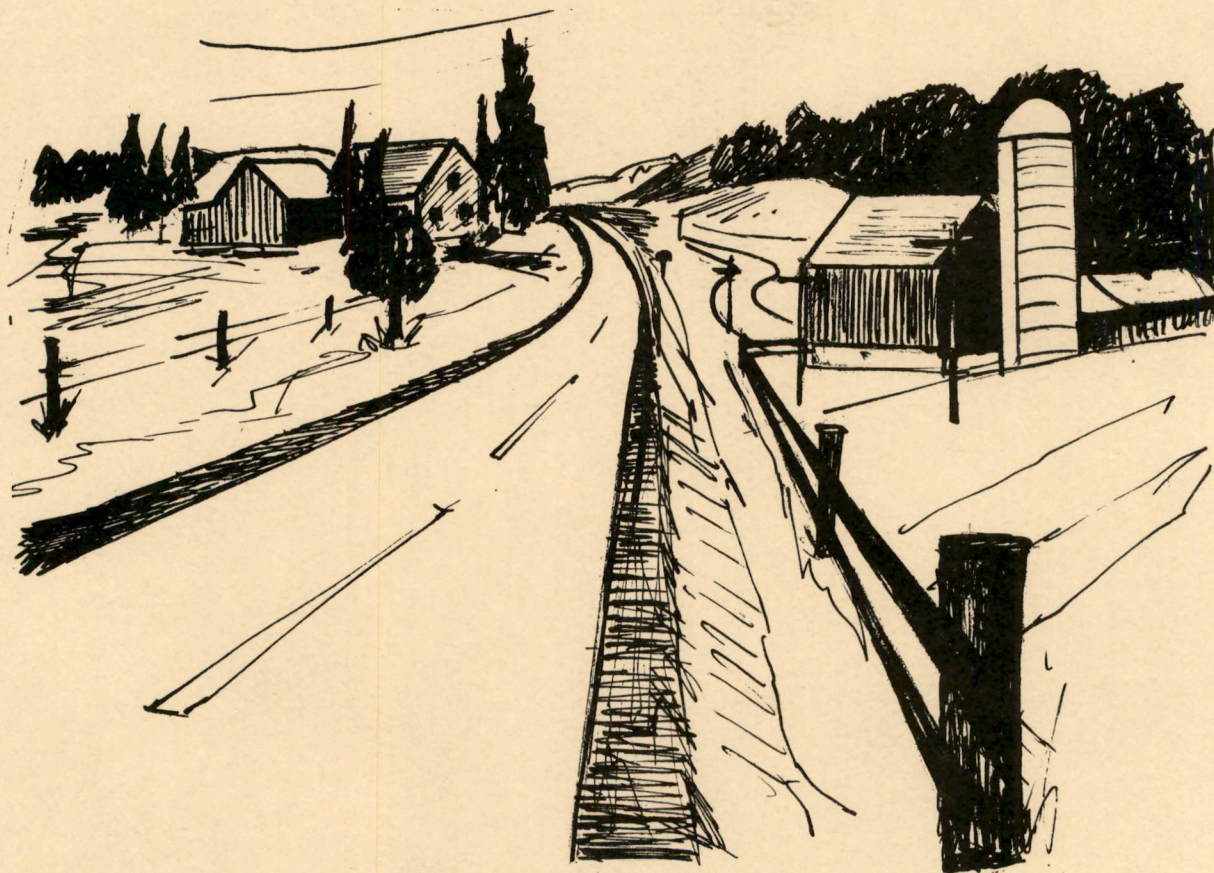


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1970
ANNUAL CONFERENCE
PROCEEDINGS

RURAL LAND POLICIES

FOR THE SEVENTIES



Dane County Regional Planning Commission

PROCEEDINGS OF THE DANE COUNTY REGIONAL
PLANNING COMMISSION'S ANNUAL CONFERENCE:
"RURAL LAND POLICIES FOR THE SEVENTIES"

April 11, 1970

Dane County Fairgrounds

Madison, Wisconsin

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Following are the proceedings of the Dane County Regional Planning Commission's Annual Conference on Rural Land Policies for the Seventies held on April 11, 1970 at the Dane County Fairgrounds. The conference was attended by approximately 100 officials of towns, villages, and cities, farmers, developers, planners, and interested individuals.

Remarks during the morning session were directed at changes in rural land patterns and the identification of rural land problems and were followed by a panel discussion among the speakers. The afternoon speakers discussed possibilities and prospects relating to the problems identified in the morning session and followed with a question and discussion period involving members of the audience.

OPENING REMARKS

Introduction

Bruce Kaufmann: I am Bruce Kaufmann, Chairman of the Dane County Regional Planning Commission.

Our Commission consists of 11 members, 5 of which are members of the Dane County Board of Supervisors: Mr. Merton J. Walter, Vice-Chairman of the Commission and the Executive Committee; Mr. Fred A. Raemisch, member of the Planning Committee; Mr. Richard A. Lehmann, Secretary of the Commission and member of the Intergovernmental and Public Relations Committee; Mr. Carl Simonson, Chairman of the Intergovernmental Committee and the Chairman of this conference; and finally myself. The town governments in Dane County are represented by Mr. Robert Ballweg, Chairman of the Town of Roxbury and Mr. Sanford Anderson, Chairman of the Town of Albion. The villages are represented by Mr. Ole Week, President of the Village of Verona and Chairman of the Administrative Committee. The City of Madison is represented by Professor Walter Fitch, who is also the Chairman of the Planning Committee, and Mr. Gary Peterson, member of the Planning Committee. The fourth class cities are represented by Mr. Emden Schey, Treasurer

Mr. Kaufmann is the Chairman of the Dane County Regional Planning Commission.

of the Commission and member of the Executive and Administrative Committees. Finally, I would like to introduce Charles Montemayor, our Executive Director.

The Commission consists of four standing Committees and three Advisory Committees. Each Standing Committee is charged with certain duties and functions particularly in relationship to planning efforts in our region, liaison between the various units of government and the Commission and administrative and budgeting matters.

The first of the three Advisory Committees is the Law Enforcement and Criminal Justice Policy Advisory Committee chaired by Mayor Walter Bauman of Middleton. The primary function of this Committee is coordination among various law enforcement agencies, identification of problems and issues and making recommendations to the Commission for resolving these issues or problems.

The second Advisory Committee, which is chaired by Mr. Robert Janus, is the Solid Waste Management Advisory Committee. This Committee, which is charged with the responsibility of making recommendations regarding the planning and programming effort on a county-wide basis, has a membership of 12 with valuable technical background.

The Water Resources Advisory Committee, which is chaired by Dr. Joseph Donovan, is for the purpose of legal and technical studies related to a water resources improvement program for Dane County. Examination of the institutional arrangements for water resources management, the preparation of needed legislative proposals for meeting the water resource management needs of the County are among the key responsibilities of this Committee. In addition, the Committee will address itself to immediate programs for water resources improvement.

