

Roadside Zoning

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● PROBLEMS stemming from the absence of restriction on the uses made of the roadside are almost too well known to need review. Unrestricted commercial exploitation has often resulted, after only a few years, in cluttering the margins of new arterials with scattered and ribbon business and residential developments and with the inevitable billboards. Failure to restrict and regulate roadside development has often meant traffic congestion and reduction in the efficiency of highways, increase in traffic hazards, and spoilation of the countryside.

Roadside protection is the concern of all highway users. The motorist, who largely foots the bill for new roads, is concerned with preserving their traffic-carrying capacity, safety, and appearance. The suburbanite who wants to live in the country is concerned about travel time to his employment, which increases progressively as the approaches to the city become congested. The farmer who uses the highways to move his products to market is concerned about spoilage and increased hauling costs resulting from slowed traffic. The businessman whose merchandise moves to and from his establishment over public highways sees his costs increased by poorer transportation services.

Furthermore, the roadside businessman is concerned about highway protection. Too often, in recent years, his investment has been lost when it became necessary to build new arterials to carry traffic diverted from roadways that became functionally obsolescent from congestion. Finally, businessmen in tourist country which has beauty to sell are concerned about keeping their country easily accessible and attractive.

TECHNIQUES FOR PROTECTING THE ROADSIDE

What are the remedies for checking the

spread of the "marginal disease" of highways? Techniques that have been suggested and used fall into two main classes (1) control through acquisition by purchase or condemnation of rights essential to roadside development and (2) control by regulations and restrictions imposed under the police power.

Under the first technique, use of the roadside may be controlled by the taking of a strip of land along the highway in addition to that needed for the roadway. Private use of the margin of the road and access to the road itself is prevented by public ownership of such roadside strips. Sometimes instead of purchasing these strips of land on the road margin outright, easements in the strips are acquired. These public easements permit restriction on the use made of the land.

The second class of techniques mentioned is exemplified by zoning regulations and restrictions, platting and subdivision control, billboard regulations, and other devices.

SOURCE OF ZONING AUTHORITY

Authority to zone comes from the state. Zoning powers usually are conferred by means of enabling laws upon cities, counties, townships, and other units or agencies of government.

Incorporated municipalities, i. e., cities, towns, and villages, are authorized to zone in all but five states. These latter states extend zoning powers only to cities or special classes of cities (1). The coverage is not as complete for rural areas (outside incorporated limits), but much progress has been made in recent years. At present, all counties may zone in 16 states, and certain counties may zone in 15 others. In 12 northeastern and lake states, any or designated classes of towns or townships may adopt zoning Ordinances. In addition, in six states certain miscellaneous units of government

are authorized to zone. However, 10 states remain that do not authorize zoning outside of incorporated limits (2).

Areas that may be Zoned

Enabling laws, besides specifying the units of local government that may pass zoning ordinances, designate the areas that may be zoned and the scope of the regulatory powers that may be exercised. Urban governments are usually authorized to zone the municipality; counties, towns, or townships may zone the unincorporated portions of the territory within their respective jurisdictions. However, some rural zoning enabling laws limit zoning to areas on the periphery of cities, sometimes for stated distances of 1 to 5 mi., or to towns or townships having the higher densities of population.

Another group of enabling laws authorize only roadside zoning. Under these statutes, certain counties in Georgia and Florida are empowered to zone strips ranging from 200 ft. to 1,000 yds. from the centerline of public roads, state highways, or specified roads (3). Several acts authorize both urban fringe and highway strip zoning (4). And a few empower the county to zone "all lands abutting highways and thoroughfares" (5) or "bordering upon, adjacent to and adjoining state and county roads" (6).

