THE RELATIONSHIP OF MUNICIPAL ZONING TO PUBLIC HEALTH

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PUBLIC HEALTH DEFINED

It would be well, at the outset, to define some terms that will be used during the course of this discussion. Quoting from Tobey's Public Health Law (1) the following definition of Public Health is given: Public Health is the science and art of preventing disease, prolonging life and promoting physical health and efficiency through community efforts for the sanitation of the environment, the control of community infections, the education of the individual in principles of personal hygiene, the organization of medical and nursing service for the early diagnosis and preventative treatment of disease, and the development of the social machinery which will enable every individual a standard of living adequate for maintenance of health; organizing these benefits in such a fashion as to enable every citizen to realize his birthright of health and longevity.

You will immediately agree, I am sure, that this is an all-inclusive definition and has stood the test of the years, and is a definition that sets forth the views of the average health officer as to the functions of public health.

ZONING DEFINED

Now the second term that will be used in this discussion should be defined and that is the word zoning. The supreme court of Connecticut once gave a very sensible definition when the court said, zoning consists of the general plan to control and direct the use and development of property in a municipality or a large part of it by dividing it into districts according to present and potential use of the property. With these two definitions in mind, I will now proceed with a discussion of the relationship between public health and zoning.

When one reads the preamble to any zoning ordinance, usually a general statement will be found to the effect that the ordinance is being adopted for the purpose of promoting health, safety, order, prosperity, historic resources, and the general welfare. Please note that health is first to be mentioned. The theory of zoning, it has been said, is to foster improvements by confining certain classes of buildings and uses to certain localities without imposing undue hardship on property owners.

NEED FOR ZONING

Experience has shown that it is impossible for people to live effectively in a community without adequate zoning laws. Without adequate zoning, heavy industry often gets into a residential district, thus creating smoke, noise, dirt, and many other health problems. It is obvious, therefore, that the health of individuals living within this community is affected. Good zoning would attempt to prevent the intrusion of industry into a residential district.

CONSTITUTIONALITY

The question that is often asked by governing bodies and others interested in zoning concerns itself with the extent to which zoning is constitutional. During the course of this presentation, an attempt will be made to give you sufficient background to prove that zoning is legal. The legislature of our state has provided the legal tools with which to work. I refer to an Act of the General Assembly of Virginia as provided in Title 15, Chapter 24, Article 2, Section 15-844.

In view of the fact that many of you represent both rural areas and cities, I feel that this section will be of interest to you. In part it reads as follows: Boards of supervisors are authorized to divide the area of a county in the unincorporated portions thereof into zones to regulate the use of land and buildings and other structures; to provide the locations of the areas which may be used as places of residence, or in which agriculture, forestry, trade, industry or other specific uses may be conducted; the height, bulk and size of buildings or other structures, the percentage of land area which may be occupied and minimum size of yards, courts, and other open spaces; and to provide for amendments and changes therein; to require county planning commissions to perform certain duties with reference thereto; to permit the appointment and prescribe the powers and duties of county boards of zoning appeals; and to provide methods for enforcement of this ordinance and penalties for the violation thereof.

BACKGROUND OF ZONING

It may be of interest to review some of the history of zoning. A number of interesting decisions can be found; decisions that have been handed down by State Supreme Courts as well as by the United States Supreme Court. Mentioned earlier was a decision...
rendered by the Supreme Court of the State of Connecticut. As one studies the history of zoning in America, it clearly establishes the struggle that has gone on through the years to protect the property rights of people. It has been stated that the late start of zoning in the United States has been attributed to many different causes, but the one most frequently mentioned, and perhaps most accurately, is the tendency of our courts, down through the years, to protect and preserve individual rights in property against the arbitrary control thereof by government. With the increase in size of American cities and urban counties, it is apparent that much harm has been done by our failure to enact regulations relative to the overcrowding of buildings on land and the unregulated use of land.

In fact as one observes the average American city today, he will find almost without exception areas where there is blight, overcrowding, lack of ventilation and light, all of which becomes a breeding place for disease. This indeed is the shame that has been brought to the average American city. The harm was done long before the first zoning ordinance was ever adopted.

Naturally a property owner wishes to know what benefits will be derived from zoning and often it is indeed difficult to convince the property owner of its value. However, we are now convinced and the courts have fairly well upheld this fact that the welfare of society transcends individual profit. In fact there have been fairly recent cases before the courts in which it was held that a land owner has no complaint though deprived of income by a zoning ordinance, unless said ordinance as applied to him was unreasonable and discriminatory and without relationship to public health, safety, morals or welfare.

