

THE ECONOMIC EFFECTS OF ZONING ON
THE SUPPLY, DEMAND, PRICE AND
USE OF PROPERTY

by

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ABSTRACT

Zoning ordinances, the administrative means used by local governing bodies to promote orderly community growth and land use development, has been criticized as having a contradictory economic effect on the supply, demand and price of zoned classes of property and impacting the community development and prosperity. Critics also contend that the traditional focus of zoning has been limited to promoting orderly development in communities experiencing population growth and economic soundness and that the retrospective implementation of zoning in communities which developed prior to the inception of land use regulations or in communities suffering economic and population declines is inappropriate and hinders economic development efforts by the communities.

The validity of these criticisms was analyzed by conducting a case study of the effects of zoning on the supply, demand and price of zoned property in Butte-Silver Bow, Montana, a community in which zoning was applied retrospectively to its development and which is experiencing erosion of its economic and population base. The potential effects of modifications to the existing zoning ordinance intended to promote economic redevelopment were also analyzed. The analyses indicated that the implementation of zoning fixed the supply of zoned classes of property, created surpluses of certain zoned classes of property and promoted speculative overpricing of certain zoned classes of property in the community.

Economic redevelopment measures, either proposed or already implemented, were found to have the potential to further aggravate economic inefficiencies in the supply, demand and price of zoned property.

The development of a new zoning ordinance in Butte-Silver Bow, Montana, which incorporated the intent of the community to facilitate and encourage economic diversity and growth was proposed. In order to remove the perceived barriers to economic development created by the existing ordinance, the new ordinance would utilize guidelines which promoted interaction of the principles of supply, demand and price of property in the development of zoning designations throughout the city.

CHAPTER 1

INTRODUCTION

Comprehensive land use planning is the process used by local governing bodies to guide the direction of future land use development within their communities or counties. The intent of development land use development plans, or comprehensive plans as they are sometimes referred to, was to project where community growth was likely to occur, to facilitate the orderly development of community growth and to encourage enhanced aesthetic quality of the community. Early land use development plans also promoted continuity and consistency in the design of new community development and compatibility of uses located in close proximity to one another. The general purpose of early comprehensive plans was to maintain and promote the existing aesthetic values of communities as they expanded.

The focus of comprehensive planning was altered after World War II, a period of time when large population increases and a trend of increasing mobility of the population were witnessed. Instead of concentrating only on aesthetic considerations, later comprehensive plans addressed land use development problems associated with rapid urbanization and suburban growth.

In order to promote orderly community growth through the implementation of land use development guidelines prescribed by community comprehensive plans, local governing authorities were granted certain police powers by federal and state enabling legislation which was intended to assist them in managing the community's development. Subdivision, zoning and floodplain regulations represent examples of the police power authority granted to local governments by state and federal governments.

Of the police powers controlling community development, zoning is one of the most commonly known and the most criticized.

Adoption and implementation of zoning regulations allows the local governing body of a community or a county the authority to restrict the location of similar land uses to specific geographic areas within the jurisdictional boundaries defined by the regulations.

The controversy over zoning is widespread and intense. Proponents of zoning claim that use of zoning regulations to implement a community's land use plan promotes compatibility of uses, orderly growth, appropriate location of uses with respect to the public services and facilities they require and conservation of public resources. Zoning is also purported to discourage "leapfrog" development which occurs when new development skips over vacant areas which already are equipped with public services such as sewer,

water and power lines. Critics of zoning argue that its administration is weak and arbitrary and that the zoning process is unnecessarily long and costly. They further contend that many zoning ordinances are not consistent with the comprehensive plans they were intended to uphold. Zoning has also been accused of leading to design monotony and promoting the exclusion of and discrimination against persons based on their race, income, wealth and demographic character.

The effects of zoning on the cost of development have long been debated. Developers claim that the costs and time involved in complying with zoning regulations discourages them from pursuing their development plans. They feel that zoning actually discourages community development.

Zoning has also been cited as inappropriately and improperly being applied to existing cities which developed prior to the establishment of land use regulations. The zoning classifications retrospectively applied in older communities rarely reflect the diverse mixture of uses and building contained within each zone's boundaries.

As previously existing uses within older sections of the community are discontinued and buildings are vacated, the affected areas often become victims of vandalism, blight and deterioration as the existing zoning regulations mandated impede different uses from locating in the area unless they conform to the regulations. Often times, the regulations

of such areas are unrealistically based on the prevalent building type rather than the prevailing use of land in the area.

Landowners in the area have little incentive to expend the time, money and energy to proceed through a lengthy zone change process and the area continues to decline.

The criticisms of zoning in older communities and its alleged hinderance of community development might be accentuated even more in an older community that has experienced population losses and severe economic decline.

In order to examine the validity of the criticisms of zoning in older communities and the extend to which zoning does affect economic development of communities, a case study analysis of Butte-Silver Bow, Montana, a community experiencing economic decline and population loss, will be conducted. The economic effects of zoning on the supply, demand, price and use of property will be examined for their effects on efforts by the community to promote economic redevelopment.

Chapter 2 will provide a general discussion of comprehensive land use planning and zoning. The historic development of each of these tools will be presented. The intent of zoning regulations, the general characteristics of, and elements commonly contained in a zoning ordinance document will also be discussed as well as new zoning techniques

that have been developed to address alleged shortcomings of traditional zoning regulations.

Chapter 3 will review comprehensive planning and zoning enabling legislation in the state of Montana and the exercise of that authority by the local governing body of Butte-Silver Bow in implementing both of those regulatory tools. A discussion of the decline of Butte-Silver Bow's economic and population bases will also be included.

Chapter 4 will examine the theoretical effects of zoning on the supply, demand, price and use of zoned property.

Chapter 5 will analyze the implementation of zoning in Butte-Silver Bow. The discussion will include a brief overview of the community's existing ordinance, an analysis of rezoning in the community, and a discussion of the use of procedures designed to provide property owners relief from the regulations of the ordinance. Relief mechanisms discussed include variances and special and conditional uses applied for by members of the community between 1978 and 1983.

The analysis of zone changes and the use of zoning relief mechanisms will be further reviewed as to the effect that each had on the supply, demand, price and use of property within the community.

Chapter 6 will discuss the recent efforts by local officials in Butte-Silver Bow to stimulate economic development and diversity in the community. Certain of the efforts

appear to modify or supplant the intent of existing zoning regulations. These efforts will be examined for their potential impact on both the zoning ordinance and community development efforts.

Chapter 7 will discuss the potential effectiveness of each of the community development recommendations and the actions of the local government in accomplishing the intended objective of each action. The exploration of alternative zoning applications which might be developed to promote community development will also be made.

Chapter 8 will provide an overview of each of the preceding chapters and discuss the potential of utilizing zoning for the stimulation of economic growth of a community.

CHAPTER 2

COMPREHENSIVE LAND USE
PLANNING AND ZONING:
AND OVERVIEWIntroduction

Comprehensive land use planning to promote the orderly development of communities is a legislative power whose adoption and utilization by private landowners began as early as 1699 to direct the design of the English colony of Williamsburg, Virginia.¹ The principal purpose of the earliest urban development plans was to encourage aesthetic quality and design continuity and compatibility. Regularity and consistency of the layout of street systems, open space, and the designated location of buildings were common features that characterized most of the early land use plans. Uses that were unpleasant, offensive, dangerous or harmful to the general public were designated for location in specific areas of the community, in order to preserve the aesthetic values of the community.

Since then, the intent of land use planning in the United States has changed constantly in response to new problems created by a changing society. New land use planning strategies were needed to manage the problems of rapid urban growth that accompanied the Industrial Revolution, to

coordinate federally sponsored work projects that were developed to reverse the downward economic spiral of the Great Depression, and to accomodate an increasingly mobile post-World War II population whose numerical growth was tremendous.²

The objectives of subsequent plans were no longer aesthetically inclined. Land use planning had become a method used by local governing officials to alleviate the problems of health, sanitation and housing which occurred as communities absorbed increasing urban populations.

Federal and state governments worked cooperatively to assist local governing bodies in officially implementing new planning strategies. Legislation passed at both the federal and state levels was designed to enable local governing entities to regulate or control the way in which their communities were to develop in order to protect the health, safety, and welfare of the general public. The granting of such authority, or "police power,"³ to develop and adopt comprehensive land use development plans and to promote the intent of the plans through the enforcement of zoning ordinances and subdivision regulations, standardized building codes and floodplain ordinances, allowed governing authorities the opportunity to better manage urban growth problems peculiar to their community. The most commonly known, and probably the most controversial, of these police powers is the zoning ordinance.

Zoning Regulations

Zoning is the process whereby land in a city, county or planning district is divided into specific areas or districts and designated for the types of development that will be allowed in each zone. By establishing specific land use zones, or districts, proposed uses of land which are not compatible with existing uses in designated zones will be restricted from locating in these areas and will be segregated or directed to zones where such uses are allowed.

Zoning is also the principle regulatory tool used to implement adopted community or county land use plans. The purpose of zoning, which reinforces the intent of comprehensive plans, is to protect land owners in cities and counties from haphazard and careless development which could result in lowered property values and unnecessary hardships to the general public.⁴

Zoning established a trade-off situation for the general public by insuring property owners that only desirable compatible land uses will be developed adjacent to them if they are willing to give up some of their rights to do what they wish with their property.

The philosophy of zoning and the requirement of relinquishing one's right to do as he wishes with his own property are concepts which are often not agreed with. The constitutionality of zoning was challenged and upheld in the U. S. Supreme Court in 1926 (Euclid v. Ambler Realty Co.,

272 U.S. 365). However, zoning is not mandated to be adopted by every city and county. Individual state enabling legislation allows each community or county to decide for itself whether or not to institute zoning regulations within its jurisdictional boundaries.

Elements of the Zoning Ordinance

The written text of most zoning ordinances consists of three major elements or sections:

1. The first element usually contains statements which specify the purpose of the ordinance, its enactment into law, and definitions of terms used throughout the text of the ordinance.
2. The second section relates the regulations which apply to each particular zoning district (i.e., permitted uses, conditional uses, special uses and non-permitted uses, setback requirements, density requirements, building height restrictions, etc.).
3. The final section defines the procedures for enforcement of the ordinance, the responsibility for enforcing the ordinance, and the procedures for appeal and amendment.⁵

An official zoning map is also included as part of the ordinance. The map should clearly delineate the boundaries of each established zoning district within the city, county or planning area's limits. Generally, the number of zoning

districts created within a community or county or planning district will depend on the variety and type of existing uses within its boundaries (i.e., residential, industrial, agricultural, etc.), size (in terms of square miles) and population.⁶

The development of each district should reflect the following considerations:

1. The compatibility of uses within the district.
Certain land uses, by virtue of their very nature and the undesirable impacts they produce, are not compatible with other uses. For example, a stockyard produces such unpleasant effects as noise, odor, unsightliness, dust and traffic, which are less than harmonious with residential uses.
2. Appropriateness of the land within the district to accommodate allowable uses. The geographical and topographical characteristics of the land may preclude certain types of development on it. For example, steeply sloped land or land within a designated floodplain (i.e., prone to periodic flooding) may only be appropriately developed for open space or recreational uses.
3. Locational needs of uses. Certain uses predicate the demand for particular services or facilities and those zoning districts permitting such uses within them should be located in close proximity

to such services and facilities. For example, manufacturers require a large area for the location of their buildings but they also require easy accessibility to a variety of transportation modes for shipping purposes (e.g., highways, railroad, airports, etc.).

4. Effects of the layouts of districts on public services. Zoning districts should be laid out so that districts which allow uses that will require the most public services and facilities are located near existing facilities and services. Such a layout discourages "leapfrog" development and reduces capital outlay to provide necessary public services and facilities.⁷

Although many different types of zoning districts could be created as a result of adhering to the above guidelines, they generally fall into one of the following categories:

1. Residential districts--districts whose intent is to allow residential dwellings as their major use. Single family, two-family and multi-family residential districts are common district sub-categories.
2. Commercial districts--districts which allow retail and wholesale commercial trades or services within them.

3. Industrial districts---districts which allow manufacturing or similar businesses to operate within them. Industrial districts are sometimes further broken down into "heavy manufacturing" or "light manufacturing" districts depending on the provisions prescribed for allowable levels of noise, dust, pollution, vibration, etc.
4. Agricultural districts--districts which permit farming, ranching or other types of crops, livestock and poultry production.

Proposed uses which fail to meet the requirements established for each district (such as height and bulk of buildings, density, lot area, lot coverage, building setbacks and off-street parking requirements) are generally automatically excluded in the district.⁸

Existing uses which are unable to meet the requirements for the districts in which they are already located are considered "nonconforming uses" and are allowed to continue in their existing state (Title 76-2-105, M.C.A.). Such uses are not usually allowed to enlarge or expand and redevelopment is not allowed if they are substantially damaged or destroyed or their use discontinues for a specified length of time.

To insure that the provisions of each community's or county's zoning ordinance are upheld, Montana law has directed that the local governing body or its designated

agent, the Zoning Enforcement Officer, enforce the zoning regulations (Title 76-2-210 and Title 76-2-308, M.C.A.).

Property owners who disagree with the provisions of the ordinance or the interpretation of the ordinance by the Zoning Enforcement Officer may appeal their case before a hearings board appointed by the local governing body and generally referred to as the Zoning Board of Adjustment (Title 76-2-221 through 76-2-226 and Title 76-2-321 through 76-2-326, M.C.A.). The Board of Adjustment also has the power to authorize digressions or "variances" from the provisions of the ordinance if a "literal interpretation will create an undue hardship" on the person applying for relief from the requirements of the ordinance.⁹ Thus, zoning ordinances are able to provide some degree of flexibility in controlling land use.

The zoning ordinance should also be consistent with other land use regulatory controls such as subdivision regulations, building codes, and floodplain regulations. Consistency and compatibility between the codes will assist the administrators of the regulations in coordinating their efforts and will promote a more comprehensive approach to land use development.

Effectiveness of Zoning

Theoretically, the implementation of zoning regulations in a city or county was to result in orderly, controlled,

coordinated community growth. The general health, safety, welfare, morals and values of the citizenry were to be promoted through the regulation of building density, construction standards, the provision of adequate light and air, the promotion of privacy, and the efficient provision of government services such as streets, sewer, transportation, lighting and school systems.

However, many opponents of zoning contend that the actual consequences of zoning have fallen short of the ideals purported by its intent. Zoning has produced a great deal of controversy between property owners, developers, local governing authorities and the judicial system. Critics of zoning principals argue that their misuse and arbitrary interpretation and implementation are actually detrimental to the general public health, safety, welfare and morals. Specifically, critics charge that:

1. Zoning controls can be misused to permit the destruction of valuable and beautiful historic sites and resources.
2. The rigidity of zoning controls lead to design monotony.
3. Administration of zoning is weak, arbitrary and sometimes corrupt; allegations of due process violations are common.
4. Zoning regulations bear little relationship to more rationally developed policies and plans.

