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EC73-859 The Why and How of Rural Zoning in Nebraska

Paul H. Gessaman

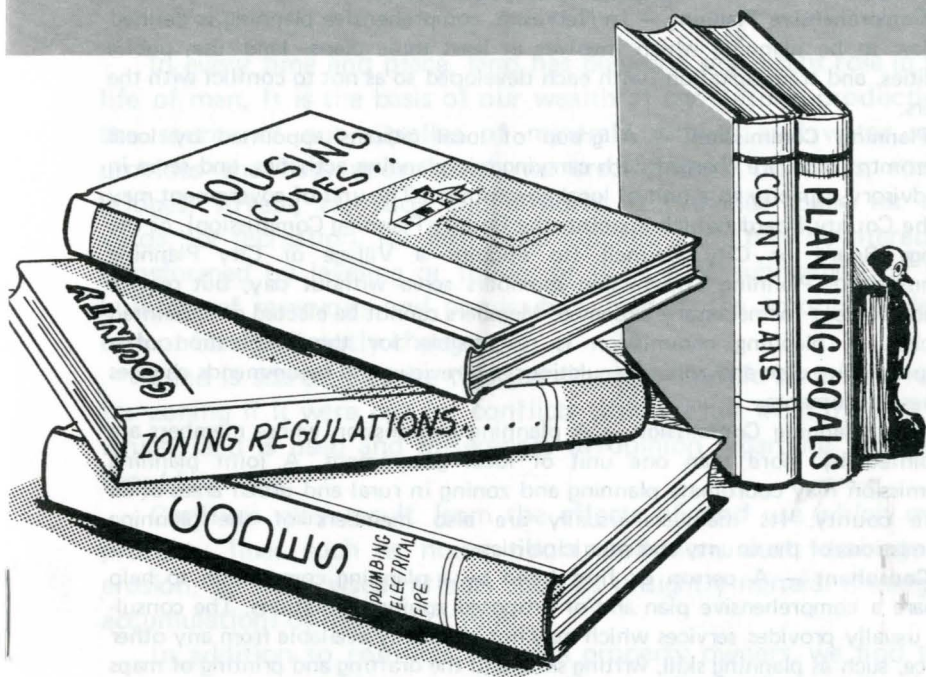
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THE WHY AND HOW OF RURAL ZONING IN NEBRASKA



Extension Service, University of Nebraska-Lincoln College of Agriculture Cooperating with the
U. S. Department of Agriculture and the College of Home Economics
E. F. Frolik, Dean J. L. Adams, Director

Definitions

Rural Zoning — Zoning is a legal process whereby local government regulates the type and intensity of land use within some specified geographic area. Rural zoning refers to the zoning of open country and unincorporated villages.

Zoning Districts — When land is zoned, the zoned area is divided into districts. Nebraska law requires that within zoning districts the zoning regulations must be uniform and must be uniformly applied.

Land Use Planning — The process by which people living within a local area seek to identify a pattern of land use best suited to their needs. Factors considered in the process: The present use of land; the capability of the land to support structures of various kinds such as buildings, roads, streets, or highways; the land's suitability for agriculture; the risk, if any, that the land may be subject to flooding; and access to means of transportation such as roads, railroads, and airports.

Functional Planning — Functional planning is concerned with only one issue such as land use, or health care, or sewer and water provision, or solid waste disposal. If you are planning for any one of these, this is called functional planning.

Comprehensive Planning — In Nebraska, comprehensive planning is defined by law to be planning which involves at least three plans—land use, public facilities, and transportation—with each developed so as not to conflict with the others.

Planning Commission — A group of local citizens appointed by local government who are charged with carrying out planning activities, and serve in an advisory capacity to a unit of local government. The unit of government may be the County Board (which appoints the County Planning Commission), or the Village Board or City Council (to appoint a Village or City Planning Commission). Planning Commission members serve without pay, but receive reimbursement for necessary expenses. Members cannot be elected or appointed officials. A planning commission is responsible for the preparation of a comprehensive plan and zoning regulations and reviews and recommends changes in these documents.

