

Social Sciences



RURAL LAND ZONING AS A PRACTICAL MEANS OF LAND USE CONTROL IN OKLAHOMA

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Zoning from the legal standpoint is the use of the police power to safeguard the morals, health, safety and general welfare and prosperity of the community and body politic large or small.

From an economic standpoint land zoning is the control of land use by law or ordinance for the greatest good of the community and state. It involves the principle of the wisest and the most economical use of land resources under given conditions for the general welfare.

In colonial and in early national America, in fact until well toward the close of the Nineteenth Century, unrestrained individualism, individual wish and interest, completely dominated the use of land.

Among a sparse rural population with seemingly limitless natural resources the methods of the use of land were of little public concern. The rapid industrialization of the United States during the last half of the Nineteenth Century slowly forced into the public mind the idea of land uses restricted for the public good. The economic necessities compelled by the growth of large cities, the passing of the frontier, and the evil social effects of the unrestricted individual use of land gave rise to the Zoning Movement. Zoning is a function of population congestion due to rapid and large industrialization in a democratic environment. Under such circumstances the police power expressed and enforced in a zoning ordinance is the only means of bringing social and economic order out of individualistic land use chaos, and safeguarding the public welfare.

The first specific case of land zoning was the city ordinance of Modesto, California in 1885, which reads as follows:

"It shall be unlawful for any person to establish, maintain, or carry on the business of a public laundry or wash house where articles are washed and cleansed for hire, within the city of Modesto, except within that part of the city which lies west of the railroad track and south of G. Street."*

Following the large Chinese immigration into California after the discovery of gold and during the building of the Union Pacific railway, hundreds of Chinese set up laundries in California cities without any regard to the sanitation or fire risks or to residential and business districts. After various means of controlling this menace had been tried with little success in various cities, the Modesto ordinance was enacted, and was upheld by both the California State Supreme Court and the United States Supreme Court.

Other cities in California and in other states followed the lead of Modesto and by 1920 zoning ordinances were in force in hundreds of cities throughout the nation.

The first state zoning law which carried the power of land zoning very far beyond the city limits was the Wisconsin County Zoning Law enacted

*Annals, American Acad. Political and Social Science, Vol. 155, Part II, May, 1931, P. 19.

in 1923. It had become evident that if the zoning ordinances of large cities were not to be largely nullified by suburban and rural conditions adjoining them, they must have the power to compel certain conformities in land use in the rest of the county or counties in which the cities were located. Both Milwaukee and Manitowoc counties enacted county zoning ordinances under this law.

With the decline of the lumber industry in the 1920's Central and Northern Wisconsin suffered an economic relapse in which large areas of land reverted to the counties through tax delinquencies, and revenues for roads, schools and other governmental units greatly declined at a time when the expenses of government were increasing.

In 1927 the Wisconsin Legislature assigned to an Interim Committee of Forestry and Public Lands the task of determining what might be done that would be helpful to alleviate this situation through later legislation.

As a result of the very complete and excellent report of this committee the next session of the legislature amended the County Zoning Law to include:

“and determine the areas within which agriculture, forestry, and recreation may be conducted, the location of roads, schools, etc. . . .”*

It is a far cry from the efforts to control the location of Chinese laundries in Modesto, California in 1885 to the program to alleviate tax burdens and direct rural settlement in northern Wisconsin in 1929. Forty-four years elapsed between the two dates. From a small and uncertain beginning the Zoning Movement spread from California to Missouri, Louisiana, New York, and over the entire United States until it includes over six hundred cities and is at present fixing its roots as firmly in the fields and forests as it had previously done in the city streets.

Many cases involving many phases of land zoning have been carried to the various State Supreme Courts and to the Federal Supreme Court. In the decisions of these courts the powers and limitations of land zoning have been quite clearly defined. Prominent among these cases are:

1. Chicago B. & A. Ry. v Drainage Commission, 1906. U. S. 561, 592.
2. Bacon v. Walker, 1907. U. S. 311, 317, 318.
3. The Hadacheck Case. May 15, 1913. California Supreme Court.
4. Euclid, Ohio case, 1926.
5. Civello v. New Orleans, Louisiana Supreme Court.
6. Whitner v. The Town of Windsor, Connecticut Supreme Court.

SUMMARY OF USE AND EXTENT OF POLICE POWER IN ZONING

1. The police power may be used for the following purposes:
 1. Protect the public health.
 2. Protect the public morals.
 3. Secure the public safety.
 4. Promote the public welfare.
 5. Promote the general prosperity.
 6. Promote the public convenience.
 7. Suppress the offensive.
 8. Suppress the disorderly.
2. It must be used reasonably and not in an arbitrary manner.
3. It must be directly designed to accomplish the purpose for which it is used.

*Statutes of Wisconsin, Zoning Law, Sect. 59.97.