5. The zoning process or system adds time and cost to development proposals.
6. Zoning has been used by some communities to exclude poor people and racial minorities.¹⁰

As a result, many of the original regulatory controls of traditional zoning, such as variances, special and conditional use permits and zone changes or rezoning have been modified or replaced with new types of land use development tools. Some of the more common "new" techniques include development incentive zoning or performance zoning, enterprise zones to encourage commercial and industrial development, planned unit developments which promote the integration of a mixture of uses in a single zone, floating zones which allow for a transition of a zone from one use to a different use, and overlay zones which are delineated and regulated to promote a specific purpose.¹¹

Performance zoning represents a compromise agreement between the developer and the community. In return for providing a development that the community ascertains as needed and in a manner satisfying community-held values, a developer is rewarded through the grant of a performance bonus. For example, a developer who is willing to provide public open space areas, direct access to off-street parking or additional landscaping will generally be allowed to build at a higher density (more floor area or more dwelling units) than normally allowed.¹²

Planned unit developments (PUDs) represent a concept which allows the integration of a mixture of uses within a prescribed planned development located in a single zone. Normal density requirements, building setback requirements and open space requirements are allowed to be modified in a PUD to promote flexibility in its development.

Floating zones are zones created for an area that has not yet been officially zoned or mapped. They provide for minimum requirements for the development, or exclusion, of certain types of uses to protect the future interests of land owners within the zone until an official zone is designated for the area.

Overlay zones are zones created and regulated to promote a specific purpose. Three common types of overlay zones are enterprise zones, airport zones, and historic preservation zones.

Enterprise zones generally are created to encourage commercial and industrial development in specific locations within a community by providing tax shelters or other economic incentives to businesses that locate within the enterprise zone.

For areas contained within an airport zone, more restrictive development standards may apply to the height of buildings constructed within the zone and the types of uses that can be located in the zone. Generally, residential uses are not allowed in the airport zones.

The preservation of a historic area or section of the community may be ensured through the designation of the area as an historic zone and through the subsequent implementation of specific controls to protect the historic integrity of the zone. Some examples of such controls include the prohibition of removal of historic structures, allowable facade design, height and color, sign limitations, reduced off-street parking requirements and reduced building setback requirements.

For the most part, even the latest zoning techniques generally address only the development of communities and counties that are experiencing population growth. Much has been written and recommended about utilizing such techniques to plan for the assimilation of population increases in suburban America, in towns impacted by energy development and recreational amenities, and the lure of areas well-suited for retirement populations.

On the other hand, very little has been written about the effects of zoning policies on cities whose population and economic bases have declined and whose central city areas are experiencing blight, deterioration and abandonment. Many traditional industrial cities have experienced severe population losses due to major workforce reductions and factory closures.

The economic decline of such cities has prompted additional criticisms of zoning, including the premise that

zoning actually restricts economic development in communities and results in an inefficient utilization of land. Opponents of zoning further contend that rigid zoning controls and lengthy zoning approval processes appear to be major impediments to attracting new commercial or industrial ventures to the community. Additionally, they charge that the implementation of zoning regulations has a regressive effect on the supply, demand, value and market price of property.¹³

Complicating the issue of population and economic decline in such communities is the fact that many of the affected cities are older and the zoning regulations that govern them were designed for new, growing communities and do not appropriately address the numerous mixtures of uses and buildings existing within their boundaries. As these buildings are abandoned and the uses within them discontinued, most zoning ordinances in effect in these cities do not allow for the redevelopment of the uses because of the rigidity of the land use controls. The buildings remain vacant and generally are victims of vandalism and deterioration.

Finally, designated zoning districts in older cities and communities may not appropriately reflect the actual uses that exist within them. Most property owners within the districts have little or no incentive to change the zoning and the local zoning authorities generally only

consider changing a zone if a request to do so is made by the general public.

Summary

Control of community growth and development was pursued as early as the seventeenth century when colonial land owners set guidelines for land use development within their settlements to promote the aesthetic values of the colony residents.

The focus of land use development guidelines shifted from an aesthetic focus to one of control of health, sanitation and housing problems evolving from rapid urban growth associated with the Industrial Revolution of the nineteenth century and, later, the growth of a very mobile post-World War II population.

The execution of control over community growth was achieved through the grant of "police power" authority to local governments to develop and implement land use development plans and to enforce the plans through formal regulatory ordinances. Of these, the zoning ordinance, which established specific districts in which delineated land uses could be developed, is the most commonly known.

The effectiveness of applying traditional zoning regulations to community growth has been questioned. Much controversy has arisen between property owners, developers, local governing authorities and the judiciary with respect

to zoning. As a result, many of the traditional zoning controls have been modified or replaced with newer land use development tools such as planned unit developments (PUDs), performance zoning, overlay zoning, enterprise zoning and the creation of floating zones.

For the most part, even the newer techniques are designed to address the shortcomings of traditional zoning on cities or counties that are experiencing population growth. Very little has been written about the effects, either positive or negative, or zoning on communities that are experiencing declines in their economic base and their population. Critics contend that zoning restricts economic development in communities and that it appears to be a major impediment to attracting new commercial or industrial ventures.

Further, critics argue that many of these communities are older and that zoning does not appropriately address or reflect the diverse mixture of existing uses within the zoning boundaries delineated for the community.

The following chapter will examine the validity of the alleged economic shortcomings of zoning by analyzing the implementation and effects of zoning, on a case study basis, in a community that has actually experienced a severe economic decline.

The community chosen for this particular case study is the consolidated city and county of Butte-Silver Bow,

located in the southwestern portion of the state of Montana.

A discussion of Montana's zoning enabling legislation, the adoption and implementation of zoning ordinances in Butte-Silver Bow, and the economic decline of the community due to industry and workforce reductions will be included.

FOOTNOTES - CHAPTER 2

¹John W. Reps, The Making of America: A History of City Planning in the United States, p. 114

²"Antecedents of Local Planning," Principles and Practices of Urban Planning, International City Managers Association, 1968, pp. 16-19.

³Robert H. Nelson, Zoning and Property Rights: An Analysis of the American System of Land Use Regulations (Cambridge, Massachusetts and London, England: MIT Press, 1977), p. 7.

⁴"Zoning: An Aid to Community Resource Development," PA-184, Federal Extension Service, USDA, 1968.

⁵Joseph DeChiara and Lee Koppelman, Urban Planning and Design Criteria (New York: Van Nostrand Reinhold Company, 1975).

⁶Robert N. Wise, Associate Director, et. al., Idaho State Planning and Community Affairs Agency, "Toward City, County, and Regional Planning in Idaho."

⁷Rural and Small Town Planning, American Association of Planners (Chicago: Planners Press, 1979).

⁸Wise, et. al., *ibid.*

⁹Standard State Zoning Enabling Act, U. S. Department of Commerce, originally issued in 1922, rev. ed. 1926.

¹⁰Michael J. Meshenberg, The Administration of Flexible Zoning Techniques, ASPO Planning Advisory Service, Report No. 318, 1976.

¹¹*Ibid.*, p. 3.

¹²*Ibid.*, p. 43.

¹³Robert H. Nelson, *Ibid.*

CHAPTER 3

COMPREHENSIVE LAND USE PLANNING AND ZONING IN MONTANA
AND THE CONSOLIDATED CITY-COUNTY OF
BUTTE-SILVER BOW, MONTANAMontana Planning and Zoning Enabling Legislation

Municipal and county governments in Montana were granted the authority to implement zoning regulations within their jurisdictional boundaries with the passage of the Municipal and County Zoning Statute of 1957 (Title 76, Chapter 2, M.C.A.). The Act allows municipalities, counties or delineated planning districts the authority to adopt and enforce zoning regulations, but only after certain prerequisites have been satisfied:

1. Each governing authority must form a zoning advisory board to establish zoning district boundaries and recommend regulations pertaining to each district (Title 76-2-103 - 76-2-112, M.C.A.); and
2. Each governing body must have adopted its own official comprehensive land use plan prior to the adoption of zoning regulations.¹

When both of these requirements are satisfied, the local governing authorities may proceed with the establishment of a zoning ordinance for their city or county. A public hearing explaining the proposed ordinance and soliciting input

from the general public must be held prior to the final adoption of the ordinance by the governing body.

Implementation of Zoning in Butte-Silver Bow

The consolidated city and county of Butte-Silver Bow is located in the southwestern section of the state of Montana and is designated as a National Historic Site in the United States because of its unique development as a prominent mining city whose population at one time reputedly swelled to nearly 100,000.

Butte went through several mining "boom and bust" cycles coinciding first with the discovery of gold, then silver, and finally, abundant copper deposits. The copper deposits discovered in Butte were of such quantity and quality that the community was commonly referred to as "the richest hill on earth."

The early development of Butte was spontaneous, random and haphazard, exhibiting a total mixture of uses throughout the city's then most populated areas. Generally, residents built their dwellings in close proximity to their workplaces, the underground copper mines. Commercial and industrial facilities were built near the major thoroughfares of traffic and railroads that led to and from the copper mines.

The population of Butte gradually began to taper off

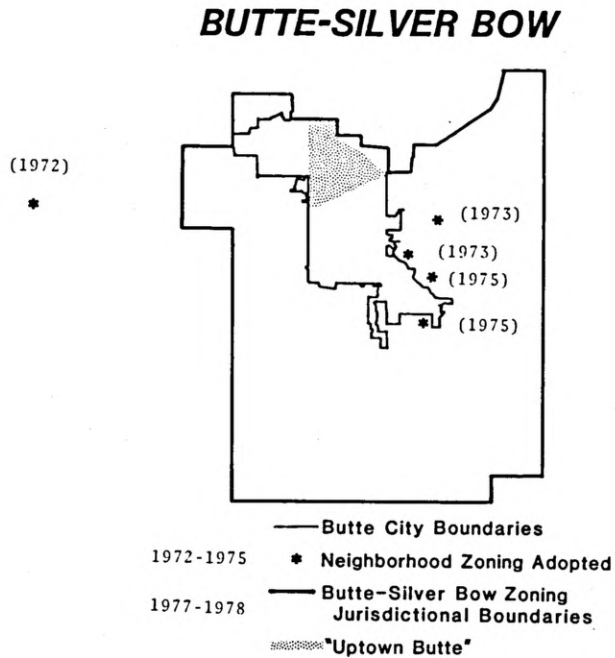
with the advent of less worker intensive mining technologies and practices between 1920 and 1950.²

As open pit copper mining developed in Butte, a transitional relocation of residents occurred. The population began to flow outward from the city proper or "uptown Butte" area, as it is commonly referred to by native residents, to the outlying areas surrounding the central city without relying on formal land use regulations to direct the community's development.

It was not until 1969 that the city of Butte developed a zoning ordinance to better direct the development of the community. Much of the residential development was occurring outside of the city limit boundaries, however, which prompted the establishment of several "neighborhood" zoning ordinances which received approval from the county commissioners between 1972 and 1975.

On May 2, 1977, constituents of the city of Butte and the county of Silver Bow voted to consolidate the two separate governments, and subsequently on September 1, 1978, a new zoning ordinance, Ordinance No. 53, was approved and made fully effective by the Butte-Silver Bow Council of Commissioners.

Figure 1. City, Neighborhood, and City-County Zoning Boundary Delineations.



Due to the consolidated city-county form of government adopted by Butte-Silver Bow, local governing officials had the choice to implement either county zoning or municipal zoning as prescribed in Montana's zoning enabling legislation. Local governing officials chose to utilize municipal zoning and, therefore, delineated the jurisdictional boundaries of Ordinance No. 53 to include the city of Butte and all areas located within 2-1/2 miles of the municipal boundaries. The 2-1/2 mile extension of jurisdictional authority beyond the city limits represented an average of the limits of 2 and 3 miles prescribed for first and second class cities respectively (Title 76-2-310, M.C.A.).

Economic and Population Decline in Butte-Silver Bow

In 1978, the year that Ordinance No. 53 became fully effective, the population and economic base of Butte-Silver Bow began to decline.

Copper mining in the community had virtually come to a standstill. In 1972, all underground mining operations were discontinued. Between 1974 and 1982 the copper smelter in the nearby community of Anaconda was closed, the operation of the open pit copper mines ceased and the concentrator facility was shut down. The result was a cumulative mining workforce reduction of approximately 1200 jobs.

Statistics from the Montana Department of labor and Industry indicate that between 1979 and 1982 the unemployment rate in Silver Bow County rose from 6.1 percent to 11.3 percent.

Butte-Silver Bow's economic base has also declined. Between 1978 and 1982 the taxable mill levy value decreased from \$55,813.09 to \$46,679.777, a 19.57 percent reduction. In 1984, the mill levy value will be \$44,566.285, an additional 4.7 percent decrease. The mill levy value in 1985 is projected to be lower still. The mill levy value reduction in 1984 was caused by the loss of one-half of the gross proceeds tax on any minerals that were taken from the mines located in Silver Bow County. In 1985, the county will lose all gross mineral proceeds taxes.³

The population of Butte-Silver Bow has also continued to decrease. Between 1970 and 1980, Silver Bow County experienced a 9 percent decrease in its population.⁴ The population of the county is projected to continue to decline by as much as 12.7 percent between 1980 and 1985.⁵

The central city and "uptown" area of Butte have begun to suffer building abandonment and deterioration. Efforts by the local government to reverse the trend of deterioration included the establishment of the Butte-Silver Bow Urban Revitalization Agency in May, 1979. A local development corporation and an ad hoc economic development strategy committee were also formed.

Although the decline of the mining industry in Butte is clearly viewed as the cause of economic and population reductions in Butte-Silver Bow, repeated accusations have arisen that the existing zoning ordinance restricts the entry of new industry and the redevelopment of existing industrial and commercial sites.

There has already been some difference of opinion between the Zoning Office and the Urban Revitalization Agency (URA) regarding the applicability of existing zoning regulations to the uptown central business district and its surrounding area. The URA, which has been attempting to implement historic preservation and redevelopment measures, created a historic district and prepared and submitted an

overlay historic district zoning ordinance to govern the areas contained within the district.⁶

An ad hoc committee has been formed by the local governing body to examine the existing zoning laws and recommend revisions for increasing the ordinance's effectiveness and decreasing its inappropriateness.

Additional political, social and economic conflicts regarding the appropriateness and inappropriateness of the existing zoning regulations are expected to continue.

Summary

The adoption and implementation of zoning ordinances in Montana was legislatively provided for by the passage of the Municipal and County Zoning Statute of 1957. Zoning was not adopted in the mining community of Butte, Montana, until 1979, a period in time when mining operations in and near the city had expanded to include open pit mining.

As the mining industry in Butte expanded, the population of the city likewise grew and began to locate south of the city's boundaries. As development in these periphery areas intensified, residents saw the need to control future growth and several neighborhood zoning ordinances were adopted to fulfill this need.

In 1977, the city and county governments were consolidated and a new zoning ordinance, having an expanded jurisdictional area, was adopted. The following year, both

the economic and the population bases of Butte began to decline as a result of the slowing and, finally, discontinuation of copper mining in the area. Since the closure of all of the copper mine operations, and the accompanying decrease in population and economic stability, the existing zoning ordinance has been increasingly criticized as impeding local efforts to revitalize the economy of Butte and reverse the trend of deterioration and blight of the community.

Critics of the ordinance charged that the ordinance restricted the entry of new industry and redevelopment of industrial and commercial sites and that it contradicted the economic principles of supply, demand, value and price of property.

Chapter 4 will discuss the theoretical implications that zoning may have on the supply, demand, price and value of property and the land use that property is utilized for.

FOOTNOTES - CHAPTER 3

¹Zoning: A Land Use Management Tool for Montana Communities, Department of Community Affairs, Helena, Montana, 1968.

²Montana Population Estimates: 1950-1975, Montana Department of Community Affairs, 1976.