Joint Planning Commission — A planning commission whose members are appointed by more than one unit of local government. A joint planning commission may coordinate planning and zoning in rural and urban areas of an entire county. Its members usually are also members of the planning commissions of the county and municipalities.

Consultant — A person or firm hired by a planning commission to help prepare a comprehensive plan and/or proposed zoning regulations. The consultant usually provides services which may not be readily available from any other source, such as planning skill, writing skill, and the drafting and printing of maps and plans.

Scope of Services — The listing of services to be performed by the consultant. This listing is usually accompanied by a cost estimate for each item listed.

(continued on page 16)

THE WHY AND HOW OF RURAL ZONING IN NEBRASKA

Paul H. Gessaman
Extension Economist
Community Resource Development

Introduction

This circular provides information on the "why" of rural zoning. It discusses the regulatory aspects of zoning, the legal framework for planning and zoning, comprehensive planning as the practical basis for zoning, and the "steps" to rural zoning.^{1/}

Why Have Rural Zoning?

In every time and place, land has played a significant role in the life of man. It is the basis of our wealth of agricultural production, the source of our supplies of minerals, timber and water, and provides the base upon which we erect homes, buildings, roads, bridges, streets, railroads and airports. It provides space for our yards, for recreation, for farms and ranches. Land may be altered or transformed by leveling or filling; or it may be submerged by the building of reservoirs and ponds; but, overall, the amount of land cannot be significantly changed.

Land is scarce. Despite this scarcity, there would be no real need for zoning if it were not for conflicts which result from the ways in which land is used and differences of opinion regarding how land should be used.

Conflicts may result from the effects of land use which cross property lines such as noise, odors, pollution, dust, drainage or erosion, or from visual effects such as unsightly mineral mining or accumulations of old cars or junk.

In addition to conflicts between property owners, we find that society as a whole is demanding a larger voice in determining how

^{1/} For more information see EC 71-844 The What, Why and Who of Rural Zoning, available from your County Agent or through the Department of Agricultural Communications, University of Nebraska-Lincoln.



land is to be used. Society is turning to zoning as a means of achieving its goals regarding the use of our scarce land resource.

Part of the effects of land use which spread across property lines are aesthetic, but many of these effects are economic. The value of any tract of land is influenced by the use of land which surrounds it. And, a property owner may gain or lose when the use of an adjacent piece of land is changed. If he loses, conflict will usually follow.

So, the two concerns which result in interest in rural zoning are:

1. The prevention of conflict between property owners (and the prevention of economic loss) which occurs as a result of incompatible uses on adjacent tracts of land.

2. The protection of society's interest in preserving and promoting health, safety and the general welfare of its citizens.

In response to these concerns, rural zoning regulates the type and intensity of land use in unincorporated villages and open country outside the zoning jurisdictions of villages and cities. The zoned area, which is usually a county, is divided into zoning districts. Within each district the zoning regulations must be uniform, and must be uniformly applied.

What Does Zoning Regulate?

Rural zoning regulates the location and extent of each category of land use. These categories of land use are defined by the planning commission as a part of the zoning regulations.

Categories (or types) of land use common in Nebraska are: *Agricultural*, which includes land use for both crop and livestock production; *Residential*, which can occur in towns or open country; *Commercial*, including filling stations, theaters, and wholesale or retail business of various types; *Industrial*, including both light and heavy industries; *Recreational*, such as our parks and various other areas set aside for recreation; *Transportation facilities use*, for airports, streets, highways, roads, and railroads; *Mineral extraction*, which includes quarries, gravel pits or sandpits; *Flood plain*, along streams; and various other types of land use as defined by the planning commission.

Rural zoning also regulates land use intensity. In any area designated for a specific type of land use, the zoning regulations can also specify how intensively this use may be carried on.