4. Its reasonable and proper use is defensible even though it injures individuals and individual rights.
5. Our present great economic and industrial development with congested population makes a greater use of the police power necessary than formerly.
6. Changes and changing social and economic and political conditions justify new and changed uses of the police power.
7. Rural land zoning is such a new, necessary, and expanded use of the police power.

Since July 13, 1933, twenty-three Wisconsin counties have passed zoning ordinances and the twenty-fourth county is now in the process. The total amount of land of various types and kinds involved in the first twenty-two zoned counties is as follows:

TABLE I. Areas of the Restricted and Unrestricted Districts Land in Farms, and in non-conforming uses in twenty-two Zoned Counties of Wisconsin, June, 1936.

	Acres	Per Cent of Total Area of Counties	
Restricted Districts	4,660,760		34.7
Forestry Districts	4,291,285	31.9	
Recreational Districts	877,475	2.8	
Non Conforming Uses	168,394	1.3	
Unrestricted Uses	3,751,252		65.3
Now in Farms	5,199,296	38.7	
Open for Settlement	3,551,956	26.6	
Total Area of Counties	13,420,012		100.0

In Wisconsin at the present time as the result of a little over three years work more than five million acres of rural land is in restricted districts, approximately 4,500,000 acres in restricted forest areas, and about 500,000 in restricted recreational districts.

The significance of these figures and of the zoning movement in Wisconsin is this, then, with little cost, the citizens of twenty-four counties have voluntarily by county ordinances set aside 4,500,000 acres of land for exclusive forest uses and 500,000 more acres for exclusive recreational uses, while at the same time in these counties they have left nearly 10,000,000 acres in unrestricted uses, nearly six millions of which are now in farms and nearly four millions more are still open for agricultural use if anyone so desires to use them.

Wisconsin has hit upon an economical, effective and democratic method and means of controlling rural land use for the public good through legitimate and approved use of the police power.

The advantages realized are that the growing costs of roads and schools in remote and sparsely settled areas are restricted and will ultimately be largely reduced. The increase of expenditure for local government in such areas will be prevented. The settlers will be concentrated upon the better land, relief expenditures will be reduced, and local government and community life improved.

POSSIBILITY OF USING RURAL ZONING IN OKLAHOMA

The purpose of rural land zoning as it has developed in Wisconsin, Michigan and other states is:

1. To obtain the most economical use of land.

2. To reduce public expenditures by reducing the increase of costs for roads and schools and health and relief and other governmental expenses by preventing the expansion of rural population in areas incapable of sustaining such populations.

The purpose simply stated is to increase the prosperity of the people and reduce the tax burden.

To what extent can this method of rural land use control which has succeeded so well in Wisconsin be used in Oklahoma?

Oklahoma has an area of 44,424,960 acres. 9,090,090 acres, or about one-fifth of this is still outside of farms. However the acres in farms is constantly increasing as more timber land is cleared and more stock range plowed up.

The figures for the last decade are as follows:

Year	Acres in Farms	Acres Not in Farms	Per Cent of State Area Not in Farms
1925	30,868,965	13,555,995	67.0
1930	33,790,817	10,634,133	76.1
1935	35,334,870	9,090,090	79.6

Of the 1935 figure, 3 285,960 acres, or 36.15 % are in six eastern counties. In the ten years from 1925 to 1935 the number of acres in farms in Oklahoma increased 4,465,905.

The amount of plowable pasture has been reduced by 1,316,522, or 35 %.

The amount of woods pastures has increased 1,298,755, or over 43 %. The acres of plowable pasture have decreased a little more than the woods pasture has increased. In the past ten years Oklahoma farmers have plowed up 2,057 square miles, an area equal to more than the size of two of our largest counties, of virgin sod, to plant cotton, wheat, grain sorghums or other crops, while they have taken under fence an equal area of timber land which had been cut over or had lain outside of farms in 1925. This action has tended to be a liability in the use of Oklahoma land at both ends of the scale. Over 2,000 square miles of land, the full area of two large counties, has been taken out of the sod and subjected to water and wind erosion at a time when agricultural crop production was already over expanded and prices seriously low. Many or most of the farmers who embarked upon this unwise course have suffered great loss, not only in failure to make a profit or to retrieve their expenditures but in the loss of the sod pasture and the erosion loss of the land. If ten years ago these 2,000 square miles of open range had been zoned against agricultural use, this loss could have been prevented.

On the other hand the thousands of farmers, many of them new settlers, who opened up this large range area to crops have cost the State, county, and local governmental units many additional thousands of dollars in new and additional taxes for roads, schools, etc. The whole movement, the entire venture, has been an uneconomical use of land and an additional expense to government. In most cases the poorer or less productive land is left in the sod to the last, and most of these acres had been left undisturbed by the plow till all the good land was gone. Most of them should still be in sod. If they were the individual's loss through failure to profit, and the state's loss in increased expenditures would be saved. Rural land zoning ten years ago would have prevented much of this loss.