³Mill Levy Values, Butte-Silver Bow Budgeting Office, 1978-1984.

⁴Census of Population and Housing, Bureau of Census, United States Department of Commerce, 1980.

⁵Unpublished Data, Western Analysis, Helena, Montana, 1982.

⁶Butte-Silver Bow Ordinance No. 206, Resolution No. 671, February 15, 1984.

CHAPTER 4
SUPPLY, DEMAND, PRICE AND
USE OF ZONED PROPERTY

Early zoning ordinances were implemented primarily to maintain the aesthetic values of existing neighborhoods, to restrict the entry of uses that contradicted those values and to promote the orderly community development that was consistent with the community's values.

The implementation of zoning has been charged with contradicting the economic principles of supply, demand, market value and market price as they apply to the disposition and use of property in a community. Theoretically, in the absence of zoning, the disposition and use of property would be dependent upon the supply of land that was available, the demand for a particular parcel of land, and the price at which it was being made available.

Demand reflects the amount of a commodity or resource that buyers would be willing to purchase at each specific price in a set of possible prices during a set period of time.¹ The law of demand states that as the price of a commodity decreases, demand for the commodity increases, and as the price increases, demand will conversely decrease.

Supply indicates various amounts of a product or resource that the producer or supplier is willing and able to

produce and make available for sale in the market at each specific price in a set of possible prices during a specified period of time.

As the price or value of a resource decreases, suppliers of the resource may be less willing to make it available and, therefore, the available quantity of the resource will be reduced. Producers or suppliers of a resource are more likely to offer their commodity for sale when they are able to exact a higher price for it.²

Supply and demand are functions of certain determinants in the market place. Market demand is determined by (1) tastes and preferences of consumers; (2) the number of consumers in the market place; (3) the money incomes of consumers; (4) the price of related goods; and (6) consumer expectations of future prices and incomes.³ Supply, on the other hand, is determined by: (1) techniques of production; (2) resource prices; (3) price of other goods; (4) price expectations; and (5) the number of sellers in the market.

A surplus of a commodity or resource will result when the price of the resource is higher than consumers are willing to pay and/or the quantity of the resource produced (the supply) exceeds the demand for it. Conversely, a shortage situation results when demand exceeds supply, which can be caused by a price assignment that is lower than consumers would willing to pay.

The principles of supply, demand and price are readily

illustrated in the development of land in the United States. An abundant supply of land and the offering of land at a low price through the passage of the Homestead Act of 1890 led to a rapid acquisition and settlement of territorial lands. As industrial cities and mining towns evolved, the demand for land near work sites increased. Workers desired residences near their place of employment; commercial interests wanted to locate near potential consumers; and industrial entities needed to be located near major thoroughfares of traffic, which generally developed near residential and commercial areas. Future-oriented entrepreneurs purchased large quantities of undeveloped property at the onset of industrial development and thus limited the number of suppliers of property. As the number of suppliers increased, the price of land became a more direct function of demand for property. That is, the highest bidder would most likely be able to purchase the property of his choice with less desirable properties being purchased by consumers willing to pay less. Therefore, the use of property developed as a direct result of demand, supply, value and price of available property. In a zoning-free situation, if the price of a parcel of land exceeded the price that the consumer was willing to pay, the consumer could simply look elsewhere for property whose price was more commensurate with what he would be willing to expend, without having to consider the appropriateness of the use the land would be put to.

As the tastes of certain consumers began to mature, those constituents who were able to purchase prime property sought means to protect the aesthetic qualities of their area from the intrusion of uses that contradicted these values and as a means of protecting the future value of their property. The establishment of regulatory controls dictating the use of properties classified according to delineated areas or zones served these purposes well. Zoning, therefore, enabled property owners to collectively restrict the entry of certain uses in an area, to maintain high quality neighborhoods and commercial districts and thus, to promote and to protect high property values.

Early zoning ordinances were hierarchial; that is, uses were classified by their order of offensiveness. Single family residences were considered the least offensive use, while heavy industry was considered most offensive.⁴

The implementation of zoning in a community has important economic implications also. By assigning specific zoning classifications to delineated land areas, a fixed total supply of land becomes available for each type of land use.⁵ The impetus would exist, then, for entrepreneurial interests to gain the highest zoning classification they could to ensure enhanced value for their property, thereby enabling them to exact higher prices for the land.

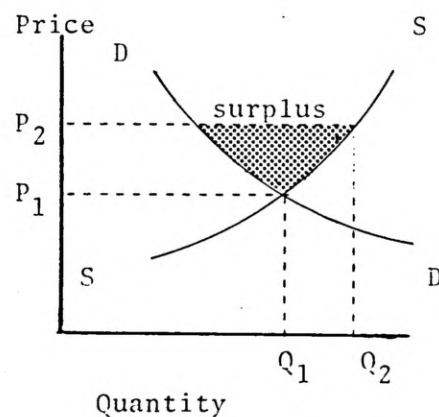
The result, if such efforts were successful, would be a surplus of land designated for higher uses (single family residential and commercial uses) and a shortage of land designated for lower uses (multi-family residential and industrial uses) when compared to the demand for each respective use. Theoretically, then, the price of undeveloped land could become artificially high because of the speculative efforts to gain high quality zoning classifications. Artificially high prices, combined with a static supply of land, would create inelasticity of demand for zoned property.

Elasticity of demand refers to the degree of responsiveness of consumers to change in the price of a product, commodity or resource. When consumers are very responsive to price changes and the demand for quantities of the resource or product decreases when the price is raised, the demand is said to be elastic. When the demand for a resource remains more static, because alternative resource choices are not available, and consumers are compelled to pay the asking price, regardless of how high it might be, demand is said to be inelastic.⁶

It should be noted that a perfectly inelastic situation rarely exists and that, in the case of zoned property, consumers are likely to seek alternatives by applying for zone changes or use variances in order to allow them to find and develop property whose price better approximates the price they are willing to pay. A surplus of overpriced zoned land results as less expensive alternative land is pursued by consumers.

Figure 2 graphically portrays both situations. When zoning is implemented and the supply (SS) of zoned land becomes static, the price of land is raised from P_1 to P_2 , resulting in a surplus of land as consumers lower their demand (DD) for this land and explore alternatives for other land through zone changes or use variances.

Figure 2. Demonstration of Surplus in the Supply of Property.



It might be argued, then, that the implementation of zoning supports artificially high prices for land, which lowers the demand for land as potential consumers look for alternatives, creates a surplus of land zoned for a particular use, and results in an inefficient utilization of land.

The inefficiency of land usage purportedly created by zoning will not change very quickly. Relief from the mandates of a zoning ordinance can only be achieved by obtaining a use variance or zone change from the local governing authority.

Use variances allow the location of uses that are normally not permitted in specific zones. An example would be the location of an industrial manufacturing plant in a residential zone. The granting of use variances must be predicated upon a hardship basis where the property owner would be denied the same rights as other property owners in the same type of zone. This hardship rarely, if ever, substantiates a use variance.

Zone changes, another type of zoning relief, are awarded to property owners only if the proposed change reflects a general trend in this area, is consistent with development guidelines contained in the adopted land use development plan of the community or county, and conforms to such public interest review criteria pertaining to zone changes as have been adopted by that local governing body

authorized to decide upon proposed changes. Generally, a substantial fee is charged for the opportunity to apply for a zone change and the completed process can take as long as 90 days before the change becomes effective. Consequently, comparatively few zone changes are applied for.

More often than not, potential consumers of property will look at property that lies outside the jurisdictional boundaries governed by the zoning ordinance. As development, usually residential, occurs in such periphery locations, other costs are incurred to develop the property, such as the extension of public services to the development. Many of these costs are borne by all members of the community in the form of higher taxes. This alternative, then, promotes an inefficient utilization of land by encouraging "leap frog" development and results in fiscal inequities in paying the underlying costs associated with development of the land.

Summary

A major criticism of zoning has been that its implementation results in an inefficient utilization of land and that it promotes artificially high prices for land that has been designated for higher use zoning classifications.

The designation of zoning classifications to land fixes the supply of each class of land in a jurisdictional area. Property entrepreneurs would seek to achieve the highest

zoning classification to ensure that the value of their property would remain high and to enable them to require a high selling price for the land.

The result of these actions would be a surplus of land designated for higher uses at artificially inflated prices which potential consumers could not or would not be willing to pay and a shortage of land designated for lower uses which may be in demand.

If these hypotheses are valid, then the application of zoning in a community facing economic hardship, population losses, and deterioration would amplify the economic inefficiencies of property use in the community.

If zoning does, in fact, create a surplus of land that is zoned for higher uses, according to the hierarchy of zone classifications, and the price of such land is artificially high, then efforts by a community to encourage economic development or to redevelop property within its boundaries may be futile. If property that can be used to contribute economic stability to a community is short in supply and the price of such property that is available is artificially inflated, the incentives for potential purchasers and/or redevelopers of property to pursue property acquisition and economic redevelopment are greatly reduced.

In order to examine the validity of zoning's negative effects on efforts to promote economic recovery of deteriorating communities, the adoption and implementation

of zoning in Butte-Silver Bow, a community suffering from an erosion of both its economic and population bases, will be examined.

Chapter 5 will include an analysis of the supply of zoned classes of land in Butte-Silver Bow which were created with the passage of its zoning ordinance, Ordinance No. 53.

The discussion will examine whether or not zoning and re-zoning of property encourages speculative efforts on the part of entrepreneurial property owners. The alternatives to zoning, which would be pursued by potential purchasers of property who are unwilling or unable to pay artificially high property prices, will also be analyzed. Such alternatives include special use permits, conditional use permits and variances.

Zone changes and each of the zoning alternatives acted upon from the date of implementation of Ordinance No. 53 through the year 1983 will be examined.

FOOTNOTES - CHAPTER 4

¹Campbell R. McConnell, Economics: Principles, Problems, and Policies (McGraw-Hill, Inc., 1969), p. 55.

²Ibid., p. 62.

³Ibid., p. 59.

⁴Nelson, p. 58

⁵Ibid., p. 187.

⁶McConnell, p. 417.

CHAPTER 5

ANALYSIS OF ZONING IN BUTTE-SILVER BOW, MONTANA

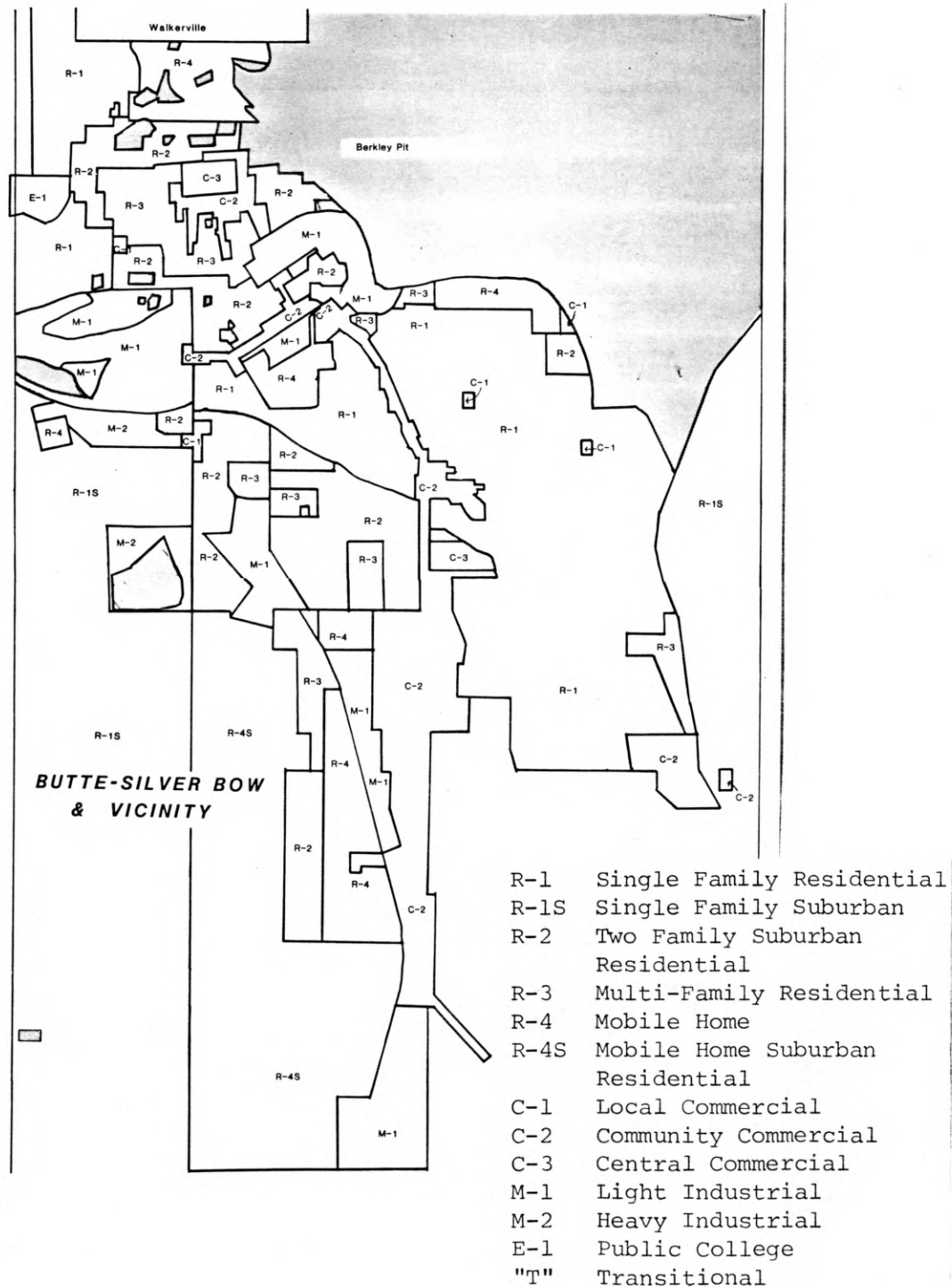
Ordinance No. 53, the Butte-Silver Bow Zoning Ordinance, was approved by the Council of Commissioners on May 7, 1977 and became effective on September 1, 1978. The ordinance had jurisdictional authority within the city limits plus the area 2-1/2 miles outside the city limits.

As was stated earlier, in order to examine the economic implications of zoning in Butte, an analysis will be made of the zones established by the ordinance and the variances, special and conditional uses, and zone changes applied for and granted between September 1, 1978 and December 31, 1983. The purpose of the analysis will be to examine the effect of zoning on changes in the supply and demand of zoned property and the use of alternatives to zoned property that are available to the potential purchaser or user of land.

Supply of Different Classes of Zoned Land
in Butte-Silver Bow

Figure 3 depicts the original zoning classifications as they were delineated on the official zoning map contained in Ordinance No. 53.

Figure 3. Original Zoning Classifications Adopted in Butte-Silver Bow, September 1, 1978.



Of particular interest is the designation of two areas as C-3, central commercial zones. The intent of the C-3 zone is "to accomodate stores, offices, service establishments, hotels and governmental and cultural centers at the central focal point of the arterial and transportation systems where they can conveniently serve the population of Butte-Silver Bow."¹

In effect, the community has zoned for two central business districts, one in the "uptown" area and one in the southern portion of the community, in which is located a shopping mall. The uptown C-3 zone contains most of the community's oldest businesses, the courthouse, the vacated city hall, the Federal building and historic cultural buildings and churches. The establishment of the southern C-3 zone was in response to the rapid development of this area of the community and a one-time push for relocation of uptown Butte to the south, or the "Flats" as it is often called. The relocation effort was initiated in response to the growth of the expanding Berkeley Pit located north and east of the uptown business district. The relocation effort has since been replaced by efforts to revitalize the uptown area to preserve its historic significance.