For example, grazing of livestock is a much less intense use of agricultural land than is a confinement feeding operation. A residential area, or a subdivision, with three or four homes to the acre is a more intense residential use than are isolated nonfarm dwellings scattered along the road. And, large or high-rise apartment buildings are a still more intense residential use than is a development of single family dwellings. The zoning regulations may specify which of these intensities are allowed and which are not allowed in a zoning district, and may regulate the height, bulk and density of buildings. In some instances housing codes may also act as a regulator of land use intensity.

Building codes regulate many factors related to health and safety, and are usually adopted at the time of adoption of zoning regulations. Building codes include:

Standard or uniform building codes—These codes specify the allowable types of construction.

Plumbing codes—These specify minimum standards for the installation of plumbing.

Electrical codes—These specify minimum standards for all electrical work.

Fire prevention codes—These regulate factors associated with the prevention of fires.

Minimum housing codes—These set standards which housing must meet to be considered habitable. Provisions of minimum housing codes may be enforced on housing existing at the time of adoption of the codes and on all new housing. Minimum housing codes are the only codes which can be made retroactive.

It is important to note that Nebraska law provides only for the regulation of *nonfarm* buildings. *Building codes enacted as a part of rural zoning apply only to nonfarm buildings.* Nebraska's enabling legislation for zoning defines nonfarm buildings as all buildings except those utilized for agricultural purposes on a farmstead of 20 acres or more which produces \$1,000 or more of farm products in each year.^{2/} In practice, this means that in Nebraska nearly all farm buildings are exempt from building codes.

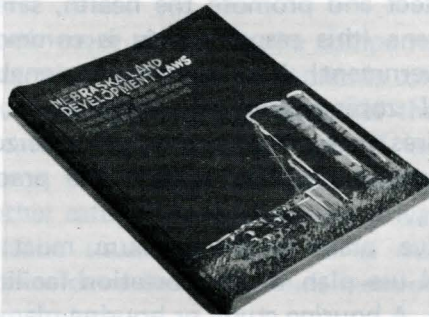
^{2/} Section 23-114.03, Nebraska Revised Statutes.

The Legal Framework

Enabling legislation passed in 1967 by the Nebraska Legislature and subsequently amended provides the legal framework for planning and zoning. This legislation authorized the appointment of planning commissions by units of local general purpose government.

Each Nebraska county can have a county planning commission appointed by the County Board. In a similar manner, the Board of each incorporated village can appoint a village planning commission, and each city council can appoint a city planning commission. Joint planning commissions can be appointed by two or more units of local government.

The enabling legislation requires that planning commissions be made up of persons representative of the planning jurisdiction. These members cannot be elected or appointed officials.



Each planning commission has responsibility for the development and appropriate updating of a comprehensive plan and zoning regulations (if zoning is desired) for its geographic area. The provisions of a comprehensive plan and the regulations for zoning as developed by the planning commission do not become effective until public hearings have been held and a formal resolution of adoption has been passed by the appropriate unit(s) of local government. The final responsibility for planning and zoning is vested in the unit of local government, not in the planning commission. In Nebraska, proposed zoning regulations usually are *not* put on the ballot to be voted upon by the voting public. As is true of any other law, zoning can be put on the ballot by petition of the electorate.

The past few years have brought increasing activity in planning and rural zoning as Nebraska citizens have made use of this legal framework. By mid-1973 eight counties (Cass, Dakota, Hall, Lancas-

ter, Merrick, Saunders, Scottsbluff and Washington) had completed and adopted comprehensive plans and rural zoning under the 1967 enabling legislation. Douglas and Sarpy Counties were working on bringing their pre-1967 planning and rural zoning into compliance with that legislation. Adams, Buffalo, Clay, Hamilton, Howard, Seward, and York Counties were well into the planning process. Numerous other counties had exhibited slight to strong interest in developing comprehensive plans and instituting rural zoning. Some had appointed planning commissions and were working on pre-planning educational work, or were at some early stage of planning.

