

The Regulation of Land Use

This bulletin discusses land use controls in Wisconsin, highlighting the balance between the individual's property rights and governmental concern for the common good. It reviews methods of control and the historic division of authority between state and local governments. It also examines recent initiatives for reform of Wisconsin's land use policies, given pressures placed on the current system by increased development in the state.

I. INTRODUCTION

The right of individuals to control their property has long been recognized, but that autonomy is counterbalanced by the fact that property use sometimes must be regulated for the common good. This concession that property rights are not absolute raises complex issues.

Local land use controls have long been the norm in the United States and Wisconsin, but economic and environmental concerns have led some states to require broader oversight of land use decisions. These issues tend to be raised in states that face high growth rates and noticeable urban sprawl. Lately, pressures have been mounting for more state control in Wisconsin, as well. Whether or not Wisconsin opts for a greater state role in land use policy will depend on whether the existing laws, which emphasize local control, can meet the challenges faced by local property owners, municipal governments and the state as a whole.

II. LOCAL AND REGIONAL LAND USE CONTROL

Although a few states have rigorous state-mandated planning standards, most allow local authorities to make land use decisions through zoning. There is a tendency to opt for tighter state-legislated land use controls only when broader concerns arise, such as protection of farmland or preservation of shorelands and wetlands. In addition, states often choose to resolve land use issues that cross county boundaries by providing for regional planning agencies.

Local Zoning. One common method of land use control is zoning, which allows a unit of government to divide its territory into districts or zones where particular uses

or activities are permitted or prohibited. Zoning, which became common in the early 20th century, is the foundation of the modern local system of land use control. Today, a local zoning ordinance usually includes a map, approved by the local governing body, that designates permissible uses for each parcel of land in the municipality. The prevalence of use zoning has tended to leave land use decisions almost entirely to local discretion.

Regional Planning Agencies. Some states give planning responsibility to regional planning agencies as a middle course between direct state control and local control. The role of regional planning commissions can vary greatly. In a state with a centralized land use policy, the impact of the commission can be significant. It may play a large role in developing regional or local plans and have major input in the creation of state plans. It may also have authority to oversee local implementation of the state land use policy. In states where land use decisions are less centralized, the importance of regional planning commissions is correspondingly reduced. In these states (Wisconsin among them), the commissions are strictly advisory. They may find their authority restricted to developing nonbinding land use or transportation plans or providing technical assistance to local governments.

III. THE LAND USE DEBATE

The debate over the state's role in land use planning defies the stereotypical "liberal" or "conservative" alignments. Environmentalists, for example, may favor state or federal control of land use planning and development because they are suspicious of capricious action by local government and its parochial view of planning. On the other hand, they may prefer local control in the case of certain emotionally charged issues, such as the disposal of toxic waste, because they find it easier to mobilize local residents than to persuade a state or regional land use body to reopen debate on a difficult decision already taken.

Business, too, can see advantages on both sides of the debate about local vs. state control of land use. Business owners may prefer to conduct their affairs unhampered by a state land use agency, but they recognize state involvement in land use planning can work to their advantage by overriding local objections to development, creating predictability for landowners or providing statewide tax incentives, such as those for farmland preservation and reclamation.

Proponents. Those favoring a greater state role in land use planning tend to see the issue as crucial to the quality of life of the state. They cite numerous evils that can arise from strictly local control of land use decisions. For example, they claim urban sprawl results from development by private interests who design commercial, residential and recreational projects without consideration of their broader impacts. Unplanned development, they contend, creates problems that ultimately become state concerns. Failure to plan for infrastructure requirements, such as roads, water and sewers, can cost state and local governments valuable tax dollars. Poorly planned development patterns have also caused racial and economic segregation in their view.

Proponents of statewide or regional planning claim that forcing developers and local communities to consider the broader implications of their actions can promote communitywide benefits over parochial concerns. A state plan, or even local decisions made within the framework of state controls, may inhibit the creation of disjointed, unattractive communities that increase pollution, destroy resources and raise infrastructure costs. Supporters of state land use planning point to the simple fact that some problems relating to land use are regional and, therefore, require neighboring local governments to work together.

