



## Social and Economic Education for Development

### Weighing the Trade-Offs in Adopting Land Use Planning and Zoning by Lori Garkovich

University of Kentucky

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#### Introduction

The implementation of comprehensive land use planning and the adoption of zoning and subdivision ordinances under the authority granted to local governments by the Kentucky Revised Statutes Chapter 100 (KRS 100) is a significant community decision. It is an action that profoundly alters the taken-for-granted understanding of public and private property rights and the ways in which change occurs in a community. It is an action that creates a greater need for local officials to ensure that all citizens are active participants in community decision-making and, demands that both the costs and benefits of this decision are shared equitably by all groups within the community.

Planning and zoning is not a "magic bullet" that will automatically resolve all concerns about the pace and nature of change in a community. Rather, planning and zoning is a double-edged sword that can either strengthen community influence over the path of change and development and preservation or contribute to the diminishment of social and political bonds within the community. How this double-edged sword cuts depends on the commitment of both citizens and local leaders to crafting and implementing a process that addresses both the intended and the unintended consequences of re-creating the meaning and use of land in the community.

This publication explores some of the issues and concerns that arise when a community considers adopting planning and zoning and identifies some of the trade-offs that must be addressed in this decision-making process.

#### Setting the Stage

In any community, if you bring up the topic of planning and zoning you will get an earful. There's a lot of things people "know" about growth, development, and planning and zoning that may or may not be true nor accurate. These are some of the things people believe that may not be so.

*Agriculture is not the best use of land. Land used for residential, commercial, or industrial uses is more economically valuable to a community.*

There is a growing number of fiscal analyses of the monetary costs and benefits of different types of land uses for local communities. These studies compare the income generated by parcels of land through property taxes with the costs of delivering a package of community services (e.g., police and fire protection, water and sewer line, roads, education) to the users of those parcels. While the specific dollar values vary, the conclusions of community-based economic studies in Pennsylvania, Massachusetts, Connecticut, New York, Florida, and California are the same: **Residential land uses cost more in government provided or subsidized services than they generate in property tax revenues and service fees, while agricultural land uses generate more in property tax revenues than they cost in services.**

More specifically, studies indicate that for every one dollar of tax revenue generated by farm land, between 21 and 48 cents of community services must be provided. Like agricultural lands, commercial and industrial

lands represent a net income flow for local communities, demanding between 18 and 44 cents of services for every one dollar of generated revenues. On the other hand, for every one dollar of tax revenue generated by residential land, between \$1.05 and \$1.36 of community services must be provided. Thus, agricultural and commercial/industrial lands have a net positive monetary effect on a community's budget while residential lands have a net negative monetary effect.

*Zoning is unconstitutional, it infringes on our most fundamental right, the right to use and enjoy our private property in any way we want.*

Property rights are not and have never been unrestricted. Zoning is but one of many ways that government places limits on property owners' use and enjoyment of their land. For example, nuisance laws say that we cannot use our land in such a way as to harm or limit our neighbor's enjoyment of his land. Property rights are actually a bundle of rights to land and some (e.g., right to sell, lease, or transfer) are reserved to the property owner while others (e.g., right to tax, to take for public use with just compensation) are reserved to the government. Zoning ordinances limit property rights in order to **promote public health, safety, morals, and the general welfare**. Zoning ordinances are based on the judicially accepted premise that the public has an overriding interest in how land in the community is used. However, it is also true that planning and zoning introduces new limits on how individuals use their property and requires additional legal and administrative work on the part of land owners.

*Communities with planning and zoning have higher costs for land and development because of the restrictions and requirements imposed by planning and zoning.*

The research on this issue is mixed. In some communities, land prices are higher due to more intensive land use, but in others, there appears to be no upward shift in land prices. It is not clear what factors lead to higher land prices in some but not other communities. What is clear is that the cost of delivering public services to scattered urban users is higher than the cost of delivering public services to more densely settled urban users.

Hence, communities must weigh the possibility of higher land prices for the private sector against the certainty of higher service costs to the public sector. What criteria should be used to determine where potential higher costs should fall, and how are higher costs distributed among different segments of the community?

*Communities with planning and zoning are less attractive to industries and businesses who are not willing to put up with the restrictions imposed on how they operate.*

Surveys of business and industry leaders and those involved in industrial recruitment indicate that planning and zoning is seen as a benefit, providing certainty in how land is used and insuring an orderly development of community facilities and services. On the other hand, certain types of manufacturing and business activities prefer the less restrictive development environment of communities without planning and zoning because their economic activities often generate public opposition (e.g., chemical manufacturing, meat processing, strip clubs).

*Communities with planning and zoning experience more conflict as each development proposal becomes a focus of debate among neighbors and different interest groups in the community.*

There is no question that planning and zoning provides a structured process wherein citizens can express their interests in and concerns about a development proposal. As a result, there is a greater likelihood of more contentious public hearings as well as litigation on a decision to approve or reject a development proposal. On the other hand, where planning and zoning is absent, citizens have few options for influencing the direction and nature of change in their community.

## Challenges of Moving Forward

### Insuring Citizen Participation

Communities often consider adopting planning and zoning in reaction to proposed or actual changes that are defined as undesirable. It may be that someone intends to develop a landfill,

a large commercial hog operation, or a chemical manufacturing plant. A local government may propose building a sewage treatment plant or a lake or river may become contaminated with residential or industrial sewage from nearby development. In these cases, planning and zoning is seen as a defensive weapon -- something designed to stop what citizens define as an unacceptable change. Planning and zoning adopted as a reaction to change often is not successful. Citizens may oppose the effort because they see no long-term benefit; the particulars of the local comprehensive plan and zoning ordinances are legally inadequate because they were adopted in haste without adequate consideration; or, the plan and zoning ordinances limit future growth or desired development because they reflected what the community didn't want rather than a clear vision of a desired future.