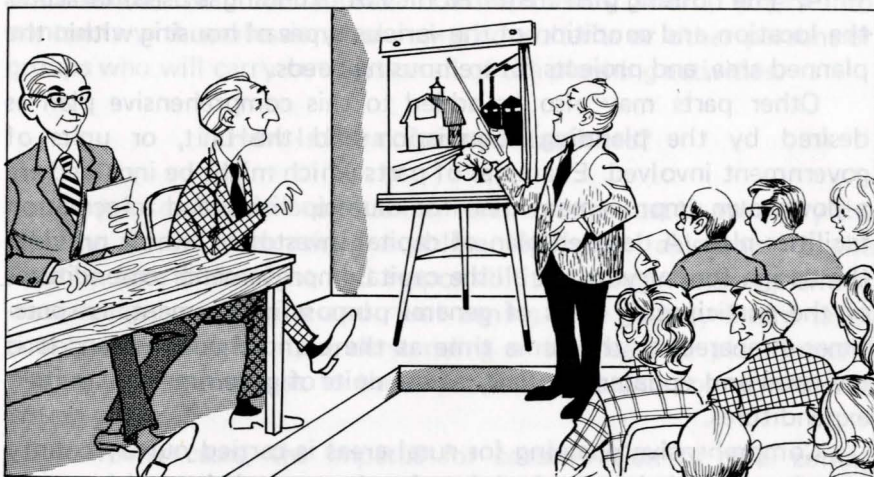
The Basis of Rural Zoning—Comprehensive Planning

Rural zoning is based on the right and responsibility of government to protect and promote the health, safety and general welfare of its citizens (this responsibility is commonly called the police power of government). Nebraska's zoning enabling legislation specifies that rural zoning shall be based upon comprehensive planning, and requires that planning must precede zoning. Thus, in Nebraska, comprehensive planning is both the practical and legal basis of zoning.

A comprehensive plan as a minimum must contain three components: a land use plan, a transportation facilities plan, and a public facilities plan. A housing study or housing plan is also required if Federal matching funds (under section 701 of the Housing Act of 1954, as amended) are used to pay part of the costs of the local planning and zoning effort.

The comprehensive plan consists of graphic materials (maps and drawings) and written documents, and is required to be designed to accommodate anticipated long range economic conditions. The estimates of future growth (or, possibly, future decline) are based upon projections of population and economic activity.

The enabling legislation further requires that the zoning regulations, when adopted, must be in conformity with the comprehensive plan. For example, land which is planned to remain in agricultural use must be zoned for agricultural use, and land which is planned for residential use must be zoned for residential use. This conformity of zoning with planned uses is required for all categories of land use in the comprehensive plan.



Now let's look more closely to the components of the comprehensive plan. As a minimum these components consist of:

1. A land use element which designates the proposed general distribution, location and extent of uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands and other categories of public and private use of land. This portion or element usually consists of a map and supporting documents and provides a basis for the delineation of the boundaries of use districts in zoning.
2. The transportation plan which contains the general location, character and extent of existing and proposed major roads, streets and highways and air and other transportation routes and facilities. This transportation plan usually consists of a map and other documentation and is quite closely related to the one and six year transportation plans which are already required of the various units of local government.
3. The public facilities plan which shows the general location, type, capacity and area served of present and projected or needed community facilities including city hall, courthouse, fire station(s), recreation facilities, schools, libraries and other public buildings. Public utilities and services such as water and sewer systems, water treatment plants or water storage areas, sewage treatment plants, sewage dispersal fields or lagoons and solid waste disposal areas are also included.

4. The housing plan (required if "701" funding is used) indicates the location and condition of the various types of housing within the planned area, and projects future housing needs.

