

ELIMINATION OF NONCONFORMING USES

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B.S., Kansas State University, 1970

A MASTER'S REPORT

613-8301

submitted in partial fulfillment of the

requirements for the degree

MASTER OF REGIONAL AND COMMUNITY PLANNING

Department of
Regional and Community Planning

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1973

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PREFACE

This report deals with the subject of nonconforming zoning uses. It begins with a survey and analysis of the state enabling legislation laying the groundwork for a comprehensive study of the nonconforming use problem. In surveying this legislation, the author wished to determine not only the parameters under which municipal authorities must work, but how arbitrary and undirective this legislation is. A need for strong legislation providing guidance should become apparent. A review of significant ordinances and case law will be undertaken to show the evolution of regulation from simple restriction of nonconforming uses to such recently popular techniques as termination through amortization. Of special interest will be the Kansas situation, with a comprehensive sample of Kansas zoning ordinances taken and analyzed.

Many sources believe that amortization methods constitute the best means to confront nonconforming uses. This report will attempt to show that although the amortization technique is widely favored, performance standards hold much promise for future land-use regulation. Realizing that the majority of Kansas communities cannot implement performance standards because of a lack of trained technical staff and the necessary equipment, an amortization table will be constructed which will suggest by specific land use type what amortization periods should be found acceptable based on the review of significant case law.

The state enabling legislation was obtained directly from each state's annotated statutes. This task was complicated by the diversity

of subject headings under which this material could be found. Zoning legislation could be found under municipalities, municipal corporations, cities, cities and towns, villages, and counties. Several statutes also made distinctions between different classes of communities. The cumulative supplement of each state's enabling legislation was surveyed to make the information current.

For the survey of ordinances and case law, Anderson's Law of Zoning provided a valuable reference source. This source is the most recent legal text on zoning providing reference to important case law, significant law school reviews, and important writings in each area. Approximately twenty major references were consulted for this section.

Originally forty Kansas communities were chosen and supplied with a questionnaire to determine if the community had established a zoning ordinance and if so, what provisions were made for nonconforming uses. The author attempted to survey the largest communities from every area of the state. Although the response to the questionnaire was good, the survey was expanded through an additional survey of ordinances maintained by the Kansas League of Municipalities. These ordinances were listed in alphabetical order. Every other ordinance was sampled. This brought the total number of communities surveyed to sixty one.

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INTRODUCTION