

Mr. Blucher Answers Mr. McBride

Walter H. Blucher, Secretary and City Planner of the City Plan Commission of Detroit, Has Written the Following Letter to the Home Owners Association of Birmingham

Gentlemen:

I have read with interest the advertisement in The Eccentric of September 30, 1926, with reference to Zoning. I say with interest, because I am interested to learn if the opponents of zoning have, in the past two years, created or thought of any new arguments against zoning. I must confess that I was doomed to disappointment. There was nothing new. There may be reasonable arguments against certain phases of zoning, just as there are arguments for and against every question, but no such reasonable arguments appear in the advertisement. It contains the same old stereotyped statements or rather mis-statements that have been advanced against zoning during the past six years in all cities where unsuccessful fights have been made against this phase of city planning. I can show you the same ineffective statements, almost verbatim, as applied in other cities and other cases.

In my opinion, you need have no fear of the effect that this advertisement will have upon the people of Birmingham. Your citizens are far too intelligent to be misled by such absurd and even insane mis-statements. I want you to have in mind that I do not know the author of the advertisement (though the contents are very familiar), and I personally have no interest in the matter other than that I want the people of Michigan to understand zoning. I am forced to say that the author either did not read the ordinance or else he does not in the least understand city planning and zoning. I would not accuse him of deliberate mis-statements but I do believe that he has been unwittingly misled by parties who have made it a business to fight zoning in Michigan.

You will be interested in learning something of the history of zoning in America. The advertisement states that zoning is Prussian, which is incorrect—we find it in France before we find it in Germany, but even admitting that it came from Germany—well, so did the workmen's Compensation Laws—and should they be thrown out or cast into the ash heap for that reason alone? This is but one example of the limit to which the opponents go. It should not be necessary to prepare an answer to such arguments, but following a brief history of zoning, I shall examine some of the statements as set forth in the advertisement.

I quote the history from a previous article: "A zone is a belt. Men have always congregated together in towns and villages for the purpose of defense and in order that they might enjoy the benefits of advancing civilization resulting from their closer associations. The earlier European cities were formed primarily for the purpose of defense and ordinarily a circular wall was built around each city. When the cities outgrew their limits and expanded, the walls were made into parks while outside of the older sections of the city the land would be laid out in belts, sometimes restricted to different types of buildings. Often times areas were laid out for farming purposes. These were called belts or zones.

"The subject when first heard of in this country was called 'Districting' as a city was divided into a series of districts, but as the word was soon confused with political districts, the public favor caught and used the word 'zoning' so that now the word is known to mean a division of a city into different districts wherein certain types of buildings are permitted and others are prohibited.

"In a book published in Berlin in 1876, the author traces use zoning back to the decree of Napoleon I, issued Oct. 15, 1810 while Protector of the Confederation of the Rhine. This decree provides that establishments which give forth an unpleasant or unhealthy odor may be erected only with administrative license. It divides such establishments into three classes, the first of which shall not be erected near a human habitation, the exact location and distance from residences to be fixed by the administrative authorities. In his book 'The Law of City Planning and Zoning' (p. 210) Frank B. Williams states: 'This decree formed the basis of the Prussian Law passed January 17, 1845, on this subject and this law was in substance followed by the North German Confederation in its industrial law of June 21, 1869.'

Zoning is now to be found in the principal countries of Europe, in England, Canada and other parts of the British Empire and also in Japan.

"As stated above, use zoning was first resorted to in order that objectionable industries might be kept out of residential districts. Out of this procedure the practice grew of establishing 'protected districts' in which such uses of property were not permitted and residences were therefore secure from the intrusion of industries. In some cities, industries were segregated in localities where the prevailing winds would take the smoke away from the city. Zoning was also resorted to in order that a uniform architectural style might be obtained. The result of such regulation is still to be found in numerous European cities. European cities went much further than modern American cities in that the restrictions were at times arbitrary and based on aesthetics, the European laws allowing restrictions WHICH UNDER OUR FORM OF GOVERNMENT COULD NOT PREVAIL."

