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Land Controls in an Urban Society

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To understand modern land use classification it is necessary to consider its historical development. Zoning was originally a defensive device to augment and supplement the law of nuisance.\(^1\) By creating zones, nuisances and near-nuisances could be excluded at least for the future without the expense and uncertainty of a law suit. This and little more was the objective of zoning. In the furtherance of this objective slight consideration was given to the total management of land, and not infrequently only a small proportion of even residential land was in fact zoned.

From this narrow beginning, through the stimulation of judicial decisions invalidating zones which did not include all the land in a given jurisdiction, the comprehensive plan developed.\(^2\) But even the early comprehensive plans were little more than a general recognition of existing land uses. The classifications were gross and seldom contemplated more than three use districts—residential, commercial, and industrial. The refinement of these districts by the creation of many sub-districts and the addition of agricultural, forestry, flood plain, and occasionally recreational zones extended the district idea almost to the point where there was a zone for every use. Where an activity was too specialized even for this scheme, the special permit provided a way for the location of diverse uses such as shopping centers, funeral parlors, garden apartments, schools, churches, or filling stations.

Land management in a relatively slow-growing, urban society imposed no serious challenge to planners, city councils, or courts; but the accelerated growth of American cities has required a substantial re-orientation of both objectives and methods. Zoning has been integrated with planning, and emphasis upon protection of adjacent land has given way to planning for municipal growth.

Most American cities seek their destiny in a balance among agriculture, industry and commercial activity. In general, however, the greatest reliance for economic development is placed upon the attraction of new industry into, or at least near, the city. This approach, of course, is not new, but what is new is the shift in industrial demands upon the city itself. At one time it was enough

\(^{\text{1}}\) Horack & Nolan, Land Use Controls 64 (1955).

for the city to offer a cheap, unorganized labor supply and a guarantee of some tax concessions to the factory. Today, industry is more interested in an adequate water supply, a well-managed city with adequate and well-cared-for streets and highways, a modern school system, provision for parks and recreation, and assurance of the availability of all municipal services. Industry has discovered that without these facilities their employees grow restless and production costs increase. As a consequence, more than a few cities have first become interested in preparing a comprehensive plan because an industry rejected the city's invitation to locate in a community where prosperous and uncomplicated production seemed uncertain.

It is beyond the scope of this article to consider all the facts which make a workable and comprehensive plan for future city development. We are here interested only in land use classification, and therefore it may appear to have a pre-eminence in the comprehensive plan to which it is not entitled.

In classifying land according to use, certain principles must be followed if the classification is to be both fair and workable. The first relates to the relative value of one land use as opposed to another. When zoning was primarily negative in its approach, it was commonly asserted that residential use of land represented the highest land use and industrial the lowest. At least economically this is erroneous. In terms of productivity, residential use is low in the scale and industrial use is the highest, except for a few extremely valuable business locations. The price of land on the real estate market clearly demonstrated the inaccuracy of the original proposition, and the desire of many to have their land reclassified from residential to business or industrial uses is evidence that land owners do not accept the validity of the apparent truism.

There are, of course, many values other than economic. What the maxim meant was that a community felt that there were social and moral values associated with a residential use which would be injured by the intrusion of business or industry. In general, this is

3. NAT'L INDUSTRIAL ZONING COMMITTEE, PRINCIPLES OF INDUSTRIAL ZONING (1951).

4. "... industry's needs become the same as the needs of the entire community. Good streets and transportation facilities, smooth traffic flow, sufficient fire and police protection, decent housing, zoning ordinances that are observed, and adequate educational, recreational, and cultural facilities are just as vital to the growth of industry and business as they are to the well-being of other elements in the community." Riley, What Industry Needs in the City Plan, Address, National Citizens Conferences on Community Planning, Oklahoma City, Oklahoma, March 23, 1949.