The Commission has adopted an overall program design for the next five years which will be reevaluated and revised on an annual basis. Among these are preparation of a land use and transportation plan, park and open space plan, water and sewer plan, plans and programs for solid waste disposal, sanitary sewer, storm drainage, and water resources improvement. In addition, a number of programs and projects on floodplain and shoreland analysis and preparation of relative ordinances will be undertaken. Some of these programs, such as the land use plan, are scheduled for completion within the next 12 months. Others will be done in certain instances concurrently over the next 2-3 years. Still some programs which are of continuing nature will be undertaken throughout the entire

five-year period with periodic assessment and evaluation in order to meet the planning objectives established by the Commission. If any one of you has any questions regarding what I have mentioned, please either let me know or discuss it with Charles Montemayor.

Welcome

Carl Simonson: As the Chairman of this conference and Chairman of the Town of Deerfield, I would like to welcome you to this gathering. I am sure many of you, like myself, have been concerned about the relationship of the present assessment policy to farming which is a basis for our livelihood as farmers and a support for this very highly complex society of ours.

In discussion with many of my fellow farmers and interested groups and individuals, I am always confronted with the taxation issue as a reason for discontinuing farming and leaving our prime agricultural land, our vital source of food supply, open to speculation and destruction. As our taxes go up, in

Mr. Simonson is a member of the Dane County Board of Supervisors and Dane County Regional Planning Commission.

order to survive, we have to maintain a higher degree of productivity. Soon, for an average farmer, this will reach a point of diminishing return. In a competitive market, small farmers are unable to match large scale farming operations. To protect his family and his investment, he has to sell out. Even renting the farm has reached a point of no return. When a farmer has to pay \$50.00 taxes per acre of land while he can only rent the same land for only \$40.00 per acre, he is facing a serious dilemma threatening his existence.

Today, we are going to discuss some of the key problems and to explore what possibilities are available to us in order to enable us to make a living for our backbreaking work and to find out if there are certain ways that we can assure the future of our children who want to remain on the farm.

I recognize this problem is very complex and our County is not the only area facing this situation. However, I feel the time has come to get together and voice our problems and hopefully take some measures in the future to make the life easier for us by protecting our farms which are key resources and very basic not only for the use and enjoyment of present generations but many generations in the future.

We have many outstanding speakers today which are going to discuss these problems and discuss different alternatives

for possible future courses of action. My request is to hold your comments and questions until we have heard our speakers and their points of view. We will have a session for comments, questions and answers this afternoon and I am certain our speakers would happily answer your questions during that period and after the meeting. If any of you has additional comments, please contact either me or our Commission's staff in the future. Now, I would like to turn the meeting over to our Executive Director, Charles Montemayor.

Purpose of Conference

The subject of this 1970 annual conference is Rural Land Policies for the Seventies for Dane County. More particularly we would like to examine what is happening to agricultural land and natural resources, what development patterns are taking place in Dane County and in other areas. We want to look at some of the causes of these changes, particularly the effect of land speculation and tax assessment policies. Finally, we want to explore some of the possibilities as to how we can prevent some of the undesirable changes from taking place. While I would like to think that our problems are correctable, I am thoroughly convinced that any real solution

Mr. Montemayor is the Executive Director of the Dane County Regional Planning Commission.

will be quite complex.

The purposes of this conference are different for different people. The farmer is interested in saving prime agricultural land. The residential intrusion brings with it many expenses and problems. To the dismay of the conservationist, the natural areas of the County are likewise threatened by this intrusion. Persons concerned with the development of our cities and villages will also have a considerable concern with our subject. The countryside's growth is now scattered and the result is more expensive roads, unnecessary branches of sewer and water lines, poor access to schools and shopping, and generally poor service to the public. Governor Knowles put his finger on the problem when he said that the urban problems of the state and the rural problems of the state were becoming more and more inseparable. As I see it, this is not an urban problem or a rural problem any more. It is a problem for the region, the state, and the nation.

MORNING SESSION

Changes in Rural Land Patterns and
Identification of Rural Land Problems:

Agricultural Land

J. W. Clark: I'm going to talk as a farmer and a land-based person today even though I have not actually been a farmer for a long, long while. And I'm going to talk very simply about the land and the people on the land. I'll begin by telling you a little story. When I came to Dane County in the 1930's, there were about 112,000 people in Dane County. Madison was a beautiful little country city of approximately 56,000 people. In 1970, we are approaching 300,000 people in the County and the City of Madison has in excess of 150,000 people. This represents a considerable change. When I came here in the 30's, there were roughly 6,000 farms in the County. In 1970 there are 4,000 minus farms in the County--probably 3,800 or 3,900. In other words, there has been a decline of at least 30% in the number of people who are earning their livings on the land in the County. This tells you that there are fewer farmers and should cause you to ask the question, "What has happened to the rest of the land?" I'll come to

Mr. Clark is the Agricultural Agent for Dane County.

that in just a minute.

The next thing we should take a look at is the County itself. One of the things that shocked me when I first came here is that Dane County is larger than the State of Rhode Island. It consists of over 1,200 square miles and more than 750,000 acres. Thus, when you think of land problems, you are dealing with a very large area. The other significant thing I want you to remember is what has happened to the land in the County during this period of rapid growth. People ask me what has happened to the farm land in Dane County and mention all of the new houses being built. They fear that soon there will be no agricultural land left. These people are not very observant because there is almost as much land today in agriculture as there was when I came here. There are still about 600,000 acres of the 750,000 acres in the County in the agricultural industry. This is because non-agricultural uses don't, as a rule, occupy much land. Only about 30 or 40 thousand acres have been lost by the agricultural industry in the last 30 or 40 years.

There are other things happening though which I think we should ask ourselves some questions about. The question the farmer asks himself is, "When, how, and for how long can I afford to farm the land on which I live?" Here is an example that explains how I feel about it. I was born in the corn

country of Iowa and love corn in all its forms. Corn is the king crop grown here in Dane County and I want to give you an idea of the cost involved in raising corn here. When a farmer markets corn, he is likely to get about 90¢ per bushel. Using the most modern techniques in Dane County, a farmer can expect to produce around 100 bushels per acre. This means he is making about \$90 per acre on the corn he is producing. There are also other costs. As most of you know, land has to pay for itself. All farmers have learned this from experience. To hold onto the land, he must have enough money to pay his taxes, to pay the interest on his investment, and also to make a slight profit. I would say that no one can afford to farm land today that costs more than \$400 per acre. First of all you have to get your interest back, and at 8% interest, \$400 per acre costs you \$32. In the production of corn your variable costs (fertilizer, wear and tear on machinery) will cost somewhere between \$35 and \$60 per 100 bushels. Add this to your \$32 and you have \$60 to \$65. These are variable costs which vary from year to year. You also have to add the cost of your taxes. If your taxes run \$20 per acre, you can see that the farmer is really making nothing at all. Most farmers take an additional step and use the corn as feed for livestock. But he still does not make much money from the farm.