The first comprehensive zoning ordinance in America was adopted by New York City in 1916. It is interesting to note the growth of the zoning movement since that time. The last report of the Department of Commerce, issued April 19, 1926, advises that 436 municipalities represent more than half the urban population of the United States, with a population of more than 27,500,000. We find that 16 Michigan cities have zoning ordinances in effect among which are Ann Arbor, Battle Creek, Grand Rapids, Jackson, Muskegon and Ypsilanti. In fact, zoning has become so popular in this country, that a zoning committee was organized by Herbert Hoover, Secretary of Commerce, which committee drafted a uniform state zoning enabling act which has been adopted by a number of states and which was recently declared constitutional by the Supreme Court of North Dakota. (See City of Bismarck vs. Hughes et al, 206 N. W. 711)

If the statements of the opponents of zoning are correct, we must assume that all of the twenty-seven and a half million people have been misled and that over half the urban population of the United States has placed itself in a position where all property may be taken away by dishonest politicians who hold office through accident. If this is true, it is a sad travesty on our form of government and certainly the system (of which most of us are quite proud) should be changed. The people of Birmingham will certainly not believe such statements. They will prefer to believe the truth which is that ordinances were adopted by these municipalities because of a desire to improve existing conditions and upon demand of a majority of the people affected by such ordinances.

If zoning is not desired by the majority of the people, or if zoning is desired because it is not understood, as the opponents would have us

believe, why was it that St. Louis so overwhelmingly demanded a new zoning ordinance after it had been held invalid in that city. St. Louis adopted a zoning ordinance in 1918. It was in operation for several years when the Supreme Court of Missouri held that the City did not have authority to adopt a zoning ordinance. The State at that time had no enabling act. The sentiment was so strong throughout the City of St. Louis for a zoning ordinance after the rendering of the decision, that an enabling act was quickly procured and St. Louis, upon the demand of its people, again has an ordinance. If the people had been misled in the first instance, can it be reasonably supposed that they would again demand an ordinance or is it more reasonable to assume that they had learned the benefits of zoning and therefore demanded such an ordinance?

I again say that, in my opinion, it should not be necessary to answer the attack on the zoning ordinance, which appears in the advertisement, but to show how absurd some of the remarks are, we will examine them very briefly.

The statement is made, "... this proposed law, that if put into effect by the people will actually take away from them every guarantee of property rights made to them in the constitution of both the United States and the State of Michigan." Can any statement be more foolish? Is any ordinance valid which deprives a person of rights granted by the State or Federal Constitution? If the ordinance is unreasonable, the courts will not hesitate to declare it invalid in that particular case. If the ordinance is contrary to the Constitution, why has its constitutionality been upheld by the Supreme Courts of such states as Massachusetts, New York, Wisconsin, Ohio, Illinois, California and others, and why has a similar ordinance been upheld by the Supreme Court of the United States in the case of Welch vs. Swasey (214 U. S. 91; 53 L. Ed. 923); and Ex parte Hadacheck (239 U. S. 394; 60 L. Ed. 348)?

Quoting from the article: "It is merely a statement of fact that no person or group of persons is endowed with vision to foretell either the needs of the future or what the future will bring about, let alone having the power to decree what the future shall be..." If this statement is true, a number of cities in the United States are wasting money in City Planning for city planning attempts to direct and control the growth of the city in order that its growth may not be haphazard. If this statement is true, many of our foremost realtors are wrong in attempting to foretell the future needs of large high-class subdivisions. We are accustomed to speak of zoning of cities and villages, but has it ever occurred to the opponents that a subdivider zones his property? Washington Heights is a well-zoned development. The owners, by their restrictions, say that certain streets shall be used for residential purposes of one kind, other streets for different types of residential development and still other streets for commercial purposes. The Aviation Field is another example of a well-zoned subdivision and there are many such examples. Can it be said five years from today that a man is being deprived of his property rights if he is not permitted to use a residential lot on a wide street for business purposes. Zoning merely carries this type of restriction one step farther. If such restrictions are desirable on a large and well-planned subdivision, are they not more desirable in a Village in order that the entire community may grow in an orderly manner?