Opponents. Those opposing a greater state role in land use planning base their opposition on a number of factors. Chief among these is the issue of local control. The creation of a state role in land use decisions necessarily dilutes the power of local governments. Some are suspicious of any transfer of power to a higher level of government. They claim the individuals making land use decisions at the grassroots level have a better opportunity to familiarize themselves with the details of land use situations that may arise; local governments often have a better idea of the needs of the community than do regional or state governments. Opponents of state land use planning also raise the specter of a land use bureaucracy, appointed not elected, wielding great power over the permissible use and, therefore, the value of land. Critics of state-level planning fear that state government will not give sufficient consideration to local interests when making land use decisions. They worry that decisions may have a highly negative impact on local economies and the potential revenue that property development can provide for local governments. Opponents of state land use schemes argue state plans that restrict land to agricultural use can be a threat to farmers who depend on the development value of their land for retirement and to secure credit. Environmental restrictions that might be imposed by a state land use agency also can make farming more difficult.

IV. STATE LAND USE CONTROL

Statewide Land Use Policies. Although many states have enacted some form of limited planning legislation, only a few have mandated broad statewide planning schemes that limit the traditional role of local decision making. Statewide plans vary greatly in their scope and ambition. Some provide for direct statewide zoning and planning; others require local governments to follow strict, state-imposed standards. Some states have chosen to focus on specific geographic areas that are prone to growth and perceived as having urban sprawl problems. Still others make the plans “optional”, while structuring strong financial incentives for municipalities and counties either to adhere to state-established plans or to create local plans that closely follow state guidelines. While these options do not constitute direct state control, they each, in effect, involve state imposition of planning guidelines on regions, counties or other lower units of government.

Special Area Provisions. State lawmakers tend to step in and take the initiative in land use planning and control when there is public concern about protection and pres-

ervation of natural resources. For example, a number of states have enacted laws designed to protect agricultural land from development. Most of them have tried to ease the tax burden for farmers faced with high assessments because their lands are valued according to development potential rather than value for agricultural use. Some states have created programs that permit farmers to sell the development rights for their farmland to the state, thereby enabling the farmer to realize some of the land's potential value while keeping it in agricultural use. This approach also allows state government to be selective in the land it chooses to protect. A few states have developed agricultural districts or agricultural zoning to prohibit land uses incompatible with farming. Wisconsin has encouraged local governments to adopt agricultural zoning to limit the conversion of farmland to other uses.

Laws protecting wetlands and coastal areas have become common in recent decades. States may limit or prohibit development within designated wetlands, and federal wetland programs offer additional protection. The federal government also offers protection for coastal areas under the Coastal Zone Management Program, which provides federal funding to states that control development in coastal areas.

Individual Property Rights and Takings. The courts have long recognized a state's authority to regulate land use as part of its police powers, but the Fifth Amendment to the U.S. Constitution declares that private property cannot "be taken for public use, without just compensation." (Article I, Section 13, of the Wisconsin Constitution provides similar protections.) State control of private land use can reach a point where it can be viewed as an unconstitutional "taking" of private property by the government. A taking may involve either physical acquisition of the property or a limitation of the property's value through governmental regulation. (For further information, see Wisconsin Brief 98-2, "Takings: Balancing Public Interest and Private Property Rights".)

V. LAND USE CONTROL IN WISCONSIN

Wisconsin was among the first states to enact laws creating municipal zoning authority, regional planning programs and intergovernmental cooperation on land use issues. Wisconsin's planning innovations in the early years generally allowed land use decisions to be made at the local level, which was consistent with Wisconsin's long tradition of strong local governments. On the other hand, Wisconsin has not adopted some of the newer approaches to land use control utilized by other states, particularly those that involve state or regional authorities.

A. County and Municipal Control of Land Use

In most cases, the landowner determines the use of a particular property within the framework of local governmental regulation. Although not required to engage in planning or zoning, most local and county governments have chosen to do so.

The involvement of local government in private land use decisions can take several forms. For example, it has the power to zone within its jurisdiction (and even outside

its boundaries in certain cases), to create local plans and to impose impact fees. A brief description of each of these powers follows.