So when you have escalating land prices, which get above

the arbitrary level I have established, and assessments drive up the value, you know that you won't be able to continue farming it for long.

Here are some of the things I think would be helpful to the agricultural industry in the County. (1) If 80% of the land remains in agriculture, there is still room for a lot more people in this County. Agriculture is the best use for most of Dane County and it should continue to be used this way. But there must be some monetary return from land. It can't be idle, so it should be used for agriculture, its highest and best use. The present hodge podge development in the County makes this difficult. It means that you have to rezone practically all of the land in the County. You have to delineate very carefully those lands which should remain in the agriculture industry. You have to develop new criteria for agricultural zoning. It should not be a "catch all" category for everything not zoned something else. An agricultural use must be defined and then zoned properly. You have to tie this to the tax assessment.

(2) You can't do this in an office. You have to start with the Planning Commission developing a broad plan for the County. Then it has to go to the county zoning officials who review it once again. And then it has to be taken out into

the country and presented to the people who live on the land. This can't be done simply by edict. We have plenty of laws today that people don't obey. The cooperation of the people is necessary for an effective program so the new rural zoning I have suggested will require this cooperation. The Zoning Committee must work very closely with the people in the townships. If this is done, you will be able to preserve the agricultural lands for agriculture, the farmers will be happy, you will have a good agricultural industry, and I think we will all be better off.

Changes in Rural Land Patterns and

Identification of Rural Land Problems:

Natural Resources

C. W. Threinen: I am a biased individual. I like expensive people and cheap goods. Too many people and over-use of resources bother me. The large number of persons in the County has created problems which will increase as the County grows.

Dane County is a finite area and contained about 290,000 people in 1960, and has many more now. The average person

Mr. Threinen is an Administrative Assistant for the Wisconsin Department of Natural Resources, Bureau of Fish Management.

consumes about 100 gallons of water per day or about 30 million cubic feet per day for the County. This is something that we must think about for the future. We also consume about 360 pounds of food per year and need about an acre of land apiece to produce this food. So land is in demand and there is strong competition for it.

Now to talk about natural resources. Urban land is becoming increasingly significant. We are collectively inexorably tied up to various natural cycles--gas cycles, nitrogen cycles, water cycles. For example, by covering up a marsh we are very significantly altering the water cycle.

The urban space is increasing very rapidly. This urban space plus the roads in the County--about 9% of the entire County--are a "closed surface." This has a very significant impact on the water cycle because a closed surface absorbs no water at all.

Forests are a very important land use because of the way they affect water cycles and their use as recreation areas. It alters the effect falling rain has on the ground by reducing its velocity, absorbing it, and holding it. So although forest land is not so valuable in money terms, the intangibles make it extremely important as a part of the natural cycle and as a home for wildlife.

At one time Dane County was about 80% prairies. Much of this land is now cropland with no natural cover and little to prevent runoff.

Marshes also have a special role. They act as holding devices for the water supply and filter out the silt load. They also contribute to the ground water supply and act as a haven for plants and wildlife. We cannot alter these delicate balances without considering the possible consequences.

Lakes and streams act as a mirror reflecting our treatment of the land. If they are clear and pure, we have exercised good judgment in our use of the land. If they are dirty, our treatment of the land is what has caused it.

We have a fixed supply of natural resources. Anything that is lost is lost permanently. In cases where there is a conflict between man and nature, we are faced with a value decision. Are we following the right kinds of rules? Urban uses often conflict with the natural cycle. Population pressure alone has a negative effect on the landscape.

The Department of Natural Resources now has 8,435 acres under control in Dane County. But this is really not much. The County also controls 773 acres on the rural landscape. But open space, water space, woods or wetlands--however viewed--

is decreasing and the slices of the resource pie per person are getting smaller. In conclusion, it is important that while we intensify land use, we also extensify an equivalent amount to compensate for the loss. And we must keep the natural cycles in mind as we project into the future.

Changes in Rural Land Patterns and

Identification of Rural Land Problems:

Non-Agricultural Development

Charles Montemayor: Dane County has been identified as one of two hundred and twelve Metropolitan Areas in the United States. These Metropolitan Areas contain two-thirds of the nation's population. Dane County is unique in that it is growing very rapidly. This rapid population growth must be viewed with some perspective. As rapid as it is, it is still manageable.

Based on census data the population growth of the cities and villages between 1960 and 1968 amounted to 64,000 people, an increase of 32%. The growth in the unincorporated areas was 2,000 people, or just 3½%. It will be interesting to look at the 1970 census to see if the trend towards large growth within incorporated areas has continued. There is reason to believe that it has not.

In 1968 the number of multi-family dwelling units built in the unincorporated areas exceeded the number of single family units. This has been true in the City of Madison for some time and now is also true in the unincorporated areas as well.

You can draw your own conclusions on some figures I have on equalized assessed value of real estate property. In 1960 in the nine towns surrounding the City of Madison, excluding the unincorporated areas, the value of residential property was \$38,700,000. In 1969 the value of that property was \$95,000,000, an increase of 145%. This would have been a larger figure except that certain lands were annexed. In all the other towns the value of residential property in 1960 was about \$12 million and in 1969 was \$53 million, an increase of 342%. Madison's growth is not in rings. There is substantial development taking place beyond the nine town area.

Agricultural land was valued at \$28 million in the nine town area for 1960 and grew to \$80 million in 1969, or 183%. In other words, the value increase in agricultural land is greater than that in residential property. Beyond the nine town area though residential land value has increased faster

than agricultural.

Since 1964 about 1,500 platted lots have been added to the County in unincorporated areas. We believe that a considerable number of land divisions have also occurred on a non-subdivision basis but these are difficult to count.

It has been mentioned that our rapid population increase is causing our resources to be used up. It has also been mentioned that the decrease in available agricultural land has actually not been very large. The amount of space is really not the problem. What is important and critical is the form this new development takes. What we really need to concern ourselves with is the livability of the region and the quality of our environment.

Changes in Rural Land Patterns and

Identification of Rural Land Problems:

National Scene

Mason Gaffney: I believe the solution to the problems that the other panelists have focused on is to be found in a higher density of the population in the central city. This will satisfy the demand in the center that is now proliferating

Mr. Gaffney is a Research Associate for Resources for the Future in Washington, D. C. and is on the faculty of the University of Wisconsin-Milwaukee, Department of Economics.

out over the County and creating problems for all of us.