Kentucky law requires that zoning ordinances serve as the tools for implementing a community's goals and objectives for future growth, development, and preservation as defined in a comprehensive plan. A plan that describes in detail both current and prospective characteristics of the community (e.g., population trends, economic activities, infrastructure, housing mix, social services, transportation, school and recreational facilities, open space, agriculture, natural resources) is the foundation for the legal restrictions on how land is used.

The comprehensive plan's goals and objectives must be grounded in a community consensus on a vision for the future if the plan is to be implemented successfully. From the beginning, then, and throughout the planning and implementation process, it is essential that citizens be actively involved. Communities that succeed in establishing an effective planning and zoning process are those where citizens, civic organizations, and elected officials work as partners in a variety of ways to shape and sustain the planning and zoning process. The following illustrate how this can occur.

- ▶ Citizens, civic organizations, and elected officials must jointly define a vision for what they want the community to be like in twenty years. KRS 100 recommends that comprehensive plans have a 20 year

planning framework, and mandates they be updated every five years.

- ▶ The community vision must be the foundation for the goals and objectives in the comprehensive plan.
- ▶ The planning process must be responsive to citizens' concerns and interests. Opportunities for citizens and civic organizations to express their interests and concerns with respect to development proposals must be built into the planning and implementation process. This means that at a minimum, official meetings of the planning commission should be held at a time to maximize citizen participation (e.g. in the evening).
- ▶ The members of the officially appointed planning commission must represent the ethnic, economic, and social diversity within the community.

### **Recognizing Differences in Land-Based Interests**

Within all communities there are valid differences in land-based interests. Some property owners have vested interests in growth and development while others have a vested interest in preservation or limiting change. Moreover, it is likely that any particular parcel of land has potentially multiple uses that would satisfy the goals of the comprehensive plan or its over-arching vision. Yet, the planning and zoning process can easily slip into a rigidity that limits opportunities to find the most efficient and beneficial use of land in the interests of the community and private property owners. A challenge for communities, then, is to design a plan and zoning ordinances that balances the need to meet legally mandated requirements with the reality of different interests in how land is used.

- ▶ The future land use map should reflect the multiple land-based interests within the community. Ample opportunities should be provided to citizens to express the different land-based interests prior to any final decision.
- ▶ Zoning ordinances should incorporate the concept of conditional uses to provide

some flexibility in how related parcels of land are used.

- ▶ The legally mandated five year review of the comprehensive plan should be followed as closely as possible to insure that changing conditions in the community are appropriately reflected in the plan's goals and objectives and the land use map.

### **Insuring Fairness and Equity in Decisions**

A criticism often made about planning and zoning is that special interests have undue influence on decisions to accept or reject development proposals or on changes in the land use map or ordinances. This perceived "shortcoming" arises from the belief that some in the community personally benefit from the planning process or the implementation of zoning ordinances, or, that planning and zoning decision are arbitrary and capricious. In fact, this criticism contains a kernel of truth in some communities and for some decisions.

It is imperative that communities adopting a planning and zoning process recognize the potential for this unintended consequence and design a process to insure not only the reality but the appearance of equity and fairness. There are ways to address this concern.

- ▶ The planning commission should adopt a code of ethics to strengthen public confidence in the decision-making process. This code should require commission members to publicly disclose any land-based interests they may have and require that they recuse themselves from any deliberations related to personal or family land interests.
- ▶ The plan may require mediation as a step in the development proposal review process so that concerned citizens and property owners have an opportunity to explore options before the formal public hearing occurs.

In many communities with planning and zoning there is a sense that some property owners are forced to bear an undue share of the costs of growth management. For example, land owners in areas not designated for future development

argue that they are unfairly prohibited from gaining the maximum return from their land, while land owners in areas designated for development reap windfall profits. In places that have adopted ordinances to protect scenic viewsheds or to preserve historic districts, land owners argue that their opportunity to use and enjoy their property is unfairly restricted for the benefit of the larger community.

To insure fairness and equity in planning and zoning it is critical that the process provide a means to assess the costs and benefits of decisions as well as assessing who bears the costs and who reaps the benefits. There are situations where ordinances that in language treat all groups within the community equitably in fact lead to inequities in implementation.

This situation poses perhaps the most significant challenge for communities with planning and zoning. Why? Because often, the only way to mitigate economic inequities arising from the planning and zoning process is through the expenditure of public funds to compensate those forced to bear an undue burden. The process can be designed to minimize these effects.

- ▶ Incorporate the concept of equity in costs and benefits arising from the planning and zoning process into the goals of the comprehensive plan.
- ▶ Evaluate the future land use map and proposed zoning ordinances to determine the extent to which costs and benefits are shared equally among all property owners in the community.
- ▶ Explore innovative approaches (e.g., purchase of development rights, transfer of development rights, purchase of agricultural easements) to compensate land owners who bear an unequal share of the costs of accomplishing the community's goals and objectives.

### **Summary**

How land is used profoundly affects the character of a community, as well as the vitality of the economy and the fiscal bottom line of local government. Planning and zoning as a growth management tool offers intended

and unintended costs and benefits to both the private and the public sector. It is essential that both citizens and elected officials carefully weigh these costs and benefits as they consider adopting planning and zoning. To fail to do this will insure that if the community moves forward with this growth management technique, it will produce considerable conflict. Unfortunately, the reality is that even with careful attention to the challenges described here, conflicts will not be avoided. But citizens and community leaders will know that they have arrived at this choice with deliberation and open participation.