1. Zoning

Wisconsin originally granted the City of Milwaukee limited powers to zone certain local businesses in Chapter 326, Laws of 1889. These powers were extended to other cities by Chapter 619, Laws of 1907. Villages were given limited authority by Chapter 507, Laws of 1917, and broader zoning powers in Chapter 204, Laws of 1925. The 1917 law granted Milwaukee County zoning powers, and Chapter 388, Laws of 1923, extended zoning authority to all counties. The Wisconsin Supreme Court ruled in *State ex rel. Carter v. Harper*, 182 Wis. 148 (1923), that zoning restrictions did not constitute a taking of property under Article I, Section 13, of the Wisconsin Constitution.

Municipal Zoning. Cities and villages currently have statutory authority (Sections 62.23 and 61.35, Wisconsin Statutes, respectively) to restrict the size of buildings and building lots, the density of occupation in an area, and land use, based upon zones created by official zoning maps. Town zoning authority is still restricted to those towns located in a county that does not exercise its zoning authority. A town must have been unsuccessful in petitioning the county board to adopt a county zoning ordinance before it can proceed to adopt its own ordinance under Section 60.61. Based on zoning maps, town ordinances may place restrictions on the location of certain activities, population density of certain areas, and the size and height of buildings. (Note: A town exercising village powers under Section 60.10 may use village zoning power if its county has no zoning ordinance.)

Cities and villages may exercise extraterritorial zoning privileges under Section 62.23 (7a). For first, second and third class cities, this authority can apply to unincorporated areas within three miles of their corporate boundaries, but the powers must be exercised by a joint extraterritorial zoning committee that includes members from affected towns. Fourth class cities and villages have similar extraterritorial power, but their authority is limited to action within 1.5 miles of their corporate limits.

County Zoning. Counties are granted zoning authority under Section 59.69, Wisconsin Statutes to create land use districts for town areas, but county zoning ordinances are not effective in a specific town unless approved by the town board. Counties may zone county-owned land without town approval. They also may exercise special zoning powers without town approval in order to control construction site erosion and manage storm water.

Local Zoning and DNR. Counties are required to zone unincorporated shoreland areas in compliance with Department of Natural Resources (DNR) rules under Section 59.692, Wisconsin Statutes, and DNR has the power to enact shoreland zoning ordinances on behalf of noncomplying counties.

Section 87.30 requires counties, cities and villages to adopt zoning ordinances for areas designated as floodplains by DNR, and, if they fail to do so, DNR may zone the floodplains directly.

Under Sections 62.231 and 61.351 respectively, both cities and villages must zone certain wetlands that are within shorelands, as defined by state statute. DNR has the authority to zone these wetlands if cities and villages do not.

2. Local Planning

Local governments are authorized to create planning agencies to assist them in making zoning and other land use decisions. These agencies formulate land use plans as the framework within which these decisions are made.

Municipal Planning. A city or village is authorized to create a plan commission by local ordinance (Sections 62.23 and 61.35, Wisconsin Statutes, respectively). Cities of the first, second and third class were first given this authority in Chapter 162, Laws of 1909. The power was extended to fourth class cities by Chapter 404, Laws of 1917, and villages by Chapter 204, Laws of 1925. The plan commission may maintain a staff and hire experts to assist it in formulating a master plan for the municipality with the aim of “accomplishing a coordinated, adjusted and harmonious development”. The commission also has the power to make reports and recommendations to public officials and agencies and may consider a variety of matters relating to city development, street layout, public buildings or zoning, when they are referred to it.

Town Planning. Towns were given the authority to create town park commissions by Chapter 353, Laws of 1925. These commissions were given the power to study land use within the town in order to insure that needs for open spaces, parks and highways were met. The commission was also given the power to acquire property for these purposes with consent of the town board. When towns were given zoning authority under Chapter 224, Laws of 1947, park commissions were given the power to recommend zoning boundaries. Towns not having park commissions were authorized to create zoning committees. 1983 Wisconsin Act 532 repealed the zoning power of park commissions and gave them to zoning committees, which can recommend district boundaries for zoning purposes. Towns are also authorized to participate in county or regional planning.