6. Equally important are population statistics, thoroughfare plans, school and recreation studies, public building programs, municipal financing, etc.
demonstrated by a reduction in residential property values when business or industry entered.\textsuperscript{7}

Today it appears clear that there is no utility in attempting to create a hierarchy of classifications, but rather the problem of land management is to establish such a pattern of uses that one use will not seriously interfere with another. More specifically, we must recognize that it is just as injurious to the welfare of a community to permit residential development of land which is needed for industrial expansion as it is to permit industrial expansion to retard the development of a prosperous residential neighborhood. The purpose seems obvious and easy to state, but to apply it in long-range terms challenges the skill of the most competent expert, for many short-range purposes will tend to outweigh long-range needs by their very immediacy.

As long as zoning was negative, the responsibility of a plan commission was primarily administrative or quasi-judicial in character. The use of a single tract could be judged in relation to a proposed use or the use of an adjoining tract. Even here there was a certain loading of the factors in terms of the community interest in "public health, safety, morals and the general welfare." Nevertheless, the focus was primarily on a particular use and its effect on specific property.

When zoning became a tool for community planning, the legislative character of plan commission activity became paramount. The focus now is upon the effect of a particular land use on the total community development and the extent to which a particular group of land owners may be asked to bear that burden. Thus commission action, except where the commission acts as a board of zoning appeals or board of adjustment, must be reviewed as other legislative action is reviewed.\textsuperscript{8} In evaluating the reasonableness of land use restrictions, the commission, the city council, and the court must consider four elements: (1) the availability of land, (2) the selection of desired uses, (3) the intensity of use, and (4) the quality of use.

\textbf{Availability}

The rapid growth of cities in the past two decades has created both a jurisdictional and a real land shortage. By a jurisdictional land shortage we mean land within a city's limits which is capable of development. After unfortunate experiences with annexations in the 1920's, most municipalities have hesitated to expand their boundaries even though the urban fringe areas surrounding the city are indis-

\textsuperscript{8} For example, Board of Adjustment v. Abe Perlmutter Constr. Co., 280 P.2d 1107 (Colo. 1955); but see, Board of Adjustment v. Handley, 105 Colo. 180, 95 P.2d 823 (1939).
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tinguishable from the city proper. Likewise, with a false sense of economics, a majority of suburbanites have resisted all attempts at annexation. The result is that few cities today have as much as ten per cent of undeveloped land within their jurisdiction. Even this figure is misleading for the undeveloped land is usually comprised of isolated lots and tracts incapable of substantial economic exploitation.

Against this back-drop there is not much land management that a plan commission can do; and yet much is expected of it. The urban but non-municipal population demands expansion of both services and consumer-goods stores. This in turn usually requires reduction in the amount of land classified as residential. If the city is well-managed and there is an apparent surplus labor supply, industry will compete for land both within and without the city limits. No commission, council, or court can resolve these conflicting claims without an awareness of the limited jurisdiction of the city to deal with the total problem of its metropolitan area. What may on the surface appear to be a manifest invasion of the rights of property owners may on deeper examination be only an attempt at economic survival.

Even if the city is permitted to reach out beyond its territorial boundaries to plan and zone land which is in fact within its urban area, it may be faced with a real land shortage. This seems almost impossible in a country as large and relatively undeveloped as is ours; but the factors which make land available underscore the problem.

Land suitable for residential purposes must be close enough for convenient public and private transportation. In other words, depending upon the size of the community and the traditions of the area, there is a distance beyond which people will not drive to find employment, to buy their goods, or to participate in social, educational, or recreational activities. Land beyond this point is "not available." Furthermore, if inadequate highways or unattractive uses are interposed between the home and the destination, the land, though near enough, once again becomes unavailable for development. Unfortunately for the city, both the highway and the use are customarily beyond its jurisdiction and control.