It is also interesting that much of the C-2 community commercial zoning is fashioned in a "strip development" pattern along some of the major north-south arterials in the community.

Multi-family residential (R-2 and R-3) zoning appears to be concentrated in the older, uptown areas while less intensive, single family zoning prevails in the newer, southern portions of the community.

Industrial zoning was delineated for areas located near railroads and highways and generally contained industrial uses existing within those areas at the time of adoption of the ordinance.

The "M" zones indicate the areas in which existing copper mines and their appurtenant operations were located. These areas are governed by the Montana Department of State Lands and, as such, are not under the jurisdictional parameters of Ordinance No. 53.

The "E-Zone" was delineated to encompass that land area upon which the Montana College of Mineral Science and Technology was located.

For the most part, the zones which were originally established reflected the uses which were prevalent within them at the time. However, within all of the designated zones, especially those in the uptown area and the older portions of the community, a significant mixture of uses existed. Single family homes, multi-family apartment buildings, commercial, industrial and mining uses are commonly interspersed in the older uptown portion of Butte. To try to accurately reflect all of the uses within each zone would have been an impossible task. Therefore, the

original zones created by Ordinance No. 53 were delineated in such a manner as to contain as many of the same uses as possible and accounts for the somewhat odd configurations of some of the zones.

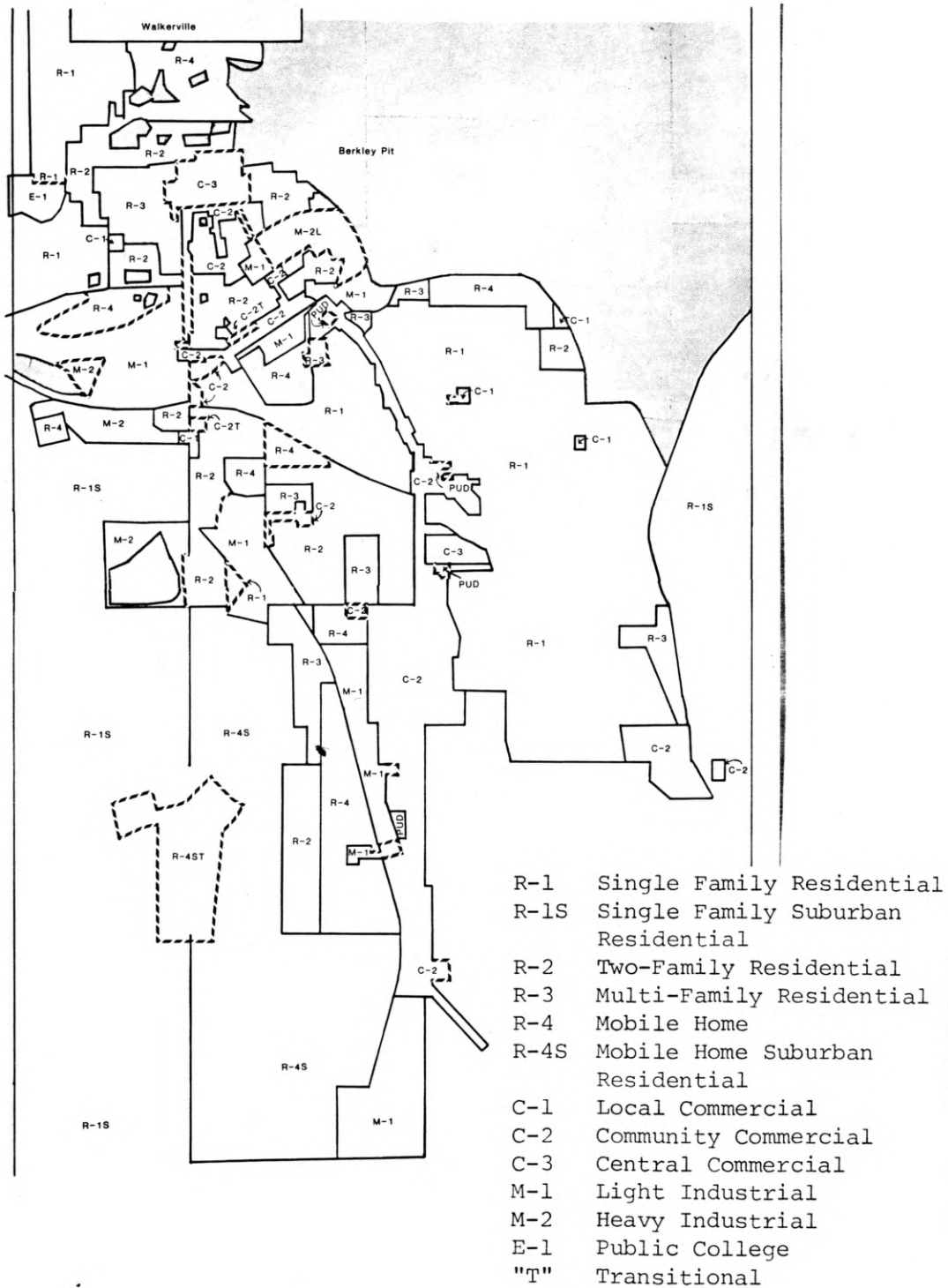
With the establishment of zones within Butte-Silver Bow, theoretically the supply of different classes of land became fixed. Critics of zoning contend that a fixed supply of zoned land leads to speculation zoning, producing high land prices and lower demand for land. A surplus of high valued land and a search by potential consumers for alternative sources of land are the end products of this process.

The alternatives available to potential consumers are variances, special and conditional uses, or zone changes.

An Analysis of Zone Changes in Butte-Silver Bow

Figure 4 depicts the areas for which zones changes have been approved by the local governing body between 1978 and 1983. A comparison of Figure 3 with Figure 4 shows an extension of commercial (C-2) development along major arterials within the community.

Figure 4. Zone Changes Effected in Butte-Silver Bow, 1978-1983.



Twelve of the twenty areas rezoned as commercial were originally established as residential zones. Four changes were to a more intensive commercial classification and four Planned Unit Developments (PUDs) were permitted in existing C-2 zones. In all, applications for change to commercial zoning represented more than half (56%) of all zone changes granted by the community. (Only one zone change was granted changing a parcel of land from commercial to residential zoning.)

One would infer by the increase in the supply of commercial property that was endorsed by the governing body that demand for commercial property had increased or that a shortage of commercial property existed.

An inventory study made by the Butte-Silver Bow planning staff in 1982 indicated that a total of 1,385 acres zoned for commercial use existed at that time. Of the total commercial acreage, 89% was zoned for C-2, Community Commercial, use. And, interestingly, 925 acres, or 75% of C-2 property, was either vacant or used for other than commercial use.

It does not appear that a shortage of commercial property exists in the community. The propensity toward commercial re-zoning may substantiate the hypothesis that the price of property zoned for commercial use is higher than potential consumers are willing to pay and that potential purchasers or users of property have pursued the

alternative of changing the zoning designation of lower priced property to the commercial classification that is required for development of the property as a commercial use.

Both speculative pricing of existing commercial property and re-zoning of lower priced land by potential consumers and users of the land to a commercial designation may validate the contention that zoning does create a surplus of high-valued, high-priced property.

A trend toward the development of industrial uses also appears to be emerging. Of the nine zone changes involving an industrial classification, four changes were made from residential zones to "M-1," light industrial zones, three were changed from commercial to "M-1" light industrial uses, and two were changed from "M-1" light industrial to the more intensive "M-2" or "M-2L" heavy industrial use classification. Interestingly, two zone changes were approved that altered one M-1 parcel of land and one M-2 block of land to residential classification.

The remaining four zone changes involved residential zones which were converted to other residential classifications (of which only one intensified the residential use), and the change of a portion of the E-1 zone to an R-1 classification.

In total, commercial and industrial zone changes represented approximately 81% of all zone changes requested

and granted. Only two zone reclassifications, a mere 5% of the total number of changes granted, changed the zone from a commercial or industrial zone to a residential zone. In total, only six residential zone changes have become effective in the years examined, representing only 17% of the total number of zone changes. Only one of these changes intensified the use from single family usage to multi-family usage.

Based upon the larger proportion of the total number of zone changes that commercial and industrial zoning comprises, the alleged alterations to the economic principles of supply, demand and price of property that zoning creates may be valid. The data indicates that two contentions can be made: (1) potential consumers of commercial or industrial property are not willing to pay the stated price for property properly zoned as commercial or industrial; and (2) potential purchasers or users of land are pursuing an alternative to purchasing existing commercially or industrially zoned property by changing the zoning classification of lower priced, more affordable land to a commercial or industrial zone classification.

The data further indicates that the economic implications of zoning on residential property are addressed only minimally by zone changes. In order to analyze residential property implications, an examination of variances and special and conditional uses will be made.

Analysis of Variances and Special and Conditional
Use Permits Granted in Butte-Silver Bow

The grant of variances and special and conditional use permits in Butte-Silver Bow is made by a 5-member decision-making body known as the Board of Adjustment. Approval of such relief requests from the ordinance is obtained only through a 4-member vote of approval.²

A variance is defined as a "relaxation" or variation "from the specific provisions of the zoning ordinance when a literal enforcement of the ordinance would result in unnecessary hardship, due to geo-physical conditions."³ In other words, the Board of Adjustment is allowed to hear and decide upon appeals from a literal interpretation of the regulations of the ordinance based upon presentation of evidence that the ordinance's provisions create practical difficulties or unnecessary hardship to the appellant property owner. Through their interpretation of zoning law, the courts have set forth several guidelines governing the appropriate granting of variances. These include:

- (1) Financial hardship, such as the fact that a property owner may make a greater profit by using his property in a manner prohibited by the ordinance, is considered irrelevant and a variance could not be substantiated on such a basis.

- (2) In granting a variance, the zoning board must validate that the hardship upon which the appeal is awarded is unique to the particular piece of property in question.
- (3) The granting of a variance must be made based upon a hardship resulting from application of the ordinance rather than from the operation of deed restrictions or other disability of the property. An example would be the need for grocery stores in a residential area as the stated hardship. Such a hardship is not basis for granting a variance.
- (4) The hardship use in a variance appeal must not result from the applicant's own actions. Further courts have denied relief to an applicant who has purchased property knowing that zoning restrictions prevent him from using it the way he wishes.
- (5) The granting of a variance must be in harmony with the purpose and the intent of the ordinance and a variance authorizing the enlargement of a nonconforming use or establishing its permanency is prohibited.
- (6) Generally, the courts have held that the board may not grant "use" variances, variances which allow property to be used for a purpose

prohibited by the ordinance. Use variances are distinguished from "dimensional" variances which govern lot area, yard size, building heights and setbacks, lot coverage and the like.

The prohibition of "use" variances is based upon the premise that such a variance amounts to an exercise of legislative authority.⁴

Special and conditional use permits are defined as permits granting the location of certain types of uses that may be essential to the general public health, safety and welfare in any zone but which may also be detrimental to the same if proper safeguards are not taken.⁵ Schools, hospitals, police and fire stations are common examples of special uses. Conditional use permits usually are not essential to the general public health, safety and welfare, and usually pertain to temporary special uses such as fairs, circuses, carnivals and religious revival meetings. Home occupations, however, which basically are businesses carried on in a dwelling, are also governed by conditional use permits. The review criteria for both types of permits, standard conditional and home occupation, are identical in Ordinance No. 53.

An analysis of variances applied for and granted in Butte-Silver Bow between 1978 and 1983 revealed the variance application information set forth in Table 1.

Table 1. Analysis of Variances Applied for and Approved or Denied in Butte-Silver Bow from 1978 to 1983.

TOTAL NUMBER OF VARIANCES APPLIED FOR = 242	USE VARIANCE		RE-USE OR EXPANSION OF NON-CONFORMING STRUCTURES		DIMENSIONAL VARIANCES	
	Denied	Approved	Denied	Approved	Denied	Approved
1978	3	1		2	3	4
1979	4	0	1	2	4	23
1980	0	4		4	9	40
1981	1	1	0	1	3	29
1982	10	7	0	3	10	28
1983	2	4	0	3	5	31
TOTAL (approved or denied)	20	17	1	14	34	155
TOTAL BY VARIANCE		37		16		189
% OF TOTAL VARIANCE APPLICATIONS		15.3%		6.6%		78.1%

As indicated in Table 1, dimensional variances accounted for an overwhelming majority of the variances applied for. Reductions in building setbacks, parking apron reductions, increases in maximum allowable lot coverage and fence height variances were common dimensional appeals for residential uses in all zones. Building setback reductions, required off-street parking reductions, fence height variances and required landscaping reductions were prevalent on commercial and industrial dimensional zone variances. Non-conforming structures and uses, which are defined as those uses or structures existing at the date of adoption of the ordinance which are allowed to continue to exist but are not to be encouraged to perpetuate through expansion, enlargement or relocation to another portion of the lot, were also examined in the variance analysis.

Between 1978 and 1983, sixteen applications allowing the re-use of non-conforming structures or expansion of non-conforming structures or uses were submitted to the Board. Only one such application was denied. Of the approved applications, many were expansions of high quality uses in lower zones such as the expansion of residential uses in commercial zones or expansion of commercial uses in industrial zones. These allowed either the expansion of a structure for a pre-existing use that had expired and was again subject to the regulations of the zone in which it was located.

Use variances, which, theoretically, represent an alternative choice to potential consumers in their search for property at a more acceptable price, accounted for 15.3% of all variances applied for between 1978 and 1983. Of these, seventeen use variances were approved and twenty denied. Again, a substantial proportion allowed for the location of higher quality uses in lower quality zones.

Some use variances were allowed because of the non-suitability of the property for authorized uses. One example was the granting of a variance to be allowed to keep horses on a parcel of land which was located in a Two-Family (R-2) residential zone but which was also located in a designated floodplain. Other use variances were granted because the nature of the use appeared to uphold the intent of the zoning ordinance. An example would be the approval of a mining company office and small storage yard in a commercial zone. Because mining would not be conducted on the premises, merely a small amount of storage incidental to the commercial-like office function, the use variance was granted. Other use variances were granted in good faith by the Board that the applicant intended to follow through on his proposal, when such was not the case after the variance was granted. A point in case was the grant of several variances to allow the construction of "residential" garages on lots having no existing primary residential dwelling in residential zones, with the full understanding

by the Board that dwellings would be built in the future. The result was the emergence of storage garages for heavy equipment or other non-conforming uses.

Finally, the Board approved many applications allowing the location of auto body repair shops in commercial zones. The ordinance did not clearly specify if such uses were light industrial or commercial in nature, therefore a variance to locate these uses in commercial zones was required until the zoning ordinance was amended in 1982 to allow auto body shops to locate in C-2 zones after obtaining a conditional use permit, rather than a variance. The rationale for the text amendment was that a conditional use permit procedure would allow for public input regarding the proposal and the addition of any special conditions that would further protect public health, safety and welfare. The amendment would resolve a questionable zone designation for the particular use and at the same time would help to discourage a proliferation of use variance applications. The amendment may have worked, as in 1983 only six use variances were applied for, compared to seventeen the year before, and only two were granted conditional approval.

