



THE LAND USE TRACKER

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Managing Rural Residential Development

By Anna Haines, Ph.D.

As many communities begin to prepare their comprehensive plans and consider the various elements required under the comprehensive planning law, the relationship between agricultural or open space preservation with housing can be both confusing and contentious. Especially for those communities that are experiencing growth pressure struggling to manage rural residential development along with other community concerns can be difficult. One primary goal of many communities is to balance residential development with agricultural needs, open space, and natural resources while trying to retain a sense of place. Several plan implementation tools are available that local governments can use including, but not limited to: Large minimum lot size, purchase of and transfer of development rights, overlay zones for shorelands, hillsides, and other environmentally sensitive areas, and conservation subdivisions.

This is the first of two articles addressing rural residential development. In this article, I provide a brief definition of each tool, how each tool works, potential benefits, limitations, and references. In the following article, we will provide a more in-depth look at one of these tools – conservation subdivisions.

Which Tool is “Right” for Our Community?

Each community should decide on the types of tools they want to use. Recognize that your community can use these tools together – they are not mutually exclusive. It is reasonable, for example, to have a purchase of development rights program in place along with overlay zones and a conservation subdivision ordinance. Below is a list of criteria to consider when choosing plan implementation tools:

- ✓ Does your community have an accepted plan that identifies rural residential development or at least sprawl as an issue?
- ✓ Does the plan specify goals and objectives that address how your community will contend with rural residential development?
- ✓ Will the tool accomplish any of your community’s goals and objectives?
- ✓ Is the tool politically acceptable?
- ✓ Can the local government or some other organization administer the new tool given current personnel or is another position or committee necessary?
- ✓ Are there any enforcement issues the local government personnel would need to contend with?

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Moratoria and Takings

TAHOE-SIERRA PRESERVATION COUNCIL, INC. V. TAHOE
REGIONAL
PLANNING AGENCY

United States Supreme Court - 216 F.3d 764

Decided April 23, 2002

Opinion author: Stevens

Held: The moratoria ordered by Tahoe Regional Planning Agency (TRPA) are not *per se* takings of property requiring compensation under the *Takings* Clause of the U.S. Constitution.

TRPA imposed two moratoria, totaling 32 months, on development in the Lake Tahoe Basin while formulating a comprehensive land use plan for the area. The planning agency solicited comments and criticisms from interested parties during its deliberations. It argued that a temporary ban on development and resulting careful deliberation of planning issues reduced risks that individual landowners would bear an inappropriate regulatory burden. It also demonstrated that property values in the area continued to escalate during the period of the moratoria. Realtor and property owner petitioners in support of a *Takings* claim in the case argued for a categorical rule that whenever the government imposes a regulation that denies all economically viable use of property, even if briefly, it constitutes a taking.

The Court recognized that moratoria are, in many cases, an important tool of community planning. The consideration of having to compensate property owners during a moratorium could compromise good decision-making, rushing the planning process or forcing its abandonment, especially in the development of a regional plan.

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Public Lands and Property Taxes: What is the Relationship?

By Eric Olson, University of Wisconsin-Extension

Introduction

As shoreland owners review their annual property tax bills, they no doubt wonder what they are paying for and why they are paying so much. Lakefront property owners have been enjoying a steady appreciation in the value of their property, but at the same time they feel the sting of the higher taxes associated with that higher values. Some may question the role that public lands play in the overall scheme of property taxation. Does public ownership of lands raise taxes by taking land off the tax role? Who pays for public land acquisition? What affect does public land have on nearby property values?

There is no simple answer to these questions, in part because there is no single type of public land. Federal, state, county and local governments all own land for different reasons with different impacts on local budgets. Each public land program also has different revenue sources, with some programs relying heavily on property taxes and others from “own source” revenue, or money generated from operations. With almost 2.5 million acres, county lands are the largest public land classification in the state of Wisconsin. While counties own land for a number of reasons (utilities, public services, roads, etc.), the vast majority of county land is classified as *county forest*, and these forestlands are the topic addressed in this article. Later articles will address other public lands such as state forests, parks, and national riverways.

