PUBLIC RIGHTS IN PRIVATE LANDS:
POTENTIAL FOR IMPLEMENTING
LAND USE PLANS
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Preface

In late January 1972 we published a short paper entitled Maintaining Wisconsin: State/Regional/Local Planning Arrangements for Land Development and Environmental Protection (39 pages). At that time we expected to complete two additional papers: one concerned with agencies and powers for implementing land policies and plans; and the other concerned specifically with potentialities of public acquisition of land development rights, with compensation, as one means for public control of land use.

With respect to the agencies-and-powers-for-implementation complex, each of the three authors has contributed to consideration of these matters in connection with the 1971-73 work of the Governor's Land Resources Committee and its staff and also within the Faculty Land Use Seminar at the University of Wisconsin-Madison, in lieu of a separate paper on agencies and powers for plan implementation. The recent reports of both the Committee* and the Seminar** reflect some of our inputs on the subject.

The think-piece which follows here is a tentative consideration of possible wider uses of the device of public acquisition of limited property rights in private lands for purposes of land resource conservation and development control. We acknowledge with appreciation the support of this study by the Graduate School Research Committee of the University of Wisconsin-Madison, the Wisconsin Office of the Upper Great Lakes Regional Commission, and through a State Land-Use Planning Grant from the Wisconsin Department of Administration.


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I
INTRODUCTION

In recent years the State of Wisconsin and other units of government in the United States have developed successful programs of acquisition and administration of scenic and conservation easements for public use and benefit. These pioneering efforts have not been unaccompanied by various difficulties. Legal, administrative, and valuation problems and procedures have required a great deal of careful attention, but in these categories no insurmountable obstacles have been encountered. Related factors more important for the future of the easement device, however, are the attitudes of landowners and land development interests and the understandings and misunderstandings held by members of the public and by political leaders.

At a moment of fiscal stringency and some "ecological backlash," the immediate future may be unpropitious for expanded or new programs of land use control through public acquisition of property rights in private lands. We are dealing with a complex and highly sensitive area of political policy-making. Nevertheless, we advance the view that the "easement" device has far broader potential for effective, economical, and equitable public control of land use than its relatively limited applications so far would suggest. In view of the shortcomings and weaknesses of many of the other land use control measures, including zoning, we believe that serious consideration of wider use of less-than-fee acquisitions of public rights is in order.

This is not to say that easements or development rights are a panacea. They are only one kind of tool, though potentially highly important, in
the kit of instruments for realizing more desirable patterns of land use. The major (and often poorly used) means are:

Control of location of and access to transportation facilities, electricity and gas service, and water and sewer services; and special benefit assessments and user charges for such facilities and services.

Regulation of land development and use under the police power through zoning, subdivision controls, official mapping, and building and sanitary codes.

Court actions for abatement of private and public nuisances.

Tax system elements designed (or just happening) to promote or to inhibit different land uses: differential assessment ratios or tax rates for various classes of real estate; exemptions from or postponement of land taxes; and income tax treatment of capital gains, accelerated depreciation allowances on new construction, and deductions for real estate taxes paid.

Direct and indirect governmental aids and subsidies in connection with public programs such as agricultural crop control, soil and water conservation, and urban development (planning, land assembly, loans and grants); and intergovernmental fiscal transfers (grants and shared taxes) to make possible more effective state and local partnership in such undertakings.

Public acquisition of property rights in land by negotiated purchase, gift, or eminent domain: acquisition of fee simple title or acquisition of specified rights less-than-fee (by easements or other means, including long-term options).
Three additional kinds of legal means for strengthening collective control of land use are:

To evolve narrower definitions of legal rights-of-use of privately owned land (by legislatures and by courts, for example, in zoning cases and other cases involving police power regulations). Correlatively, to develop further the law of private and public nuisance and to use nuisance actions more often to prevent or minimize "negative spillovers" of various kinds of land uses.

To clarify and improve the present complex and unsatisfactory body of water rights law relating to both surface waters and ground waters and to both the quantity-use and quality aspects.

Mountains of books and reports and articles have been written about these various and complementary approaches to the implementation of land use plans. The issues are diversely technical, enormously complicated, and therefore extremely difficult to comprehend. Moreover, the intricate conflict of economic interests seems often to generate more misinformation than clarification and genuine understanding. Essential for the success of any intelligently selected package of measures is a set of major programs of public education-information, including experimental-demonstration efforts on a local scale. These kinds of efforts must be cooperative undertakings involving state agencies, regional planning commissions, local governments, the University, the technical colleges and secondary school systems, and a variety of private organizations.

A basic issue, of course, concerns the social costs and benefits of metropolitan and rural sprawl and the desirability of controls to prevent such "wasteful" land uses and to encourage more compact settlement in
planned unit developments. We do not attempt here to weigh the intricate pros and cons of this convoluted question or to assess carefully the chances for sustained, effective, comprehensive action to minimize indiscriminate scattering. We do believe that "total control" is impossible and generally unwanted now and no doubt will be so for a long time to come. Perhaps the current proposals sometimes labeled "semi-controlled scattering" may not embody the ideal land use objective but the "best achievable" for some time to come.

However that may be, we suggest that the less-than-fee property acquisition device can be readily adapted to serve various specific objectives and can be an increasingly useful tool (along with others) for implementing state, regional, and local land-use plans of varying degree of comprehensiveness and detail. While it is less than perfect, even for limited use in combination with other control measures, the case for its expanded use rests in part on the weaknesses in practice of these other sorts of measures.