County Planning. Counties can create planning agencies or commissions under Section 59.69, Wisconsin Statutes. These agencies, originally authorized by Chapter 77, Laws of 1967, direct the preparation of the county development plan for all unincorporated areas within the county. Plan preparation may include comprehensive surveys and studies of land use, population density, economics, and environmental features of the county. This information serves as a basis for identifying goals and objectives for future county development with respect to a variety of natural resource and infrastructure concerns.

3. Plat Approval and Impact Fees

Local governments also use plat approval and impact fees to control land use and development. Under Chapter 236, Wisconsin Statutes, a developer who proposes to

create a subdivision must obtain approval of a plat (map) of the subdivision. The local government may disapprove the plat if it conflicts with local ordinances or a local land use plan or if the developer does not propose to install necessary public improvements. In addition, state agencies may disapprove a plat for failure to comply with certain state requirements related to sewage disposal and highway access.

1993 Wisconsin Act 305 created Section 66.55, authorizing cities, villages, towns and counties to impose impact fees on land developers in certain circumstances. Prior to this act, local governments had no statutory authority to impose these fees, but they could require developers to dedicate parcels of land for public purposes, to construct public facilities or to pay fees in exchange for zoning approval. With the adoption of Act 305, the imposition of impact fees became subject to certain limitations. Local governments must now demonstrate that the fees they impose to pay for capital costs are necessary to accommodate development. The statute provides a specific definition of what types of public facilities may be financed with impact fees, including highways, sewage treatment and water facilities, parks, law enforcement or medical facilities, and libraries. (The law specifically prohibits the financing of school facilities with impact fees.) Municipalities may exempt low-cost housing developments from impact fee ordinances.

4. Incorporation and Annexation

The Wisconsin Statutes prescribe the minimum standards and procedures for incorporation (Sections 66.012-66.018) and annexation (Sections 66.021 and 66.024-66.026). For incorporation or annexation to proceed, a specified percentage of voters or land owners must give their approval through a referendum or a petition. In the case of incorporation, the plan must be approved by the Department of Administration and recorded by the Secretary of State.

The location of civil boundaries has considerable impact on land use patterns. Existence of multiple cities, towns and villages within an area can impede attempts to approach land use planning from a regional perspective. Different units of government will inevitably have their own views on what constitutes sound land use policy. These sometimes conflicting views may encourage random, decentralized development that increases overall governmental costs.

5. Cooperative Plans

Under Section 66.023, Wisconsin Statutes, combinations of municipalities may prepare cooperative boundary plans or agreements. In addition to dealing with physical development, environmental and housing concerns, and planning and zoning, these plans may specify changes to boundaries of participating municipalities. The cooperative plan must identify the boundaries that will be altered, under what conditions they will be altered, and the schedule of boundary changes. Section 66.023 requires municipalities adopting a cooperative plan to approve the plan by resolution, conduct required public hearings and receive written comments from the public. An individual municipality may also hold a referendum on the plan. Finally the plan must be sub-

mitted to the Department of Commerce for approval. An existing cooperative plan may be amended by agreement of all municipalities involved.

B. Regional Planning Commissions

A regional planning commission (RPC) is designed to offer assistance to county and municipal governments in determining land uses and in planning for regional infrastructure needs. Authorization for local creation of RPCs is contained in Section 66.945, Wisconsin Statutes, originally created by Chapter 466, Laws of 1955. This section permits local and county governments to petition the governor to create an RPC. If local support for a commission is unanimous, the governor may create it by executive order. The governor may also create a commission if local governments representing over 50% of the population or assessed valuation of the proposed region consent to the creation. Commission members are appointed by either local governments or the governor.

By law, RPCs function as strictly advisory bodies. They have the authority to conduct studies, collect and analyze data, and make and adopt plans for the physical and economic development of the region. They are required by law to formulate a master plan for the physical development of the region, including recommendations for transportation, recreation, sewage and water supply concerns, as well as “areas for industrial, commercial, residential, agricultural or recreational development.” They also provide advisory services to local governments and assist them within the framework of the regional plan.

