

**An Appraisal of Zoning
For
McMinn County**

“If the legislature of a State, under pretense of providing for the public good, or for any reason, can determine, against the consent of the owner, the uses to which private property shall be devoted, or the prices which the owner shall receive for its uses, it can deprive him of the property as completely as by a special act for its confiscation or destruction. If, for instance, the owner is prohibited from using his building for the purposes for which it was designed (and, one might add, for which the owner would like it designed) it is of little consequence that he is permitted to retain the title and possession. . .” Justice Stephen J. Field

There have been a few residents of McMinn County who have continuously sought zoning ordinances for our county. A referendum has been taken on the matter and the voters were adamantly opposed to zoning. It was defeated by a large margin.

The History of Zoning

Zoning is not a new concept. Historically, zoning was used as early in the 15th century to set aside areas in which religious minorities such as Jews were forced to live. In 20th century America it was used to quarantine blacks. Today it is used to segregate those who can not afford single family dwellings from those that can.

Why Zoning Proponents Claim Zoning is Necessary

The proponents of zoning generally give two reasons why they believe McMinn County needs zoning. The first reason is to stop unwanted businesses such as landfills. It is somewhat ironic that zoning proponents want a county which owns and operates a landfill to make it illegal for landfills to exist. Why aren't these proponents attempting to shut down the "people's" landfill?

History has given us an example of the sorry saga of landfills and government in McMinn County. In the late nineties, a group of residents formed an association and incorporated it under the title "Residents Against Industrial Landfill Expansion" (RAILE). They spent thousands of dollars of private money documenting how one of the present landfills was damaging the environment of property owned by residents of McMinn County. Our County Commission did absolutely nothing to protect the property rights of those who were polluted by that landfill. If our local government was unwilling to stand up to a landfill then, why should we believe that it would not "amend" any zoning rules to permit a new landfill in the county after zoning became law?

The second reason given as the need for zoning is that often someone builds a beautiful home and another person moves in next door with a "trailer." It is as if they are saying "those people aren't good enough to live next door to me." Do the advocates of zoning think people who live in mobile homes don't live in an expensive, 4,000 square foot home with a two car garage and a swimming pool just because they don't want to? People who can't afford the best life has to offer have just as much right to live where they wish as do the wealthiest among us. As libertarians, we feel if the proponents of zoning feel they are better than others, that is their right, but they have no right to use the force of government to deny others a place to live. Do they wish to zone the poor and middle income out of the county entirely, or just restrict them to ghetto areas so that we might have economic segregation?

Too often we hear the complaint that if someone builds a lesser quality dwelling next door it will lower the value of my home. This may be true, but should we not allow someone to build a nicer home next to ours because it would raise our property taxes?

The Economic Effects of Zoning

A federal report from the Kemp Commission reported in 1991 that zoning and other restrictions add up to 35% to the price of a new home. Zoning hurts communities and families by banning convenience stores, offices, and social services from residential areas, thereby forcing citizens to spend more money and time because of the necessity of driving further. It hurts those who cannot afford or prefer not to live in a single family residence by limiting areas where multifamily dwellings can be built. Zoning can hurt the poor by prohibiting them from operating businesses out of their residences, and by limiting the number of units which may be built on each lot it reduces the opportunity for home ownership. Zoning hurts families by forcing aging parents into areas which are zoned for nursing homes, condominium, and apartments while their children often live in single unit structures in a another part of town.

Zoning is often used as a method to restrict competition against established businesses since those businesses are usually grandfathered in once zoning is established. Naturally it is an unsuspecting public that suffers from this restriction on free trade. This is so established in the business community that textbooks even teach it to students as in the following excerpt. "Regulation opens up an additional avenue whereby those most capable of bending the political process to their advantage can increase their wealth."¹ Thus zoning drives up prices and the consumer is forced to pay more.

While reducing the power of the landowner, zoning gives power to bureaucrats to manipulate the choices of property owners. Zoning does not preserve the right of the property owner, it restricts the rights of the property owner; It essentially lets the government be part owner of the property without having to pay for any part of it. The American Planning Association suggests the following language in zoning ordinances to intimidate citizens: "As a matter of legislative drafting, it is good practice to include a general 'violations' section in zoning regulations that, in part, says, "It shall be a violation of this ordinance to make any use of property not expressly permitted by this ordinance or a permit or other approval granted hereunder."²

What Happens When Zoning Takes Effect

Once zoning has its foot in the door it tends to grow in power and scope. Flossmoor, Ill., banned pickup trucks from its streets. Coral Gables, Fl., charges residents \$35 to get a permit to paint their bathroom. Los Angeles prohibits freelance writers from working out of their homes in areas not zoned commercial. Guilford, Connecticut, has outlawed takeout windows at restaurants and fast-food establishments. Pasadena, California, outlawed weeds in residents' yards - sometimes referred to as "crabgrass fascism." Zoning was used in a suburb of Washington D.C. in 1988 to evict up to a thousand renters primarily to boost the value of a minority of the homeowners.