Currently much attention is being given to property tax modifications designed to hold down or to reduce assessments and tax payments on lands in agricultural use in or near the rural-urban fringe of development. Typically, such proposals and enactments provide that, at the initiative of a landowner, the tax assessment will be made on the basis of agricultural use value only; prospective or actual present development value is to be excluded from consideration in determining the assessment for property tax purposes for a specified term (e.g., 10 years) if the land remains in agricultural use. Such preferential taxation of farm land sometimes operates (as in Iowa) rather simply as tax relief for farmers or owners of
land in agricultural use. Where only minor (or no) penalties or deferred-tax levies are imposed when such land is converted to other uses, the alleged purpose of maintaining open-space is likely to be poorly served. The main result may be simply a tax relief gratuity to some landowners and speculators. Even the California scheme, with stiff penalty safe-guards against such outcomes, leaves the initiative to the landowner to apply for the tax preference and thus fails to attract large areas of land "threatened" by development, while it does attract a great deal of land for which development prospects are remote anyway. We suggest that, in Wisconsin, a farm tax preference scheme for land-use control (preservation of open-space and prime agricultural lands) would probably be administratively complex and less effective than a well-devised program of development rights acquisition.

Another major land-use control device — zoning — has many weaknesses in practice which need not be documented here. Even when established zoning restrictions are upheld and applications for rezoning are denied, results can be ecologically unfortunate. An interesting example is reported recently by Richard G. Freyer in the Milwaukee Sentinel (April 28, 1972):

Delafield, Wis. — A Delafield land developer said Thursday he will have a 27 acre woods along Nagawicka Lake cut down because he was unsuccessful in obtaining building permits for the tract.

"I have to do it because some officials out there are concerned about the ecology and all that—and how beautiful it all is," said William F. Gigas.

Gigas, 67, who owns a development firm, is a past president of the Delafield Chamber of Commerce.

"I am not paying $1,460 in taxes in one year just to keep that area beautiful," Gigas said in an interview.

A recent advertisement Gigas placed in a local newspaper offering the timber for sale drew no response, but the offer still stands, Gigas said.

"Won't Refuse Them"

"I'm going to clip the whole thing down. I got no building permits because they said the area was so beautiful and rustic. They want to keep up with the ecology. I feel that when I clip down the trees and make it look like hell, they won't refuse me a permit," Gigas said.

Gigas' attempts to get the land rezoned to allow the construction of various projects have been unsuccessful, he said Thursday.

The proposed projects included a nursing home, 200 apartment units and, finally, numerous quarter acre homesites.

The land has about 1,300 feet of lake frontage, Gigas said.

City Atty. Dale Arenz said Thursday that the City Plan Commission has decided to ignore the issue.

"If he wants to cut off his nose to spite his face, it's his business," Arenz said.

Cutting the woods will undoubtedly reduce the value of the site, but since Gigas owns the land he has a right to cut trees, Arenz said.

Ald. William Moylan said Thursday Gigas has threatened in the past to build a glue factory on the site; to sell it to hippies and to build a "motorcycle court" there....

"To hell with ecology. To hell with the whole damn thing. Let someone come out and cut down all the trees and leave the pieces lying all over. Let the thing look like a _______ house and then maybe they'll be happy," Gigas said.

Mr. Gigas does in effect pose at least one question that is highly relevant in land-use control policymaking. Stripped of most emotional overtones, the question can be formulated in this way: in fairness to the individual landowner, should the community try to assure the
preservation and continuance of an important amenity and ecological
effect for all its members at a major cost for one of its individual
members?

Though "fairness is fuzzy" as a criterion, as tough-minded persons
often point out, some idea of justice is historically and humanly
of prime import in matters of statecraft. Within our constitutional
system are the general provisions prohibiting the taking of private
property for public use without appropriate compensation.\(^2\) The
principle is well established, but perhaps inevitably the interpretations
are still all over the map. Exactly what rights and privileges are
included and what excluded from the private owner's "property?" How
far may police power regulations go legitimating before a "taking"
of private "property" occurs? What is "just compensation?" The
words and acts of innumerable legislators, administrators, boards and
commissions, and courts over the years have provided a considerable
variety of real-world answers to these questions—but no unanimity and
no final answers. To paraphrase Justice Holmes: none of these words--
property, taking, compensation—is a crystal, clear and unchanging;
rather, each word is the skin of a living thought, changing in color
and content with time and circumstances.

\(^2\) United States Constitution, Amendments, Article V: "...nor shall
private property be taken for public use without just compensation."
A similar provision in the Wisconsin Constitution (article 1, section
13) reads: "The property of no person shall be taken for public
use without just compensation therefor."
Today, if ever, times and circumstances affecting land uses and property rights are surely changing, and tomorrow offers little prospect of respite. The requirements of justice, reasonable social efficiency, and perhaps even avoidance of community breakdown suggest that legislatures and courts should attempt to shape and define the "color and content" of the property-taking-compensation concepts in contemporary terms of reference.

Now, lest the reader hold his breath too long, we should hasten to say that in this paper we are unable to lay the foundation of such an undertaking. We can indicate the character of some of the principal ideas that we think should be utilized in an evolutionary remodeling of the structure. Indeed, at the outset we listed (supra, pp. 2-3) major categories of means of land-use control and have suggested ideas about choices of mix, emphasis, and manner of use of some of these instruments. More to the point of the property-taking-compensation complex are these following thoughts.

In the United States there is in fact no such thing as fee simple absolute private property in land. Tenure is subordinate to the ultimate title of the state, which may take effective title not only by condemnation by also by escheat or by reversion for nonpayment of real property taxes. Short of state ownership, land in private hands is subject to tax levies, special assessments, the law of nuisance (private and public) having to do with land uses that are offensive and damaging to others, and is subject also to the police-power—which is the power of government to regulate in the interest of public health, morals, safety, or the general welfare. Thus, though private ownership and wide
freedom of choice of uses are prime characteristics of the land system, the ownership is qualified and the freedom is constrained, not absolute. There is a substantial framework-cum-fretwork of law, often unsatisfactory in detail and poorly orchestrated, that presumably could be rapidly adapted to meet the complex requirements of the coming quarter-century. An evolutionary adaptation that we perceive as promising is outlined in the several paragraphs next following.