Land is likewise not available for residential development if sewer, water, gas, and other utilities cannot be provided. An adequate school system, churches, community centers, and park and recreation programs condition the availability of land in many areas of the country. Finally, depending upon its use, the topography of the land will affect its availability. Low-cost housing, for example,

9. See HORACK & NOLAN, LAND USE CONTROLS 58-63 (1955). Many enabling statutes permit a municipality to exercise planning and zoning authority beyond the territorial limits of the city—recognizing that within a relatively short time the land will have urban characteristics and in all probability will be a part of the incorporated area.
usually requires level land with good drainage, although the builders of higher-cost houses choose more rugged sites.

Land, to be available for industrial development, must also be level, well drained, accessible to rail and highway transport, and provided with the requisite utilities. Indirect qualifications also limit the availability of land for industrial purposes: industry must be in or near a well-planned, progressive community which can provide appropriate housing and community facilities for its workers.

While the gross acreage needed is smaller, land for commercial or business expansion requires most of the same qualities sought by residential and industrial users. Ultimately, when land scarcity reaches the critical point, all three types of use compete for existing raw land which is structurally undeveloped.

The function of the plan commission is to weigh and judge these and other conflicting claims to the use of the land. No single standard or set of standards will provide an answer. For example, how should the average city of 100,000 or more population, growing at its present rate, conserve the remaining available land even if it has jurisdictional authority?

If present predictions are correct, the city will need a second airport within ten years. Until such time as inventions make smaller landing fields possible, it is clear that even the most modest field will require at least a square mile of level terrain located eight miles distant from an existing airport and as close as possible to the central business district of the city. If the city cannot provide adequate air transport, it cannot expect to grow. Industry assumes and expects air service. But if the community is to grow it needs level, well-drained sites for industrial expansion. Land of this character is also sought by realtors for subdivision and shopping center development.

The community decision is extremely difficult when land is scarce, for each use is essential to the development of the economy. Yet in the normal situation only one use can be accommodated. Under these circumstances, who gets, and who should get, the land?

Some persons would conclude that there must always be more land available and that the land should be developed, without governmental interference, on a first come first served basis. Everyone who has taken a long bus or taxi ride from the airport to his destination must recognize that this is not quite the solution to the problem.

10. In Colby v. Board of Adjustment, 81 Colo. 344, 351, 255 Pac. 443, 446 (1927) this problem was fully understood, the court saying "a full perspective . . . requires not merely that the present be depicted, but that the future be envisaged." But this seems to have been forgotten in People ex rel. Friedman v. Webber, 110 Colo. 161, 132 P.2d 183 (1942) where the court emphasized a backward look to predict future zoning needs.

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Many a city today wonders why it did not reserve airport sites twenty years ago which would have been miles closer to the center of the town.

On the other hand, it will be hard to resist the pressures of the subdivider, the industrialist, and the taxpayer who all find it difficult to understand why the city should expend funds for land not now needed for airport purposes and at the same time exclude from the real estate market land urgently needed for immediate development.

There is no single or easily applied yardstick to measure and resolve the conflict. For good or ill the decision must be achieved through the process of democratic choice, and it will be the wise court which does not interfere, whatever the outcome.

SELECTION OF LAND USES

Within the limits of the available land, the government of most communities seeks to provide some land for all three of the major uses. As the size of the governmental unit increases, this becomes almost a foregone conclusion; but in the smaller units it is not uncommon for the community to elect to remain either rural or at the most suburban, excluding industry entirely and often restricting commercial uses to a minimum.12

In earlier days when the supply of land was greater, provision for residential, commercial, and industrial uses within a municipality was commonplace, even though lands zoned for industry were usually those which seemed inappropriate for other uses—and were usually unsuited for industrial purposes as well. Even the courts, in nuisance cases, appeared to assume that there was always land available somewhere for industrial use and, at least in the words of their opinions, were never concerned with where the industry could relocate.