As for the problems between agriculture and wildlife, Mr. Threinen seemed to be more concerned with the effect of agriculture on wildlife than the effect of cities on wildlife although he expressed concern with both. I would like to point out that the city is not to be blamed for a large portion of the ecological damage that people are concerned about today.

Getting back to higher density in the city.... I feel it is not necessary to force this to take place, it is necessary to stop preventing it. The idea that people prefer to leave the city for the country is not necessarily true. We have many laws making it difficult for people to live in apartment buildings and high density areas. Low density zoning is very common in the suburbs and floor area ratios are common in the cities to hold down the height of apartment buildings. We seem to have in the cities a complex of social controls that stop the consumers from living at the higher densities that they would seem to prefer.

Bill Clark raised a number of interesting issues. He pointed out that the amount of farm land in Dane County has not been appreciably diminished by urban expansion. So it is not a matter of aggregate loss of land but a matter of

disorganization. His figures show that the size of farms has increased. So it is interesting that in such a rapidly growing County, the farmers have not adapted more to the expanding urban market. You would think that intensification in smaller farms might be called for. What seems to be growing is speculative holdings--at least this is the historical trend. Speculative holdings tend to be much larger. To some extent this represents people coming in from outside. Often the farmers also change into speculators because of economics.

Implicit in the fact that a very small quantity of the land in the County is actually being urbanized is a contradiction in the idea of the urban price influence spreading around the whole County. Since there is still much rural land, it would seem that if only a small amount of farm land in the County could be fully committed to urbanization, this should satisfy demand and contain urban sprawl effectively. This would not be a negative device like prohibiting growth beyond certain limits but would instead be positive by providing city people with the land they need for their legitimate uses. This would solve the problem of high land values and taxes on the urban fringe and would not require too much land to bring about, given a perfect market. But once this option

is stated, I think part of the problem becomes clear-- ambivalence. Is this what the farm people really want? Fifty per cent of the problem is that those owning land that is appreciating want two things at once which are mutually inconsistent. They can't help enjoying the capital gains accruing but they don't like some of the things that go along with it. But you can't have both. I think the better solution is to forswear the capital gains and encourage the city to develop at high density even though this may mean more state and County funds go to the city. By looking at it this way, you can see that it is a hard decision.

It is desirable to organize society in such a way that there are a lot of opportunities for human beings to make a living. There is a conflict between this point of view and the concept of preserving open space in extremely low density use. If we reserve too much land for open space, there may not be enough left for making a living and many problems would result. I think this conflict can be constructively resolved by high density development. I personally also prefer low density living for myself but I think it is dangerous for us to assume that everyone shares this feeling. I don't think they do. But this is really our salvation. Man is a social animal and tends to congregate in dense urban

agglomerations. If those of us who like the wide open spaces just let them do this, we will have most of the rest of the country left for ourselves.

Charles Montemayor observed that most of the growth in Dane County is not in the form of a ring. This is the national phenomenon called urban sprawl. I would like to suggest a marked distinction between the pattern of development and the pattern of land values. Urban land values are characterized by a high degree of spatial continuity. The key word is continuity. That is to say the value of every piece of land is very close to the value of the piece next to it because they are nearly substitutes for one another, with obvious qualifications. There is, therefore, this sharp contrast between the pattern of land values which is continuous, and the pattern of settlement which is sprawled. Assessment of land at its market value would bring pressure to develop land that would be much greater near the city center. Land far away from the center of the city that was not ready for urban development would have very little pressure. When the pressure near the city center does cause earlier intensive development, it will suck in the demand which is now causing speculation throughout the County. This would in turn bring down values and assessments, or at

least keep them from going up. This sucked in demand would permit the remainder of the County to remain agricultural or ecological.

Changes in Rural Land Patterns and
Identification of Rural Land Problems:

Panel Discussion

Mr. Threinen: I have a question for Mr. Gaffney. You said the urban areas are not as responsible for the ecological damage as is commonly felt. Here the urban community has been responsible for a great deal of ecological damage. The City of Madison has dumped its sewage effluent first into Lake Monona, then Lakes Waubesa and Kegonsa with many ill effects. This is an example of an urban area being very responsible for substantial distortions in the ecological picture.

Mr. Gaffney: I did not say that the city was not responsible for any ecological damage. I suggested that there was a conflict between agriculture and wildlife that is just as great as the conflict between the city and wildlife and that therefore the urbanization of agricultural land would not necessarily worsen the problem.

One of the important things cities do is provide mass

sewer systems. This allows high density. The problem area is intermediate density where people live close enough together to get in each other's way but not close enough to do anything about it constructively. Septic tank suburbs are an example. Cities are an improvement because they substitute sewers for septic tanks. A well-planned city should end abruptly where its mass systems end.

Mr. Clark: I think you get no place with pollution and ecological problems if you point the finger at any one group. The major cause of today's pollution problem is a too rapid growth of population and a change in our life style. It is people and the way they live and the things they do that cause pollution. Today's problem looms large on the horizon because the old balances have already been upset.

Agriculture's primary contribution to water pollution in this area is not commercial fertilizer, but comes from animal manure spread on frozen ground. Silt is also a serious polluter. I agree that much of our problem results from development in peripheral areas and I also agree that there is agricultural pollution. I will not agree that you get any more tolerance out of resources just because a majority of people live in cities.

Mr. Montemayor: Mr. Gaffney, would you explain again

how land values can suck in development?

Mr. Gaffney: I was referring to the difference in land values between the central city and the periphery. It is a continuous thing; the values decrease as you move out from the central city. On the other hand, if you consider the value of the land and the buildings together, there is a declivity at the center because it is poorly developed and the buildings old.

Mr. Clark: I have heard that in some of the eastern states, they have a state law which makes it possible, as this encroachment on the lands takes place, to tax and assess based on what the agricultural people can get out of the land. But when a certain time comes, they rezone and reassess at a higher rate if the land is to remain in agriculture. You can then continue to pay at the lesser rate until you decide to sell the land for another use, at which time you will have to pay those taxes that have been deferred. Do you know anything about this?

Mr. Gaffney: There are seven states that have gone in for preferential assessment of agricultural land on a formal basis. To a certain extent they were formalizing that which had previously been informal. It is still used informally in some places. In Maryland and Connecticut there were

assessment reform movements that lagged less behind the market than has been the case in some other states. A lot of this appreciating suburban land was being assessed at its market value, and that hurt. The Maryland law was a response to this problem. I would like to read a quote from an evaluation of the Maryland law by Peter House of the U. S. Department of Agriculture. The report is called "Differential Assessment of Farm Land Near Cities Experienced in Maryland through 1965," Economic Research Service, 1967. He says, "This study has produced no evidence to show that lower taxes have preserved open space. It does show, however, that taxes of farm land are substantially lower than they would have been in the absence of the law." He then compares this to buying the land outright. He concluded that it is an expensive way to preserve open space. William H. Whyte came to a similar conclusion. The benefit of lower taxes has not been shared by the public. So with regard to the eastern states, the experiment has not been inspiring. However, the results have been more successful in California and Hawaii as a device to control urban sprawl.