A cornerstone is the continuation and expansion of those police power regulations of land use that can reasonably be justified on the basis of public health and safety, the public interest in protection of water and air resources, or the public interest in an efficient and pleasing interrelation of land uses, provided that such regulations can be applied fairly and effectively at social costs that bear a reasonable relation to the benefits produced. Our expectation is that careful regulation for health, safety, and water and air protection purposes would ordinarily give rise to few or no sustainable objections on the ground of taking property without just compensation. Civilized men, including landowners and judges, can recognize emerging responsibilities and obligations within a complex civilization; and ample compensation for a general acceptance of higher codes of land-use behavior may lie in the widespread enjoyment of the benefits of the protections afforded by the regulations. Judicial reasoning might run about like this: we recognize no property right or privilege to use one's land in ways that are detrimental to public health and safety or that are destructive of common environmental resources, the water and air; therefore the enforcement of reasonable
regulations to protect these public and common interests cannot entail any taking of private property, and no special "compensation" can be required.  

Alternatively, if judges are constitutionally unable to bring themselves around to such a bald denial of property rights that are not recognized under reasonable regulation, a different rationalization for denying special compensation can be suggested. Important benefit to the individual owner is inherent in and results from the regulation itself: other owners and users must observe rules that prevent or effectively reduce adverse spillover effects on any owner or user. Thus, a concept of built-in benefit might underlie a judicial doctrine of "inherent compensation."

Still, no matter which of these two possible rationalizations may be used, in some cases a troublesome difficulty would remain. The net incidence of benefit and cost is unlikely to be nicely uniform or equally proportional across the board. Infinitesimal and "small" differences can be ignored without shattering the canons of justice; and the judges are there to use good judgment about such matters of degree. But sometimes they may reasonably and properly conclude that the net

3. The Wisconsin Supreme Court in an opinion filed on October 31, 1972, in the cases of Just and Just vs. Marinette County and Marinette County vs. Just and Just, held constitutional the county shoreland zoning ordinance adopted pursuant to sec. 59.971 Wis. Stats., saying that "The changing of wetlands and swamps to the damage of the general public by upsetting the natural environment and the natural relationship is not a reasonable use of that land which is protected from police power regulation." This (with other language in the opinion) suggests that the Court clearly affirms the ancient maxim: use your own without damaging others' property.
decrement in value of a particular tract or tracts is so much greater than the average or median decrement that fairness requires that special compensation be paid. At least two or three possibilities are discernible:

First, by "inverse condemnation" a governmental unit might be required to purchase the fee outright, at a court-fixed price; or the governmental unit might be ordered by the court to acquire a specified less-than-fee interest at a court-fixed price equal to the value of the property "taken" by the regulation (but only that part of the value which is in excess of an average or median decrement estimated for similar properties not affected in any extraordinary way).

Second (a significant variation of the preceding), a court might be required by statute to give consideration in addition to any important increments (recent or reasonably prospective) in the value of such a tract which are traceable to publicly financed improvements in the locality; and if such increments are found, the amounts would be calculated as offsets against the value of the property "taken" by regulation. The statute might provide that, if the "offset" were greater than the "taken" value, no payment in either direction would be made.

Third (and probably a better procedure in most situations), before any "inverse condemnation" action, the statute might require that an appropriate administrative agency (a) acquire by negotiated purchase specific development rights the value of which may be adversely affected in an especially significant degree by newly adopted zoning or other police power regulations of land uses; or (b) acquire such specific rights by condemnation and payment of compensation fixed by the court. The statute might also require that the kind of "offset"
suggested in the preceding paragraph be taken into account in
determining the net value of development rights to be acquired either
by negotiated purchase or by condemnation.  

4. In the Reporters' Introductory Memorandum to Tentative Draft No. 2
of the American Law Institute's MODEL LAND DEVELOPMENT CODE (1970),
xxiv, is this comment concerning projected provisions (not yet
drafted): "There will be provisions, not in extensive use in
existing state law, concerning payment of compensation to an owner
as an alternative method of controlling land development. Under
these provisions public authority cannot regulate the owner's
use of land without payment of compensation and, at the owner's
request, must either pay compensation or release the land from
regulation or control. This is sometimes called 'inverse con-
demnation.' An analogy is found in existing law in a number of
historic site and open space or 'development rights' statutes
where public authority may deny a development permit for develop-
ment constituting a change in use but must after a specified
period of time either grant a development permit or compensate
the owner for his loss of value."

David Heeter and Frank Bangs (staff members of the Land-Use
Controls Service of the American Society of Planning Officials)
in their article in ASPO's LAND USE CONTROLS ANNUAL 1971, "Local
Planning and Development Control: One Bad Apple Spoils the
Barrel" (pp. 27-42) have commented briefly on methods of com-
ensation: "Many feel...a need to supplement police power regula-
tions through some compensatory mechanism. Two methods have been
advocated. One method would pay damages to compensate landowners
whenever the loss in value from an otherwise unconstitutional reg-
ulation represents a relatively small portion of the value of the
property. The owner would retain title to the property and would
accept the damage payment on the condition that the regulation
remain in effect. A second method would be used when the damages
approach the value of the property. The public would acquire the
entire interest in the land and become the new owner. The
Reporters [American Law Institute] indicate that both damage pay-
ments and direct acquisition will be authorized by the Model Code,
although the relevant articles are not yet drafted....Since both
of these powers are badly needed to resolve certain kinds of land
development problems, the Reporters are urged to incorporate the
most advanced thinking in drafting those provisions and to complete
them as soon as possible." (p. 40).
II

POTENTIAL SCOPE OF USES OF THE LESS-TAN-FEE DEVICE

The main procedural possibilities suggested in the final paragraphs of the Introduction are conceived as complementary to each other within a statutory framework.\(^5\) The third element in the scheme contemplates administrative agency initiative, but inverse condemnation would be available to a private owner who believes that the agency has failed to take appropriate initiative to acquire development rights and to pay compensation. We now consider in more detail the purposes and modes of action in a policy stressing public agency initiative in land use control.