In examining special and conditional uses, home occupation applications were segregated to examine the effect, if any, on the number of such applications during the years when Butte-Silver Bow suffered major workforce reductions and economic declines. This information appears in Table 2.

Table 2. Analysis of Special and Conditional Use Permits Applied for and Approved or Denied from 1978 to 1983.

TOTAL NUMBER OF SPECIAL AND CONDITIONAL USE PERMITS APPLIED FOR = 89	CONDITIONAL USE		CONDITIONAL USE (HOME OCCUPATION)		SPECIAL USE	
	Denied	Approved	Denied	Approved	Denied	Approved
1978	0	0	0	1	0	0
1979	0	0	0	1	0	2
1980	0	0	0	0	0	0
1981	0	2	3	22	0	11
1982	0	0	1	19	0	11
1983	0	1	1	2	0	12
TOTAL (approved or denied)	0	3	5	45	0	36
TOTAL BY USE PERMIT		3		50		36
% OF TOTAL USE PERMIT APPLICATIONS		3.4%		56.2%		40.4%

Conditional use permits for home occupations and special use permits accounted for 96.6% of all use permits applied for between 1978 and 1983.

The three conditional use permits which were approved (column 1) involved the location of a non-polluting re-cycling plant in an M-2L zone (which has been designated as a "non-attainment air quality area" and was additionally under the reviewing authority of the Montana Department of Health and Environmental Sciences Air Quality Bureau), the location of a light industrial use in an R-C (Rural Center) zone which is listed as an appropriate conditional use,⁶ and a commercial greenhouse located in an R-1S (Single Family Suburban - 1 acre lot minimum) zone which is also listed as an allowable use if a conditional use permit is obtained.⁷ The intent and spirit of the ordinance appeared to be upheld, as each of the approved conditional uses were listed as allowable uses for each of the zones in which they were located and conditions ensuring the promotion of public health, safety and general welfare were attached to the approvals.

Table 2 indicates that 50 home occupation conditional use permits were applied for between 1978 and 1983. Of these, 48 were applied for between 1981 and 1983. This compares fairly well with the economic indicators of taxable mill value and unemployment rate discussed previously.

Table 3. Comparison of Butte-Silver Bow Economic Indicators with Approved Home Occupation and Special Use Permits, 1980 - 1983.

	% CHANGE TAXABLE MILL VALUE	UNEMPLOYMENT RATE IN SILVER BOW COUNTY	NO. OF HOME OCC. PERMITS APP.. FOR	NO. OF SPECIAL USE PERMITS APP.. FOR
1980		6.8	0	0
1981	- 2.9%	8.3	25	11
1982	-11.3%	11.3	20	11
1983	+ 1.2%	11.1	3	12

As the taxable mill value declined and the unemployment rate rose, the number of home occupation applications rose dramatically between 1980 and 1981 and stayed fairly high again in 1982. The rise in home occupations can also be attributed to the major mining workforce reductions that occurred during those two years. In 1983, as the economy of Butte-Silver Bow began to stabilize after the economic blows it suffered in the two previous years, the number of home occupation applications once again dropped off dramatically.

Of note, also, is the fact that during 1981, 1982 and 1983, the number of special use permits applied for rose dramatically. The types of uses granted special use permit approval included a wide variety of business interests such as recreational facilities (10), day care centers (1),

demolition dumps (1), medical clinics and health-related uses (6), public utilities and services (8), retirement centers (1), bed and board houses (1), construction of radio towers (2), cultural uses (1), churches (1), a pre-release center (1), and a portable re-cycling center (1).

It appears from the data that as major workforce layoffs at the copper mines and the Berkeley Pit increased, unemployed workers sought alternative ways to make a living, as is indicated by the home occupation and special use permits applied for during the years of the heaviest workforce reductions. The number of home occupations tapered off considerably in 1983. This may be due to the fact that potential seekers of home occupations have found employment in the community or, more likely, elsewhere outside of Butte-Silver Bow.

Summary

The analysis of zone changes, variances, special and conditional use permits applied for in Butte-Silver Bow between 1978 and 1983 indicates that commercial and industrial zone changes appear to be the alternative means utilized by potential consumers of land to obtain land at a price they are more willing to pay, as previously zoned commercial property is priced higher than consumers are willing to pay. The percentage of vacant commercial land in Butte-Silver Bow substantiates this claim. Speculative zone changing may also be a part of the zone change trend.

Special use permits appear to be an alternative available to potential consumers of land located in any zone if the proposed use of the land is listed as an allowable special use in Ordinance No. 53, and the general public health, safety, and welfare are protected through the imposition of specific conditions on the permit.

Use variances do not appear to be a realistic alternative available to potential consumers of property unless the property is already utilized in a non-conforming manner and its status as a non-conforming use (grandfather status) has not expired.

Dimensional variances do not represent an alternative means of acquiring property at a more reasonable price, but they do appear to allow existing property owners the opportunity to maximize the value of their property within acceptable parameters exhibited by the surrounding neighborhood, as long as no construction alternative exists that would comply with the mandates of the zoning ordinance and as long as public health, safety and welfare are not jeopardized.

Home occupation permits appear to be a reaction to unemployment and are not a means of maximizing property values or finding reasonably priced property. For many, they were merely a temporary means of survival.

The population of Butte-Silver Bow has been dropping at an estimated annual rate of - 2.6% (between 1980 and

1985).⁸ This rate of decline would decrease the 1980 census population of Butte-Silver Bow from 38,092 persons to 35,169 persons in 1983 and 33,221 persons by 1985. By 1990, the population is estimated to be 34,005 persons, increasing only 0.5% annually from the 1985 population estimate.

Faced with continued population and economic decline, business and government leaders have joined their efforts in economic redevelopment of the community.

The next chapter will include a review of the economic redevelopment efforts in Butte-Silver Bow. The efforts of the local government to minimize the economic restrictions imposed by zoning and to utilize zoning for promoting economic redevelopment will also be discussed.

FOOTNOTES - CHAPTER 5

¹Ordinance No. 53, Butte-Silver Bow Zoning Ordinance, September 1, 1978, p. 19.

²Ordinance No. 53, Chapter 20, "Board of Adjustment," September 1, 1978, pp. 38-39.

³Ordinance No. 53, Ibid., p. 6

⁴Principles and Practice of Urban Planning,
International City Managers' Association (Washington, D.C., 1968), pp. 439-440.

⁵Ibid., p. 439.

⁶Ordinance No. 53, Section 90-4, p. 15.

⁷Ordinance No. 53, Section 30-3, p. 9.

⁸Unpublished Data, Western Analysis, Helena, Montana, 1982.

CHAPTER 6

ECONOMIC REDEVELOPMENT AND ZONING IN BUTTE-SILVER BOW

Implementation of Economic Redevelopment Efforts

Efforts to revitalize the "uptown" portion of Butte and stimulate economic recovery in the community as a whole were prompted when a special central business district (CBD) study was prepared by the Butte-Silver Bow Planning Board in June of 1974. The study developed a "two-pronged" redevelopment strategy which called for: (1) "a phased withdrawal from the present 'uptown' business area, along with redevelopment and eventual conversion of this area to mining;" and (2) "efforts to establish a new CBD in a new location that will be unaffected by future mining activities." One result of the study was the establishment of two separate C-3 (Central Commercial) zones in Ordinance No. 53, adopted in 1978. Another result was the clash of two constituencies in the community, the proponents and opponents of the proposed CBD relocation. The opponents won.

Butte is nationally recognized as a city of unique historic significance and was designated as such in 1962 by the U. S. National Park Service. Opponents to the relocation of the CBD capitalized on the historic

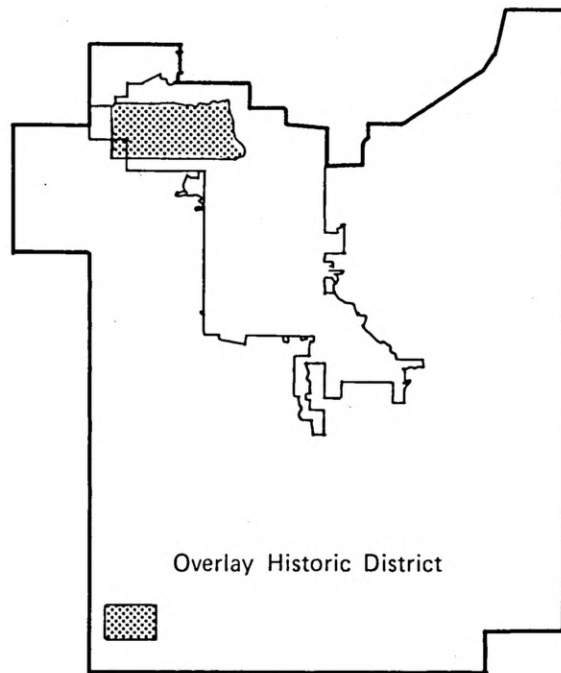
designation and used it to justify the creation, in May of 1979, of the Butte-Silver Bow Urban Revitalization Agency.

The Agency's first major accomplishment was the establishment of a tax increment financing district whose purpose was to utilize tax increment financing funds created by the district to revitalize the "uptown" area. Thus, preservation and rehabilitation of the uptown area was assured.

It was not until after the Arco/Anaconda Minerals Company closure of its mining operations in Butte-Silver Bow that other progressive preservation and redevelopment efforts were undertaken by the local government, most pertaining to the uptown area.

The first action, undertaken to encourage more retail trade in the uptown CBD, was the removal of all parking meters in the area in 1982. Second, an overlay historic district was established in the uptown area (Figure 5) in order to prevent the removal, demolition or excessive alteration of buildings within the district that were designated as "historically significant" according to guidelines and a building inventory established for the overlay district.¹ An uptown area parking special improvement district was created in order to provide appropriate off-street parking areas in the uptown district.²

Figure 5. Jurisdictional Area of the Butte-Silver Bow "Overlay" Historic District, 1984.



Both of these actions served to circumvent specific provisions of Ordinance No. 53 which were judged to be too restrictive in both the preservation and the economic development of the uptown area. Some of the provisions of Ordinance No. 53 that were re-worked to suit the particular needs of the uptown historic overlay district were building setback requirements, density requirements, and off-street parking requirements.

Local government leaders sought to address the economic development of the rest of the community also. In June of 1983, the local government announced the creation

of a five-person advisory committee to study economic development strategies for Butte-Silver Bow. The committee, which would complement economic development efforts by the local Chamber of Commerce and local development corporation, planned to examine seventeen areas that needed development including (in order of importance) labor and management, information, marketing and business support, tourism, mining and milling, commercial; retail and wholesale trade; transportation; manufacturing; technology; service industries; education; conferences and sporting events; government; real estate and housing; health services; agriculture and forestry; and arts and entertainment.³

In addition, an ad hoc committee delegated the responsibility to study zoning in Butte-Silver Bow was appointed by the city-county's chief executive in early 1984. The committee members included four commissioners, three members of the Planning Board, and one member of the Zoning Board of Adjustment.

In March of 1984, the committee submitted several recommendations regarding the existing zoning ordinance to the Council of Commissioners for consideration. Some of the recommendations have been supported by the Council and have been effected by zoning text amendments or other appropriate legislative means.

Briefly, the ad hoc committee recommendations include:

1. Replacement of the off-street parking requirements

in the uptown Central Business District by the implementation of some effective parking plan financed by a Special Improvement District. (This recommendation was implemented through the passage of Butte-Silver Bow SID #1008, Resolution No. 704, on August 1, 1984).

2. Amendment of existing zoning controls governing the issuance of home occupation conditional use permits to allow the delegation of more administrative authority to the zoning enforcement officer and to allow storage in garages of materials and equipment used in the operation of the home occupation. (Butte-Silver Bow Ordinance No. 216, which proposes such amendments to the zoning ordinance, has been introduced and awaits final reading and approval by the Council of Commissioners.)
3. Amendments granting administrative authority to the zoning enforcement officer in reviewing and approving, when appropriate, construction on lots with less than 60 feet of frontage. Previously, such construction was allowed by a combined variance/conditional use permit obtained from the Board of Adjustment. Under the proposed revision, which was to be introduced to the Council of Commissioners in September of 1984, the zoning

officer would have the authority to approve such construction if all other parameters specified in the ordinance for that particular situation are met. If the zoning officer would choose not to approve the proposed construction, the applicant could then appeal the zoning officer's decision to the Board of Adjustment through normal appellate channels.

4. Creation of a new "C-M" (Commercial and Light Industrial) zone to accomodate a mixture of commercial and light industrial use. (Ordinance No. 214, which proposes the creation of the "C-M" zone, is before the Council of Commissioners for final review and approval.)
5. Greater utilization of transitional zones in areas experiencing land use changes in order to protect and allow the continuance of higher uses. Presently, the creation of transitional zones is provided for in the ordinance and allows the orderly transition of an area from one use (e.g., Two-Family Residential, R-2) to a lower use (e.g., Local Commercial, C-1). Under the provisions of the "T" designation, all of the provisions of the new, lower zoning classification would be applicable in the area but special standards, such as more intensive screening, buffering and

landscaping requirements, created by the "T" additive would be applied where they were more stringent than the regular zone requirements.⁴ The ad hoc committee's recommendation basically advocates greater utilization of the "T" designation.

6. Education of the public with respect to the zoning ordinance through news releases, articles in the newspaper, and public meetings.
7. Designation of one county attorney to handle zoning problems and litigation so that one attorney would be well informed of the relevant procedures and rules.
8. Compilation into one document of the existing zoning ordinance and all amendments to its text that have been made since the adoption of the original ordinance.
9. Examination of the ordinance to allow changes in the enforcement organization structure that would facilitate efficient and economical administration and enforcement of the ordinance.⁵

The creation of the overlay zone and implementation of the ad hoc committee's recommendations pertaining to the zoning ordinance may alter the impact of traditional zoning on the supply, demand, price and value of property in

Butte-Silver Bow. In addition, their implementation may promote the economic redevelopment efforts of the community.

Effects of Economic Redevelopment Efforts on
Zoning in Butte-Silver Bow

Each economic preservation and development prescription that has been implemented by the Butte-Silver Bow local government or that is scheduled for review and possible implementation affects, to some degree, the supply, demand, and price of zoned property in Butte-Silver Bow.

Three of the adopted or proposed ordinances--the adoption of the historic district, the creation of the uptown off-street parking SID, and the zoning text amendment regarding construction on lots with a frontage width of less than sixty feet--generally affect dimensional zoning requirements and not the type of use that is prescribed for a particular zone.

Each of these ordinances provide for the modification of existing zoning mandates regarding building height and width, building setbacks, the amount of off-street parking that is required in conjunction with the redevelopment of commercial property and the maximum percentage of lot coverage or density of development that is allowable on the property. The guidelines of the historic overlay district exercise stronger "police power" mandates through

the restriction of demolition, sale and removal, and excessive alteration of buildings within the district that are declared to be historically significant. The overlay district also provides very specific facade and signage controls for the commercial uses within its boundaries.

An examination of the types of dimensional variances applied for between 1978 and 1983 revealed that the creation of the overlay historic district responded to dissatisfaction with the off-street parking requirements of the zoning ordinance. Of the twelve variance applications requesting reductions or waivers of required off-street parking development in conjunction with new commercial or industrial development, nine applications concerned property in the uptown area and were granted. The three applications pertaining to property outside the uptown area were not approved. The creation of the SID for off-street parking provided a compromise between uptown developers and "flats" developers who felt that they were discriminated against because they were mandated to suffer additional expense to provide required off-street parking. Passage of the uptown SID, in effect, provided equity in development requirements by mandating that uptown developers pay for future off-street parking development.