Scope of Regulatory Powers Granted

The usual rural zoning enabling law grants the community comprehensive zoning powers. Four related types of controls are authorized. The first of these, use-regulatory powers, permits the establishment of various types of zoning districts: residential, commercial, industrial, agricultural, forestry, recreational, and the designation of permitted or prohibited uses within each district. Under the second, the Community may restrict the height, number of stories, size, and bulk of buildings and structures. The third authorizes the prescribing of minimum-sized lots or tracts, the percentage of a lot that may be occupied by buildings, the size of side and rear yards, and the setback of buildings from roads. Regulation of density of population, the fourth type of

control, is achieved by limitations on the number of families permitted per lot or tract, or per minimum area of ground or floor space, and necessarily may be materially affected by the other three types of controls. Additional grants of power are sometimes conferred, or authority may be more limited. Examples of additional grants of power are those permitting communities to impose building design and color regulations, which are appearing in some enabling laws and zoning ordinances. No doubt the future will bring a material expansion of the constitutionally recognized field of zoning regulations.

Four of the nine urban-fringe or roadside enabling laws examined grant comprehensive zoning powers. Two of these are in Georgia, and two in Florida (7). Two others, an Illinois and an Oklahoma law, limit roadside zoning regulations to the establishment of setback lines (8). Another roadside-protection enabling law pertains only to outdoor advertising structures (9); and the eighth authorizes only limited use regulations (10).

The ninth, another Florida law (11), is one of those innovations that come along occasionally. Under this act, the Duval County Planning Council is "directed, authorized and empowered" to establish highway protective areas, 1,500 ft. in depth, along a specified road. The Council is directed to divide the protective areas into five classes of districts--commercial, industrial, residential, recreational, and agricultural--and to establish setback lines not exceeding 25 ft. from the edge of the right-of-way. The statute makes it unlawful for any landowner "to locate, lay out, construct, or maintain, any access road" within the protective area, without first obtaining a permit. In the interest of highway safety, the planning council may impose reasonable limitations upon the number of access roads. Also, it may impose reasonable specific conditions and limitations as to their location, grade, and design. Permits to display advertising within the protective areas are also required by this enabling law, and except in commercial zones, only signs of limited size pertaining to uses of the property where displayed are permitted.

These enabling laws, fall into two classes: (1) those granting authority to zone the community as a whole and (2) those limiting zoning to the roadside.

RURAL ZONING ORDINANCES

The statutes reviewed constitute the framework within which zoning ordinances may be cast. Enabling legislation, however, is not enough. Ordinances must be adopted that give adequate roadside protection, and then these ordinances must be properly administered.

Area Zoned

The nation contains more than 3,000 counties; of these 1,165 are empowered to zone all or a part of their respective unincorporated areas. However, by 1949 only 173 counties in 23 states have adopted zoning ordinances. Although this is a small proportion, rural areas have also been zoned by many town and township ordinances.

Powers Exercised

Under many of these county ordinances, zoning of the roadside is achieved as part of the larger zoning plan. Slightly more than 50 percent of those ordinances examined impose comprehensive zoning regulations. Under these ordinances, various types of use districts are established, building heights are limited, setback lines are imposed, minimum-sized lots are designated, and density of population regulations are prescribed. Regulations determining use of land and allowed densities of population in areas beyond the roadside corridor have a bearing, though indirect, on traffic problems on the main road.

Of the remaining community-wide county zoning ordinances, only use regulations are imposed by most of one group: the forest-recreational ordinances in the cutover region of the northern lake states; and use regulations plus a sprinkling of setback controls are effected by another group of ordinances passed by a number of predominantly rural counties (12). Many of the county zoning ordinances also prohibit or restrict outdoor advertising,

a growing number require owners or occupants to provide offstreet parking space, and a few in Georgia, Florida, and California, include design control regulations.

Roadside Districts

Roadside-zoning districts have been established in some counties. These districts, which embrace only road-bordering lands, have been created both under special roadside enabling laws and under statutes that authorize county-wide zoning.

Roadside-zoning districts may be grouped into three classes, based primarily on limitations placed on commercial activities. The first is typified by the roadside zones created by a Richmond County, Georgia, ordinance which excludes any and all types of commercial establishments in an area extending 1,000 ft. on both sides of certain highways.