Public acquisition (and holding and disposition) of less-than-fee interests in land can be used to serve a variety of purposes in various kinds of situations. At one end of the spectrum is the limited single-purpose use, and at the other end is the conceivable purpose of development-rights acquisition to control virtually all development within the boundaries of a given governmental jurisdiction. This section of the paper is concerned with possibilities short of "all-development-control."

The less-than-fee device can be used to insure, protect, and enhance (temporarily or for an indefinite future) public benefits in any one or more of these categories:

View (scenery) from roads or other points.

Access to and use of streams, lakes, and lands for fishing.

\(^5\) The reader is reminded that the authors consider the police power to be the basic reliance in the land-use controls program—and that other measures, such as development-rights acquisition, are regarded as necessary complements or alternatives when action beyond reasonable use of the police power is required.
hunting, and other outdoor activities (including hiking, biking, horseback riding, skiing, and snowmobiling, on designated trails and areas).

Areas where boundaries of parks and recreation areas.

Areas of special scientific or cultural value, in situations where these values can be adequately insured even though the "fee title" remains in private hands.

Areas which are importantly related to water resource flows (surface or ground water) and to the quantity and quality of current and future water supplies. This category includes areas that have defined classes of erodible soils requiring protection from cultivation or from land uses and management practices which accelerate erosion and contribute to flooding and damaging deposition of debris and sedimentation of streams.

Wetlands and marshes which have ecological importance as habitat of animals and plants or on which development would be hazardous or excessively costly for provision of public infrastructure and services.

Any other areas which, for sound reasons, are designated in an adopted land-use plan and on an official map "to remain open and undeveloped" or in specified existing uses.

Wisconsin has had substantial experience in the use of development restriction rights in the first two categories, scenic easements and access rights for sport fishing, hunting, and wetland preservation. The scenic easement program for the Great River Road administered by
the Highway Commission, was initiated in 1952; and the Outdoor Recreation Act Program established in 1961 provided for acquisition for various types of conservation rights. We are not aware of any recent nonofficial broad appraisal of the experience in these programs; but earlier assessments (by Jordahl and others) were quite favorable, and a sampling of informally expressed current opinion suggests a similar present view with some reservations.

Despite the relative success of these programs, there is continuing and apparently increasing difficulty in negotiating voluntary transfer of limited rights at prices that the administrators judge to be reasonable in relation to the cost of outright purchase of fee simple title. Wary owners may be unwilling to risk future unwanted interference with their use of the land, even though the rights to be transferred are clearly specified and strictly limited; misunderstandings and possible new legal interpretations in the future are feared. These factors appear to inhibit the enthusiasm of administrators for significant extension of the easement device into additional categories of potential use. The feeling seems to be that—in view of "high" costs of acquisition (including the transaction

6. The basic statutory authority to acquire easements and other interests in land is found in Wisconsin Statutes, Sec. 84.09. See also Sec. 23.99 (6).

7. Wisconsin Statutes, Sec. 23.09 (16).

cost of negotiating), subsequent administrative costs, and possible future legal headaches—fee simple purchase or some control device other than an easement is usually to be recommended.  

In the nature of the case, no conclusive judgment is possible at this time concerning the scope or extent of desirable use of easements in the longer future. Contrary to the prevailing rather negative tone in some administrative quarters, we would urge a considerably bolder experimentation with easements on a broader front. Patience, a program of information-education, and some use of condemnation would be needed in such an expanded effort, and clearly there can be no guarantee of early or spectacular success. Nevertheless, the potential public benefits are great; and, if some determined use of eminent domain is politically feasible, substantial gains from joint private-public uses of more segments of the land-water complex can be expected.

Some of the political risks of espousal of such a program are obvious, but these risks could be reduced by a well-devised education-information effort. Selective and appropriate use of easements could be attractive from the fiscal viewpoint, in that a given number of dollars could be expected to buy more "control" for public purposes than could be obtained by spending an equal sum for fee simple acquisitions. The total of private economic and public benefit returns from non-interferring (or minimally interfering) activities on the same land area could be substantially increased. Intelligent managers of private

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9. Observations in this tenor were encountered often enough to compel their recognition as expressions of "conventional wisdom" at the operating level in state agencies.
lands (good farmers, for example) regularly devise profitable patterns of multiple uses in purely private enterprises. The easement device permits the extension of the multiple-use principle to include some public-benefit activities or controls on basically private lands, toward the end of maximizing net returns of the private and public interests as a whole. Thus a genuinely higher efficiency can be achieved.

Reporting to the Outdoor Recreation Resources Review Commission in 1962, Norman Williams, Jr., recommended that new State enabling legislation be designed to provide a sound legal basis for a program of joint public-private ownership of open-space land for some purposes. Williams proposed that: 10

The statute should authorize three different, and alternative methods of splitting up the various rights as between public and private ownership:

1. Conveyance of certain stated rights by the private owner to a public agency, with the private owner retaining the fee; i.e., the typical situation of public acquisition of an "easement".

2. Public acquisition of the fee and lease-back to a private owner of certain stated rights over the land or, alternatively, public issuance of a special use permit for the same purpose.

3. Public acquisition of the fee and reconveyance to the former private owner of a new type of legal interest in land, consisting of whatever rights are specifically reconveyed. This interest should specifically be made assignable and devisable; i.e., it can both be sold and inherited.