With the scarcity of available land a reality, the problem yet unfaced either legislatively or judicially is the extent to which particular uses may be excluded entirely, or the extent to which these uses can be so burdened that the effect is the same as exclusion.13 A corollary issue involves the extent to which the state is willing to permit the democratic process to operate in the smallest municipal governments which are satellite to a metropolitan area.14

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14. Local autonomy has been preserved so long that it is now almost impossible to establish any unified planning and zoning authority for regional and metropolitan areas. See, however, the grant of minimal authorities for regional planning.

decisional law is fragmentary, the legislative policy is uncertain, and their combined result has been chaos for economically integrated metropolitan areas.  

Consideration has been given previously to the problem of a limited supply of available land. To what extent can a community determine as a policy that it will exclude all industrial activity? In the *Duffcon Products* case the court sustained the power to exclude, but observed that available land existed in contiguous municipalities which had no such ban.

This solved the problem of the immediate case; but suppose there had not been readily available land? How far could an industry be required to move from either its markets, its labor supply, or its raw materials? The question is not as easy to answer as it may sound. If zoning is a valid exercise of the police power, and if the community decides to restrict land use to residential purposes and a minimum of supporting business services, under what right can the vendor or purchaser, even at common law, insist that the land be put to a prohibited use? It may be very unwise to permit splinter or satellite communities to exercise so large a proportion of the police power. However, until the state legislatures remove that power or require the dissolution of out-moded municipal corporations, can it be said to be an unreasonable exercise of the power if the exclusion of industrial uses is consistent with the existing character of the community?

Even more difficult problems arise when, to encourage industry, industrial zones are created which exclude all other land uses. Logically, the problem is not too difficult. If industry can be excluded from residential and business zones, is it not possible to exclude residential and business uses from the industrial zone? Analytically, such exclusion seems justified. Economically, it is clear that unless an exclusive industrial zone is formed, a substantial tract of land available for industrial development can be removed from the availability classification if it is partially built up with residences which cannot be procured by industry through eminent domain proceedings. Furthermore, the scattered residential users may demand a

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17. *Id.,* 64 A.2d at 350.

price which makes industrial development of the land uneconomical, thus depriving the municipality of the productivity necessary to its well being.

From the land owner's position, however, these considerations are unconvincing. By definition the land is undeveloped. Except for possible agricultural income, the land is unproductive; the owner's liability continues unabated. If industry has not sought out the site in the past twenty years or more, does the owner have any assurance that within his lifetime industrial lightning will strike? If it does not, no structural use of the land is possible. To be sure, the *jus disponendi*, at least so far as title is concerned, has not been disturbed; but the probability of economic profit has been materially reduced by the exclusively industrial classification. But should an individual landowner be able to block community development?

Other prohibitions of use raise similar though perhaps less difficult problems. Most cities of any considerable size are located on a water shed, drainage area, or water course. Long before Johnstown, municipalities experienced the devastating results of occasional but periodic floods which destroyed the life and property of those situated on the flood plain. After such disasters there was the inevitable demand for flood walls to protect the property of those who had so improvidently located.

The immediate reaction was to aid those who had suffered from a visitation of catastrophe. The more humane and economical approach has been to relocate those who subject themselves to occasional but catastrophic risk upon higher and more secure ground to guard against recurrence of similar catastrophes. The removal of such land from structural exploitation is ultimately advantageous not only to the individual, but also to the immediate community and to all governmental agencies which may be called upon to finance such extravagant speculation.

In response to such a situation, many communities have prohibited structural development of flood plain areas, thus limiting the risk of loss both to persons and property. This does not prevent non-structural use of the land. Agriculture, storage, outdoor advertising, parking, used car sales lots, or junk yards may be profitable uses of these lands. Legalistically it may require a restriction on the absolute use of property, but it prevents improvident land development and eliminates the public financing of unnecessary and expensive flood control projects.

Prohibition of the structural use of flood plain lands is justifiable in terms of public health and safety, if nothing else; but land

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development which does not involve risks to health and safety may be equally improvident. Even a well-constructed industry built across the path of a residential development may stymie home expansion in the area. Excessive subdivision of land may have a blighting influence on home construction, with a loss of investment to buyers, bankruptcy for developers, and unnecessary utility costs to the city.