AFTERNOON SESSION

Possibilities--Problems and Prospects

as Viewed by a:

Tax Administrator

Werner Doering: One of the focal points of discussion this morning was the competing uses for land. We have the farmer and the nature lover. We have the person who wants to derive income from the land by developing it or renting it. We also have home owners and industrialists interested in their personal ends. In other words the problem is "other people." Things are fine until interests conflict.

I'd like to give some perspective to the tax aspect by dispelling some popular misconceptions about the property tax law. Land is unique; it is a piece of the planet Earth. Private ownership is relatively new in history. When our country started, most of the land belonged to the federal government. But the government through the Homestead Act gave much of this land to individuals.

We don't own land itself; we own rights to the land. People in the United States have particularly strong feelings

Mr. Doering is the Director of the Bureau of Property Taxation, Wisconsin Department of Revenue.

about their private rights to the land and they are reluctant to relinquish these rights to zoning and land-use authorities.

Property taxes are a concern to many people in addition to the farmer. Total collections are increasing but as a per cent of total personal income, not as fast as state and federal taxes. The property tax remains because it is very effective. If you don't pay, the land is taken away.

Another reason that property taxes are rising is that our fiscal problems are fragmented. There is no centralized fiscal responsibility or authority keeping a watchful eye on total tax burden. There is a demand for both state and local services but not enough coordination in how these will be financed. State and local governments are reluctant to finance these new services by increasing sales and income taxes. As a result the property tax picks up the residual automatically without the benefit of the same kind of debate and deliberation made by a joint finance committee with respect to the state budget. The best source of relief from the property tax in Wisconsin is federal revenue sharing since we already have substantial sales and income taxes.

With regard to the legal framework of the property tax the present state constitution has a strong uniformity clause in it. The legislature has wide latitude in exempting

property but once something is non-exempt (taxable), then all taxable property is to be treated uniformly with respect to a certain standard. The standard in Wisconsin is fair market value. Since this has been the same for years, why this sudden concern. One of the reasons is the higher levies. This makes people look more closely at the problem and many feel that their assessment is unfair and demand reassessment. Reassessment in turn causes pressure on owners of large vacant lands. They may be speculative holdings or operating farms but in either case their taxes go up with the reassessment.

Many people feel that the agricultural classification provides them with a legal tax shelter. This may be done in practice but is not the law. Property should be taxed according to its market value and classified according to its use. Classification is primarily for statistical purposes and comparisons.

I would suggest that perhaps the property tax does not have quite as much leverage as is generally assumed. It does have some, because high taxes definitely make land harder to hold. It creates willing sellers but there might be willing sellers without any property tax at all. It is also necessary to have a willing buyer.

I think we need something in addition to the property tax to control land use. For one thing, property taxes can be deducted from federal and state income taxes and for some taxpayers are therefore paid in "cheap" dollars.

The other thing to remember is that we have to reconcile the social costs with individual benefits. What is the long-run social cost of allowing individuals to use their land as they wish?

Possibilities--Problems and Prospects

as Viewed by a:

Farm Organization

William Kasakaitas: The need to take inventory of our natural resources and the policies that guide us in their use has never been greater. Traditional policies of tax justice, land tenure, home rule, and private rights need to be reexamined critically in the context of contemporary trends.

These are complex and delicate problems of guiding human activity which will either improve the quality of life in our community or destroy it.

Unplanned development of our land resources and haphazard

Mr. Kasakaitas is the Legislative Counsel for the Wisconsin Farm Bureau Federation.

growth of the urban community is having a devastating effect on the urban fringe agricultural community.

Land values are rising beyond the reach of operating farmers; taxes based on speculative values that may never be realized make it difficult for farmers to continue farm operations; special assessments for water, sewers, streets are borne by farm land that may have no need for such improvements for decades; prime agricultural land is being lost at an accelerating rate, as well as lands with unique, scenic, and historic or ecological value; conflicts are developing between urbanites and farmers as to noise and odor, pesticides, water run-off, and scenery.

Uncertainty prevails. Investments in new technology are deterred, and the farm deteriorates into a marginal unit as the farmer waits to cash in on the possibility of profit on sale for non-farm use.

Wisconsin has 20,600,000 acres of land in farms. This is 8% less than 10 years ago. Less than half of this land is devoted to production of crops for harvest. We have less than 2 1/2 acres of cropland per capita in our state.

Taxes on the average acre of Wisconsin farmland is \$3.71. This represents an increase of \$1.15 per acre in the last seven-year period. Taxes in several Dane County towns are

as follows: Fitchburg with \$7.52; Middleton \$8.86; Bristol \$5.29; Medina \$3.87; Berry \$3.20. There are isolated reports of taxes on agricultural land of \$15, \$20, \$30 and more per acre.

Real estate taxes based on \$100 full value in Wisconsin are \$2.03 for 1968. In Minnesota it is \$1.43, and Michigan \$1.39. The corn belt states average \$1.09. It is obvious the Wisconsin farmer is disadvantaged by higher tax rates compared to their counterparts in neighboring states.

The ratio of real estate taxes to realize net farm incomes is 14.5%. The ratio of non-farm real estate taxes to non-farm net income is less than 5%. The pressures of property taxation on the farmer are much greater than on the urbanite. Farmers in the urban fringe or caught in the web of urban scatteration find these pressures intolerable and often surrender prime agricultural land for urban development.

Patterns of land use resulting from the action of market forces appear to be undesirable. The standard of profit for the allocation for land resources may need to be replaced with other criteria to give stability to agriculture and help conserve prime agricultural land and other attributes of nature. While use of prime agricultural land for urban development may be the most profitable for the developer, it

might not be the most desirable socially and economically.

We must develop a land resource use program that will:

1. Provide stability in the use of agricultural land resources and encourage investments in new agricultural technology.
2. Allow flexibility for orderly urban growth and development.
3. Protect and conserve the quality and the natural attributes of our environment.

Recommendations:

1. Enable the creation of exclusive agricultural and open space zones in Wisconsin. Agriculture, conservation and recreation should have priority rights in these areas. These areas could include the prime agricultural land, the flood plains, scenic and recreational sites, forest and woodland areas, and wetlands. Other uses if they would exist would remain at the peril of the priority users.

These restrictions should be so structured as to remove the probability of urban development in these zones.

This land then should be valued for tax purposes on the basis of its highest undeveloped use and still be consistent with the ad valorem principle.