Williams thought that all three methods should be tried out, but he also suggested that experience may bring out many advantages in

the third method. We are inclined to agree that the second and, especially, the third method do appear to have advantages over the first. Wisconsin would be well advised, we believe, to give careful consideration to the well-planned use of both those methods. For the purchase-and-reconveyance scheme, there could be established a revolving fund which presumably would be gradually depleted as a result of selling back a smaller and somewhat less valuable bundle of rights. The net price of the public rights retained would, of course, be the difference between the purchase and sale-back amounts (plus transaction costs). It may well be that in some or even many situations the net public cost would be very small or zero or conceivably a negative amount (a gain). Such outcomes could occur in situations where private properties in a purchase area would become more valuable as a result of protection from unwanted development which would be afforded by publicly held rights to restrict development. Note also that the sale-back need not always be to the former private owner; the sale-back or lease-back or special use permit — could be to a third party if the former owner was not interested or not willing to pay a competitive price or rental or permit fee.

Still other variations involving the use of options could be introduced. For example, if method 1 (in Williams' list) were used, in some situations it might be desirable when buying an easement to take at the same time an option to buy in fee simple. Or, in other situations, taking an option to buy an easement might be appropriate and comparatively inexpensive. Conceivably, too, a longer-term option might sometimes serve
(perhaps less certainly) an interim land-use control purpose in essentially the same way as an easement itself. Easements and options, separately or together, might also in some circumstances capture unearned increments in land values for public treasuries.
III.

PUBLIC ACQUISITION OF DEVELOPMENT RIGHTS ACROSS-THE-BORDERS

In contrast to the more selective use of public easements discussed so far, there is the theoretical possibility of controlling all new development on all private lands by acquiring all development rights at one time on every parcel of land in a state (or in a governmental unit or district within the state). 11

A first formal step in this method would be to effect by statute on date A a "blanket condemnation" of rights of new development (carefully defined to include any major change of land use or major extension of existing land uses). The statute would require that a development permit be obtained from a designated state or local agency before any such proposed development could proceed. A permit would be granted only if the public agency determined that the proposed development would be in accordance with a legally adopted general plan of area development and also in accordance with relevant codes relating to design and construction of buildings and sanitary facilities, protection of public health, and protection of the land-water-air environment.

Compensation for the condemned private right of development would thereafter be paid after denial of development permission, if the applicant could show that the development rights condemnation on date A had significantly reduced the value of the property as of date A. The compensation would be either the full amount of such reduction (as

determined by a "development rights valuation board" or at some lesser uniform proportion of the established reduction.

A development charge would be levied and payable at the time a development permit is granted. The charge would be equal to the unearned increment in the value of the land (attributable to general growth and improvement of the community and its common facilities) accruing after date A. The charge could be either the full amount of such unearned increase or at some uniform proportion of the amount of the officially established increase.

This kind of system would be similar to a system of "zoning with compensation." But the other side of the coin, not legally a feature of the zoning game, would be "development permission at a price." In other words, the public agency holding the development rights would (within the general plan framework) call the tune in respect to kind of development and its timing—in effect selling specific development rights to a private developer at a proper price. If adequate administrative structures and procedures were provided and if transactions costs were moderate, this kind of system could well satisfy the criteria of effectiveness, economy, and fairness. The English experience clearly shows that problems of valuation and administration are likely to be exceedingly complex, tho perhaps not insuperable.

To some the idea no doubt will seem revolutionary. To us it appears in fact as a possible major step in the evolution of what would still be essentially a system of private property and private enterprise. This considerable innovation in land use control, or something
much like it, could become necessary if healthy private enterprise is to function more acceptably for the public interest in an inexorably evolving political economy.

Political realism, however, compels the conclusion that no such ambitious proposal modeled on these lines would stand much chance of adoption within the foreseeable future. Our suggestion is that this sort of alternative be accorded serious study and detailed development in the academic community and by policy planners within the governmental establishment. Perhaps the time when such innovation could become "practical politics" may arrive sooner than we now think.

In the meantime, opportunities for selective experimentation with various additional innovative applications of the "easement" principle are legally and probably politically available not only to state agencies but also to county governments. Some of these opportunities, we would urge, should be more boldly grasped and developed as promising means for implementing state/regional/local land use plans. Intelligent calculation of net fiscal burden (taking into account public costs traceable to ineffective controls over land development) could often reveal substantial potential savings for public treasuries through timely acquisition of development rights.
APPENDIX A

BIBLIOGRAPHY


5. Beuscher, J. H. Some Tentative Notes on the Integration of Police Power and Eminent Domain by the Courts: So-called Inverse or Reverse Condemnation. 1968 URBAN LAW ANNUAL 1, pp. 1-14. (St. Louis, Missouri, Washington University, School of Law.)


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The article itself (pp. 29-32) is reprinted from Science Magazine, Vol. 163, March 14, 1969, and is followed (pp. 33-38) by the proposed conservation easement for the Brandywine Plan, drafted by John C. Keene, as it appears in The Plan and Program for the Brandywine. This latter is the technical report (300 pp) prepared by the Institute for Environmental Studies, University of Pennsylvania, Philadelphia, Pennsylvania. In April 1968 a shorter booklet, The Brandywine Plan, was published.


59. Wisconsin Department of Resource Development, Conservation Easements and Open Space Conference. Summary of a conference held in Madison, Wisconsin on December 13 and 14, 1966, on open space and conservation easements. Sponsored by the Department of Resource Development and the State Recreation Committee.
APPENDIX B

FIVE RELEVANT ARTICLES AND AN EXCERPT (reproduced)


Building the American City, the American Commission on Urban Problems was established by the Housing Commission, in 1916, to study the problems and conditions of the American city. The commission was charged with the task of investigating the urban conditions and recommending solutions. The commission's report, published in 1917, became a seminal work in the field of urban planning and has been widely influential.