In practice, RPCs have been limited by a variety of structural factors and the fact that they are advisory only. A 1983 Legislative Audit Bureau report outlined some of the reasons that the commissions have not functioned as envisioned in the 1950s and 1960s. First, because they serve a strictly advisory function, any plans they adopt are useful only to the degree that county and local governments adhere to them. Second, funding sources have changed. In their early years, RPCs received substantial federal and state funding, which encouraged cooperation from local government. More recently, state and federal funding has declined, making the cost to participating municipalities higher. Third, participation has dropped. Section 66.945 (16) permits participating municipalities and counties to withdraw from their RPCs, and higher costs and reduced services have caused several counties to end their participation. As fewer municipalities participate, the financial burden falls on the remaining units of government, adding further incentive to drop out. The overall goal of accomplishing regional planning has become more difficult as most regions now are honeycombed with non-participating governmental units. As a result of these factors, the commission functions have become more local and less regional – for example, providing assistance in platting to a particular county. Although the 1983 Audit Bureau report recommended legislation to improve the commissions’ ability to better fulfill their mission, none has been enacted.

C. State Involvement in Land Use Policy

In Wisconsin, the state usually is not closely involved in land use decisions, but there are some instances where it takes a direct role through encouraging certain behavior by landowners or by directly regulating land use in certain designated areas.

Other land use decisions may be made by state agencies within the exercise of their regular duties. For example, DNR has powers related to sewer service, shoreland and wetland protection, and landfill and mining regulation, as well as general environmental protection authority. The Department of Transportation affects land use through selection of transportation rights-of-way. The Department of Agriculture, Trade and Consumer Protection (DATCP) has powers related to soil and water conservation and farmland preservation.

1. Land Use Control Through Tax Exemptions and Credits

Agricultural Land Use Value Assessment. Generally, real property in Wisconsin is taxed uniformly, based on its market value. Article VIII, Section 1, of the Wisconsin Constitution, as amended in 1974, permits exceptions from property tax uniformity for agricultural land and undeveloped land. 1995 Wisconsin Act 27 enacted a different method of assessing agricultural land for the purposes of property taxation. Assessment of farmland was frozen at its January 1, 1995, level for a period of three years, ending January 1, 1998. Beginning in 1998 agricultural land will be assessed on the basis of the income it could generate from rental for agricultural use.

Farmland Preservation. Chapter 29, Laws of 1977, created a farmland preservation program whereby owners of farmland that meets certain requirements may claim a state income tax credit. The program developed from concerns over the increasing burden of taxation on farmers and the simultaneous increase in development of farmlands. The amount of the credit depends on the property tax paid on the land and whether the land is subject to exclusive agricultural zoning by a county or is included in a farmland preservation agreement approved by DATCP for a period of at least 10, but not more than 25, years. The land owner must agree to maintain the property in agricultural use, as required by the contract or zoning provisions, or be liable for penalties set by law.

Farmland Tax Relief Credit. Created by 1989 Wisconsin Act 31, this credit allows owners of eligible farmland to claim an income tax credit of 10% of the property tax levied on the land (up to \$1,000). This credit together with the farmland preservation credit may not exceed 95% of the total property tax levied on the property.

Forest Land Preservation Programs. The Forest Croplands Law, created by Chapter 454, Laws of 1927, was enacted to promote reforestation and encourage sound management of forest lands in contrast to previous logging practices. The law exempts large parcels enrolled in the program from the property tax. In lieu of taxes, the owner pays an acreage fee to the taxing jurisdiction, which the state matches at 20 cents per acre. The owner must also pay to the state a percentage of the value of timber harvested

from the property. Agreements under the Forest Croplands Law are either 25 or 50 years in duration. DNR may declare the property ineligible for the program if it finds that it is no longer forest land or that sound forestry practices are not being observed. If the owner withdraws the property from the program before the end of the agreement, all taxes due since enrollment must be paid. The Woodland Tax Law, which was created by Chapter 384, Laws of 1953, provided a similar program for smaller woodland parcels. The Managed Forest Land Law (1985 Wisconsin Act 29) closed enrollment of land under the Forest Croplands Law and the Woodland Tax Law and established a new program, similar to the Forest Croplands Law. One difference is that owners of property under the newer program are expected to open their lands to the public for recreation. They may designate certain areas as “closed”, but the acreage fee is higher for closed lands.

