning regulations.

a whole is not interested in what land is used for agriculture or for forestry, nor in how these uses are conducted. But the traveler on the highway, and consequently the State as a whole, is interested in those uses which are induced by the existence of the highway and by the traffic on it. The line of division between the interest of the State and the interest of the locality does not stop at the highway right-of-way line, but, rather, at the somewhat indefinite edge of whatever strip of land along the highway is influenced as to its use by the traffic on the highway. If the local governments are willing and able to protect the interest of the State by regulating the roadside uses which occur on this strip, observing adequate and effective standards of regulation, the State could leave the task to them. In the absence of either such willingness or such capability, it must be recognized that it is the responsibility of the State to apply the regulations which are necessary to conserve the interests of the State.

"Except possibly in the New England States, where the counties are largely vestigial, or at least exist primarily as administrative districts of the State rather than possessing independent local governmental powers, the county is the logical unit of local government for the application of whatever regulations are to be applied by local governmental agencies outside municipal boundaries. There are ponderous obstacles in the way of effective action by county governments generally in the field of roadside zoning. Exception may be noted of county governments which possess strong legislative powers, administrative organizations capable of assuming the responsibilities of zoning, and sufficient financial resources to enable a competent job to be done. These counties are relatively few. In many other counties there may be a lack of interest in what is happening along the roadsides, or such interest as does exist may not readily find expression in the processes of the county government. County governments are concerned with a pattern of functions which have become more or less traditional, and it is frequently difficult to adjust the administrative structure of the county government so as to enable the efficient undertaking of such regulatory functions as zoning. Even where these difficulties may be overcome, there may not be available to the county government the technical services which are necessary in order to do a good job of zoning, and the financial resources of the county may be so limited as to make it difficult to obtain such services from elsewhere. Another obstacle which is faced by the county government which wishes to undertake zoning is the deep-seated tendency of the rural dweller to resist encroachments upon his independence of action. This tendency may not be directly opposed to the regulation of roadside uses, since the rural dweller is frequently the first person to resent the littering of the roadsides and the intrusion of roadside shacks into rural neighborhoods. The rural dweller tends to live in harmony with his surroundings and to feel uneasy at the extension of what may be called roadside slums into the country. But while he may be ready to admit the desirability of roadside regulations, he may be afraid that the regulations will not stop there but may be extended to other applications. This feeling may translate itself into

vigorous resistance to any proposal to undertake county zoning, resulting either in inaction or in ineffective regulations if zoning is undertaken. The suggestion that the State undertake the job is not made with any thought that a centralized government should arbitrarily proceed to override justifiable local attitudes. Rather, it lies in the essential difference between the approach by the State to the problem and the approach by the local government agency. Properly, the power to adopt zoning regulations as extended to county governments does not stop with roadside strips (regardless of where the application of zoning may stop in a given instance). The States which have enacted county zoning enabling acts have conferred upon county governments the same broad zoning powers as are conferred upon municipalities. On the other hand, the interest of the State does not extend to comprehensive county zoning, but is limited to the roadside strip. State action is thus confined to that very small percentage of the total land area of a county which is comprised within the roadside strips within which the existence of the highway and the traffic on it induces the establishment of uses which are extraneous to the land uses which generally characterize the territory through which the highway passes.

"The obstacles to effective roadside zoning by counties are reflected in the experience of the past ten years. There are notable examples of county zoning in various parts of the country. Some counties have achieved results in roadside zoning which could not be expected of State action, in that they have been able to apply more detailed regulations, with possibly more effective administration, than could have been obtained under a general scheme of regulations promulgated by the State. But the total number of these counties is only about thirty. The interest has been much more widespread than this would indicate, but, due to the obstacles previously noted, this interest has not found wide expression in effective action. Considering that there are over three thousand counties in the United States, it can be seen that widespread effective action in roadside control by county zoning can not be expected within any reasonable time. Again, in the absence of the willingness or the ability of county governments to act, it is the responsibility of the State to protect its own interests.

