

# County Zoning in Wisconsin

## Agriculture, Forestry and Recreation

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OUR failure to deal wisely with our land resources and the unforeseen turn of economic events since 1920 have left us with a heritage of social, economic and political problems which have focused public attention on regulation and control of private land. The cut-over areas of the lake states are confronted with a shrinking tax base on the one hand and continued and even rising public costs on the other. Abandoned farms, shrinking land values, especially the cut-over land, disappearing timber resources and tax delinquency have dried up the resources upon which the general property tax rests. During the period of prosperity and expansion towns, counties, roads, schools and public services were projected on the expectation of more population and a larger tax base. When the collapse came it was not easy to reduce public expenditures, and were it not for the state aids many communities would not maintain the usual services of government.

The costs of government are not abnormally high for the compact agricultural areas found in many counties of the North, but they are excessive in the isolated and scattered settlements. Schools with five or six pupils often cost \$400 a year per child whereas the cost of educating a child in a school of thirty or forty pupils is less than \$40 a year. Roads built and maintained for a few farmers are very costly in terms of the services rendered even though they are only dirt or gravel roads. In one of the northern Wisconsin counties, there are 200,000 acres of land, primarily non-agricultural soil. The few settlers and resort owners had 105 children in school whose education cost the locality and the state about \$18,000 in 1931-32. If these settlers were to be moved out and placed in the agricultural section of the county small additional cost would be placed on the schools in the areas, and \$17,000 might be saved by such translocation of set-

tlers. The savings in three years would equal the assessed value of all the land owned or rented by the parents of these 105 children. The removal of the settlers from this area would also reduce road costs. It is estimated that over \$7,000 could be saved annually. In fact, several towns might be consolidated with profit since the area would be practically depopulated by such a move.

Land planning should not only attempt to correct a situation of this kind but should be in line with the possible trends in land use in the area. Only about twenty per cent of the seventeen northern counties of Wisconsin is in farms. It is reasonable to expect a small increase in this land use, especially while the "back to the land" movement is on, but planning and zoning should guide this "trek" to prevent the recurrence of past tragedies of settlement on submarginal land and of isolated settlement with its excessive costs for public services. The remaining timber in private ownership will tend to disappear but there is evidence that the Forest Crop Law is encouraging private reforestation, selective logging and better silvicultural practices. Private recreational land can do much to add to the taxable wealth of the North even though the area suitable for this purpose is physically and economically limited. Public land, made so by outright purchase for forests and parks, or by reversion through tax delinquency will increase and policies for its proper utilization must be formulated.

### ISOLATED SETTLEMENTS ADD TO PUBLIC COSTS

Little can be done about the high cost of the isolated settlements now existing. Roads are already laid out and maintenance cannot easily be withdrawn. Schools are there and are usually maintained for a small number of children or the children are transported to other schools at public expense. However,

the present movement to the land created a new condition. Abandoned farm houses have been reoccupied and new settlers have come in, many of them with the idea of becoming second Daniel Boones by going as far from civilization as possible. Unlike Daniel Boone, however, they want the benefits of modern civilization—roads, schools, rural free delivery and the services of the county agent and the county nurse. It is reported that a single settler caused public expenditures of \$1,400 in one of the northern counties during the first few years of his stay. On the other hand, if a new settler buys land in or near an old farming community with roads, schools and markets already established he adds little or nothing to the public costs; in fact he helps to bear public burdens as a new taxpayer. It is not settlement as such, but isolated settlement that creates the problem. Some of the northern communities have also found to their sorrow that it takes only a year to establish a "legal residence" entitling the settler to poor relief from the town or the county.