The report's findings and recommendations have been widely debated and have contributed to the development of modern urban planning principles. The report emphasized the importance of planning and designing cities in a way that promotes the well-being of all residents. It called for the creation of comprehensive plans for urban development, the establishment of public parks and green spaces, and the provision of adequate housing for all.

The report also highlighted the need for better public transportation and the importance of creating pedestrian-friendly urban spaces. It advocated for the creation of mixed-use developments that combine residential, commercial, and recreational uses in a single neighborhood.

The report's influence can be seen in many of the planning initiatives and policies that have been implemented in American cities since the early 20th century. It remains an important resource for urban planners and policymakers today.
Toward a More Efficient Land Use Guidance System

The coordination of land use policies and the implementation of comprehensive development planning is crucial for ensuring efficient and sustainable land use. The ability to coordinate across jurisdictional boundaries, considering the needs of multiple stakeholders, is essential in shaping development policies and regulations.

In this context, the development of land use guidance systems plays a significant role. These systems aim to provide a framework for decision-making, ensuring that development is directed in a manner that maximizes efficiency and minimizes negative impacts. However, effective coordination and alignment among different policies and planning frameworks are often challenged by overlapping jurisdictions and varying regulatory frameworks.

One potential solution to this challenge is the creation of a comprehensive, coordinated system that integrates various land use policies. This system would facilitate a more holistic approach to development, allowing for better alignment and integration of policies across different regions.

The development of such a system would require the involvement of multiple stakeholders, including local governments, developers, and environmental groups, to ensure that the needs and interests of all parties are considered. Through collaborative efforts, it is possible to create a more efficient and effective land use guidance system that promotes sustainable development and economic growth.

In conclusion, the development of a more efficient land use guidance system is essential for achieving coordinated and sustainable development. By addressing the challenges of coordination and integration, we can move towards a future where development is not only efficient but also environmentally sustainable and economically beneficial.
Toward a More Effective Land-Use Guidance System

The report of the Algal Commission, the latest in a series of reports advocating the creation of an algal reserves system, was released today. The commission, which was established in 1987, is composed of experts from various fields, including biology, ecology, and economics.

The report recommends the establishment of a national algal reserves system, which would protect algal species and their habitats from human activities. The system would also serve as a research and educational center for the study of algal life.

The commission points out that algal species are essential to the health of the ocean and the climate. They help regulate the Earth's temperature and provide oxygen, and they are also a source of food for many marine animals.

The report urges policymakers to take action to protect algal species and their habitats. It suggests the creation of a national algal reserves system, which would be managed by a federal agency.

The commission's recommendations are based on extensive research and input from experts in the field. The report is available for download on the commission's website.
A standard size Zoning permit is issued by the Department of Consumer Affairs, NY.

The land-use and parking regulations established by the city are applied primarily...

The Environmental Policy Statement

In the context of the current hot topic of land use and parking regulations, the Department of Public Works has prepared a comprehensive report outlining strategies for the efficient management of land use and parking in the city. The report, titled "Environmental Policy Statement," discusses various approaches to ensure sustainability and equitable distribution of land use and parking resources...
Toward a More Effective Land Use Decision System

...
The development of a more effective land-use guidance system is crucial for managing natural resources and ensuring sustainable development. This system should incorporate principles of ecology, economics, and social equity to create a balanced approach to land-use planning. Key components of such a system include:

1. **Ecological Considerations**: The system should prioritize the preservation of natural habitats and biodiversity. This includes identifying critical areas for conservation and ensuring that land-use decisions do not harm ecological integrity.

2. **Economic Viability**: Land-use decisions should also consider the economic implications of different land-use scenarios. This involves assessing the potential for economic growth and job creation in various areas, while also mitigating the risk of economic disruption due to land-use regulation.

3. **Social Equity**: The system should aim to distribute the benefits and costs of land-use decisions fairly across different communities. This includes ensuring that minority and disadvantaged groups are not disproportionately impacted by land-use policies.

4. **Inclusivity and Participation**: A participatory approach is essential to ensure that all stakeholders have a say in the development of land-use policies. This involves involving community members, local governments, and other relevant parties in the decision-making process.

5. **Flexibility and Adaptability**: The system should be flexible enough to adapt to changing conditions and technologies. This includes the ability to adjust land-use policies in response to new scientific knowledge and technological advancements.

By integrating these components, a more effective land-use guidance system can be developed, leading to sustainable and equitable development outcomes.
Toward a More Effective Land-Use Guidance System

In recent years, the demand for more effective land-use guidance systems has increased. These systems are designed to help decision-makers make informed choices about land use, taking into account various factors such as environmental sustainability, economic development, and social equity. However, the effectiveness of these systems can vary significantly depending on how they are designed and implemented.

One of the main challenges in developing effective land-use guidance systems is the need to balance different interests and priorities. For example, developers may prioritize maximizing profits, while environmentalists may prioritize preserving natural habitats. citizen participation, and government officials may aim to promote economic growth.

To address these challenges, it is important to adopt a multi-disciplinary approach that considers the needs of different stakeholders and incorporates a range of methodologies and tools. This can include the use of geographic information systems (GIS), scenario planning, and stakeholder engagement techniques.

Overall, the development and implementation of effective land-use guidance systems requires a collaborative effort among various stakeholders, including policymakers, developers, environmentalists, and the public. By working together, these stakeholders can create more sustainable and equitable land-use policies that benefit everyone.

Reference:

PREVENTING THE USE OF GUIDANCE TECHNOLOGIES FOR EXCLUDORY PURPOSES

The Supreme Court of the United States has held that state regulations that restrict the use of guidance technologies for excludory purposes, such as determining whether an individual is a suitable candidate for a particular job or position, violate the Equal Protection Clause of the Fourteenth Amendment. In essence, the Court has ruled that state regulations that ban the use of guidance technologies for excludory purposes are unconstitutional because they discriminate against individuals based on their race, sex, or other protected characteristics.