Archeological and Historic Site Preservation. State income tax credits are provided for an owner’s costs related to rehabilitation of historic sites if the changes meet standards set by federal regulations and state law. Property tax exemptions are also offered in the case of archeological sites meeting statutory definitions.

Other State Tax Policies Affecting Land Use. Other state tax policies with an impact on land use include the environmental remediation credit, designed to provide a nonrefundable tax credit to offset the cost of removing or containing pollution on certain eligible lands; tax incremental financing, which encourages development in blighted areas; and the Wisconsin Development Zone Program, which provides a variety of income tax credits to individuals or businesses investing in certain economically depressed areas.

2. Land Use Control in State Riverways

The Wisconsin Legislature created the Lower St. Croix Riverway (1974) and the Lower Wisconsin State Riverway (1989) as areas in which it could control land use. In the case of the Lower St. Croix, DNR is authorized to prohibit land uses inconsistent with the preservation of the riverway and to establish acreage, frontage and setback requirements. Local governments are required to adopt zoning ordinances that comply with DNR guidelines, and modification of local government ordinances requires the written consent of DNR. In the absence of local action, DNR is authorized to adopt the necessary ordinances, which must be enforced by local governments, as well as DNR.

Within the Lower Wisconsin State Riverway certain activities, such as cutting vegetation, mining, erection of boat shelters or stairways, and posting of signs, are prohibited or strictly limited. Other activities are controlled through a permit process. Buildings must meet aesthetic standards, particularly on land visible from the river. The law also provides for special prohibitions and enhanced penalties for littering in the area. Finally, the law permits DNR to obtain title or easements to property within the area.

VI. RECENT LAND USE INITIATIVES IN WISCONSIN

Growth and a new environmental awareness spurred interest in the issue of land use planning in the late 1960s and early 1970s, both in Wisconsin and across the country. Some notable statewide land use plans were developed during this period, particularly in Florida, Hawaii, Oregon and Vermont. In addition, a major effort to create a national land use policy passed the U.S. Senate but failed in the House of Representatives.

Wisconsin Land Resources Committee. Gov. Patrick J. Lucey issued Executive Order No. 26 in July 1971 to create the Wisconsin Land Resources Committee, which was to identify statewide land use problems and suggest solutions. The governor appointed his predecessor, Gov. Warren P. Knowles, to serve as chair of the committee. Many of the issues planning advocates cite today were featured in the committee's March 1972 progress report:

Yet today there is evidence of exploitive, wasteful and unwise use of our limited land resources and the destruction of unique ecological and recreational assets. Wetlands are drained. Prime agricultural lands are converted to subdivisions. Electric transmission lines mar the countryside. Old city residential and commercial centers deteriorate into slums. Some zoning practices tend to reinforce social polarization. Urban sprawl frustrates efficient mass transit and sewer services.

The committee raised the further concern that a growing population and economic development would increase these problems. It identified broad land use concerns of statewide or regional significance, including resource preservation, land deterioration, public facility siting and protection, urban quality, and metropolitan development. It recommended that the state's land use planning system be "substantially strengthened". Specifically, it called for the establishment of statewide land use standards and regulatory criteria to guide localities in making land use decisions.

The committee's recommendations were introduced in April 1973 as 1973 Assembly Bill 882. (The bill assumed passage of a national land use act with federal funding to help Wisconsin implement its statewide plan.) AB-882, which eventually died in committee, received strong criticism at a public hearing because it represented a transfer of land use regulation authority from local governments to state executive agencies. Knowles stated that the bill went beyond what his committee had envisioned and asked that his name be taken off the proposal.

Several measures adopted since 1973 have to some degree addressed the concerns raised by the Land Resources Committee, particularly the use value assessment of agricultural land, but the fundamental framework of local control over land use planning remained unchallenged for almost a quarter century. Recently, however, the issue of land use planning and control has reappeared on the state agenda.