It has been suggested that subdivision regulation be integrated with zoning ordinances, and that certain areas be districted for subdivision development with subdividing prohibited in all others. The point is made that real estate promotion is a commercial activity, and that it can thus be zoned as any other business. This is probably too easy a conclusion. Unless all residential building is prohibited, land can still be transferred by metes and bounds with results even more haphazardous to economic values and the future growth of the city. Another equally arguable possibility would be classifying the land for agricultural use exclusively. The difficulty with all of these approaches is that they do not contemplate the management of real estate development so much as they desire to prohibit it entirely. It is a long step from the prohibition of noxious industries to the prohibition of real estate development. For the present at least, the better approach seems to be the regulation of the activity. When provision for utilities, roads, playgrounds, and adequate lot sizes are enforced, it appears that the ordinary laws of economics will adequately police the problem. So long as the subdivider must make substantial out-of-pocket expenditures, the real estate speculator will be deterred sufficiently.

One serious barrier to the community's ability to select the most appropriate land development is the private covenant. The older covenants restricting the use of land to single family dwellings usually were appropriate when first made; but within a decade or two, existing houses were out of fashion and too large for single-family use in a servantless society and the land was no longer adaptable to residential use. Often the land was desirable for multiple family residences, apartments, transitional uses, or churches. There is little reason to believe that present-day covenants will not produce similar hardships.

The existing law is clear that either the zoning classification

20. Fagin, Regulating the Timing of Urban Development, 20 LAW & CONTEMP. PROB. 298 (1955); Vladeck, Large Scale Developments and One House Zoning Controls, 20 LAW & CONTEMP. PROB. 255 (1955); 2 LEWIS, PLANNING THE MODERN CITY 151 (1949); CORNICK, PROBLEMS CREATED BY PREMATURE SUBDIVISION OF URBAN LANDS IN SELECTED METROPOLITAN DISTRICTS, DIVISION OF STATE PLANNING 144 (1958).

or the private covenant prevails—whichever is more strict. The public character of the zoning regulation makes orderly amendment to meet changing times relatively simple. No such procedure is available in the case of the covenant. The choice is between costly and uncertain litigation or the expensive purchase of a release from those land owners who see an opportunity to profit. Technically, the legal remedy for the removal of restrictive covenants may be adequate. If changed conditions exist, equity may refuse to enforce the covenant, or recovery will be limited to nominal damages. However, as a practical matter, the land developer normally cannot afford to spend a substantial amount of money to finance litigation and await the delay of a court decision. Faced with a restrictive covenant he will look for land elsewhere.

If planning and zoning are proper exercises of the police power, it should logically follow that the property interest in a restrictive covenant should be just as subject to regulation as the use of land itself. Logic, however, has given way to a justifiable fear of the administration of zoning ordinances. Plan commission administration follows no orderly pattern. A commission is often inactive for years at a time. Also it may be swayed by political pressures, or accept short term expediences and reject long term planning. In such cases, the security of the land owner and the land-user is slight indeed. The subordination—in fact the elimination—of the private covenant affecting land subject to zoning jurisdiction is not a realistic choice. There is perhaps a middle ground. The amortization of the restrictive covenant is not essentially different from the amortization of the nonconforming use. Further protection to the property owner could be provided by more formalized notice, a longer period of time for remonstrance, and the opportunity to relocate during the period of amortization. This middle ground, with some burdens still remaining on the land-owner, would deter hasty action and yet would afford opportunity to the community to grow without the artificial restraints of ancient covenants now important only as economic tools for aggrandizement of those individuals who seek to capitalize upon growth itself. Unfortunately, at this date, it appears that amortization of covenants would fail to survive judicial review. But so once seemed the fate of non-conforming use amortization.

**Intensity of Land Use**

With land available and its use classification determined, there still remains the issue of how intensively it should be used. Intensity of use depends not only upon the character of the community but also upon the character of the particular activities involved. Gen-

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eraly, it is conceded that business or commercial use is entitled to exploit land to the point at which structures cover the entire lot.\textsuperscript{23} Even in the small community, this maximization of use in the central business district is encouraged.