"It is recognized that regulations applied by the State will probably have to be minimum regulations; that is, they may not be able to explore all the possibilities of fine adaptation to variations in local conditions. They will undoubtedly have to be more general in form and more simple in content than might be the case with regulations developed as a part of comprehensive local planning. As previously outlined, they are concerned primarily with the confining of roadside commercial uses to designated districts, the establishment of set-backs for roadside buildings, and some control over the appearance of roadside buildings. If local conditions call for a more detailed differentiation among uses than the foregoing, or for supplementary regulations of some kind, the responsibility is undoubtedly that of the local governmental unit, since such further differentiation or supplementary

regulations would be required primarily as a result of community or neighborhood conditions. The answer would seem to be that the State should undertake to do the basic job of roadside zoning, with provision, if desired, that the counties could supplement the State regulations by additional regulations, but not in such a manner as to nullify any of the restrictions of the State regulations."

The foregoing discussion of the respective places of roadside zoning by the State and roadside zoning by counties is taken from the 1940 report of the Committee on Roadside Development and Control of the American Automobile Association, which was adopted at the annual meeting of the Association held in Washington, November 13, 14 and 15, 1940. This action constitutes one of the most notable contributions yet made in the field of roadside control, ranking with the pioneering steps which were taken in roadside zoning by several California counties nearly ten years ago. It places the American Automobile Association as the sponsor of a comprehensive presentation of the principles of roadside zoning. The report includes a legislative guide for roadside zoning, which is made available with the full support of the Association. This guide, based on the excellent work of Alfred Bettman of Cincinnati, will provide decisive leadership in the field of roadside zoning by the State, in which the last two or three years have seen a number of unsuccessful attempts to obtain enabling legislation.

3. Suggested Program of Research to be Pursued by the Subcommittee During the Next Year.

The following program of activities is suggested for the Subcommittee on Zoning. It recognizes that the primary function of the Subcommittee should be that of research, but that the Subcommittee can also serve a beneficial purpose by collecting information of interest to roadside zoning and having this available in summary form.

(a) Ascertain the actual results of roadside zoning by counties. As previously noted, county zoning has been practiced for about ten years, during which time about thirty counties have adopted zoning regulations in which there is some control over roadsides, either as a part of community zoning or under special forms of roadside regulations. It would seem that it is now time to make a critical examination of the actual effectiveness of these regulations in accomplishing their major purposes with respect to highway use, i.e., protection of traffic safety and protection of roadside appearance, together with their incidental effect on land uses in adjacent areas. It is recommended that the Subcommittee proceed immediately to develop the means for obtaining the information necessary for such an examination and proceed as soon as possible thereafter with the collection of the information and with its subsequent analysis. The Subcommittee should seek to obtain statistical data, with examples and illustrations, rather than merely generalized statements.

There should also be sought qualified opinion as to the likelihood of any considerable extension of roadside zoning by counties in the respective States.

(b) Obtain information as to any specific proposals that may be made for legislation for roadside zoning directly by the State and offer technical advice to any official agencies interested in such proposals. This advice should be confined to the technical aspects of such proposals, and should not extend to questions of policy. The availability to the Subcommittee of the most advanced information as to roadside zoning, either by States or by localities, should make this advisory service particularly valuable. Since the legislatures of most of the States will be holding their biennial sessions beginning next January, it is recommended that notification of the availability of the Subcommittee's advisory service be given immediately to the legislative reference bureaus, legislative councils and other agencies in the respective States having to do with legislative drafting.

(c) There is a limited field in which the Subcommittee can serve as a repository for and source of information relating to roadside zoning. This is in the collection of enactments (both statutes and ordinances) relating to roadside zoning and of reports pertaining thereto,⁵ and the making available of summaries of this material. This service should appropriately be limited to officers, department officers, and members of committees of the Highway Research Board and to officials of the organizations participating in the work of the Board. This limitation is in order to avoid duplication of the work of the American Society of Planning Officials, which serves as a clearing house and a source of information for planning officials generally, the work of the American Planning and Civic Association, which deals primarily with the civic aspects of planning, and the work of the National Roadside Council, which serves as a central organization for the roadside councils and similar organizations in the respective States. There can undoubtedly be a valuable interchange of material as between the Subcommittee and these organizations, and the Subcommittee should build up a file of such material as the valuable bulletins of the California Roadside Council, some of which are already at hand, and similar bulletins which are known to be issued from time to time in other States. However, the actual informational service of the Subcommittee should be limited as indicated above.

⁵ An example of such reports is the exceedingly valuable Research Report No. 5 of the Research Division of the Maryland Legislative Council, entitled "Roadside Control", prepared by Robert R. Bowie (September, 1940).