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LAND USE PLANNING AND ZONING LEGISLATION - WHAT HAPPENED?

In June of 1973 the Senate passed the first comprehensive land-use legislation to be considered by the United States Congress. The House Interior Committee approved and sent to the House Rules Committee similar legislation. Early in 1974 President Nixon said that land-use legislation was high priority.

On February 26 the House Rules Committee refused in a 9 to 4 vote to send the house bill to the floor for consideration, thus killing the bill for the time being at least.

The South Dakota Legislature in 1973 created a sub-committee of the Legislative Research Council to study and present land-use legislation to the next legislature for consideration. This mandate was carried out and the Critical Areas Act of 1974 was presented to the legislature but was killed after considerable debate.

After what appeared to be intense interest in both the State and National legislative bodies, legislation on land-use planning has not passed. What happened and why?

NATIONAL INTEREST IN LAND-USE PLANNING

The increased interest in the environment made the need for land-use controls evident to many people. The "environmental movement" focused attention upon the widespread abuses of the land through uncontrolled development and the forces of nature. The preservation of areas

which are of more than local concern such as lakes, streams, historical, archeological and scenic sites are of particular concern and were given high priority in both the State and Federal proposed bills.

The control of the use of land is embodied in the broad police powers possessed by state government. The states have delegated this power to their local governments in enabling acts which set up the procedures for the passage of local zoning ordinances. Local governments have possessed these delegated powers for many years but have not exercised them to the extent envisioned in the proposed land-use acts.

The federal legislation, among other things, proposed to give grants to the States for periods ranging from five to eight years for the purpose of developing and administering a land-use planning process. After a given period grants would be cut off if the process was not completed and in operation.

The state legislation proposed the procedure whereby local governments, groups of individuals, planning districts, and the state planning bureau might nominate "areas of critical concern" for designation. Such areas must meet one or more of ten specified criteria. The State Planning Commission was empowered to make the designation. Actual controls were to be written and administered by the local governmental units.

AN OPINION

In this writer's judgment, land-use legislation will eventually pass. Already at least two separate measures are being made to move the stalled bill out of the House Rules Committee. The bill that is likely to be passed will probably contain provisions designed to spur state and local governments to deal with the problems which lie within and across their jurisdictional boundaries.

The mood of our state legislature was evidenced by the passage, with virtually no debate, of a measure which required county planning commissions to have completed and filed with the State Planning Bureau by July 1, 1976, county comprehensive plans with zoning controls. The legislation does not require that such plans and controls include development

restrictions on areas of more than local concern or measures designed to reduce soil erosion and lake and stream pollution. It does indicate that they believe locally enacted regulations should control the use of land. The legislature also voted to continue the work of the land-use sub-committee of the legislative research council.

The time-honored concept that the landowner may do with his land as he wishes is under fire. The major question to be resolved is how can many of the decision making functions of the landowner be maintained in terms of the use of his land and yet be restricted in order to protect society's present and future interest in the land. When should society's interests override the interest of the individual landowner and at what level of government will this determination be made?

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