In the development of shopping centers, the opposite tendency has been promoted by business itself. Most of the land is devoted to parking space, with green areas and landscaping. Thus two patterns of business use are developing simultaneously in most American cities today. The threat of the shopping center to the central business district is so real that it would be hazardous to predict that all consumer goods and service enterprises can survive in the central business district, in all but the smallest communities, for more than a decade.\textsuperscript{24} Customer preference for easy parking and modern concepts of aesthetics pose an almost insoluble problem to land owners who have failed to make downtown shopping both convenient and attractive.

Intensity of use not only involves the horizontal development of land, but also its vertical use. At this point civic pride conflicts with city financing. At least in the past, the mark of progress was the skyscraper, even though in the small town it meant only a hotel or office building six or eight stories in height. Such visual proof of growth and prosperity is hard to combat. The fact that such a structure creates undue traffic congestion, insoluble off-street parking problems, the need for increased pressure in the water supply system, and more powerful fire-fighting equipment was universally ignored. Whether municipal pride should be indulged at so great a cost seems doubtful; but municipal pride has usually won, even though restrictions on height of commercial buildings have always been judicially sustained.\textsuperscript{25} Conversely, municipal pride which requires new buildings to be two or more stories in height has been held invalid as an unreasonable restraint on an owner's right to develop his land as he wishes.\textsuperscript{26}

The central business district has faced other problems in an attempt to retain its customer appeal. Some cities have required that demolished business buildings be replaced by off-street parking accommodations. Others have prohibited the conversion of land to parking purposes and thus indirectly require that the land remain idle or be returned to retail business uses. The validity of these two positions cannot be easily assessed. On the one hand, the provision

\begin{itemize}
\item \textsuperscript{23} Horack & Nolan, Land Use Controls 136 (1955).
\item \textsuperscript{24} Planning Advisory Service, Criteria and Standards for Shopping Center Stores, Information Report No. 47 (Feb. 1957); Clark, Office Building in the Suburbs, 13 Urban Land No. 7 (July-Aug. 1954).
\item \textsuperscript{26} 122 Main Street Corp. v. City of Brockton, 323 Mass. 646, 84 N.E.2d 13 (1949).
\end{itemize}
for more off-street parking stimulates suburbanites to visit the central business area. On the other hand, however, off-street parking is a deterrent to the window-shopper who shuns the street where there is not an unbroken line of retail establishments.

The intensity of use of industrial lands has been reduced so substantially since the 1930's that earlier standards are no longer realistic. Freed from a limited power source and willing to invest in substantial acreages, the average industry today provides not only an adequate off-street parking area but also sufficient buffer landscaping to insulate adjacent business and resident zones from the impact of industrial activity. The concept of limiting industry to a rigid zone is giving way to regulation by performance standards. These will permit industrial location in any area where the industry is willing to invest in sufficient land and provide sufficient services so that its production and its employees will not burden adjacent areas or unduly reduce their economic value.

Intensity of use also presents many value questions in the management of residential zoning. The decisions depend in large measure upon the history of the community and its established living patterns. In some eastern communities, for example, the row-house without front and side yards and with only limited open space in the rear yard is acceptable. In most other parts of the country, the generally accepted lot size is 6000 square feet, and not more than thirty percent of the area may be occupied by structures. In some suburban subdivisions, the minimum lot size is much greater, and judicial approval has been given to minimum lot requirements as great as five acres.