In addressing the issue of public lands, it is important to understand the context in which the different land programs came about. For this reason, the history of county forests is briefly reviewed to provide a sense of how we have come to the current situation. In addition, it is important to explore the “soft” expenses and benefits that county lands provide as well as the “hard” numbers that measure the direct monetary costs and benefits of program. In this way, the article provides a more holistic view of the county forest programs in Wisconsin.

History of County Lands

The existing system of county-owned land has its origins in the earliest settler economies of the 19th Century. Much of Wisconsin was covered with forestland, and timber was a valuable commodity for supplying the explosive growth of cities such as Chicago and St. Louis. The laws regulating forest harvest were minimal and rarely enforced. As a result, many timber companies found it easier and more profitable to harvest with little or no concern for forest regeneration. This practice was reinforced by the widespread opinion that the plow would follow the ax, that much of the so-called cutover region was destined to become farmland.

In the early part of the 20th Century, the promise of productive farming in the cutover proved more challenging than local boosters had anticipated. The depression further worsened a bleak situation, and droughts turned scrubby regrowth and slash into a tinderbox, fueling fires that occasionally reached catastrophic levels. Farmers abandoned their lands, as did many others who purchased land on speculation. The counties were faced with massive delinquencies in property taxes. At the same time, the remaining settlers in the north woods were scattered about the landscape. This made per-capita costs for public services like schools and road maintenance more than local governments could bear.

Public Solutions to Widespread Public Problems

As the situation turned from bad to worse, the state, counties and towns agreed that public ownership was the most promising path towards reforestation of the landscape and prevention of deadly forest fires. A system of cost-sharing was developed whereby the state would levy a statewide property tax to fund forestry activities and fire protection. Local governments would take on much of the day-to-day work of forest management. Counties were granted ownership of tax delinquent lands, a move that required a constitutional amendment. Counties were also given the authority to zone rural land and even to resettle scattered households into more concentrated sites. With time and

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- ✓ To be effective, would the same tool need to be used by adjoining communities and is a cooperative effort possible?

Answering the above questions will give you a better idea which tools are appropriate to use in your community. Avoid choosing to use any plan implementation tool before you have done your homework and understand how that tool works and the implications for administering and enforcing it.

For Further Reading

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Tools for Managing Rural Residential Development

Tool	Definition	How it Works	Potential Benefits	Limitations
Large minimum lot size	A common type of agricultural zoning that says that a farm cannot be broken into parcels below a certain size for farming purposes. Daniels and Bowers 1997: 117.	Designate minimum lot size within an agricultural zone. Determined by legal and political acceptance balanced with effective land protection. Examples: some Oregon counties – 80-acre minimum; McHenry County, IL – 40-acre minimum; Pennsylvania – 50-acre minimum.	Can be changed over time as circumstances change. Keep farmland in large blocks to maintain economic viability. Easy to administer.	Can be ineffective if lot size is reduced to a size that makes farming impossible.
Purchase of development rights	A landowner agrees to sell the rights to develop his/her property to a local government, land trust or DNR. The development rights to a piece of property can be separated from the bundle of rights that go with the land. With the sale of that development right, a conservation easement is put into effect which restricts development in perpetuity. The value of the development right is determined by the difference between the market value and agricultural value of the farmland.	Local government or land trust must determine how to buy development rights, bonds, impact fees, additional levy on property are some possibilities. A local ordinance designates how funds are to be allocated and which agency will operate the program. The PDR agency drafts program regulations and guidelines and selects criteria for making decisions on appropriate land to preserve. The PDR agency solicits and receives applications and ranks them. An appraisal of the development rights is conducted by a independent appraiser.	Seller gets sale price and possibly property and estate tax reduction. Voluntary and permanent means of land use control. Avoids property rights outcry that zoning can elicit. Equitable method of containing sprawl, protecting valuable farmland and openspace. Property is retained on tax rolls and is privately owned and managed. Can separate funding and managing conservation easements from administration of program.	Substantial acquisition costs involved. Can result in scattered preservation if only some landowners participate. Property owners may not donate development rights if they know they can be paid. Can undermine the power of regulation by creating incentive-based expectations. A challenge to administer and find funds.