#### POWER GRANTED TO CONTROL LAND USES

The county zoning law proved to be a means for controlling the situation. This law was passed in 1923 primarily to control the utilization of land adjacent to incorporated cities and villages. California has a similar law passed about the same time. Milwaukee County took advantage of this law to zone the area surrounding the city of Milwaukee in 1927. Meanwhile the situation described above was developing in the North. Many people saw the trend. Economists, foresters and others spoke of the need for zoning the marginal areas, but most of them had in mind the classification of land, the urging of settlement on the good land and the reforestation of the remainder. Some suggested the control of the situation by withholding public services such as schools and roads. The document making the most direct reference to zoning as a means of public control over private land was the Report of the Legislature's Interim Committee on Forestry and Public Lands in March, 1929. This said, "Counties must have the authority to declare such a region to be a forest and recreation zone, and be

empowered to prevent the construction of additional roads and schools for agricultural settlement. . . . This committee urgently recommends that counties be given the needed authority for zoning, following a county survey, and that the laws be amended to give county control over development by relocation of settlers and by directing expenditures for roads and schools."<sup>1</sup>

The legislature then in session made several important changes in the law of 1923. It granted counties the power to control agricultural, forest and recreational land in these words: "The county board of any county may by ordinance regulate, restrict and determine the areas within which agriculture, forestry and recreation may be conducted, the location of roads, schools, trades and industries, and the location of buildings designed for specified uses, and establish districts of such number, shape and area, and may also establish set-back building lines, outside the limits of incorporated villages and cities, as such county board may deem best suited to carry out the purposes of this section."<sup>2</sup>

The legislature also inserted a clause providing for the exchange of land acquired through tax deed "for the purpose of promoting the regulation and restriction of agricultural and forestry land," but did not grant power to counties to relocate settlers or to withhold public services.

#### PRELIMINARY STUDIES

However, the first zoning ordinance to be enacted under this law did not appear until 1933, four years after the 1929 amendments to the county zoning act. Meanwhile local public officials were active and public opinion was crystallizing in favor of some form of control over the marginal lands. Surveys were made by the University of Wisconsin, College of Agriculture, on tax delinquency and land utilization and in 1928-29 a joint survey was made by the Department of Agriculture and Markets and the College of Agriculture covering soils, forests and economic data. These surveys have been continued, sometimes as cooperative projects and in other cases as separate publications. The College of Agriculture, however, con-

<sup>1</sup> Pp. 39, 40. See also p. 46.

<sup>2</sup> Section 59.97 Wisconsin Statutes.