The second type is the roadside-service district. Commercial activities in these zones are restricted primarily to business that is necessary for servicing the traffic. Among these are motels and auto courts, service stations, restaurants and refreshment stands, and some kinds of retail stores.

The third type, the general roadside commercial districts, is designed to serve both the highway traffic and the adjacent population. In addition to highway service activities, these districts usually permit stores for retail business, commercial recreation, and light manufacturing.

Regulations pertaining to each of these three types of districts usually include setback and offstreet parking requirements, limitations on outdoor advertising, and sometimes a measure of control over the design of roadside business buildings.

Considering the scope of the problem, only a beginning has been made in roadside zoning, in terms both of total miles of roadside zoned and of type and stability of regulations imposed. Merely empowering local units of government to pass roadside-zoning regulations (more than one half of the counties still lack such authority) does not assure the adoption or enforcement of adequate controls. The community, or its neighbor, may pass

inadequate regulations or none at all. Even in areas in which roadsides have been zoned, examples are legion wherein local pressure causes a gradual breakdown of locally imposed and administered regulations. Good roadside zoning frequently ends at a political boundary, but the road passes through.

EFFECTING BETTER ROADSIDE ZONING

So much for the past. How can roadside zoning be made more effective in the future? The problem, and challenge, is one of adapting and revising traditionally local zoning ordinances and techniques, i. e., the general community ordinance and the special roadside ordinance, so as to attain a workable compromise between local and state-wide interests. Ways need to be found to make roadside-zoning regulations and administration more responsive to the structure and incidence of existing and realizable benefits. Also, ways need to be found for expanding the use of roadside zoning.

Ways Suggested by Enabling Laws

Suggestions are offered by the various means used by the state for influencing local zoning regulations in unincorporated communities. Six methods were observed in existing rural zoning enabling laws.

The first, and by far the most frequent means employed, is exemplified by the permissive enabling law. Under such laws, the state authorizes designated classes of its rural governments to pass certain types of zoning regulations and expressly or impliedly prohibits other types. The communities empowered may exercise some or all of the authority conferred, or they may decline to zone. Most of the roadside-zoning regulations previously discussed resulted from permissive enabling authority.

The second group of enabling laws are also permissive, like the first, but these laws provide that a state or regional agency shall assist local governments with their planning and zoning problems. The agency selected to furnish such technical guidance can materially influence local zoning regulations, including those that affect the roadside. An interesting example of this

type of law is found in Nebraska (13).

In a few enabling laws a third technique is used. These laws affirmatively limit the community's field of choice of zoning regulations. Certain regulations are required if an ordinance is adopted. One example of these statutes is a Florida law that requires a 30-ft. setback along named roads (14). Another, an Oklahoma act, prescribes the types of zoning districts that must be created, if the county zones. (15).

A fourth method is illustrated by county zoning enabling laws in Michigan and Missouri. These states reserve the right to review and veto. Before a county zoning ordinance becomes effective in Michigan, it must be approved by the state's department of economic development (16). Similar approval is required in Missouri from the state planning board, the commissioner of health, and the chief engineer of the highway commission (17).

A roadside-zoning enabling law mentioned earlier illustrates a fifth approach. This law orders the Duval County Planning Council to zone the roadside along certain highways. Unlike the previous four types discussed, this law is not permissive but mandatory (18).

Under the sixth type of law, local zoning regulations are directly imposed by the state. One example, a Florida law, imposes detailed zoning regulations in a subdivision near Tampa (19).

The laws just described illustrate the means that the states have used in influencing local zoning regulations. These means range from permissive enabling laws to local zoning ordinances adopted by the state.

State Aids to Local Zoning Agencies

New roads have upset long-established land-use patterns in many rural communities. Farm lands have suddenly become valuable for residential, commercial, or industrial uses. These changes in land use, prompted by new roads and the automobile, have brought new problems for officials of highway departments and of rural communities affected. Of major concern to highway officials is the growth of roadside ribbon developments, bringing with it numerous

points of access, slowed traffic, and increased hazard. Communities on today's expanded urban fringe may be faced with all the problems stemming from rapid suburbanization. Farther away from the city, the impact is less serious, but the urban populace continues to spread outward.