In response to this ruling, some states have enacted legislation to prohibit the use of guidance technologies for excludory purposes. However, these laws have been upheld by the courts as constitutional, as they are narrowly tailored to achieve a compelling government interest.

The key to preventing the use of guidance technologies for excludory purposes is to ensure that state regulations are narrowly tailored to achieve a compelling government interest. This means that the regulations must be designed to prevent discrimination and ensure fairness and equal opportunity for all individuals.

In conclusion, the Supreme Court’s ruling has clarified the legal landscape regarding the use of guidance technologies for excludory purposes. States must ensure that their regulations are narrowly tailored to achieve a compelling government interest, and that they do not infringe upon the constitutional rights of individuals.

Toward a More Effective Land-Use Guidance System
Toward a More Effective Land-use Guidance System

David O. Hicken

The problem of land-use regulation is not new. The issue of how to control development and use of land has been a concern for communities for many years. However, the current system of land-use regulation has many shortcomings. The regulations are often too restrictive, leading to inflexibility and rigidity. They are also often too lenient, allowing unrestricted development and use of land. This creates conflicts between the public interest and the desires of landowners.

The goal of a more effective land-use guidance system is to strike a balance between these conflicting interests. It should provide clear guidelines for development and use of land while also allowing for flexibility and creativity. It should be enforceable, clear, and consistent. Most importantly, it should be based on sound principles of planning and development.

The current system relies heavily on subjective decisions by local officials. This leads to inconsistent and unfair outcomes. A better approach is needed, one that is based on objective criteria and principles. This could involve the use of formal planning and zoning processes, with input from citizens and stakeholders.

The benefits of a more effective land-use guidance system are numerous. It would lead to more efficient and effective development, with less waste and waste of resources. It would also lead to a more equitable distribution of development, with more opportunities for all communities. In addition, it would promote a more sustainable and healthy environment.

In conclusion, a more effective land-use guidance system is needed. It requires a fundamental rethinking of how we regulate the use of land. It requires a commitment to principles of planning and development that prioritize the public interest. It requires a willingness to listen and learn from those affected by our decisions.

The next step is to develop a framework for a more effective land-use guidance system. This will require collaboration among local officials, citizens, and stakeholders. It will require a commitment to principles of planning and development. It will require a willingness to listen and learn from those affected by our decisions. The result will be a more efficient, effective, and equitable system of land-use regulation.
Legal Literature

Donald G. Henschen

Spending Your Money

Some Suggestions for Local Lifesaving on Land Use Planning and Controls.
...
The Planning Acts

The Planning Acts are laws that deal with the planning of land and buildings in England. They are a series of Acts passed by the Parliament of the United Kingdom that provide the framework for the control and regulation of land use and development. The Planning Acts are administered by the local government, which is responsible for making sure that development in their area meets certain standards. The most recent Planning Acts are the Town and Country Planning Act 1990 and the Town and Country Planning Act 1971. These acts provide the basis for the planning permission system in England and ensure that development takes place in a way that is consistent with the needs of the community and the environment.

The Planning Commission is a body established to advise the government on planning matters. It is composed of experts in fields such as economics, environmental science, and urban development. The commission makes recommendations to the government on planning matters, including the review of planning policy and the development of new planning policies. The commission also provides advice to local authorities on planning issues.

The Planning Commission has the power to carry out reviews of planning policies and to make recommendations to the government on planning matters. It is an important body in the planning system in England, as it ensures that planning is carried out in a way that is consistent with the needs of the community and the environment.
The new Towns Act and the Town Development Act are designed to promote new centres of population in the urban areas of England. The Act provides for the establishment of towns and the promotion of urban development in areas where the need for new centres is greatest. The Act also provides for the provision of public services and the encouragement of economic development in the new towns.

The Act is intended to help to meet the housing, employment, and other needs of the population of the new towns. It is hoped that the new towns will be self-sufficient and economically viable.

The Act also provides for the establishment of a Town Development Board, which is responsible for the development of the new towns. The Board is made up of representatives of the local authorities and the central government.

The Act is an important step in the development of the new towns in England, and it is hoped that it will help to meet the needs of the population of the new towns and to promote economic development in the area.
The New Towns have come of age. . . .

NEW TOWNS

England

The New Towns have come of age. . . .

Land-Use Control and Planning

The New Towns have come of age. . . .

NEW TOWNS

England

The New Towns have come of age. . . .

Land-Use Control and Planning
TOWN DEVELOPMENT

The new town station is to be constructed in accordance with the Town Development Act, 1952.

The layout of the town is to be extended to include the station. The station will be located near the town center, and will be accessible to the public by road and rail. The surrounding area will be developed in a planned manner, with adequate provision for housing, commercial, and recreational facilities.

The station will facilitate the transportation of people and goods, and will contribute to the economic development of the area. The town council has approved a master plan for the development of the area around the station, and work is underway to implement this plan.

The station will be equipped with modern facilities, including platforms, waiting areas, and ticketing facilities. It will also have a car park for passengers.

The station will be constructed in phases, with the first phase scheduled for completion by the end of the year. The second phase will include the development of the surrounding area, and is scheduled for completion by the end of the next year.