<p>Transfer of development rights</p>	<p>Similar to a PDR program in that the property owner agrees to separate his/her development rights from the bundle of rights that go with the land and a conservation easement is put into effect. Rather than the local government purchasing the development rights to a property, a TDR program transfer the "rights to develop" from one area to another. The property owner still sells his/her development rights, but those rights are bought by a developer. In turn, the developer can use those development rights to create a denser subdivision, for example.</p> <p>Daniels and Bowers 1997.</p>	<p>Must have a comprehensive plan in place.</p> <p>Transfer the "rights to develop" from one area - a "sending" or preservation area - to another - "receiving", or development area.</p> <p>The costs of purchasing the easements are recovered from developers who receive the building bonus.</p> <p>Buying development rights is similar to a PDR program, but more controlled than PDR.</p> <p>Designate sending and receiving areas. The components of a TDR program include a preservation zone, a growth area, a pool of development rights, and a procedure for transferring development rights.</p> <p>In Wisconsin a typical overlay zone is shoreland zoning. Shoreland zoning is overlaid onto usually already zoned areas, such as a residential zone around a lake.</p> <p>The ordinance must specify and map the area that is within the overlay zone.</p> <p>Other types of overlay zones include:</p> <ul style="list-style-type: none"> Hazards overlay zones, such as floodplains; Hillside/slope overlay zones; Historic preservation overlay zones; Woodland protection overlay zones; and Groundwater overlay zones. 	<p>Provides certainty about where development will happen</p> <p>Creates incentive for developers to buy development rights rather than the local government needing to find a source of funds to purchase them.</p> <p>Allows higher density (developer incentive) than zoning ordinance might allow.</p> <p>Creates a competitive market between sellers and buyers.</p>	<p>Lack of community willpower to designate a "receiving" area.</p> <p>Misconceptions about the concept of density and meaning of "higher" density.</p> <p>Program depends on a stable and predictable real estate environment.</p> <p>A consensus is necessary to place conservation easements on agricultural areas while allowing for an increase in development densities or "bonuses" in other areas.</p> <p>Can be a challenge to administer.</p>
<p>Overlay zones</p>	<p>A set of zoning requirements that is described in the ordinance text, is mapped, and is imposed in addition to those of the underlying district. It is a technique for imposing more restrictive standards for a certain area than those specified under basic zoning.</p> <p>Development within the overlay zone must conform to the requirements of both zones or the more restrictive of the two. It usually is employed to deal with special physical or cultural characteristics present in the underlying zone, such as flood plains, fragile environments, or historical areas.</p> <p>Schiffman 1999.</p>	<p>Can be formalized within an ordinance.</p> <p>One of the more popular methods advocated by Randall Arendt is a four step process that identifies primary and secondary conservation areas, designs open space to protect them, arrange houses outside of those protected areas and finally lay out streets, lots and infrastructure.</p> <p>Minnesota Land Trust and University of Minnesota 2001.</p>	<p>Communities can provide additional protection to environmentally sensitive areas without changing underlying zoning.</p> <p>Straightforward to administer.</p>	<p>Property owners, developers and other may not understand with which regulations they need to work.</p> <p>Like zoning, variances are possible and can dilute the power and usefulness of this type of zoning.</p>
<p>Conservation subdivisions</p>	<p>The purpose of a conservation subdivision is to protect natural resources while allowing for the maximum number of residences under current community zoning and subdivision regulations.</p>	<p>Can be formalized within an ordinance.</p> <p>One of the more popular methods advocated by Randall Arendt is a four step process that identifies primary and secondary conservation areas, designs open space to protect them, arrange houses outside of those protected areas and finally lay out streets, lots and infrastructure.</p> <p>Minnesota Land Trust and University of Minnesota 2001.</p>	<p>Achieves a community goal of preserving openspace at the same density standard.</p> <p>None of the land is taken for public use unless the developer/owners want it to be.</p> <p>There are a variety of ownership choices: The original landowner, a farmer, for example, can retain ownership of up to 70% of the land and continue to work that land as a farm; and/or a homeowner's association, a local government, or a land trust can manage the property.</p> <p>If implemented under a plan and with conservation as the motivation, potential benefits include: "does not require public expenditure of funds; does not depend on landowner charity; does not involve complicated regulations for shifting rights to other parcels; does not depend upon the cooperation of two or more adjoining landowners to make it work.</p> <p>Better Designs for Development in Michigan</p>	<p>It is not a panacea.</p> <p>Conservation subdivision design should take place with a planning framework and conservation goals in place.</p> <p>These subdivisions should connect to a broader network of conservation areas, if not a community will have a chopped up landscape.</p> <p>Conservations subdivisions not attached to already developed areas and not connected to services result in poor land use practices.</p> <p>May not provide any affordable housing.</p>