State Interagency Land Use Council. Gov. Tommy G. Thompson created the State Interagency Land Use Council by Executive Order No. 236 (September 15, 1994) and charged it with "developing a renewed vision for land use in the state". The council's interim report in December 1995 noted that the growth of population and the decline

in household size has had a severe impact on the land, especially in areas of concentrated growth, such as the Fox Valley, Dane County, and the vicinity of the Twin Cities and Milwaukee. The report focused on conversion of farmland to other uses, the increased strain on the transportation system, and the decentralization of employment areas as reasons for reexamining land use policy in Wisconsin.

The council's final report proposed creation of a permanent cabinet level Interagency Land Use Council; creation of a land use information system; completion of a land use inventory for each county; direct state support for regional, county and municipal planning; and creation of dispute resolution procedures for land use issues. The report suggests a number of steps state government can take to improve local planning, including action to:

- foster intergovernmental cooperation in boundary adjustment, tax base sharing and governmental operations;
- require counties to adopt comprehensive plans conforming with state established standards;
- encourage municipalities to adopt comprehensive plans in consultation with county government and neighboring municipalities;
- require that zoning and other municipal land use action be consistent with adopted land use plans;
- encourage counties and municipalities to establish joint planning boards with neighboring local governments to facilitate coordinated land use planning;
- review the role of regional planning commissions.

The report concludes with recommendations to increase public knowledge and public input in governmental land use decisions.

Joint Legislative Council Special Committee on Land Use Policies. A special committee of the Joint Legislative Council, created in July 1996, was directed to seek public comment and assist the legislature in evaluating the report of the State Interagency Land Use Council. In its final report on January 12, 1998, the committee did not recommend any legislation, but it did state that "it is clear that land use issues will be among the most contentious issues ever considered by the Legislature". The report provided several useful insights to the land use debate in Wisconsin. It emphasized that developing major land use legislation would be difficult particularly in terms of striking a balance when addressing the interests of local government and the issues that transcended municipal boundaries. It also pointed out that land use questions touch on several issues that are already very contentious: state mandates to local governments, state finance, property rights, state agency conflict and zoning, to name a few.

Transportation Issues. The increasing amount of traffic in densely populated areas of the state and the high cost of maintenance of the state highway system have necessi-

tated study of local land use decisions and their impact on the state's transportation needs. In 1993, the Statewide Land Use Task Force, appointed by the Secretary of the Department of Transportation, recommended the adoption of a state land use policy; interagency cooperation on land use issues; cooperation among state, regional and local planning organizations; and an emphasis on making planning decisions at the local level. The task force also discussed multimodal transportation, rural land preservation, and transportation corridors and their relationship to land use.

More recently there have been studies of the I-94 East-West Corridor in Milwaukee and Waukesha Counties, surveys of Dane County transportation needs, and proposals for regional transportation authorities in the Milwaukee area and the Fox Valley. Some have advocated stronger regional or state oversight of land use in an effort to better control costs of the state's transportation infrastructure.

Wisconsin Land Council. 1997 Wisconsin Act 27 created the Wisconsin Land Council, with various functions regarding development and coordination of land use policy in Wisconsin. The council, which must report to the legislature and governor by September 1, 2002, before it sunsets on August 31, 2003, will identify state land use goals and priorities and recommend legislation to meet those goals. Council membership includes the secretaries of administration; agriculture, trade and consumer protection; commerce; natural resources; revenue; and transportation (or their designees); along with the state cartographer, representatives of local government and the University of Wisconsin, and four public members. To accomplish its charge the committee will study land use statutes and search for conflicts within the statutes or with local ordinances; study the activities of local, Indian, and the federal governments in the area of land use regulation; and facilitate land use planning on the local level.