Quoting: "... if, as often happens in politics, a group of corrupt and conniving politicians should get into office, the people of Birmingham will be absolutely at the mercy of politicians who can overnight destroy the value of any citizen's property by declaring it shall not be used longer for the purpose it is being used, and to back up this decree by forcing the owner in jail if he refuses to obey their dictates, however unjust and unreasonable they may be." The author forgets that ZONING DOES NOT CHANGE EXISTING CONDITIONS and he is unfamiliar, apparently, with the Zoning Enabling Act, which provides checks against easy change and he has not, apparently, read the ordinance which contains this clause: "The Village Commission may, AFTER PUBLIC NOTICE AND HEARING AS PROVIDED BY LAW, amend, supplement or change the district boundaries or the regulations herein established. Whenever a written protest against such proposed amendment, supplement or change, signed by the owners of twenty per cent of the frontage proposed to be altered, or by the owners of twenty per cent of the frontage immediately in the rear thereof, or by the owners of twenty per cent of the frontage directly opposite the frontage proposed to be altered, shall have been presented to the Village Commission, the ordinance providing for such proposed amendment, supplement or change SHALL NOT BE ADOPTED EXCEPT BY THE FAVORABLE VOTE OF THREE-FOURTHS OF THE MEMBERS OF THE VILLAGE COMMISSION" (the entire commission in your case). Need I repeat, that if the ordinance is unreasonable or unjust, it will be declared invalid?

Quoting: "If a man should violate this ordinance for thirty days, he would be subject to a fine of six thousand dollars or imprisonment for twenty-seven hundred days or more than eight years, or both, if the court should so decree" (I haven't checked the figures). In the first place, such a provision is to be found in a number of ordinances and in practically all zoning ordinances throughout the country. It is a common and customary clause in ordinances where the violation may be of a continuing nature. In such cases, the penalty may naturally be of a continuing nature. It must also be remembered that if a man continues to violate an ordinance, such violation becomes WILFUL and the penalty must be such as will tend to discourage violation. How many of the people of Birmingham will willfully violate its ordinance relating to construction of buildings, health, fire, safety? In the second place, the same penalty is to be found in the State Housing Code, which I understand has been adopted by your Village. There has been no uproar over the Housing Code nor do I believe that any people have been thrown in jail for more than eight years because they violated the code.

The claim is made that a man should be paid if his property is affected by zoning. Is a man paid if he is not permitted to put up a wooden building where brick must be used? Do we pay him the extra cost of construction? If a man must travel fifteen or twenty miles per hour in the Village, rather than fifty miles per hour as he wants to, is he paid for the time lost in getting to his office? Suppose a man wants to use his premises for a use which injures his neighbors. He is prevented from doing so. Do we pay him for his property, or the loss of its use in that particular manner? In one state in this country, an effort was made to do zoning by the eminent domain method. It was a dismal and immediate failure. That state now does zoning in the only manner which is proper and that, under the so-called police power which

merely gives the city or village a right to enact laws which are necessary to preserve and protect the public safety, health, morals and welfare. Edward M. Bassett clearly explains the difference between the police power and eminent domain with reference to zoning in the booklet called "Zoning Practice in the New York Region".

"Efforts to provide for compensation spring from a misconception of the purpose of zoning. The Zoning Enabling Act merely grants to each municipality the police power to regulate the height, bulk and use of buildings. The Enabling Act itself cannot possibly be unlawful because it merely grants what the legislature possesses, and no more. If, however, a municipality employs this grant of police power so that the zoning is unreasonable or discriminatory toward any property owner, then the ordinance in that particular may be void. The reason it is void is because the state and federal constitutions provide that no person shall be deprived of life, liberty or property without due process of law. If the municipality should employ the police power granted it by the state legislature in an unreasonable or discriminatory manner, the courts would consider that the citizen was deprived of his property without due process of law, and consequently such provision in that instance would be void.

"The above considerations show the impropriety of provisions for compensation. They are tantamount to saying that, where a zoning provision is void, damages must be paid to the property owner. The courts will protest property owners against unreasonable or discriminatory regulation. Zoning is not taking private property for a public use. Zoning cannot be accomplished under eminent domain. Accordingly it is absurd and unworkable to make a provision for money payment in exactly those cases where the courts would protect the private citizen by declaring the ordinance void."