The purported intent of the overlay district and the SID was to encourage redevelopment in the uptown area. The price of property in the area, because of its age and

condition, may be lower, and relaxing parking requirements and reducing that development cost may encourage the purchase and development of some properties for uses which are approved for the overlay zone.

The economic effect of both actions may very well be that the highest speculative price of property in the area may actually be raised, compared to the price in the absence of the ordinances.

The age and blighted condition of vacant or available property in the area would lower the demand for this property because the costs of renovating and re-developing the property would be so great. Therefore, the speculative price of the property, theoretically, would be very low. Given the tax incentives available to persons redeveloping property within the URA district, the costs of renovating and redeveloping property would decrease, resulting possibly in an increase in demand for the property. The price of the property, according to economic principles, would increase with the increase in demand and because the supply of available property within the URA tax increment financing district is limited.

The creation of the overlay historic district, which imposes much more detailed regulations regarding aesthetic and historic significance concerns but reduces restrictive building setback requirements, does little to change the

demand or incentive to redevelop property in the area, as the restrictions of the district are offset by the relaxation of other development requirements which previously were applied to the district.

The elimination of off-street parking provisions in conjunction with the creation of the historic overlay district which was supplemented by the creation of the uptown parking SID, however, is designed to further encourage redevelopment in the area. The elimination of off-street parking lot costs, which are only minimally offset by individual SID payments, lowers the total potential cost of redevelopment or new development of property in the area, thereby creating the impetus for increasing the demand for property in the area. Again, because the supply of land in the district is fixed due to zoning, and demand for property in the area is likely to increase, the price of the property will probably rise. The speculative price, the price that the entrepreneurial property owner may be prompted to ask given the "special" characteristics of his property, could be even greater.

The third dimensional revision, which would delegate administrative authority to the zoning officer with respect to approving or denying construction on lots that are less than sixty feet wide, may also cause the price or value of property to eventually rise.

The need or demand for this revision can be demonstrated by an analysis of the number of variances applied for to construct on lots of less than sixty-foot frontages and to reduce building setbacks (which generally was required when construction took place on narrow lots). Between 1978 and 1983, 125 building setback variances and 29 narrow lot construction variances were applied for. The desire to construct on narrow lots was not isolated to the older uptown area, as the number of such applications was evenly split between the uptown area and property outside the area. The ordinance allows property owners to develop or sell for development property that previously was restricted from such development. The result of the ordinance is an increase in the potential value of the property, should it be developed.

The demand to reduce building setbacks was more prevalent for areas outside of the uptown area. Only 31 of the 125 building setback variances applied for pertained to property encompassed in the uptown Butte area. The rest (94) pertained to property located elsewhere in the community. The widespread demand appears to substantiate the contention that acceptance and control of aesthetic considerations, such as building setback reductions, appears to be based on the collective judgement of the neighborhood in which they occur.⁶

In 1981, a text amendment reducing required sideyard setbacks was added to the zoning ordinance. Presently, other setback modifications are being examined which will be administered by the zoning officer, if the changes are approved by the council. The proposed amendments also respond to the ad hoc committee recommendations that changes in the enforcement structure be made and more discretionary administrative authority be granted to the enforcing officer to promote efficient and economical public service.

The overall economic effect of the proposed amendments on the supply, demand and price of property would be minimal because they will apply across the board to all zoned property in the community and potentially allow all property owners to increase the value of their property equally.

Of the other prescriptive economic development mandates recommended by the zoning ad hoc committee or passed by the local council of commissioners, the creation of the "C-M" (Commercial-Light Industrial) zone and the recommendation of increased utilization of "T" (Transitional) zoning have the strongest implications for changing the effect of zoning on the supply, demand and price of property. The effect of implementing each recommendation will be to combine fixed portions of zoned land into newly arranged fixed supplies of zoned land. The resulting price of land will vary according to whether the property is designed as a "C-M" area or a "T" area.

Areas which are assigned the "C-M" classification will be permitted to allow the development of a mixture of commercial and light industrial use within their boundaries. Industrial uses are generally considered a lower use than commercial uses in the zoning hierarchy of uses. The effect of placing the C-M classification on an area previously zoned commercially might be to increase the value of the property within the zone. As was stated previously, the amount of land in Butte-Silver Bow which is zoned commercially and the percentage of vacant or unused commercially zoned property in the community suggested that entrepreneurial property owners may have sought and attained commercial zoning for their property in hopes of increasing the marketplace price of the property. It also suggested that subsequent applications for zone changes to a commercial classification represented an alternative means by which potential property owners sought a supply of more affordable property and attempted to apply the proper commercial zoning designation to it retrospectively.

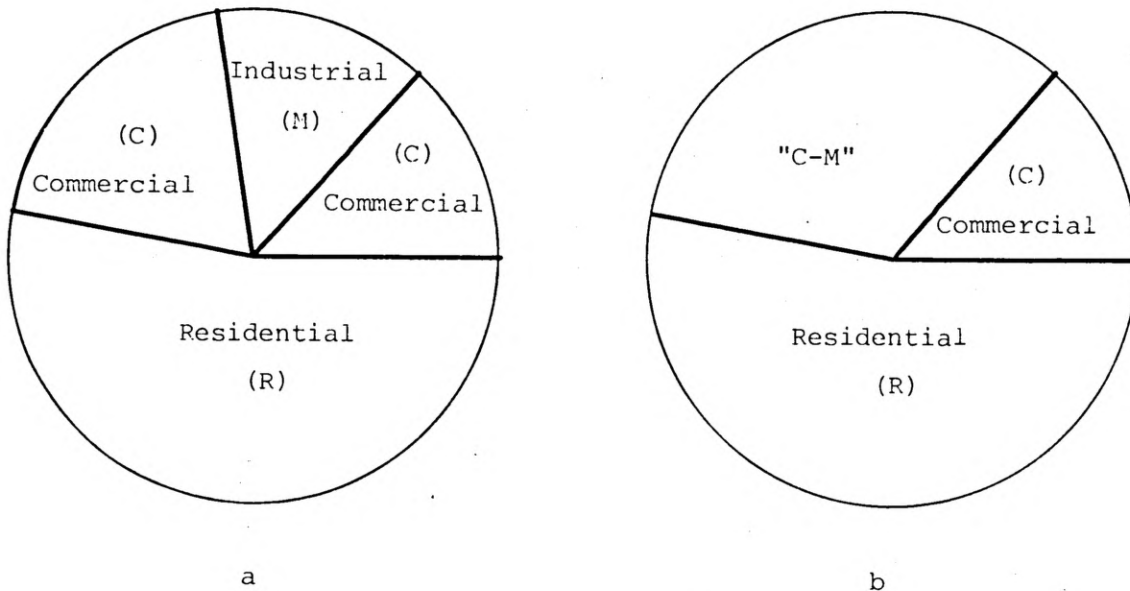
Entrepreneurial property owners who have attained commercial zoning for their property would not be likely to support the imposition of a C-M designation on their property, as the potential development of lower value light industrial uses may cause a reduction in overall property value in the area.

Potential property owners would be likely to support the C-M designation of an area, especially if they are seeking property that will be developed commercially, because theoretically, they would be able to purchase more affordable, less expensive industrial land and develop it for a higher value commercial use. The only instance in which this theory is applicable, however, is if less expensive industrial land is purchased and the C-M zone classification is sought and attained subsequent to the purchase of the property. Even then, the price of industrial property may be speculatively raised by existing property owners in hopes of future attainment of the C-M classification.

The overall economic effect of C-M zoning may very well be an increase in the overall price of industrial land due to speculative future commercial development on the property and resistance by existing owners of commercial properties to allow the value of their property to decline due to the intrusion of light industrial uses.

Figure 6 illustrates the total fixed supply of land in a community where zoning is adopted and illustrates the potential designation of C-M zoning to all commercial and industrial land. If, for purposes of explanation, commercial property (C) is valued at one-and-one-half times the value of industrial property (M), the overall value of both types of land would be lower for commercial property and higher for industrial.

Figure 6. Illustration of Potential Designation of "C-M" Zoning to Commercial and Industrial Property.



A reduction in the value of commercial property would be unlikely. A speculative increase in the price of light industrial property would be a more probable reaction.

The eventual result may be a search by potential commercial and industrial developers for less expensive land in heavy industrial or even residentially zoned areas for property, and an attempt to attain commercial or C-M zoning after the property is purchased. The transitional "T" zoning that has been recommended by the ad hoc zoning committee would facilitate potential purchasers of property in their search. Section 250-4 of Ordinance No. 53, which provides for the creation of transitional "T" districts,

allows for "the growth of a lower district into an adjacent higher district." The ordinance does not address the issue of large variances in adjacent property uses, however.

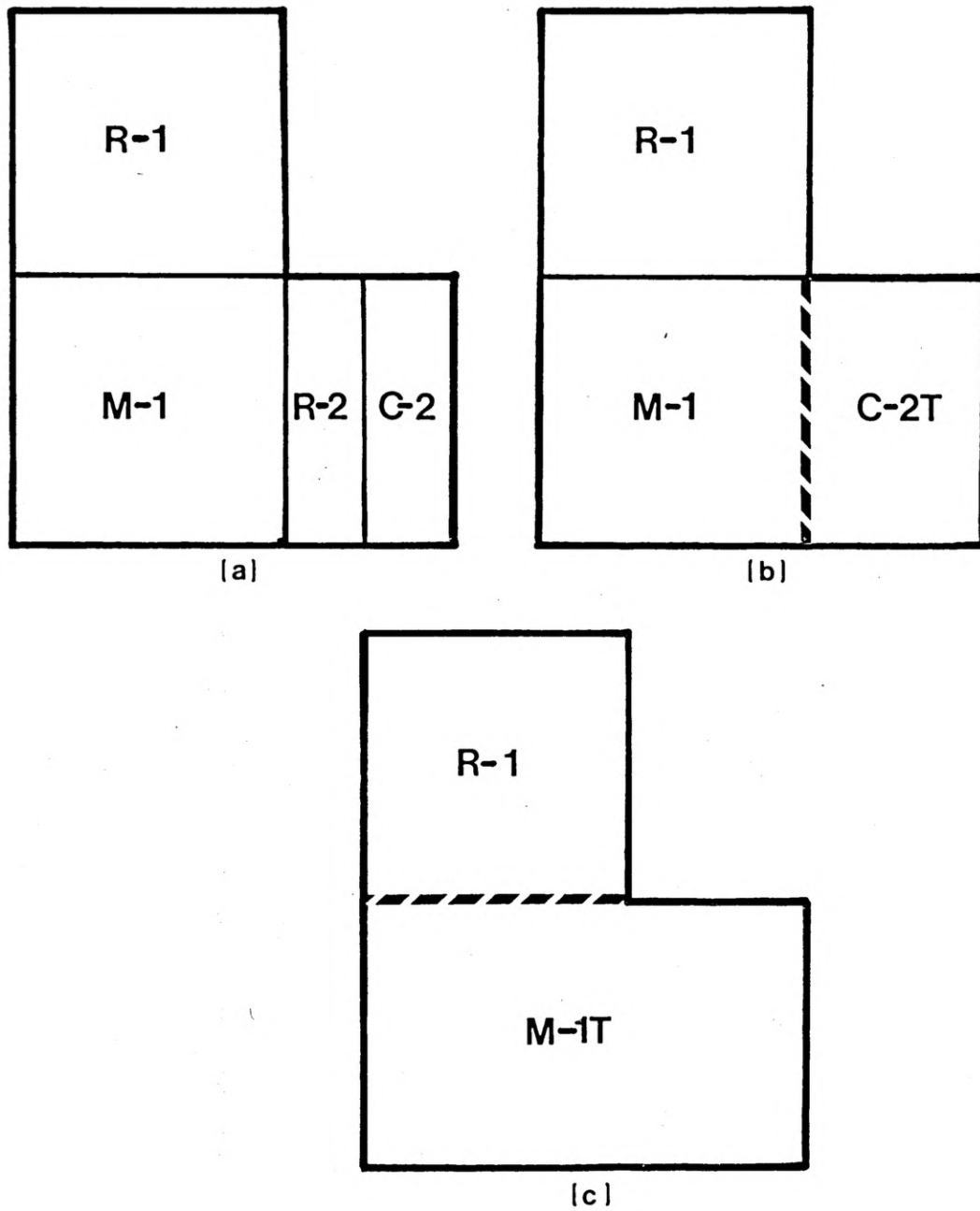
Adjacent zones in Butte-Silver Bow, because of its random historical development, have wide variations in use classifications. The presence of a heavy industrial zone next to a residential zone or the total mixture of commercial, industrial and residential zones in a relatively small land area are evident in the community. The application of a "T" designation to a residential area which is adjacent to a heavy or light industrial area would, in effect, combine the two areas into an M-1-T or M-2-T zone, according to the transitional district regulations of the ordinance. Any use which was permitted in the industrial zone would also be permitted in the new "T" zone, subject to special reviews and approval and the imposition of special conditions on proposed uses, regardless of the fact that they would be developed in a residential zone.

The transitional district provision of the ordinance does not provide for the higher district to be awarded the "T" designation, which implies the overall lowering of use classification in the "T" zone. The effect of "T" zoning may be the overall lowering of property values in the T-zone, which would be resisted by existing owners of higher value property. Realistically, "T" zoning would most likely be applied and approved for adjacent areas that were in close

zoning hierarchial succession with each other. For example, a multi-family residential zone (the most intensive residential classification) and a local commercial (the least intensive commercial designation) would be more likely to have transitional zoning applied to them than would a single family residential zone and a heavy industrial zone.

As transitional zoning is encouraged and implemented, higher use zones which are located adjacent to lower use zones will, in fact, become lower use zones and will establish new adjacent zoning dichotomies in the community. Conceivably, the T-zone could then expand into the adjacent zone, whether it be a higher or lower use classification, and a subsequent lowering of allowable uses within the new zone would occur. Ultimately, transitional zoning could actually eliminate zoning within the community (see Figure 7). While this is not likely to happen, because of property owner resistance to lowering of property values, the concept of transitional zoning could seriously jeopardize the intent and purpose of traditional community zoning.

Figure 7. Theoretical Progression of Transitional Zoning.



Summary

The economic implication of the actions, ordinances and recommendations that have been made in Butte-Silver Bow since the creation of the historic overlay district, thus far discussed, may be an increase in the overall value and future speculative value of property within Butte-Silver Bow. In addition, the intent, purpose and guidelines contained in the existing ordinance may be weakened.

Whether or not these actions will encourage economic development in the community remains to be seen. As was previously pointed out, economic development or redevelopment will probably occur if the price of potential "developable" property is reasonable to potential developers. Each of the actions proposed, thus far, have the theoretical propensity to raise property prices beyond the reasonable price level sought by developers.

The remaining recommendations of the ad hoc zoning committee--which include increasing the discretionary authority of the zoning officer in the approval of home occupations applications and dimensional variances, public education about zoning, assignment of a county attorney to zoning, and consolidation of the existing ordinance and all text amendments to it--serve primarily to expedite the administrative enforcement of the zoning ordinance and do not have economic implications on the supply, demand and price of property in Butte-Silver Bow.