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proper management, the forests would return to provide more revenue through future timber harvests. In the meantime, the county lands would be open for recreational enjoyment by Wisconsin residents and distant tourists. The most recent overhaul to this Great Depression-era system took place in the 1960s when the counties sought to renegotiate the cost-sharing between the state and local governments. During these deliberations, Governor Nelson agreed to yield more money to the counties and towns, but he also sought to ensure that the county forest program would be a *permanent* public lands system to be actively managed for forestry and recreation, benefiting all Wisconsinites.

Today's county lands cover nearly 15% of the entire state land base. The vast majority of these lands are in the northern half of the state, with some counties owning over a quarter of the local land base. Counties manage these lands for a variety of uses, but timber production is often the most predominant. Many counties receive significant revenue from timber sales, and as time goes on more stands will be reaching valuable, mature stages. Many counties are also continuing to acquire additional forestland. Most acquisitions are "blocking" purchases or land-swaps designed to consolidate ownership within a forest boundary and eliminate in-holdings.

What's the Bottom Line?

The impact of the county system of forestland for the Wisconsin taxpayer is complicated because it varies from county to county and year to year. On the cost side, one must consider the operating expense of running the forest system, the direct cost of acquiring any additional lands, and the foregone revenue from land not in the taxable property base. On the revenue side, one can measure gross and net revenue from timber sales, direct payments from the state for county land management, and indirect state aids that are tied to the size of the local government tax base. Though not a direct revenue, one should also consider what the expenses would be for providing services to land-uses other than county forest; in many cases, property tax revenue generated by private land does not cover all the expenses associated with the land use.

A number of studies have been conducted by state government offices, the University of Wisconsin, and local governments to determine the net total of the above costs and revenues. These studies have repeatedly found that local governments, be they counties, school districts, or towns, are relatively unaffected by county land ownership since direct state payments and state aids make up for the lost tax base. The story told again and again by these studies is that county land acquisitions are revenue neutral for local governments.

The story gets more complicated when one considers that state aid itself must come from somewhere; that is, the state does not simply print money to make up for lost tax base when counties buy land. The complexity at this level, however, is almost entirely undecipherable. Some general themes in state finances, however, can be discussed. First, the majority of state revenue comes from the income tax. These taxes are collected in their greatest amounts in dense urban areas, most concentrated in the southern half of the state. Second, aids to local governments and schools are the biggest consumer of the state budget. Third, the forestry mill tax enacted earlier in the previous century is still in use, and a significant portion of that money is collected in urban areas where total property values are highest. This revenue is then spent for a variety of state and local forestry programs throughout the state, including the Kettle Moraine forests in the southeast part of the state. The northern region, where property values tend to be lower, benefits greatly from direct and indirect expenditures associated with the forestry mill tax.