Newtown Borough, Pennsylvania, demands residents pay a \$10,000 non-refundable fee before they may challenge the constitutionality of the local zoning ordinance.³ This exemplifies the effects a zoning bureaucracy can have on the rights of a property owner.

One group which has been hit particularly hard is car restoration enthusiasts. Zoning regulators often attempt to prevent them from restoring older model cars on their own property under the excuse of no "junked" cars permitted laws. This group has found it necessary to start an organization called CARZ⁴ (Citizens Against Repressive Zoning) just to keep their hobby from being outlawed by zoning officials.

Churches are also finding zoning laws to be prohibitive. In 2002 the Third U.S. Circuit Court of Appeals ruled that zoning was an acceptable method of denying the establishment of churches in any area the government deems inappropriate.⁵ Zoning discrimination against churches has become so entrenched that Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 in a vain attempt to stop it.⁶ Communities have even gone as far as outlawing prayer meetings in private homes.⁷

Zoning and Residential Area Protection

For those who believe zoning will protect them from neighbors they wish not to have, it would be prudent to realize that zoning laws are not fixed in concrete but are susceptible to change at the whim of politicians when someone provides them with the incentive to change the zoning laws.

In 2002 in Cleveland, homeowners in an area zoned residential were powerless to stop local regulators from re-zoning their area to business once Home Depot announced it wanted to build there. The prospect of hundreds of thousands of dollars of new taxes was too much for the City Council to turn down.

In October of 2002 The Tennessean reported Trousdale County leaders were about to change the

zoning on area zoned as agricultural to a new zoning category in order to accommodate the building of a new \$1.1 billion uranium processing plant.⁸

Residents of a community in Davidson County were forced in 2002 to take to the picket lines in an attempt to prevent a Metro Council recommendation that a trash transfer station be developed in their residential area.⁹ Davidson County does have zoning.

Alternatives to Zoning

The most effective thing government can do to make zoning unnecessary is to be a staunch defender of property. If a neighbor pollutes the air, ground, or water the County Government should prosecute the offender just as diligently as it would if the offender had broken into the house and stolen property. We don't need zoning to prevent vandalism or theft of private property, we shouldn't need zoning for the government to prevent others from physically damaging our property.

For those who doubt that a growing community cannot manage itself without zoning Houston is an excellent example of the benefits of remaining zoning-free. Free markets and deed restrictions enabled Houston, the fourth largest city in the U.S., to go quite rapidly and efficiently without the expense and bureaucratic regulation of a formal zoning plan.¹⁰

There are alternatives to zoning which do not require the force of government to be used against the residents who are not concerned about what their neighbor does. Restrictive deed covenants work quite well to assure property owners that the future use of the surrounding area will remain the same. It is becoming common practice in McMinn County to place deed restrictions on property when large parcels are sold off in sections at auctions.

County officials too often give the impression nothing could be done without zoning to protect the public from nuisances. In November of 2002 Scott County developed an ordinance which regulates the side effects of what they consider undesirable businesses in a neighborhood by strict licensing provisions, Scott County has no zoning.¹¹ By encouraging the use of restrictive covenants when the large farms of McMinn County are sold, areas can remain suitable for either agricultural or residential purposes without the heavy hand of zoning regulators entering into the picture.

Summary

In conclusion, the damage which would be done to the rights of McMinn county property owners, the ill effects on the affordable housing market, and the unreliability of the zoning process make it necessary to say no to zoning. The bureaucracy which would develop from zoning will cost not only in terms of dollars to support it, but more importantly will substitute the rule of law by the rule of regulators. It is hoped that rather than blindly accept zoning as a cure for all problems between neighbors that our community leaders would examine methods of protecting the rights of citizens without destroying the rights of citizens. Life without zoning may not be a panacea, but it is far superior to life with zoning.

This document was produced by the McMinn county Libertarian Party as a public service:
Send Comments to liberty@mcminnco.net

Footnotes

- 1 J.D. Gwartney & R. Stroup, Economics (3d ed 1982), p. 481
2. Bovard, James. FREEDOM DAILY August 1996 "Zoning: The New Tyranny" p 28
3. Bovard, James. FREEDOM DAILY August 1996 "Zoning: The New Tyranny" p 22
- 4 <http://clubs.hemmings.com/clubsites/fightcityhall/>
- 5 http://www.gomemphis.com/mca/faith_values/article/0,1426,MCA_4076_1546310,00.html
- 6 http://www.rluipa.com/generaldocs/RLUIPA_Text.html
- 7 http://www.aclj.org/News/Nr_001204B.Asp
- 8 http://www.tennessean.com/local/archives/02/11/24736037.shtml?Element_ID=24736037
9. http://www.tennessean.com/growth/archives/02/11/25304468.shtml?Element_ID=25304468
10. [Http://www.libertyhaven.com/personalfreedomissues/freespeechorcivilliberties/houstonzoning.html](http://www.libertyhaven.com/personalfreedomissues/freespeechorcivilliberties/houstonzoning.html)
- 11 http://www.timesnews.net/article.dna?_StoryID=3135866