Quoting: "Certainly the people of Birmingham will not transfer questions of their equity in property from courts of civil law to those of criminal law." I also say, certainly not. The right to appeal to the civil courts is retained and the citizen always has the right to appeal to that court from the findings of the Building Inspector and the Board of Appeals. No single right which he now has, is taken away.

Quoting: "The only recourse left to citizens of Birmingham to appeal from the decrees of the City commissioners is a so-called Board of Appeals. As this Board of Appeals is appointed by the Commissioners and subject to their control it certainly isn't reasonable to suppose that any relief could be expected from it." The author forgets that he may also appeal to the courts. It is a peculiar fact that the greatest honor accorded to zoning is to the Board of Appeals. Not so long ago, I was in Chicago and there talked to a number of people relative to their Board of Appeals. The usual answer to my query was, "Well, you know how politically-ridden this city is—you would expect to find the Board of Appeals the same way? Well, it isn't. It is the fairest board we have in the city of Chicago and it has been extremely satisfactory to the citizens."

Quoting: "The proposed zoning law was drafted by a man who does not live in Birmingham and who evidently knows nothing of the city or its needs." Just as a matter of information, who was that man? The writer was asked to examine your ordinance AFTER it was drawn and he also advised that the people who should lay out the districts ought to be Birmingham citizens familiar with the Village. The only ordinance and map which the writer has seen was prepared by local citizens. Therefore, as a matter of information, I ask if you have adopted still another ordinance from that prepared by your Committee.

The next statement is so absurd as not to require answer at all. In substance it says that a man may not rent a room or carry on any of the customary home occupations. The ordinance of course does not affect existing buildings and existing conditions and it contains a specific provision that home occupations may be carried on. I refer to item 7 in Section 3 "A" Dwelling district wherein accessory uses are distinctly allowed. To say that a man cannot rent his house is "bunkum"—why answer it?

The next statement is equally absurd. It says in substance that the ordinance will permit a business or industry in a highly restricted residential district. This shows the utter lack of knowledge of zoning. Zoning cannot and does not interfere with existing restrictions. It can not lift a residence restriction which is a private contract between the seller and the buyer of property. It merely helps restrictions or districts where restrictions have run out and where the property demands protection. I hope the statement was made through ignorance though it appears to be a deliberate mis-statement of the truth.

Somewhere in the article a distinction is made between City Planning and Zoning. This is very interesting for City Planners may get new ideas on the subject and they are always seeking information. We have always felt that a zoning ordinance is needed to gather up the loose ends of City Planning. Zoning is a fundamental feature of city planning without which the other features such as streets, transportation and parks cannot be well carried out. City Planners will tell you that it is essential that cities have a zoning ordinance if they are to take advantage of the money spent for street widenings, parks, rapid transit, etc. I refer you to the statements of Mr. Daniel Turner, the expert on Rapid Transit as to the need for zoning in conjunction with rapid transportation and to many others.

It is charged that zoning will deteriorate property values and make it difficult to obtain loans. This charge is directly refuted by the fact that one of the largest insurance companies in the country has established a policy of refusing to loan money in cities UNLESS SUCH CITIES ARE ZONED. It is zoning, and zoning alone which can prevent blighted districts and which will assure a property owner and one who makes loans, that the property will not be damaged through the intrusion of a single non-conforming use.

I think I have gone far enough in showing the statements in the advertisement as being incorrect and not based upon the existing facts. I have not gone into the matter of zoning to show its benefits and advantages as there are many. It is sufficient to say that such cities as New York, Boston, Chicago, San Francisco, St. Louis, Muskegon and Grand Rapids, together with more than four hundred others find zoning satisfactory and a benefit to their communities.

Just a few words as to what nationally known men have to say about zoning and with particular reference to stores:

Joseph P. Day, nationally known realtor:
"It is my opinion that our Zoning Regulations are having and will continue to have a beneficial effect. In the best retail store