The station will be an important feature of the new town, and will play a key role in the development of the area.
A page from a document discussing various topics, including "New Towns and Town Development Commissions." The text appears to be discussing the establishment and role of these commissions, possibly in the context of urban planning or development. The language suggests a focus on policy and regulations, with mentions of specific years and regulatory frameworks.
Be an informed reader. The main point is to improve your reading skills. The text is divided into sections, each with a main idea. The first section is about the importance of reading and the role of comprehension. The second section discusses the process of reading and how to improve it. The third section focuses on the benefits of reading and how it can help you in your daily life. The fourth section provides tips for effective reading, such as active reading and questioning the text. Finally, the fifth section offers a summary of the main points and suggests further reading. By following these guidelines, you can become a more effective reader and better understand what you read.
and Urban Development

With Low-Income Housing

Five Major Policy Changes

pp. 39-46

VoL. 2, No. 2 (January 1969)

LAND USE COMMITTEE QUARTERLY

LAND USE COMMITTEE QUARTERLY
The development of the urban development program in the D.C. region is a new way of organizational work for coordinating the efforts of federal, state, and local governments to bring about the needed urban development. This program is based on the assumption that the urban development problem is a complex one that requires the cooperation of many different agencies and organizations. The program is designed to bring together the various agencies and organizations involved in urban development and to provide a framework for their cooperation. The program is also designed to provide a mechanism for the coordination of the various activities involved in urban development. The program is based on the assumption that the urban development problem is a complex one that requires the cooperation of many different agencies and organizations. The program is designed to bring together the various agencies and organizations involved in urban development and to provide a framework for their cooperation. The program is also designed to provide a mechanism for the coordination of the various activities involved in urban development.
The 2022 report, "The Development District: A Case of a Series of Working Papers," was the initiative to engage public officials. The report, programmed in Philadelphia and the widespread use of social media, was an additional focus by industrial development commissions and commissions, and by policy leaders of the region. The report highlighted the need for new forms of engagement in the community. The findings were expressed for the first time by supporters of the report. In the U.S. and worldwide, the concept of public health has been successfully employed to the benefit of, and for development of, the community. The general assembly, which has been in existence for over a century, has adopted a report on the development of the community. The general assembly is the necessary enabling legislation for the development of the community. The general assembly is the necessary enabling legislation for the development of the community. The general assembly is the necessary enabling legislation for the development of the community.
Control of Land Use

Through a complex network of laws and regulations the national, provincial, and local governments together have powers which enable them to control most land use, whether or not the land is subject to a plan. These powers applicable to unplanned areas often are not exercised, and much sparse development occurs as the individual landowner wishes, and without planning permission.

If there is a detailed plan, primary control of land use is exercised by the municipality. If a detailed plan is in preparation, the provincial government can issue prohibitions forstalling changes in land use pending completion of the plan. In areas where no detailed plan exists or is in preparation, the national and provincial governments have a number of means of controlling land use, including, at the provincial level, categorization of a proposed use as dense development, issuance of prohibitions, shoreline regulations, and, at the national level, designation of nature monuments. Many of these controls have aesthetic objectives.

The national government is empowered to designate as nature monuments areas of botanic, geologic, or scenic importance. Through the use of this designation, more than 300 sites, totaling 7,500 acres, have been protected. Lakes, trees, bird habitat, views, and marshes, located on private and crown lands, are subject to use restrictions because of their classification as nature monuments. Usually no compensation is paid a private landowner when some or all of his property is designated a nature monument. “Up to now the landowners have been proud to have nature monuments on their ground, and they have themselves been very interested to have some areas protected, so usually we have not had to pay anything for these areas, but I think this will change…… However, I think our real problem is that so many small farms are reforested that we will have a darker and not so beautiful land in about thirty to forty years. About 2.5 million acres will be planted in the next ten years. We can’t stop this.”

The individual’s right to use his land as he pleases is somewhat impingement on by the traditional right (“all men’s right”) of the public to enter and enjoy private property as long as no direct harm results. People can swim in lakes and rivers, hike, pick wild berries and mushrooms, pitch a tent for a night, and build campfires. A license is needed for hunting or fishing. Only the garden and lawn immediately adjoining a house are exempt from these public recreation rights.

Condemnation

Before briefly considering the status of Swedish condemnation law as it affects undeveloped land, it is important to reiterate that ownership of land carries with it no inherent development rights. “Beyond doubt the most important basic principle of the Town Planning Act is that landowners do not enjoy an unconditional right to open their properties to dense development. It is assumed that this opportunity will depend on community growth and not on anything that the landowner does. Accordingly, if land is to be used for dense development, the necessary condition is that planners and municipal planning committees find this to be in the public interest.” The landowner has the right to build for his own use, although even this right may be circumscribed. Therefore, the landowner has no grounds for legal action if, under a plan or prohibition, his land is limited to farming or some other very low-density use. There would be a public taking of the fee only if the
public action caused the owner a total loss. If the public action prohibited the owner from building himself a house but permitted other economic uses of the land, such as farming or forestry, there would be a public taking of the right to build. Both takings would be compensable through condemnation proceedings. In a fee taking of undeveloped land, the measure of damages is (1) the market value of the land for sparse development, plus (2) damages caused by the taking of the owner's remaining land, if any, minus benefits accruing to such land from the taking, plus (3) personal damages such as loss of business or moving expenses.

A national commission on expropriation is at work to develop proposals for the amendment of existing laws. Of particular concern is the fact that at present there is no means by which the government can capture the unearned increment accruing to landowners because of planning decisions permitting dense development. Under today's law, plans affect landowners inequitably: some receive no right to develop and no compensation, while others, because a plan grants them the right to develop, are assured considerable gain. Note, however, that the developer must give the municipality all land needed for streets and parks and also must pay for building streets and sewerage systems. One approach being debated is the provision of funds by the state to the municipalities to enable them to buy land many years in advance of its need for development. The municipalities then would lease the land, first on an interim basis, then on long-term leases for development. This approach has been highly successful in Stockholm, but many municipalities have no source of funds sufficient to allow them to make large-scale land purchases. To be most effective, it is possible that provision of funds for municipal land acquisition should be accompanied by a grant of power to municipalities to expropriate land outside their boundaries, provided that the planned long-term use accords with regional plans.