Other parts may also be added to this comprehensive plan as desired by the planning commission and the unit, or units of government involved. Examples of parts which might be included are a downtown improvement plan for municipalities, and a recreation facilities plan. A detailed plan of capital investment, which provides the design for carrying out all the capital improvements expenditures of the participating units of general purpose government, is sometimes prepared at the same time as the comprehensive plan. It is reviewed and updated annually as the units of government plan their expenditures.

Comprehensive planning for rural areas is carried out by county planning commissions, or by joint planning commissions with part of the members appointed by the County Board. There is nothing in Nebraska law that prevents a person from serving on two or more planning commissions. Thus, a person may serve on a joint city-county planning commission and also be a member of the planning commission of his municipality or county.

Planning commission members must be appointed in such a way as to make them representative of both the population and the geographic area to be planned. Since the planning commission is a policy making group that identifies goals and determines policies for its county or community, it is important that the membership include representatives of all principal occupational and ethnic groups. *The planning commission must be a representative body if it is to do a good job of policy making for the residents of the planned area.*

Planning commission members are appointed for staggered terms. When the planning commission is initially appointed, one-third have membership for one year, one-third for two years, and one-third for three years. In subsequent years appointments are for a full term of three years. This arrangement provides continuity to planning commission efforts by limiting the change in membership in any one year. While there is no set number of members required for a county planning commission, an odd number such as 9 or 11 usually makes a good working body.

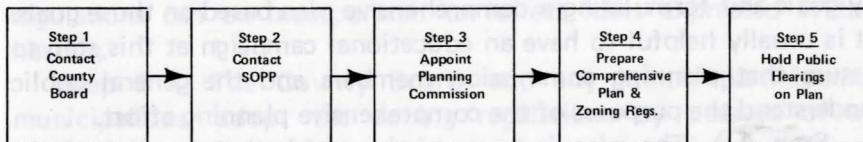
When the planning commission has been appointed, it elects its own chairman and is then ready to go to work. The planning

commission, with the approval of the county board, enters into contracts with professional planning consultants or other persons or groups who will carry out part or all of the planning activities.

How Is Rural Zoning Established?

Any formal action to establish rural zoning must be taken by the County Board. Nebraska's enabling legislation delegates to the County Board the right and responsibility to begin and implement comprehensive planning and rural zoning. The County Board takes action as a result of its understanding of the need for planning and zoning and in response to the expressed needs and concerns of the voting public.

In many cases, the impetus for consideration of rural zoning comes from individuals or interest groups who have problems growing out of unplanned change. It may be that cattle feeders are concerned about nonfarm residences being built near feedyards, or a farmer may find a land fill dump or auto salvage yard is being started near his home. The establishment or expansion of a feedyard may bring with it the potential for conflict with neighbors who object to dust, flies and odors. In any case, the person or persons who feel a need for rural zoning may begin action for its consideration as a tool for reducing future conflicts.



The following are usually called steps to rural zoning.

Step 1 — Local residents contact the County Board to indicate interest in rural zoning. If the County Board or the local residents, or both, want more information on rural zoning, they can ask the County Extension Agent or the State Office of Planning and Programming ^{3/} for help in one or more informational meetings. The

^{3/} The address of the State Office of Planning and Programming is: P.O. Box 94601, State Capitol, Lincoln, NE. 68509. Or, telephone (402) 471-2414.

meetings should be open to the public. They provide an opportunity for obtaining factual information on what rural zoning is, how it is instituted, and what it can and cannot do.

Step 2 — The County Board can contact the State Office of Planning and Programming (SOPP) to secure the help of a local planner. The local planner is employed by SOPP and provides a link between that agency and the local planning effort.

SOPP allocates and disburses Federal funding assistance available for local planning efforts under the "701" program. SOPP also maintains a listing of planning consultants who can provide the specialized help needed by a planning commission.

Step 3 — If the County Board decides to take action, it appoints a county planning commission. This planning commission is responsible for preparation of a comprehensive plan and proposals for rural zoning regulations.