In order to encourage economic development while at the same time protecting property values in a community, other development alternatives should be explored for their feasibility. The following chapter will offer some possible alternatives to the measures that have already been suggested or implemented in Butte-Silver Bow.

FOOTNOTES - CHAPTER 6

¹Butte-Silver Bow Ordinance No. 206, Resolution 671, February 15, 1984.

²Butte-Silver Bow SID No. 1008, Resolution 704, August 1, 1984.

³The Montana Standard; Butte, Montana; June 10, 1983; p. 4.

⁴Ordinance No. 53, Section 250-4, p. 38.

⁵Letter to Chief Executive Don Peoples and Council of Commissioners, March 22, 1984.

⁶Nelson, p. 18

CHAPTER 7

AN ANALYSIS OF ALTERNATIVE ZONING APPLICATIONS
IN BUTTE-SILVER BOW

The introduction of alternative zoning applications in Butte-Silver Bow is especially appropriate at this point in time, because the Master Land Use Development Plan for Butte-Silver Bow is undergoing a full review, update and revision.

The existing Land Use Plan governs the urbanized Butte area and two-and-one-half miles around the area's perimeter. The boundaries of the Plan are identical to those delineated by Ordinance No. 53, the Butte-Silver Bow Zoning Ordinance, as Montana law requires that the guidelines for development prescribed for the territorial jurisdictional boundaries set forth in the master plan be used in the adoption of zoning ordinances or resolutions.¹ In developing both its master plan and zoning ordinance, the consolidated city-county government was afforded the opportunity to utilize either the municipal enabling legislation² or the county enabling legislation³ prescribed by the State in the development and adoption of master plans and zoning ordinances. Butte-Silver Bow's local governing body chose to use the municipal option.

A Supreme Court review⁴ of both the master plan and zoning ordinance revealed that the utilization of the

municipal enabling legislation was inappropriate as areas outside of the actual city limit boundaries were included as part of the "urbanized area" and used in delineating the additional two-and-one-half mile zoning area around the perimeter of the urbanized area. If municipal zoning were properly utilized, only the area within the city limits and the area two-and-one-half miles around the perimeter of that particular boundary would have been included within the zoning ordinance's jurisdictional boundaries.

The Court allowed the continued enforcement of the existing zoning ordinance but directed the local government to develop a county-wide master plan and subsequently to adopt a county-wide zoning ordinance. The master plan is presently being developed and county-wide zoning will likely be considered in the near future.

Butte-Silver Bow will have one of three courses to pursue when it develops a county-wide zoning ordinance. It can continue to enforce the same type of ordinance it now utilizes by providing agricultural or rural development guidelines for the new land area under the jurisdictional authority of the ordinance and it can continue to adopt and implement piecemeal reactive zoning measures exemplified by the "C-M zone, historic overlay zone, off-street parking SID and "T" zone legislation previously recommended or adopted by the local government.

Another option is to choose to abolish zoning in the

community, as critics claim that its existence impedes or prevents economic development or redevelopment.

A final option is to use the economic analysis of historic zoning practices in the community to determine which zoning practices were regressive and should be altered and which ones promote economic improvement and should be continued in the future.

Continuation of Existing Zoning Practices in Butte-Silver Bow

The previous discussion of existing zoning practices in Butte-Silver Bow indicates that continuation of the existing zoning practices in the community will not promote economic development of the community. The long range effects of continuing existing zoning practices in Butte-Silver Bow or implementing proposed zoning alternatives such as overlay zoning, transitional ("T") zoning and combination commercial/industrial ("C-M") zoning would be as follows:

1. Further piecemeal granting of use variances and zone changes in Butte-Silver Bow would result in the continued speculative overpricing of land zoned or rezoned for commercial purposes. These artificially high prices would continue to create a surplus of commercially zoned land as potential purchasers or users of such property would not be willing to pay (or would be unable to pay) the

set price for the property. Potential purchasers or users of property would instead seek more affordable alternatives or substitutes for commercially zoned land. They would continue to gain a commercial use variance to utilize property in a non-commercial zone for commercial purposes or they would seek commercial rezoning of non-commercial, less costly property subsequent to its purchase, lease or rent. After obtaining either a use variance or a change to commercial zoning, property owners would conceivably increase the utility and value of their property to the level set by the prevailing market price of existing commercial land in the community.

Entrepreneurial property owners also would continue to seek commercial rezoning for lower-priced property in order to speculatively increase the re-sale or investment price of their property. The effect, then, would be an increase in the supply of highly priced commercial property and a decrease in the supply of other zoned areas of land. As the supply of non-commercially zoned, less expensive property decreased, likewise the alternative choices of property available to potential purchasers and users would decrease.

Theoretically, a diminishing supply of alternative choices would prompt an increase in the market value of that commodity also. Therefore, the overall price of property in Butte-Silver Bow conceivably could, if continued commercial use variances and commercial zone changes were granted, raise the price of all land in the community.

The community's efforts to encourage economic redevelopment and diversification of its economic base may be hampered because increasing property prices, especially in commercially zoned areas, will reduce the incentive and possibly the ability for potential commercial or industrial ventures to locate in Butte-Silver Bow. This situation may be further affected because the price of the depleting supply of less expensive, non-commercial properties may rise simply because of such property's increasing scarcity. These factors, combined with a lengthy and somewhat expensive zone change or variance process, will have negative impacts on the economic redevelopment efforts of Butte-Silver Bow.

2. The continued practice of granting dimensional variances such as reduced building setbacks and increased lot coverage allowances will also

promote an increase in the value of property as they allow property owners to increase or maximize the utility of their property in accordance with the prevailing neighborhood standards of acceptability.

In principle, the theoretical bases for dimensional zoning regulations, such as minimum building setback requirements and maximum fence heights, were established to ensure adequate air, light, safety and space to the general public.

In practice, dimensional zoning requirements provide a point of origin for negotiating dimensional reductions which are acceptable on an individual neighborhood basis. Zoning setback requirements which once promoted general health, safety and welfare considerations (e.g., prevention of fire and its spread) have since been supplanted by standard building, electrical and plumbing codes which govern such safety aspects as construction materials, construction standards and structural soundness of new buildings.

Existing dimensional requirements contained in zoning law reflect historically accepted, aesthetic guidelines for the construction of buildings and dwellings.

In terms of promoting or impeding economic redevelopment of Butte-Silver Bow, continued granting of dimensional variances will be of little significance. Dimensional variances reflect individual neighborhood aesthetic preferences and might be considered a characteristic of a piece of property within a specific area. Economic development will be predicated by the amount of available land zoned for a specific commercial or industrial use, the set price for the land and alternative supplies of less costly land which are available. The accepted aesthetic norm for building setbacks, lot coverage and fence and building heights are a feature of the property which would only be a secondary consideration in making a choice between similar parcels of property.

3. The continued granting of conditional and special use permits and home occupation permits will not affect economic development efforts. The uses permitted to exist by these permits are specifically listed in the present zoning ordinance and they are allowed to locate in any type of zoned area. The pursuit of such permits for commercial or industrial uses other than those specifically cited as eligible applicants in the

ordinance has not been evident in the past and probably will not be employed or advocated in the future.

4. The creation of the overlay historic zoning district, having its own dimensional and aesthetic requirements, the removal of parking meters and the creation of an uptown parking area special improvement district were actions intended to promote the economic redevelopment or revitalization of the deteriorating uptown area of Butte-Silver Bow. The implementation of these measures was intended to reduce the financial and zoning disincentives for locating new enterprise in the uptown area.

If the theories of supply, demand and price of zoned property discussed in Chapter 6 hold true, the long range effect of implementing these measures may be an increase of the price of land in the uptown area. If, after considering all the characteristics of property in the "uptown" area and the price at which such property is offered, a prospective enterprise is able to find less expensive property suitable for his use elsewhere, purchase or use of the less expensive property alternative will be chosen over property in the uptown area.

Incentives to locate in the uptown area such as tax incentives, less stringent building setbacks and off-street parking provision exemptions in lieu of participating in the special improvement district program, may all be negated if owners of property in the area raise the price of their property above the expectations of potential purchasers or users of such property. Property in the uptown area will attract new contributors to Butte-Silver Bow's economic base only if the benefits of locating in the uptown area (e.g., the special uptown incentives) are greater than the costs (e.g., price of property, price to renovate, etc.) of locating there and other more affordable property alternatives aren't available.

5. The recommendation of increased use of transitional "T" zoning and the legislative provision allowing the creation of commercial/industrial "C-M" zones, if implemented, could have the long range effect of nullifying the intent of zoning in the community. The intent of zoning is to protect the general health, safety, welfare and convenience of property owners from being subjected to adverse impacts created by other uses by limiting the location of different land uses to specific areas or zones. Generally,

specific areas would be designated for residential, commercial and industrial uses in order to minimize the adverse effects or impacts they may have on each other.

Usually, the boundaries of each zone are delineated in such a manner as to encompass as many similar uses as possible. In Butte-Silver Bow, the configuration of many of the zoning districts are very irregular due to the mixture of uses existing in the community at the time of adoption of the zoning ordinance. The interspersion of mines and commercial and industrial uses throughout the community led to the creation of very divergent zones directly adjacent to each other. It is not unusual for a heavy industrial ("M-2") zone or a mining ("M") zone to be located in the midst of a residential ("R") zone or directly adjacent to it (see Figure 4). Therefore, the intent of zoning to protect property owners from the undesirable effects of incompatible uses is weakened.

The creation of "C-M" zones or "T" zones further aggravates the situation. The establishment of a "C-M" zone allows the location of specific light industrial uses in commercial areas where they were previously excluded, thereby promoting a

mixture of uses. Mixing different uses in the same area contradicts the intent of zoning. The problem becomes worse if the commercial area considered for "C-M" zoning is located adjacent to a residential area or zone. The effect of creating a "C-M" zone near the residential zone would be an encroachment of less desirable uses on the residential area.

Transitional "T" zoning also promotes mixing of land uses, albeit on a gradual incremental basis. Transitional zoning, theoretically, allows for the orderly expansion of one type of zoning classification into an adjacent area zoned for a different type of land use. If transitional zoning in Butte-Silver Bow is encouraged, existing zoning boundary delineations separating commercial and industrial zones from residential zones would offer only temporary protection to property owners in the residential zone from encroachment by commercial and industrial uses.

The combined implementation of "C-M" zoning and transitional zoning could, in the long run, provide for a total mixing of uses in the community and therefore render the community's zoning ordinance useless.

In terms of actually helping to stimulate the economy of Butte-Silver Bow, the promotion of transitional zoning and the ability to create "C-M" zones would not necessarily promote such a goal.

Theoretically, both proposals would allow commercial and industrial business to either expand in adjacent areas or locate in areas that were previously unavailable to them. The propensity for such entrepreneurs to exercise these options would depend on the price of the property available to them and the number of available alternatives that they have to choose from.

In the case of Butte-Silver Bow, it was found that a surplus of vacant or unused commercial land existed while at the same time more than half of the zone changes requested from 1978 through 1983 involved commercial rezonings. The surplus of commercial land would indicate that either the demand for commercially zoned land was less than the available supply of such land or that the price was higher than consumers were willing to pay.

The substantial proportion of commercial rezonings that were implemented between 1978 and

1983, even though a surplus of commercial land already existed, demonstrated that a demand for commercial property existed. It would appear, then, that the existing surplus of commercial land in Butte-Silver Bow was not a function of demand but rather one of speculative overpricing of commercially zoned property.

Given this conjecture, it would appear that the entry of certain light industrial uses into commercially zoned areas (as provided with the creation of a "C-M" zone) would be hampered by the overpriced value of available commercial properties. Although the creation of "C-M" zones would promote ease of entry of industrial ventures into previously unavailable areas or localities, the price of available land will continue to dictate whether or not such development will actually occur.

Transitional zoning, as stipulated in Ordinance No. 53, provides for the orderly growth of a lower district into an adjacent higher district. Development of lower uses in adjacent higher zoning districts will only occur if the price of available property in the adjacent area approximates the price that the potential consumer or purchaser of the property is willing to pay.

Therefore, only those parcels of land which are priced in accordance with the expectations of potential commercial or industrial users of property would be developed as a result of either "C-M" or "T" zoning. The "price" of such property must also reflect the zone change process that must be complied with and resistance by existing adjacent property owners to the development. If the "price" of property is higher than the consumer is willing to pay, he will look for alternative sites either within the community or in a different community. And, as was previously hypothesized, existing property owners will not be willing to lower their present property prices and overpricing of industrial and commercial land is likely to continue.

If the price of property available for economic development (either existing commercial or industrial land or land within a newly created "C-," and "T" zones) remains excessive in terms of consumer preference and alternative supplies of land are sought (either by retrospectively changing the zoning of less expensive land or by looking in another community), the surplus of existing commercial land in Butte-Silver Bow will

be increased by the addition of overpriced, unused land zoned for commercial/industrial or transitional purposes.

If, on the other hand, "C-M" zoning and transitional zoning are greatly utilized by commercial and industrial uses, an increased mixing of uses will result. In Butte-Silver Bow, because of the haphazard configuration of present zoning districts, the potential of further mixing of uses in the community through the progressive establishment of "T" and "C-M" zones will weaken what little protection residential property owners have from the adverse impacts of incompatible uses.

The foregoing recommendations or actions to stimulate economic growth in Butte-Silver Bow may actually result in a rise in overall property prices in the community and a severe weakening of the provisions of the existing zoning ordinance.

Abolition of Zoning in Butte-Silver Bow

The nullification or abolition of zoning in Butte-Silver Bow would have several effects on the supply, demand, and price of property within its jurisdictional boundaries.

First, the theoretical supply of classes of land in the city-county would no longer be fixed, reducing the propensity

in the same area. While this outcome might be perceived as promoting economic development, other consequences arising from the abolition of zoning could serve to cloud this perception.

Economic development in Butte-Silver Bow will entail the recruitment of new primary industries to replace the loss of its former basic industry, mining. In order to attract new commercial and industrial ventures into the community, the "price" at which the community offers itself to potential developers has to approach the "price" thought to be reasonable by developers. The "price" to enter a community's economic base may include such components as the supply of developable land, the market price for available developable land, community tax rates, public services and facilities available in the community and the aesthetic appearance of the community.

The absence of zoning or a comparable land use development guideline would affect each of these price components. While the non-fixed supply of land made available through the abolition of zoning may promote lower prices for property in the community, the absence of zoning would also promote a mixture of land uses throughout the community which, in turn, would lead to different requirements for public services (e.g., water, sewer, fire and police protection, transportation and education services). The costs of providing the necessary services demanded by the composite

of entrepreneurial property owners to speculatively obtain zoning designations would enable them to raise the price of their land. Subsequently, the laws of supply and demand, as they apply to property, would have a much more elastic or direct effect on the uses that land would be put to. The demand for property would be based on the need or desire for a particular piece of property because its features (e.g., location, square footage, available services, etc.) and if its price met the expectations of the potential consumer or use. If all or most of the desired characteristics were not satisfactory to the potential consumer, then he would be able to search for an alternative piece of property anywhere in the community as the supply of available alternatives of property parcels would be limited only by the county's delineated boundaries.

Therefore, the use of that property in a community that has no zoning regulations would evolve as a result of the suitability of the property in terms of its attributes and, more importantly, its price compared to the expectations of potential purchasers or users of the property. Land that was priced higher than the consumer is willing to pay would not be purchased as less costly parcels of land might be available for development. Eventually, the basic uses of land in Butte-Silver Bow, if zoning were abolished, would be determined by the economic pressures of supply, demand and price of property rather than the compatibility of uses of land.