VII. SOURCES

- Caves, Roger W. *Land Use Planning: the Ballot Box Revolution*. Newbury Park, California: Sage Publications, 1992.
- Congressional Digest. *Controversy Over Proposed National Land Use Legislation*. 1973. (333.1/C761)
- Delogu, Orlando. "Local Land Use Controls: An Idea Whose Time Has Passed", *Maine Law Review* 36 (1984): 262.
- Downs, Anthony. *New Visions for Metropolitan America*. Washington, D.C.: The Brookings Institution, 1994. (352.58/B79)
- Fulton, William. "In Land-Use Planning, a Second Revolution Shifts Control to the States", *Governing* 3 (March 1989): 40-45.
- Harris, Glenn and Leslie King. "Reconsidering Planning and Environmental Protection", *Journal of Planning Literature* 3, no.4 (Autumn 1988): 373-385.
- Jacobs, Harvey M. "Localism and Land Use Planning", *Journal of Architectural and Planning Research* 6, no.1 (Spring 1989): 1-17.
- Kunstler, James Howard. *The Geography of Nowhere*. New York: Simon & Schuster, 1993.
- Platt, Rutherford H. *Land Use and Society, Geography and Public Policy*. Washington: Island Press, 1996.
- Plotkin, Sidney. *Keep Out: the Struggle for Land Use Control*. Berkeley: University of California Press, 1987.
- Popper, Frank J. *The Politics of Land-Use Reform*. Madison: The University of Wisconsin Press, 1981.
- Popper, Frank J. "Understanding American Land Use Regulation Since 1970", *Journal of the American Planning Association* 54, no.3 (1988): 291-301.
- Rusk, David. *Cities Without Suburbs*. Washington: Woodrow Wilson Center Press, 1995.
- Wisconsin. Interagency Land Use Council, *Land Use in Wisconsin, an Interim Report*, December 1995. Madison: State Interagency Land Use Council, 1995. (333.1/W7n1)
- , *Planning Wisconsin: Report of the State Interagency Land Use Council*, 1996. (333.1/W7n)
- Wisconsin. Legislative Audit Bureau. *An Evaluation of Regional Planning Commissions*, 1983. (Au2/1983/19)

Note: Numbers in parentheses are catalog numbers for materials in the Dr. H. Rupert Theobald Legislative Library at the Legislative Reference Bureau. Readers are also referred to the clippings filed in the library under *Land Use Planning and Control - Wisconsin* (331.1/W7z); *Land Use Planning and Control* (331.1/Z); and *State Planning* (354.6/Z)

-
- Wisconsin. Legislative Council. *New Law Relating to the Lower Wisconsin State Riverway, As Contained in 1989 Wisconsin Act 31*, 1989. (622.24/W7c7)
- . *Overview of Programs for the Protection of Rural Resources*, 1994. (333.17/W7b4)
- . *Report of the Joint Legislative Council's Special Committee on Land Use Policies*, 1998.
- Wisconsin. Natural Resources, Department of. *Common Ground: Report of the DNR Land Use Task Force*, 1995. (333.1/W7L2/1995)
- . *Land Use Views: a Summary of Public Input on the Department of Natural Resources' Draft Land Use in Wisconsin Report*, February 1995. (333.1/W7L3)
- Wisconsin. Southeastern Wisconsin Regional Planning Commission. *Twenty-Five Years of Regional Planning*, 1985. (622.6/So82i)
- Wisconsin. Transportation, Department of. Statewide Land Use Task Force. *Final Report*, April 1993. (333.1/W7j2)
- Wisconsin. University of Wisconsin. College of Agriculture. *Farms or Forests: Evolution of a State Land Policy, 1850-1932*. Madison: University of Wisconsin College of Agriculture, 1958. (UW/AgriCol/f)
- Wisconsin. Wisconsin Land Resources Committee, *Final Report*, February, 1973. Madison: Land Resources Committee, 1973. (Gov/Land/r)
- . *Progress Report*, March 1972. Madison: Land Resources Committee, 1972.
- . *Report of the Subcommittee on Land Use-Taxation Relationships*. February 1973. (333.1/W7f1)
- Wisconsin Council of Regional Planning Organizations. *Regional Planning for Wisconsin's Future: Profiles of the Nine Commissions*. September 1985. (622.6/W752a)

THE REGULATION OF LAND USE



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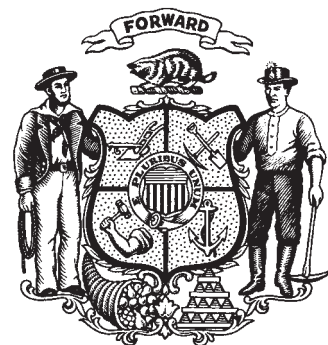


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