If, as a result of preliminary meetings, the municipalities in the county and the County Board decide to launch a joint planning effort, a joint planning commission is appointed.^{4/} Some of its members will also be members of the county planning commission. Total membership will come from the rural areas and from the villages and cities in a manner representative of the population and geographical areas of the county.

Regardless of the type of planning commission, its members need to be able to work together effectively. They also need to be willing to actively participate with their constituencies in defining community goals and formulating a comprehensive plan based on those goals. It is usually helpful to have an educational campaign at this step to assure that planning commission members and the general public understand the purposes of the comprehensive planning effort.

Step 4 — The planning commission, with the approval of the County Board (and the municipal government(s) if it is a joint planning commission), usually hires a consultant who helps prepare the comprehensive plan. The planning commission and the consultant work together in gathering information and data upon which the plan is based. Remember, the consultant works for the planning commission, not the reverse situation. A continuing effort to keep people informed of planning commission activities should be carried

^{4/} SOPP gives a higher funding priority to joint planning efforts in making decisions on the use of "701" funds.

out. The ideas and preferences of residents provide the basis for a really acceptable plan.

Every effort should be made to secure these ideas and preferences.

The comprehensive plan is based upon expected long-run conditions as indicated by projections of population and economic conditions. Proposed zoning regulations are usually prepared in the latter part of the planning process. The regulations must be in conformity with the comprehensive plan.

Step 5 — When the comprehensive plan is completed, public hearings must be held. These hearings should be widely advertised and all interested persons encouraged to attend.

The public hearing provides an opportunity for comments, both favorable and unfavorable, regarding the proposed comprehensive plan.

After the hearing the planning commission may make adjustments in the proposed plan to reflect ideas expressed at the hearing.

Step 6 — The County Board, and any jointly participating municipalities, adopt the comprehensive plan by passage of resolution. This makes the plan an official document of the adopting units of government.

Step 7 — The proposed zoning regulations are presented at a public hearing similar to the hearing for the comprehensive plan. This hearing should also be advertised widely and people should attend and make their desires known. Modifications in the proposed zoning regulations can be incorporated to reflect ideas expressed at the hearing.

Step 8 — The County Board, and any jointly participating municipalities, adopt the zoning regulations by passage of an appropriate resolution. When this is done, the zoning regulations become law.

Step 9 — The County Board sets up the needed administrative structures to carry out rural zoning. Unless the zoning is very complex, the administrative structure can be quite simple. It needs to be effective in its actions regardless of its degree of simplicity.

The planning commission continues as a functioning body, but the emphasis of its work changes from preparation of the plan to consideration of the need for updating, modification and change. When requests for rural zoning changes are received, the planning

commission considers the requests and makes recommendations to the County Board. The County Board then takes action as it sees fit. Changes in zoning must be based upon modifications of the comprehensive plan. In many cases, action resulting in changes in the plan or the zoning regulations must be preceded by public hearings.

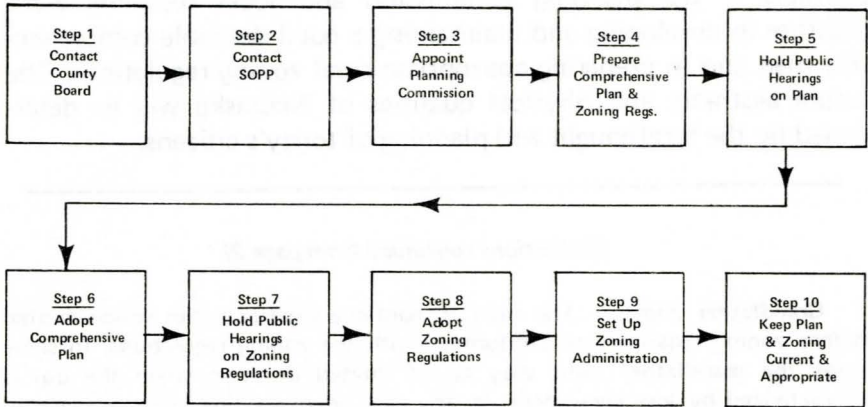
It is easy for the planning commission to become so involved in the maintenance of zoning that it loses its overall view of the needs of the whole county or community. To avoid this, the commission needs to periodically examine the comprehensive plan to determine the appropriateness of goals and policies set in the past, and to make needed adjustments or changes. Small planning efforts of this type, when carried out on a regular basis, will help ensure that the comprehensive plan does not become obsolete or inappropriate.