2. Enable the creation of transitional zones in areas which are either planned or may be needed in the near future for urban growth and development. Farmers in these areas should be given an opportunity to enter into contracts with their municipalities to hold their land in farming or as open space until needed for the orderly development of the urban community. To encourage farmers to enter into these agreements, deferral of taxes in excess of taxes based upon current use may be offered. This would help to restrain the hodge-podge, premature, and piecemeal development, and may also influence the use of other land resources for urbanization.
3. Undeveloped land in an area deemed to be most appropriate for urban development would be taxed on the basis of its market value.

I believe that a program of this sort, modified and refined, should be acceptable to farmers. It would provide them a guarantee, or immunity, from tax assessments based upon speculative value. It would give him some assurance of stability so that he may make investments in new technology and expand his base of operations. If he is in the transitional zone, tax deferment removes the pressures that are causing farmers

to prematurely sell their lands to speculators.

I believe that such a program will provide benefits to the public. It will help in the conservation of prime agricultural land resources, of open space, as well as the scenic and aesthetic qualities of our landscape. It will help to avoid providing costly and inefficient public services to the hodge-podge, haphazard urban development which seems to be commonplace today.

Possibilities--Problems and Prospects

as Viewed by a:

Legislator

Norman Anderson: It has been my experience that there is seldom any shortage of persons who can list problems in this area. Some of them are pollution of water and air, urban sprawl, shoreland deterioration, wildlife habitat destruction, wetland destruction, and solid waste disposal. There is a shortage of persons who have constructive and practical ideas for coping with these problems.

It is easy to point out manifestations of various forms of economic activity that affect our environment. Obvious

Mr. Anderson is an attorney and the Assemblyman from the Dane County First District.

examples are dumps and solid waste disposal sites and industrial pollution.

The public must be educated to a fundamental premise. It is not new but is largely not understood. No one really owns land. At most you are a tenant for life. When you are gone another tenant moves in. The Indians at least were not deluded by the ownership concept. They could not conceive of any one individual controlling land. For two centuries we have been using the land as though we were going to be the only occupants of the land. It is only recently that we have seen the folly of this view.

After we accept this premise (which has what really amounts to theological implications), we can see that no one should have the unqualified right to alter the character of the land. Therefore, as landlords of the world we must not:

- (1) drain and fill all of our marshes, (2) subdivide our lake shores, (3) choke off all of the open space around cities, (4) make extinct our predatory birds with pesticides, (5) make cesspools of our lakes, (6) destroy wildlife habitat, and (7) use up all of our low lands.

Our focus here is on rural land policies and urban pressure on rural land. No one here will deny that tax policy affects the use of land. Specifically it affects open space

land around metropolitan areas, land divisions around lake shores, and wetlands. The result is that economics forces farmers to subdivide their land.

I realize that any attempt to change this will step on some toes but a necessary first step is some changes in the state constitution. The uniformity clause requires that all land be assessed at its market value. So in the 1969 session of the legislature we introduced a joint resolution to change that clause. The resolution would give the legislature the power to classify lands for the purpose of taxation. We could start out on a voluntary basis rather than seeking to impose corridors or open space areas by governmental decree. An owner who wanted his land to remain in a natural, say a marsh, state might make application to an appropriate governmental agency. He would request that this land be assessed as a marsh since that is to be its use in perpetuity. If the governmental agency approved the request, the landowner would file a declaration with the Register of Deeds making the use a covenant with the land. The assessor would then assess the property at its declared use and at its potential use. The landowner would pay taxes only on the lower assessment. If the landowner changed his mind and wanted to change the use, he would first have to obtain the approval of the

government agency and then pay an amount equal to what the taxes would have been had the land been fully assessed together with interest. In this way no one could get out of paying his fair share of the taxes.

This system may complicate the administration of our laws but I feel the responsibility of the legislature is broader than to make it easy for the tax department to do its job. Our responsibility is to conserve the resources of this state for the people. Tax policy may have to change with the times.

Wetlands are also a major problem. There is no argument that we have destroyed the vast majority of Wisconsin wetlands and that if present policies continue we will destroy the remainder by 2000. Thus if we want to stop this trend, we have to do something besides complain.

We cannot expect, as a practical matter, the farmer to bear the cost of maintaining marshes on his land. The wetlands he has benefit others besides himself so others will have to help bear the cost. I think we should adopt, as soon as possible, a Wetlands Preservation Act in Wisconsin which provides that no further marshlands be drained or filled in the absence of compelling reasons other than the short run economic benefit of the owner. A set of guidelines will have

to be developed to outline those rare conditions under which wetlands could be altered. The owner of land who wants to drain his wetlands but who is prevented from doing so by this Act will have to be compensated for the loss of that right. The Farm Drainage District Law will undoubtedly have to be modified so as to discourage further drainage, but allow existing districts to continue. Good soil conservation practices must be made obligatory. We must do better in solid waste disposal methods and the Roadside Brush Management Program must be further developed and tied to economic benefits.

Possibilities--Problems and Prospects

as Viewed by an:

Economist

Mason Gaffney: There have been some things in the discussion so far that I can't go along with in terms of priorities. I am dedicated to conservation but I think there is a higher priority. That is the building industry and its customers. We are currently experiencing an urban crisis highlighted by skyrocketing rents and an acute shortage of residential housing. The production of housing in the U.S. has been either stable or declining for the past ten years while the population has

continued to increase.

But I would caution against negative containment. The city is now the economic frontier and such a policy does not work. The people will rebel against any policy whose thrust is negative. Preferential assessment is not completely like this but does have elements of it. These elements must be purged if it is to be applied successfully.

As a positive policy I would begin with reassessment. Assessments in the city have lagged way behind changes in the market place. The present assessment policies also presently have an anti-developmental bias and tend to discourage the renewal of cities. To some extent this is inherent in the law. And to some extent it is a matter of assessment practices. To take a specific example on the east side of Milwaukee--there is an area being invaded by new apartment buildings. When an apartment is built the land is reclassified mercantile and the assessment is increased five times. If nothing is built, it remains in a residential classification. So the tax penalizes anyone who builds on the land. This aggravates the present situation in which the property tax bears down on the man who improves his land. I believe it would be constructive to move in the direction of removing buildings from the property tax base and focusing it on land

value alone.

Another area has to do with utility services and their pricing. The rates imposed on people are independent of the costs they impose on the system. It is obvious that people who are scattered impose much greater costs on the utility network than those living at high densities, yet all pay the same rates. This rate structure constitutes a built in bias against high density. The solution is not simple yet movement in this direction is needed.

What this country needs is a single standard of equity when it comes to paying taxes. Farmers have gotten used to paying taxes on a more lenient standard than the average wage earner. Much of the anguish farm people are feeling today simply represents an equalization of an inequitable situation. Appreciation of land is income yet it is hardly taxed at all.

A greater allocation of funds to urban areas would encourage the cities to develop more intensively and take the invading pressure away from farmers.