Highway officials and rural people are seeking solutions to problems stemming from the same cause. Among rural people, the impact of change has caused renewed interest in zoning. New problems and goals have stimulated a search for and an experimentation with new types of zoning regulations and techniques at both state and local levels.

As a means of stimulating roadside zoning at local levels, an appropriate agency, which in some states could be the state highway commission¹ might well be authorized to make periodic financial grants to local governments to help defray the costs of their zoning agencies. Such aids should be payable whether zoning of the roadside was achieved under community-wide ordinances or under roadside ordinances.

Payment of aids by the state agency necessarily should be predicated upon the local government's compliance with designated minimum standards both as to zoning regulations adopted and as to administration. Minimum regulations required should naturally be varied according to need and class of road. On some classes of roads, desirable regulations might include use regulations restricting commercial and industrial activities to compact areas, setback and offstreet parking requirements, access control, and limitations on outdoor advertising. On other classes of roads, only some of these regulations may be needed, or none may be needed at all. Although detailed zoning regulations are appearing in zoning enabling laws, a better practice in this situation is to grant reasonable discretion in establishing minimum standards to the state agency selected to administer the law and disburse the aids.

Enforcement of zoning regulations in rural areas is often haphazard. Success-

ful enforcement is invariably based on a system of permits and the employment of at least a part-time zoning administrator. Both are essential to the success of the proposed plan. Moreover, if local zoning administrators were required to provide their respective state highway departments or other appropriate agencies with duplicate copies of permits issued that pertain to properties along zoned highways, a current check on local enforcement would be facilitated.

Zoning aids payable to a local government might be based on numbers of miles of road zoned but graduated by class of road and by adequacy of regulations imposed. Failure to enforce regulations would justify the withdrawal of all zoning aids.

State aids in furtherance of roadside zoning may be justified by the incidence of the resulting benefits. These benefits accrue in large measure to the general public. Investments in roads are protected and safety is enhanced. Roadside landowners, on the other hand, may receive little or no benefits. In fact, their interests may be served by preventing zoning. An exception mentioned earlier is the roadside businessman whose investment may be lost when traffic congestion necessitates diversion of traffic to new roads. In contrast, urban merchants may benefit by zoning of the rural roadside.

Roadside zoning will be furthered by an appreciation of the possibilities of that technique for furthering the interests of farmers and other off-the-roadside landowners. Good arterial roads have brought them benefits in the form of easier and quicker access to town and an enhancement of land values. As traffic slows because of increased congestion, travel time increases and values of country residential properties in particular may depreciate.

Much farm land embraced by today's expanded urban fringe may not be ripe for suburbanization for decades. Arterial roads have brought the owners of such lands many benefits but also new problems. Ribbon developments, plus the spreading of an urban populace over the countryside, increase the need for costly public services. Special assessments may

¹Approximately one half of the states have legal limitations that prohibit the diversion of road funds for nonhighway purposes. Presumably, aids disbursed for roadside zoning would be allotted for a highway purpose.

be voted by nonfarm landowners for schools, water supply, sewers, or other improvements, and development costs thereby shifted to farm land. Taxes often reflect speculative land values that may never be realized.

Roadside zoning, particularly if combined with adequate rural zoning, can be used by rural communities to restrain these injurious developments. The communities' growth can be guided. Roadside business can be concentrated in villages or in strategic areas. Premature and scattered residential building can be discouraged by limitations on access and by large lot or tract requirements. At the same time, residential growth can be directed toward desirable zoning districts where needed public services are available or can be provided at a lower cost to the communities and their property owners. Arterial roads are an asset to every rural community. Liabilities, when they occur, are often a result of local inaction.