Step 10 — Residents and the planning commission need to work constantly to keep both comprehensive planning and rural zoning current and appropriate to the county needs. Times change, and both the plan and the zoning regulations will need adjustment to reflect changing conditions.

For many counties and communities this last step may prove to be the most important and the most difficult. Planning and zoning administration and zoning enforcement are often attempted without help from experienced or professionally qualified persons. The result is often failure to achieve objectives for which zoning was instituted, and an expensive set of plans and zoning regulations gather dust upon the shelf.

The counties and municipalities which have employed persons to administer zoning have had better success than those who have not. Even if someone is employed to administer and enforce the zoning, an extra effort by citizens is required to keep current the planning and zoning which can be the key to a better and more desirable community.

Steps to Rural Zoning



Summary

Rural zoning is a legal process carried on by local government in which the type and intensity of land use is regulated to benefit local residents. The legal basis of rural zoning is the duty and responsibility of local government to protect and promote the health, safety and general welfare of its citizens. Enabling legislation adopted by the Nebraska Legislature in 1967 (and subsequently amended) provides the legal framework for rural zoning.

This enabling legislation requires that rural zoning must be preceded by, and must be in conformity with, comprehensive planning. A planning commission prepares the comprehensive plan and proposed rural zoning regulations. These must be adopted by the appropriate unit(s) of local government before zoning becomes effective. Subsequent changes in the comprehensive plan and the zoning regulations must also be adopted by the local government unit(s).

The planning commission is an important goal-setting and policy-making group. If it is broadly representative, it will be better able to carry out its responsibilities in a way that is acceptable to residents of the area. Once the plan is completed and adopted, the planning commission and local residents must work constantly to keep the plan and the zoning regulations appropriate to local needs and conditions.

Rural zoning is not a cure-all for the problems of rural Nebraska. However, it is our only "tool" for achieving orderly development and change. It can be effective in preventing future problems and

conflicts if the planning commission and local residents work together in developing and maintaining a good desirable comprehensive plan and in preparing appropriate rural zoning regulations. The future aesthetic and physical qualities of Nebraska will be determined by the forethought and planning of today's citizens.

(Definitions continued from page 2)

Grandfather Right — The right to continue legal activities which existed before zoning regardless of conformity with the zoning regulations. In some cases the grandfather right may be of limited duration when the use is characterized by low investment. In any case, adequate time must be given to allow amortization of the property owner's investment.

Non-Conforming Use — Any use or activity not in conformity with zoning regulations. Most non-conforming uses come about as a result of the "grandfather right." A pre-existing residence in an area zoned for commercial use is an example of a non-conforming use.

Zoning Jurisdictions — Zoning jurisdictions are the geographic area over which a set of zoning regulations has effect. The 1967 enabling legislation sets limits for the zoning jurisdictions of the various units of government, determined by the size of the village or city:

Population	Extraterritorial zoning jurisdiction (distance beyond the village or city limits)
less than 5,000 (villages & second class cities)	1 mile
5,000 - 100,000 (first class cities)	2 miles
100,000 or more (primary & metropolitan class cities)	3 miles

The county board has zoning jurisdiction over open country outside these extraterritorial zoning jurisdictions described above and in all unincorporated villages. If a village or city within the county does not have zoning, then the county board jurisdiction extends up to the village or city limit.