At one time this trend to the larger lot would have received unqualified approval, but recently doubt has been expressed concerning its soundness. In the first place, with the availability of land rapidly decreasing, there is anxiety whether the community can afford such a low rate of use intensity. Furthermore, direct burdens to the municipality result: extra construction cost for sewers, water, other utilities and streets connecting the widely spaced houses; additional police and fire personnel; and more costly garbage and trash collection. This tendency toward municipal sprawl also aggravates the problems of the school district. Although the cost of

27. The flexibility of electric power transmission plus motor transportation of raw materials and finished products permit almost unlimited industrial location if community facilities make the site attractive.


the large lot was intended to discourage families with school age children from purchasing in the area, such has not been the case, and the desired elimination of school taxes has not occurred.\(^{30}\)

Our improved economy has created other problems relating to the intensity of residential land use. Most notable is that of the private swimming pool. Now available at a price that is within the means of most upper middle income families, and certainly by co-operative action, it provides recreation for young and old alike. In the process, however, it tends to concentrate more than the usual number of persons on a given lot. The accompanying noise, evening lighting, and the attendant risk from drowning frequently do not commend its location to the non-swimming members of a residential community.

Zoning ordinances have not specifically dealt with the problem, so that it is difficult to determine what a court would do if a community through its plan commission and council fixed a specific policy. By analogy to the private park cases, it would seem possible to exclude the co-operative pool on the ground that it is a business enterprise conducted in a residential area.\(^ {31}\) In one case dealing with an individually-owned pool, the court found no violation because the use was residential and different only in degree from the lighted horseshoe court.\(^ {32}\) Another approach to the problem would be to consider the swimming pool as a structure even though it is primarily an underground structure. If it is so classified, it would be excluded from a side yard and could be placed in a rear yard only if it did not increase the structural use of the property above the usual thirty per cent maximum.

**Quality of Use**

The control of the quality of land use is not generally considered as a part of zoning regulation, and where it has been included, it has been vigorously criticized.\(^ {33}\) Nevertheless, the requirements of fireproof or fire-resistant construction in business areas have been commonplace for more than a half century. Building, plumbing, sanitary and electrical codes have established minimum construction standards which have added to the costs of residential construction. To that extent they have excluded those persons from building who could only afford a substandard home. At least one community requires all residences to be equipped with garbage grinders and gives no consideration to the non-conforming user.\(^ {34}\)

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33. See note 36 infra.
34. Ordinance, City of Huntingburg, Indiana, 1951.
More recently, by zoning ordinances, many communities have imposed floor space requirements on residential construction.\(^{35}\) Either as a universal minimum or as a graduated requirement for different residential zones, these ordinances require a minimum square footage of 768 square feet or more. The objectives of such ordinances are to provide adequate but minimal living area for the average family, to prevent the creation of rural slums, and to preserve the value of adjacent residential property. Although these ordinances have been attacked as establishing a kind of economic segregation,\(^{36}\) the same attack could be made upon nearly every statute which has raised structural standards or added to the cost of land through increased subdivision requirements.\(^{37}\)

With the rapid consumption of available land, it seems entirely appropriate for the community to engage in those conservation practices which are necessary to prevent the blight of remaining realty. If houses are inadequate for minimum living, at least one of two things will certainly happen: they will be abandoned or expanded. Abandonment will impose a loss upon the landlord and upon all adjacent land owners. Expansion of the house by adding rooms or garages results in increased intensity of use and usually produces a request for a variance from area and bulk requirements.\(^{38}\)

Emphasis on quality of land use involves a new approach to the problem of industrial uses. Again influenced by the lack of available land, industry is being admitted into non-industrial zones where it can demonstrate that the quality of its use will not be injurious to the community or to adjacent property. Thus even heavy industry has been admitted into non-industrial zones where the character of the industrial operation and the size of the tract confines noise, vibration, and flash to the land area of the industry.\(^{39}\) Likewise, off-street parking for employees' cars must be provided. Transportation of raw materials and finished products must not impose unreasonable burdens on the city's traffic pattern or unduly disturb adjacent property—particularly if it is residential.