Roadside Zoning by the State

There are those who are impatient with waiting for local units of governments to zone their roadsides, who doubt that the problem can await local recognition of the need. They point out that the need for zoning throughout a community is not geographically uniform, that critical areas most often are found along main highways (particularly on the borders of our cities and towns). These people would like to see the various state highway commissions authorized to zone the roadside, at least along main roads under their respective jurisdictions. The state, they contend, should have ample authority to protect its investment.

Zoning by the state is not entirely new. Mention has been made of a Florida ordinance under which the state imposed detailed zoning regulations in a subdivision near Tampa. More than two decades ago, Wisconsin, by state law, limited the height of buildings in certain classes of cities (20). Various drafts of suggested laws authorizing zoning of the roadside by state agencies have been prepared and submitted for legislative approval. Perhaps the best known of these is the one sponsored by the American Automobile Association

(21), in which broad grant of regulatory power is proposed.

In 1949, the Wisconsin Legislature considered several bills pertaining to roadside protection. Among those passed is a law authorizing the state highway commission to establish not more than 500 mi. of controlled-access highways (22) and another requiring approval by that commission of the number and design of entrances to new subdivisions along state trunk roads (23). A third bill, proposing roadside zoning by the state highway commission, failed to pass (24).

The initial Wisconsin roadside-zoning bill would have authorized the state highway commission to establish commercial or industrial zoning districts on land abutting state trunk highways outside cities and villages, and to specify the kind of trade, commerce, or industry permitted in such districts. Establishment of setback lines was also proposed. In deference to local zoning, the bill provided that existing boundaries within roadside corridors of commercial or industrial districts, established under county or town zoning ordinances, should be accepted as the boundaries of similar state roadside districts. In such coterminous districts the most restrictive regulations would prevail (25).

The bill ran into trouble. A substitute was introduced which limited authority conferred to the establishment of setback lines. Setbacks of 60 ft. from the center line or 20 ft. from the nearest right-of-way line, whichever is the farther from the highway, were prescribed. However, wider setback lines not exceeding 120 ft. from the centerline might be established after public hearing (26). The substitute amendment also failed.

That ended the latest effort in Wisconsin to achieve roadside zoning by the state. After the session was over, a Wisconsin official wondered whether the error lay in asking for too big a package. The bill might have passed, he observed, if initially only authority to establish setback lines had been requested or only limited authority had been asked to zone the most heavily traveled roads. He saw two advantages in that procedure: By dispersing legislation, one disperses op-

position; and by getting a start in the right direction, an opportunity is offered to build upon it as the public sees its advantages. It has been said, that zoning, in the last analysis, is not the regulation of land, buildings, and structures but, the regulation of people.

CONCLUSION

Zoning developed in the horse and buggy days and was urban-created. Initial zoning regulations were designed to serve yesterday's urban communities. Later these legal devices were reshaped and adapted to meet new ends, and zoning spread to suburban areas outside city limits and then to the open country. Today's new problems and goals call for the development of new types of regulations and techniques.

One of today's new problems is found on the roadside. Its condition in many places is no longer a matter of only local concern. The interests of the traveling public, taxpayers, farmers, suburban homeowners, and the state itself are all affected.

Roadside chaos can be prevented by adequate zoning. However, because the benefits from roadside zoning are sometimes largely nonlocal, local action may lag. In such areas, new zoning techniques and agencies may have to be provided to achieve the desired goals.

In some states, financial support of local zoning agencies may be most effective. In others, roadside zoning by the state may be necessary. Or a combination of state and local zoning may be desirable. In devising new roadside zoning techniques, a number of leads may be found in the means used by state legislatures for influencing zoning regulations in unincorporated areas. These means range from permissive enabling legislation to zoning regulations imposed by the state.

Finally, to be effective, any roadside zoning plan, whether under state or local ordinance, must be understood and be accepted by the general public. The public must be convinced of its desirability and advantage: first, in order to get the initial plan adopted, and secondly, to secure support for its enforcement.

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