With regard to open space in urban areas--we don't create it, we relocate it. If central city land is used for low intensity activity, the high intensity activities that would have been there will be forced to relocate out in the country

on rural land. So it is a matter of deciding which space you want to be open and which space you want to be closed. The only way to increase the net open space is to increase the density on the land that is used.

Another policy that I feel is important is to stop the highway Juggernaut. The policies at the federal and state level virtually guarantee that we are going to get more public investment in highways than any rational allocation of national resources would call for. As these highways move out into the countryside they bring with them higher land values, premature scattered urbanization. If we don't like these results we should do something about the cause. The public could recapture the initiative on this by controlling the extension of utility lines.

Another policy that is important is to hold down the price of land so it will be available to many buyers.

In terms of paying for open space, I think anything worthwhile can be paid for provided there is an institution that allows the beneficiaries to pay the cost.

Possibilities--Problems and Prospects

as Viewed by a:

Lawyer

Orrin Helstad: The previous speakers have discussed

Mr. Helstad is a Professor of Law at the University of Wisconsin.

some of the difficult problems faced by farmers who own land in the vicinity of growing metropolitan areas and have suggested possible solutions. I understand it to be my function to discuss briefly some of the legal issues which can arise in connection with the various kinds of governmental action which may be taken in an attempt to control the rate and direction of urban growth.

Before turning to the specific problems, let me outline for you the basic regulatory tools which government has at its command. Governmental powers can be divided into three main categories. The first is the power of eminent domain or condemnation, that is, the power to take land for a public use. The principal limitations on this power are that the taking must be for a public use or public purpose and that the governmental agency must pay just compensation to the landowner whose property is taken. The second is the power of taxation, about which I will say more shortly. The third is the police power, or the basic power of government to regulate private citizens in the public interest, including the power to regulate the use of land. These powers, of course, may be used in combination with each other to achieve particular objectives, but it is helpful to keep in mind that they are separate powers.

Let us turn first to the power of taxation, a subject which has been referred to frequently in this conference.

We have heard that the power of property taxation in particular is controlled by a uniformity clause in the state constitution. Such a clause has been written into the constitutions of many states, but they generally are written in rather vague language, and courts of different states have interpreted them differently.

The Wisconsin Supreme Court has interpreted very strictly the clause in the Wisconsin constitution which says that "the rule of taxation shall be uniform." Basically, the court has held that property must either be completely exempted from taxation or it must be taxed uniformly, and this includes uniformity in assessment formulas. This point was emphasized again in a case which arose in Milwaukee a few years ago (Gottlieb v. City of Milwaukee, 33 Wis.2d 408, 147 N.W.2d 633 (1967)).

In this case an attempt had been made to promote urban redevelopment by private landowners in Milwaukee by giving a tax break to landowners engaging in private urban redevelopment projects. Specifically, the law provided for a property valuation freeze for a period of years after the redevelopment had taken place, so that the property during this specified period of time would be assessed at the same value after redevelopment as it was before redevelopment, even though

the actual value of the property would most certainly be much higher after redevelopment. This law was invalidated by the Wisconsin Supreme Court on the ground that it violated the uniformity of taxation clause in our state constitution. This is, of course, because the redeveloped property would have been assessed under one formula (something less than fair market value) while all other property in the city would have been assessed under another formula (fair market value).

It is clear that this strict interpretation of the uniformity clause in our constitution has implications with regard to one of the problems we have been talking about today: Can farm land on the fringes of a growing city be assessed as farm land as long as it is used as such, even though it has a higher market value for urban purposes? In Wisconsin, the answer to this question generally will be "no." If urban land developers are willing to pay more for the property than it is worth for farming purposes and this fact is reflected in the price being paid for land currently being sold in the area, the tax assessor clearly has a duty to take this indication of market value into account. The Wisconsin statutes require property to be assessed at its fair market value, and the Wisconsin Supreme Court ruled as recently as about a month ago that the price at which comparable parcels of

property in the area currently are being sold is the best test of the market value of the property being assessed (State ex rel. Markarian v. City of Cudahy, 173 N.W.2d 627 (1970)).

The use of tax policy to achieve social goals is more easily accomplished in a state like Minnesota whose constitution has been construed to permit classification of property for taxation purposes. There have been some attempts to write into the Wisconsin constitution a provision which would permit classification of property for taxation purposes, but these attempts have been met with considerable resistance and so far have failed.

As I indicated previously, there is the possibility in Wisconsin of completely exempting property from taxation. The Wisconsin Supreme Court has said that this meets the constitutional test of uniformity. But complete exemption may be neither desirable nor politically feasible. It is also legally possible to substitute some other kind of tax. This was done in connection with grain elevators, for example, where the tax was imposed not on the value of the property as such, but on the number of bushels of grain handled by the elevator during the year. Since this is not considered to be a tax based on the value of property, the uniformity clause does not apply. There might also be a possibility of

working out some kind of a tax refund procedure as long as the refund is not based directly on the value of the property. This sort of thing was done in connection with the homestead tax relief law for persons over 65 years of age, and this law was upheld by the Wisconsin Supreme Court against attack based on the uniformity clause (State ex rel. Harvey v. Morgan, 30 Wis.2d 1, 139 N.W.2d 585 (1966)). But, in summary, it can be said that the manipulation of property taxes in such a way as to guide land use policies is legally difficult in Wisconsin. It seems better to try to work through the police power, which in turn may have an impact on the amount of property taxes which must be paid.

We turn, then, to that broad category of regulatory powers generally referred to in law as the police power. The basic legal question here is one of fairness--how far can government go in regulating a land use before the impact on particular landowners becomes so great that the courts will refuse to go along with the regulation? As long as the regulatory objective is legitimate and as long as the landowner can make some profitable use of his land, courts will go a long way in upholding land use regulations. But if the owner is unable to make any profitable use of the land, the courts will be likely to say that the regulation in effect is confiscation,

and will either order the regulation to cease or the landowner to be compensated.

The first regulatory power or police power that is likely to come to mind in connection with land use regulation is the power of zoning. It should be kept in mind that any lawful regulation imposed on the use of land is likely to have an effect on the fair market value of that land and consequently on the amount of property taxes paid by the landowner. For example, if a farmer's land can lawfully be zoned for agricultural purposes, even though there may be some demand for that land for industrial or residential use, the value of that land is likely to be depressed below what it would have been in the absence of the zoning. In short, a buyer presumably will look at the zoning, and if the zoning is lawful and not likely to be changed in the near future, it is unlikely that a buyer of land zoned exclusively for agricultural uses will want to pay any more for the land than it is worth for such uses.