Similarly, apartments and garden apartments have been admitted

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35. For example, see Lionshead Lake, Inc. v. Wayne Township, 10 N.J. 165, 89 A.2d 693 (1952).
37. Strangely enough those who object to minimum space requirements as economic segregation have not opposed an increase in the minimum size of lots. They have never particularized the reason, but perhaps it is on the assumption that there are rural areas where a larger tract may be procured at about the same price as a minimum sized lot in a city.
39. See note 28 supra.
by special permit into single-family residence zones⁴⁰ where there is architectural harmony with existing residences and where the area-population ratio does not increase the intensity of residential use.⁴¹ The almost universal resistance to such permits even where intensity of use is not increased indicates the believed, if not actual, economic damage of the intermixing of uses even of the same class.⁴² It suggests also that the neglected quality-of-use standard should receive increasing attention by plan commissions and courts.

Although Berman v. Parker⁴³ was a conservation and not a zoning case, it appears that it will have profound effect upon the imposition of quality controls in zoning administration. If the generalization from this decision will permit, as it seems to, minimum standards of maintenance,⁴⁴ then zoning, together with conservation ordinances, may provide affirmative means for creating a new supply of available land out of the structural refuse piles which surround the heart of our great cities.

Without the help and resources of the health and welfare departments, it is obvious that zoning and conservation cannot rescue large portions of the population from the social, economic, and moral graveyard in which they exist. Through education and improved economic opportunity, many of the succeeding generations can become valuable citizens—but only if they have an opportunity to escape the structural and cultural influences of their environment.⁴⁵

⁴⁰. Also motels and tourists parks have been admitted, even though they are of a more obvious commercial nature. Bohn v. Board of Adjustment, 129 Colo. 539, 271 P.2d 1051 (1954). But see, People ex rel. Gronmen v. Hedgcock, 106 Colo. 300, 104 P.2d 607 (1940).


⁴². For example, Rodgers v. Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951); Akers v. Mayor and City Council of Baltimore, 179 Md. 448, 20 A.2d 181 (1941).

⁴³. 348 U.S. 26 (1954). A Congressional enactment declared that "... conditions existing in the District of Columbia with respect to substandard housing and blighted area ... are injurious to the public health, safety, morals and welfare; ...". The statute authorized the district commission to acquire such land for purposes of redevelopment. Appellant alleged that the statute as applied to his property violated the Fifth Amendment. The court rejected his challenge, saying "If those who govern the District of Columbia decide that the Nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way." Subsequently, the Wisconsin Supreme Court sustained an ordinance which conditioned the issuance of a building permit upon a determination "that the exterior architectural appeal and functional plan of the proposed structure will, when erected, not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood ... as to cause a substantial depreciation in the property values of the neighborhood." State ex rel. Saveland Park Holding Co. v. Wieland, 269 Wis. 262, 69 N.W.2d 217 (1955), cert. denied, 350 U.S. 841 (1955).


LAND CONTROLS IN AN URBAN SOCIETY

Quality use requirements, whether expressed through slum clearance, redevelopment, conservation, or zoning, will contribute substantially to this significant social process.

CONCLUSION

With the unprecedented and accelerated trend toward urban living, local units of government seem increasingly unable to finance the services which business, industry, and the people expect. Thus the concern for acquiring available land and regulating its use will intensify in two directions: (1) locating uses in such a fashion that municipal services may be provided efficiently and at the lowest cost, and (2) encouraging uses of high intensity in order that maximum tax revenues may be procured.

A landowner in an urban community will experience increasing regulation of his rights in land. Where he deals in land as a commodity, the regulation will become intense. Indeed, as the legal advertising preceding the hearings on the Parsippany-Troy Hills Township master plan warned, consideration must be given to “every question relating to land development that requires a public decision in light of the fact that the interest of the developer is ephemeral, but that the community will have to live from then on with what the developer does.”46 These pressures will require more precise standards for administration than have been developed in the past. Quality controls and standards for measuring availability must be added to the existing use and intensity regulations.

46. But see Jones v. Board of Adjustment, 119 Colo. 420, 204 P.2d 560 (1949), where only the dissent seemed to be concerned with the problem.