Diversity of land uses in the community would be greater and necessary public services to diverse uses could be provided for if paid in the form of higher local taxes. The result would be an inefficient provision of all types of public services at a higher cost in order to meet the needs of a composite land use population rather than a more efficient, less costly provision of public services designed to meet the specific demands of a population that has similar service requirements.⁵

Additionally, the absence of zoning and the subsequent haphazard development of a mixture of uses contributes to what is construed by many as a "low aesthetic quality" of the community.⁶

Therefore, although the actual supply and price of available property in an unzoned community may be attractive to potential entrepreneurs, higher taxes, inefficient provision of public services and facilities, and the trade-off cost of locating in a community having a low aesthetic appeal may serve to dissuade potential economic development. Another consequence of abolishing zoning regulations in the community would be the undesired impact that future uncontrolled development would have on residential neighborhoods.

"Of major importance for the individual citizen is the part zoning plays in stabilizing and preserving property values."⁷ The implementation of zoning was effective in protecting the environments of existing neighborhoods from

the intrusion or encroachment of undesirable, lower land uses on the residential area. The exclusion of certain low quality land uses from residential areas or neighborhoods enable residents to maintain and improve the aesthetic quality and value of their property. The willingness of area residents to modify their standards of aesthetic acceptability was reflected by the number of dimensional variances from the zoning regulations which were supported (or which were not opposed) by residents of the area.

The absence of zoning would remove the protection to residential neighborhoods from the intrusion of land uses that would produce undesirable effects on the aesthetic quality and, possibly, the health and safety of neighborhoods and their residents. Likewise, the property value of the area would decline as the quality of uses within the area was lowered.

The individual property owner would not be able to exclude undesirable uses from locating near his property as was once possible through the implementation of collective neighborhood preferences reflected in the zoning ordinance. The only recourse that would be available to the individual resident would be judicial relief which, unless the lowering of the value of his property due to the intrusion of the debated use was clearly proved to be a "taking," would be difficult to obtain.

The total abolition of zoning in Butte-Silver Bow would have several undesirable consequences that could hamper economic development in the long run and potentially lower the aesthetic quality of the community as a whole.

The contention that the existing zoning ordinance hinders or restricts economic development from occurring in the community may be true to a certain extent, as the effects of zoning on the supply, demand and price of available developable land are somewhat regressive.

The recommended and implemented modifications to the zoning ordinance may have the long range effect of further hindering economic development efforts, and the abolition of zoning would aggravate the poor aesthetic quality of Butte-Silver Bow further.

Rather than modifying the existing zoning ordinance on a piecemeal, reactive basis, it might be beneficial to pursue a total reworking of the existing zoning ordinance, which would incorporate the intent of the previous zoning recommendations and modifications in conjunction with the development of the county-wide master plan.

Economic Based Zoning in Butte-Silver Bow

In order for Butte-Silver Bow to attract new economic development while at the same time protecting the health, safety and general welfare of its constituents from the undesirable effects of haphazard zoning, a new approach

should be taken which combines the economic theories of supply, demand and price of property with the implementation of zoning regulations.

It is especially timely to examine such an approach as the local government of Butte-Silver Bow is updating and rewriting its existing land use plan so that its guidelines pertain to the entire county.

The composition of a new land use plan and new zoning ordinance for Butte-Silver Bow will involve several steps:

1. The community, through its local governing body representatives, must decide what the long range development trends of the community should be.
Butte-Silver Bow has suffered a serious erosion of its primary economic base, mining, and it has made a concerted effort to implement policies which will attract new industry to the community and promote both growth and diversity of its economic base.
The formation of an ad hoc committee to study economic development strategies and the diversity of the areas that the committee defined as needing development is a clear indication that growth and diversity of the community's economic base is the long range development goal of the community.
2. An inventory of land uses throughout the county should be taken and compared with prior inventories to analyze the transition in land uses that have

taken place between inventories. From this analysis, it may be possible to identify areas that have experienced a steady change or transition from one type of a land use to another. Older neighborhoods in the community should be evaluated carefully in terms of their use or non-use. If it is found that certain of these areas have shown an increase in abandonment, blight and deterioration, it could indicate that the types of uses allowed by the existing zoning designation of the property can no longer be sustained.⁸ For example an area that has been zoned for multiple family residences (e.g., apartments, boarding houses, etc.) and has experienced a great deal of abandonment, building deterioration and vandalism, may be overzoned. That is, the true "highest and best" use of such property may be uses allowed by a lower zoning designation, such as industrial, rather than the residential uses that it is presently zoned for.

3. Following the inventory, a determination of the highest and best potential use for land throughout the county should be made. The physical aspects of property should be taken into account in making this determination. Physical aspects which may enter into a potential use determination would include the public services available to the

property (e.g., water, sewer, roads, etc.) and the physical limitations of the property which might preclude the development of certain uses (e.g., steep topography, flooding potential, slumping or subsidence problems and presence of toxic mining wastes).

After a guideline determination of a highest and best use is made, land throughout the county should be evaluated as to the lowest acceptable use that should be allowed to develop in a particular area. For example, the existing zoning of older abandoned or deteriorating neighborhoods or areas within the community may preclude the use of the property for lower classes of uses when, given the poor condition of the neighborhood, the uses of the property for which it is zoned will never develop. The highest and best uses of the property may be a lower one (according to the hierarchy of zoned uses) than the area is zoned for. The lowest acceptable use of the land might be determined by factors such as the area's proximity to areas having very high zoning classifications and the long range impact of allowing very low types of uses to locate in these areas.

On the other hand, the rural and open space areas located outside the jurisdictional boundaries of

the existing zoning ordinance would be better preserved for the high uses of agriculture, forestry and recreation. The lowest acceptable use of such land would certainly exclude industrial, commercial or multi-family development as the location of such uses in these areas would involve an exorbitant expenditure of funds to provide the necessary public services and utilities to these areas.

In areas that have not experienced high rates of vacancy, building abandonment and deterioration, more likely than not the area probably does not contain too many different types of land uses. In Butte-Silver Bow, large land areas contain homogeneous residential land uses having very few uses which do not conform to the regulations pertaining to the zoning classifications that they have been designated.

In areas such as these, the highest and best use would probably be single family residential usage. The lowest acceptable use, however, might also include two-family or multiple family residential use of the property because of the physical characteristics of the property.

Because higher classes of uses are generally allowed to locate in lower zoning classifications,

areas whose highest use might be single family residential and whose lowest acceptable use might be two-family or multiple family should be considered for the lower zoning classification initially.

Indeed, the lowest acceptable zoning classification should be determined for each area of the county after the inventory is made in order to maximize the development potential of the land by removing barriers to entry of lower classes of uses in areas that may be more suited to accommodate them than higher classes of uses given the physical limitations of the property and the transition in use of the property over the years.

4. The inventory and the determination of both highest and best use and lowest acceptable use for property in the county should be compared with the land use development trend analysis that has been previously conducted. The two analyses should be combined or reconciled with each other to the extent possible, to produce a future land use guide for the community and establish the basis for the city-county's new zoning ordinance.

If the lowest acceptable land use is utilized as the basis for determining the future land use of property within the county, then the zoning

ordinance which would reinforce the implementation of the development guidelines contained in the new land use plan would best contain very general zoning classifications in order to promote the development of the community and still provide some degree of control of location of land use.

Traditional zoning classifications could be melded to form broad, general zoning classifications which would facilitate land use development. Commercial and industrial zoning classifications should be combined, much the same way that the "C-M" zoning prescribed. By combining these classifications and applying a general commercial/industrial zoning classification to areas experiencing either type of development and areas able to accommodate future development of either kind, the supply of land available for development for commercial or industrial uses would increase. If the principles of supply, demand and price are valid, as the supply of commercial/industrial land is increased, the price of the property should decrease. Conceivably, lower property prices would encourage economic development of the property.

Open space and agricultural zones could be established for outlying areas of the county which would also be based upon the lowest acceptable use.

While certain commercial, industrial and residential uses might be acceptable for development under the zoning, their eventual development would be controlled by other factors pertaining to the land such as the expenditure (or dedication) of a developer's funds to provide necessary public services (streets, sewer, water, etc.) and safeguards as required by other regulatory controls such as subdivision regulations and environmental protection acts. Therefore, more affordable open space and agricultural uses would probably prevail in these areas.

All existing residential zoning classifications could be combined into a single residential classification using multiple family residential use as the lowest acceptable use for the area.

Because traditional zoning ordinances were effective in stabilizing or improving property values, they were subsequently used to exclude certain uses and promoted segregation of the population according to both their wealth and even their race. Implementing a general residential zone classification would reduce the social inequities encouraged by the use of traditional zoning.

If residents of a particular area wanted to further restrict the type of allowable residential use or

the allowable dimensional requirements of the ordinance (in order to ensure stable or greater property values), they could choose to form neighborhood associations and collectively adapt restrictive covenants for the area defined by the neighborhood association and as approved by 100% of the association's members. Dimensional variances within the particular neighborhood could be decided upon by the association as dimensional requirements reflect the aesthetic values of the neighborhood. The association would be able to approve, conditionally approve or deny applications for aesthetic changes in its neighborhood. Additionally, associations could decide whether or not nonconforming buildings or uses (such as an abandoned grocery store) should be allowed to be re-used. If the association had some control over nonconforming uses within its neighborhoods, the majority of the residents would be able to exercise their preferences to such redevelopment. Those neighborhoods which did not form associations or adopt restrictive covenants would be subject to the regulations governing the general residential zone classifications.

Summary

The long range consequences of the actions proposed by the local government of Butte-Silver Bow to modify the existing zoning ordinance may serve to hamper economic development rather than promote it.

The basic problem with each of the recommendations offered or actions implemented by the local government is that they have been developed and implemented on a reactive, piecemeal basis without examining the possible long-range effects their implementation might invoke.

Another way to approach the problem of modifying traditional zoning regulations in order to promote the development of property within a community would be to increase the supply of land available for development by combining certain land use classifications and to promote more elasticity between the supply and demand for property by making more alternatives of property available to potential developers.

The creation of zoning classifications would take into account the lowest acceptable use in addition to the highest and best use of land, based upon the property's physical characteristics, its proximity to other very different areas and its comformance to the newly created master plan.

Residential areas, which have traditionally relied upon zoning to stabilize and increase property values, could form neighborhood associations and adopt restrictive

covenants which would reflect the individual aesthetic preferences of each neighborhood.

The effect of adopting a very general zoning ordinance for the community would be to continue to direct land use development in a manner that conserved public resources (roads, sewer and water systems, schools, etc.) and reduce the restrictions that allegedly restrict economic development.

FOOTNOTES - CHAPTER 7

¹Section 76-1-605, M.C.A.

²Section 76-2-301 - 76-2-328, M.C.A.

³Section 76-2-201 - 76-2-228, M.C.A.

⁴Harry G. and Lillian Martz, et. al. vs. Butte-Silver
Bow Government, State of Montana, 1982.

⁵Robert H. Nelson, Ibid., p. 39.

⁶Ibid., p. 18.

⁷Principles and Practice of Urban Planning, Ibid.,
p. 403.

⁸Robert H. Nelson, Ibid., p. 94.

CHAPTER 8

CONCLUSION

The adoption and enforcement of zoning regulations have been criticized for their alleged regressive effort on social equality and the contradictory effect that they have on the interaction of supply, demand and market price of property within a community.

Originally zoning regulations addressed problems of health, sanitation and housing by controlling the location and development of land uses within the communities. These duties have since been assumed by other legislative codes (e.g., building, electrical, sanitation and subdivision). The intent of zoning ordinances has since evolved to the purported promotion of similar uses of land in close proximity to each other to ensure orderly community development.

The critics argue that traditional ordinances do not control compatibility between zones, they fix the supply of certain classes of land and promote the artificial increase of the market price of property within a community. They further charge that zoning impedes economic growth of communities, especially those communities experiencing a decline in their economic and population bases.

The analysis of zoning in Butte-Silver Bow, a community which has experienced tremendous declines in its economic base and its population, substantiated several economic criticisms of zoning.

The propensity for property owners and potential developers or users of land to request commercial zoning when a surplus of such land existed supported the contentions that: (1) the price of existing commercial property was higher than consumers were willing to pay; (2) the speculative price could be charged because the supply of commercial property was fixed and contributed to the inelasticity of supply and demand for commercial property in the community; and (3) potential consumers or users of property were seeking more affordable property alternatives which did not have a commercial zoning reclassification, and pursued commercial rezoning of the property subsequent to purchase or lease.

The use of variance procedures to gain relief from the mandates of the zoning ordinance applied predominantly to uses within residential areas and represented changes in the acceptable reduction of dimensional requirements in a neighborhood. The types of variances granted appeared to reflect the aesthetic norm of the particular neighborhood in which the property was located.

Because zoning has been continually criticized as restricting economic development in Butte-Silver Bow,

recommendations for changes to the existing ordinance were made and, in some cases, implemented on a reactive, piecemeal basis.

An analysis of the recommendations on the supply, demand and price of property revealed the potential of certain of these recommendations to further raise the market price of property in the community. Other recommendations promoted mixing of different land uses and promoted a severe weakening of the intent of the zoning ordinance in the community. Residual impacts of a weakened ordinance included continued haphazard development, inefficiency in the provision and cost of public services, utilities and facilities, and continued deterioration or blight of the community.

Efforts to promote economic development would be hindered by these impacts also. Total abolition of zoning in the community would only emphasize these negative consequences.

Because Butte-Silver Bow is presently updating its land use plan so that the entire county is included within its jurisdictional boundaries, the community has the unique opportunity to comprehensively modify its ordinance in such a way as to enhance the economic development of the community.

A general methodology for development a zoning

ordinance that would not contradict the principles of supply, demand and price of property was offered.

Because traditional zoning classifications are based on the highest and best use of property within a delineated area and because so many different classes of land uses have been developed, traditional zoning classifications of property in the community exclude the development of uses that might very well be suited to property in an area that is underutilized for the higher types of uses that are allowed under the existing zoning classifications.

The availability of rezoning property to a higher use allows entrepreneurial property owners to continue to gain rezoning of their property to classifications that promote speculative overpricing of their property.

In order to reduce the economic inefficiencies produced by the existing zoning ordinances, the creation of very general zoning classifications based upon the lowest acceptable use of the property was recommended. In developing general zoning classifications, the supply of many classes of land is increased, thereby increasing the elasticity of supply, demand and price of property in the community. Residents of areas which exhibited homogenous land uses who desired more restrictive land use development regulations could form homeowners association and restrict the entry of undesirable uses, the re-use of nonconforming use, and the reduction of dimensional requirements through

the adoption and enforcement of restrictive covenants. Property values of neighborhoods and the aesthetic consensus of residents in the neighborhood could be maintained only by exercising the total collective rights of all neighborhood owners.

The preservation of traditional zoning is weakening as new regulatory land use devices continue to be developed, including such concepts as planned unit developments, enterprise zones, overlay zones, and floating zones. The combination of certain aspects of each of these devices with the concept proposed in this paper may serve to address the land use development problems at hand. As new problems regarding the supply, demand, price and use of property arise, the shortcomings of all previous approaches may assist in the development of yet more comprehensive, meaningful land use controls which truly promote the general public health, safety and welfare.