Because only lawful zoning theoretically will affect the fair market value of land, it becomes important to determine how far it is legally possible to go in imposing zoning regulations. There has been very little litigation on the question of the constitutionality of agricultural zoning,

so this is largely an uncharted area in so far as zoning law is concerned. But from what I know about zoning law generally, I would agree with Bill Clark's earlier remark about the importance of developing a careful and comprehensive plan of land use for the entire County. It is much more likely that agricultural zoning will be upheld if the courts can be shown that an important social value is being promoted through a zoning process which attempts to direct the development of land according to a carefully developed plan of land uses than if all the rural land in the County simply is zoned agricultural in the hopes that this will somehow retard the urbanizing process.

The extent to which agricultural zoning will stand up in court in particular situations is difficult to say. Perhaps about the only generalization we can make here, in addition to those already suggested, is that the Wisconsin Supreme Court has shown about as great a willingness to uphold zoning regulations as any court in the country. This can be illustrated, for example, by the court's willingness to uphold temporary zoning freezes to allow time for preparation of comprehensive zoning plans (Walworth County v. Elkhorn, 27 Wis. 2d 30, 133 N.W.2d 257 (1965)) and a very recent case in which the court in effect upheld the concept of contract zoning

(State ex rel. Zupancic v. Schimenz, 174 N.W.2d 533 (1970))

even though the courts of a substantial number of states have refused to do so.

The contract zoning concept incidentally might have some implications relative to the problems we have been talking about today, although this is a rather "spur of the moment" suggestion on my part which I have not thought through very carefully. The concept usually involves an agreement between the landowner and some municipal body (in Wisconsin, it would have to be some official or agency other than the ultimate zoning authority, according to the Zupancic case) to the effect that the municipality will rezone the landowner's land or zone it in a particular way which presumably would be beneficial both to the landowner and the public, if the landowner in turn will agree to impose some deed restrictions on his land which the municipality considers to be in the public interest. For example, the Planning Commission might agree to recommend that a particular area be zoned for agricultural purposes only, if the landowners in turn agree among themselves that their land will be used only for agricultural purposes for a period of say 10 or 15 years and if they then put the agreement in the form of restrictive covenants running in favor of the local municipality. The municipality

might in turn zone the land for agricultural uses. There would then be considerable certainty that the land would not be available for development for a number of years, and this should in turn keep the taxes down and enable the farmers to continue using the land for farm purposes, relatively free of urbanizing pressures for a few years.

So much for zoning. Another important aspect of the police power from the standpoint of controlling and regulating urban sprawl is the regulation of land subdivision. It is not quite clear just how far a governmental body can go in imposing restrictions on a subdivider, but it is clear that it is one of the more effective tools which government has had at its command. Most of the regulations presumably should relate to the extra costs which the subdivision is likely to impose on the governmental unit, such as extra school costs, extra sewer costs, extra street costs, and so on. Again, the Wisconsin Supreme Court has been about as sympathetic toward such regulations as the courts of any state (e.g., Jordan v. Village of Menomonee Falls, 28 Wis.2d 608, 137 N.W.2d 442 (1966)).

In addition to zoning and subdivision controls, there are some devices which have been infrequently tested in the courts. One would be the limitation of the number of building

permits issued in a single year. This kind of regulation was knocked down in at least one case.

The device of purchase or condemnation may have to be resorted to under some circumstances, for example, where the objective is to preserve wetlands or wildlife habitat in their natural state. Effective regulations in such a case are likely to impose such a severe economic burden on the landowner that the regulations will not stand up in court. Purchases need not always be of the entire rights in the property but in some circumstances might involve purchase only of development rights. This is basically the approach used in the acquisition of scenic easements.

Finally, there have been some proposals in recent years which seek to combine the use of the police power and the eminent domain power. These are sometimes referred to as compensated regulations. One proposal designed to preserve open space would provide the landowner with a guarantee that he will get the present value of his land whenever it is sold while at the same time imposing regulations on the land to prevent its development for urban uses. This proposal (discussed in 110 Univ. of Pa. Law Review 179) is intended to permit the government to reserve land for open space, including agricultural lands, without immediately going into

a large-scale land purchase program.

All these devices deserve exploration, but it is my belief that a great deal toward solving the land use problems of rural Dane County could be accomplished merely by a more sophisticated use of the traditional devices of zoning and subdivision controls.

Possibilities--Problems and Prospects:

Questions and Discussion

Question from Audience: This question is directed at any panel member. Is there any course of action we might take whereby we might completely eliminate the property tax? There seem to be two concepts of taxation. One is based on what you own, which is not necessarily correlated with your ability to pay. The other concept is the income tax based more on our ability to pay. Why can't we file three income tax forms--one federal, one state, and one to our local municipality, all in lieu of the property tax?

Kasakaitas: I agree that the property tax is a poor denominator for the distribution of the burden of taxation. It is not easily defended. I think though that some form of property tax must remain because we need the discipline of the tax to encourage the maximum development of the resources

that we have. Something has to act as a stimulus and, in a small way, the property tax serves that purpose. Otherwise I would be for elimination of the property tax entirely.

Question from Audience (Walter Fitch): Although the state constitution bars us from taxing uses directly as opposed to by value, why can't we create a value in the zoning itself? By applying a standard a person could be charged for the value added by the zoning change. In this way you would be putting a value into the zoning which then could be reflected in the assessment.

Gaffney: I don't understand your proposal fully but.... I believe the proposal has a certain equity rationale, that is something of value should not be given away. I agree with this. But I'm a little skeptical of the proposal as I understand it, that is that zoning would be floating and you could buy it and apply it to your land wherever it may be. This would not help get the intensive uses clustered together at the center where they can relate to each other. Land title is the existing means of access to land. If we set up this floating zoning concept, we would have a double system of access to land and these two systems would conflict with each other. The zoning system would have a bias in the direction of scatteration.

Walter Fitch: I did not mean that the zoning would be floating and easily bought. It would still be under control and subject to approval by a zoning committee. The difference would be that once you got the zoning, you would be charged for the value created.

Gaffney: That makes the proposal more acceptable to me. I still worry that the tax on zoning might become another tax on development which would tend to discourage people from putting their land to its highest and best use.

Norman Anderson: If this system were used, you would also have to compensate an owner if his land decreased in value. I'm not sure this would be a good thing.

Question from Audience: I would like to comment on the use of the income tax instead of the property tax. I am concerned about the high school tax. I think this is one of the real reasons we are concerned with high property taxes. There is no relation between the value of property and school costs, yet schools are paid for out of the property tax. I have no solution but more state aid taken from the income tax for education would be a step in the right direction. It would have to be a significant increase to affect the property tax.

Werner Doering: Much of the reason for this is the absence

of coordination among taxing bodies. If the state did not already aid education, the property tax would be out of sight. So what we need is a system that gives us some state-wide overall control over all taxes including the property tax by establishing priorities for available revenue from all sources.