On the other end of the scale the loss is as great. Two thousand square miles of timbered lands have been taken into farms during the past ten years. This is now listed as woodland pastures. Most of it is, of course, in a dozen of the heavily timbered counties in the eastern part of the State. Much of it has been cut over, is rough land, and very unproductive as pasture, but was earlier, and would be again, productive as a forest area. Most of these acres are suited by nature to timber production and to nothing else. If a wise timber policy had been initiated in Oklahoma ten years ago as it was in Wisconsin and some other states, this 2,000 square miles of woods pasture might now be growing a profitable crop of timber instead of serving as a fourth class pasture area. A wise policy of rural land zoning initiated in Oklahoma ten years ago could have achieved this result. In the last decade 4,000 square miles have been added to the farming area of Oklahoma half of it taken from the prairie and half of it from the forests. Little of this has made a profit as a farming venture, but all of it would have made some profit as either a grazing area or a timber producing area.

This is only a part of the confusion and loss of a single decade. Even long before 1925 much land had been taken under the plow in Oklahoma that should have remained in grass and timber. The many deep gullied and abandoned fields of the prairies and rough hill sides of cleared woodlands attest to this fact. The fact that Oklahoma has one of the worst, if not the worst, erosion situations in the United States is further proof of this condition. If a wise system of land use control had been applied to Oklahoma twenty or rather forty years ago the farming, grazing, and timber wealth of the State would be much greater today.

Nearly 9,630 square miles, or 6,164,467 acres are listed in 1935 as other pasture. This is equal to the area of nine of our largest counties. This pasture is neither woodland nor plowable. It is rough, eroded, thrown out fields, scrub timber and other such land that is incapable of producing crops or timber. It is scattered all over the State, but much of it is in the central two-thirds of the State outside of the northern wheat area. Ten years earlier this poor and nondescript area of "other pasture" included 14,547 square miles, or 9,304,740 acres. In the ten years after 1925 nearly 5,000 square miles of this area had been removed from this classification. During the same ten years the number of farms of Oklahoma increased over 10,000. It is quite certain that much of this area again went under the plow in new emergency; depression farms on which the owners or tenants could not make a living and would have starved without relief.

Reference to the past has no value except to point the way to the future.

The uneconomic, unscientific, individualistic chaotic land policies have brought us our present land problems.

This paper is not permitted time to discuss the technic or method of applying rural land zoning. All that we may do is to point out that especially in Wisconsin and also in some other States the same or similar land problems are in large measure in process of solution by the Rural Land Zoning Program.

A serious rural land use problem exists in our State. Its extent and involved details have only been hinted at in this paper. Rural land zoning offers a possible, if only partial, solution. In the central portion of the State the application of zoning would be quite difficult and in many places impracticable because of the small and checkered areas of good and poor land, but in the more typical areas of the West and the denser timbered areas of the East a large and practicable application of county rural land zoning seems desirable as a democratic, home rule, and inexpensive means

of rural land use control. The execution of the plan would come to this:

1. To zone and set aside at once for timber use all areas now bearing timber or better suited to timber than other crops.
2. To zone and set aside at once for grazing purposes all lands now in grass or better suited to grazing than to other uses.
3. To zone and set aside at once for recreational uses all lakes, parks, and areas primarily suited to recreation.
4. To leave unrestricted all other areas at present with the provision that portions of such unrestricted areas may be added to one or the other of the restricted areas as and when the people by vote in the counties so determine.
5. The education of the people by the use of precept and demonstration as to the advantages of rural land use control by the zoning method.

Rural land zoning can be made to function in Oklahoma through the present organization and machinery of County and State government. Rural land zoning is primarily a home rule program in which each county through popular vote on zoning ordinances proposed by the county commissioners and discussed and studied in local township and school district hearings over a period of two to four months, adopts, rejects or modifies.

The State Planning Board or other State agencies could be of valuable service in the collection and distribution of information on land use conditions and means of improvement in various sections of the State and in assisting the counties in the coordination of their local land use programs into a unified State land use program.

At the present time 36% or nearly 3,300,000 acres of the land not in farms in Oklahoma is in six southeastern counties. Most of this land could be zoned at once into a major forest area and prevented from being destroyed in the future in attempts to extend field culture.

In the western part of the State are many thousands of acres now in ranches or farms devoted to grazing. These areas could be zoned into grazing areas and the plow kept out.

Erosion could be brought under more effective control through zoning in many sections of the State.

Wisconsin and Michigan have demonstrated the practicability of land use control through rural land zoning, and much of Oklahoma can profit from the same methods and program, at least with modifications to meet our special needs.