"Soft" Costs and Benefits: Property Values and Industry

Beyond the "hard" balance sheet of revenues and expenditures one can try and identify the indirect effects of county lands on local governments and economies. It is well established that public lands yield a great deal of amenity value to residents and non-residents through the provision of outdoor recreation and scenic beauty. Properties adjacent to county lands are often valued more greatly than similar properties

without county lands. The amenity values of county forests no doubt contribute to the overall growth in private land values in the northland. The potential downside is evident when low-income households cannot capitalize on this value growth without leaving their residence.

Tourism is a long-established activity in the northland due in no small part to the public lands base of the area. The outdoor recreation opportunities bring money to the region that is spent on a variety of goods and services. The costs of tourism are comparatively low, but they are evident in resource degradation and occasional crowding and conflict. In addition, tourist supported service jobs are most often low-paying and offer little opportunity for career enhancement.

Timber harvesting and processing based on county forests also support a large and relatively stable industrial base that may otherwise not exist in the state. From paper mills to furniture manufacturers, forest products provides income, demands other commercial inputs, and contributes to the local property tax base. The Fox River Valley, for example, relies heavily on the timber supplies of county and other lands for much of the paper-related processing in the area. Timber harvesting on county forests, however, can be contentious when people express concern over possible effects on scenic or recreation values. Many people are not aware of the prominent role that forest harvest played in the creation and ongoing maintenance of the county forest system. In general, the recognition that timber harvesting plays a major role in managing the forest ecosystem and providing access to forested lands supports the view that timber management will continue on county lands for the foreseeable future.

Summary

In summary, it is hard to make a solid case against the county forestlands system from the standpoint of direct fiscal costs and revenues. Time and again the analysis has shown that the program is a fiscal “wash” for local governments. The various state aid formulas work to make county land ownership tax neutral, and it could be argued that a disproportionate amount of the state revenue used to fund these programs is collected from outside those counties with the most county land.

Which isn't to say that urban residents are being taken for a ride, as the county forests yield their benefits to all Wisconsin people- the urbanized southeast region included- through the support of two major industries (tourism and forest products) and through the provision of a diverse and accessible recreation resource. In addition, many people depend on these public lands for their income, while others obtain quality of life benefits from this massive land base. While difficult to quantify, these additional amenities make the county forest system a valuable asset for Wisconsin residents worthy of protection. To get a sense of what the state might have been like without the system, one only need look back at the turn of the 20th century and revisit the land degradation, the fires, and the bleak future for Wisconsin's rural counties. Today, the picture is much brighter.

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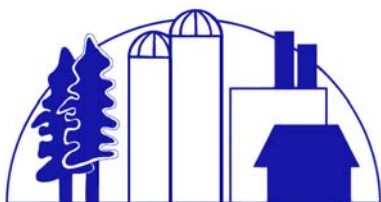
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Land Use Education Course Group Offered This Summer at UW-Stevens Point!

UW-Stevens Point is offering a two-credit graduate course group this summer in land use education! The two-credit course group is NRES 744: Land and Its Human Uses and NRES 603: Land Use Curriculum Resources. The classes are offered on July 8-11, 2002 from 8am to 5pm at the UW-Stevens Point campus. The cost is \$484.25 for 2 graduate credits. The course is designed for teachers of grades 4-12, with an emphasis on social studies curriculum.



The courses will feature guest speakers and activities to use in the classroom such as mapping, geography and issues investigation. It will also feature field trips to planning offices and education on the Wisconsin Comprehensive Planning Law. All activities and topics covered will be correlated to Wisconsin DPI Social Studies and Environmental Education Standards. Additional help with the infusion of the topics and activities into the classroom will be offered in the fall of 2002.

In addition, lunch and both mid-morning and late-afternoon snack will be furnished. As well, a \$100 stipend will be given to all participants completing the course. Resources will be furnished, including a Land Use Map of Wisconsin. (This is generously funded by a WEEB Grant.)

If there are any general questions, please contact Heidi Hoover at (715)-346-3783, hhoov678@uwsp.edu. For any registration questions, please contact Tim Byers at (715)-346-4176, Tim.Byers@uwsp.edu.