

Glossary for the Measure 7 Forum

Privatized Zoning (Bidding scheme):

A “privatized” zoning system could work as follows. Government would dictate that properties within an X-mile radius of a subject parcel’s location are in the same market for the purposes of zoning. This radius would be set to ensure that the bulk of the effect of the parcel’s development is felt within that distance. Then, a party wishing to change the use of the subject parcel would offer to pay those within the market area for the right to change the use. The party would be able to proceed with development only if some percent say, 50 percent or more of the land owners agreed. Some land owners, of course, might try to unreasonably “hold out” for too high a price, but market rules can be defined to avoid this eventuality. For example:

Those first in the required percent of property owners who must agree to allow a change in use might be the only ones to receive the full value of the offer. Those holding out might get only half of the offered amount. This approach is potentially low-cost (to the public), fast, and likely to yield efficient outcomes.

Externalities:

Negative or positive effects that are not captured by market prices.

Just Compensation:

The value of the land or potential value of the land had the owner intended and been allowed to develop the land, which the government is required to pay the landowner after “taking” the land.

Limited vested development rights:

Another method that could reduce the need to pay compensation is coupling new regulation with limited vested rights to develop a property within a certain time period after the passage of a new regulation. This method would prevent property owners from being caught off-guard and would allow them to develop the property as if the regulation did not exist, for some reasonable period of time (e.g., five years). After that period expired, the property would be subject to the regulation without compensation; the compensation provided by this method is the “grace period” before the regulation is enforced. The downside of this method is that it does not allow immediate enforcement of regulations that could be urgently needed. This method might need to be coupled with a compensation measure, in the event that the grace period was not practical.

Performance-based zoning:

Another change to the regulatory system would be to change the zoning system to a performance-based or market-based system. Traditional zoning is based on the assumptions that the external costs of certain land uses can be reduced to an acceptable level by separating and otherwise limiting certain uses. This is a broad and approximate regulatory response that has caused some planners and economists to argue for “performance zoning,” which would describe the desired performance of a land use (measured, for example, of noise, air quality, runoff, traffic, and so on), and then allow any use that can meet those standards.

In The Netherlands, government helps set targets for resolving environmental and other problems, and then allows industries and other groups to devise appropriate solutions. This approach does not, however, entail doing away with regulations. Instead, tighter regulations are used as a backstop that provides an

incentive for all groups to work together to solve common problems. This approach does, however, allow a tighter correspondence between a group’s contribution to a problem and its responsibility for solving it. It also sidesteps many of the concerns about the conventional regulatory system’s inefficiencies and ineffectiveness.

Regulatory Taking:

The concept of a regulation being considered a taking if it diminishes the use of the property to such an extreme as to make it without value, or if that regulation does not serve the public interest.

Prospective:

A resolution is prospective if it is not retrospective.

Ripeness:

Legal doctrine requiring courts to hear cases brought against regulations only after all administrative steps have been taken to enact the regulation and all state remedies have been exhausted.

Taking:

The term comes from the Fifth Amendment of the US Constitution “nor shall private property be taken for public use, without just compensation...” In the original sense, it meant the government literally came in and took the property away from a private party for the greater public good. Now the meaning is being expanded to include any reduction in value to land affected by regulation.

Vested interest:

The expectation of an owner to develop land for a specific purpose. To show vested interest, an owner must produce evidence to demonstrate that the expectation to develop the property existed before the regulation was in place.