Again your attention is called to the fact that the court places the same degree of emphasis upon public health as upon safety, morals or welfare. The courts will always hold an ordinance invalid when it clearly appears that the restrictions are unreasonable and have no substantial relation to the health, safety, welfare and convenience of the public. This, of course, is true whether the ordinance in question relates to zoning or any other proper subject for police power regulation.

The first test case in the United States Supreme Court of the right of a city to enact a comprehensive zoning ordinance arose out of consideration of the validity of an ordinance of the city of Euclid, Ohio. The court in this case upheld the validity of the ordinance.

**ZONING AND PROPERTY VALUES**

Before the advent of zoning in America, there were few regulations to prevent a property owner from using his property as he saw fit. Prior to that time there were only a few scattered fire and health laws. Many fine residential areas were injured by the frequent intrusion of business and factories. Into these vexing situations, came zoning laws and court decisions upholding them. These appeared as a silver lining to harassed property owners.

It has become more and more apparent, therefore, in this land where individuals love freedom that zoning itself has given the greatest amount of freedom and protection to the greatest number of people. Zoning has protected the health of people and property values. Good zoning has contributed to the orderly development of cities; has relieved cities of overcrowding, thus, making the average American city a more desirable place in which to live.

**AUTHORITY FOR ZONING LAWS**

The question that you may now ask is through what fundamental authority have zoning laws been passed. The answer is by an exercise of the police power of the state. How does such police power operate? The police power has been defined as one inherent in every sovereignty for the preservation of the public health, the public safety and the public morals. We must understand that the police power of a state or a locality is not something that is rigid and definitely fixed but in its very nature, it must be somewhat elastic in order to meet changing and shifting conditions which from time to time, arise through the increase in population and the complex commercial and social relations of the people. In the complexity of our present day life, there are so many factors connected with the health, safety and convenience of the community that the police power and regulations of wide scope are increasingly upheld.

One can hardly discuss this subject without asking very boldly who has the responsibility for zoning. In every county and city of the commonwealth it is the full responsibility of the governing body to see that adequate zoning regulations are passed for the protection of the people in that community. It is not intended to indicate that the governing body should attempt to zone in a dictatorial fashion, on the contrary it should be done in cooperation with the planning or zoning body of that community and with the citizens. There is no better person in a community to give leadership or certainly moral backing to the governing body in the adoption and enforcement of zoning regulations than the local health officer.

I think that zoning has been set apart from public health as such too long and it is now time that we begin to emphasize the importance of zoning in relationship to the promotion of public health.
Steps in Zoning

In conclusion, I should like to outline the methods to be used in establishing a zoning ordinance. It is necessary first to appoint a planning commission or zoning commission. This body will be responsible for drafting an appropriate zoning ordinance for the community and will make recommendations to the governing board. Briefly, zoning regulations start with the development of the zoning map which shows the exact boundaries between the different districts decided upon. The map usually shows the streets, highways, all property lines and natural streams, rivers and lakes since all of these things have been surveyed by engineers and have a known location on the ground. The zoning district boundaries are then fixed and so indicated. The map also makes clear each district with appropriate markings or colors. Each zone is given a name, such as agricultural zone, residential zone, retail business zone, etc. If it is decided to keep all future buildings back a certain distance from certain streets, then the set-back line must also be shown on the map.

The other part of zoning is the text which explains what the map means. It states just how the land in the zones or districts can be used or developed in the future. It lists, under the name or number of each zone, the kinds of property use permitted, the maximum height of buildings, the smallest size lot permitted, the rules on how close to a front, side or rear lot line a building can be built, and any other special rules that may be reasonable or desired. One of these special rules might be that every business should have a place on its lot for the customers to park, to keep parked cars off the highway where they may cause danger or interfere with traffic.

The text of the ordinance contains a section on how the regulations are to be enforced and establishes a penalty for breaking the laws. It must also set up a board of appeals, with power to allow some minor variations when the strict enforcement of the letter of the law would work a hardship on one man without doing anyone else very much good. It must always be remembered that good zoning regulations are clear, exact and easily understood. They should be as simple as possible and still do what the people in the community have decided they want to do.

As soon as the ordinance has been adopted, necessary funds must be appropriated for the establishment of machinery capable of enforcing the ordinance. The mistake should not be made of thinking that zoning enforcement can be handled in a haphazard manner. To enforce the ordinance an official must be appointed. He may be called a zoning administrator, zoning official, planning official—it matters not what is his title. He must be acquainted with the zoning ordinance, understand good zoning practices and, above all, be able to be firm yet fair in the enforcement of the law. Of course, the law makes provision for appeals from the decision of the zoning administrator. It is his duty, however, to see that the ordinance is fairly and firmly enforced.

Those of you who are working in communities where zoning laws are inadequate must be willing to recognize the value of such laws as tools in the field of public health. You are qualified by training to understand the importance of zoning. You should give leadership whenever and wherever possible.