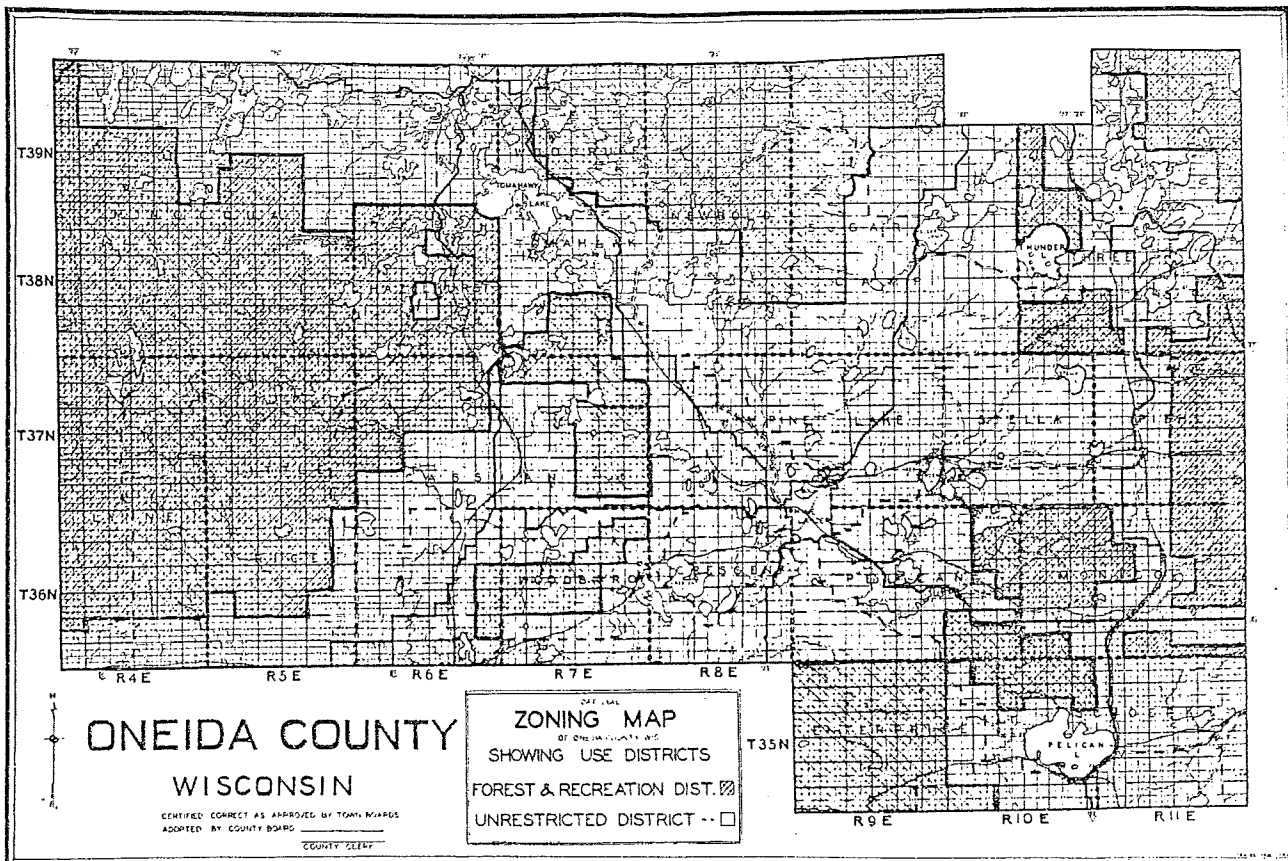
fined itself for a while to making studies of the economic and financial situation of certain counties at the invitation of the county board, thus tying the county administration to the research upon which future action could be based.<sup>3</sup> These studies involved the cooperation of various state departments (Conservation; Education, and Agriculture primarily) with the University. Several of the maps in these bulletins become vital from the standpoint of diagnosing the "trouble areas" of the counties, especially the tax delinquency map, the map showing the location of operating and abandoned farms and a third showing the land in public ownership and under the forest crop law. The tax paying land was easily identified with farms, forests and resorts whereas the tax delinquent land consists primarily of the cut-over land, the poorer soils and the land in speculative ownership. One of these surveys was made in Oneida County and the local papers reprinted a large part of the material from the bulletin.

In 1932 Oneida County was threatened with new and what promised to be unreasonable public costs by the infiltration of settlers into the isolated areas. The board of supervisors sent a request to the dean of the College of Agriculture for a model zoning ordinance. A committee worked with the Conservation Department and the Attorney General's Department in framing the ordinance. Two separate districts were set up: (1) a forestry and recreation district, consisting of several separate blocks of land totaling about 300,000 acres; and (2) an unrestricted district which finally occupied the remaining 420,000 acres when the ordinance was legally enacted.

LAND USE CLASSIFICATIONS

As the name indicates, in the "unrestricted district" all uses of land are permitted. However, in the "forestry and recreation district" the uses are limited to forest industries and summer resorts. The permitted uses are enumerated in the ordinance and are as follows: (1) Sawmills, cutting and storing of lumber, manufacture of maple sugar and the other usual forest operations;

<sup>3</sup> Extension Circular, "Making the Most of Marinette County Land." Seven counties have been surveyed, Marinette, Ashland, Taylor, Oneida, Forest, Washburn and Langlade.



(2) public and private play grounds, golf courses and camp grounds; (3) resorts, camps, and cottages designed for seasonal occupancy only; (4) hunting, fishing, or trappers' cabins occupied only at special seasons; (5) boat liveries; (6) mines, quarries, hydro-electric plants, etc.

Since it is not so much the occupation of the individuals or the use of the land that affects public costs, but the establishment of a legal residence, family dwellings are especially mentioned as a prohibited use. Under another section (10) terms used are carefully defined and "family dwelling" is stated to be "any building designed for and occupied by any person or family establishing or tending to establish a legal residence or acquiring a legal settlement for any purpose upon the premises so occupied."

Farming generally requires a permanent residence for the operator, therefore, it is really prohibited on two counts—occupation and residence. However, it was found that the restricted areas had marshes and natural meadows where hay could be mowed, and wooded areas and cut-over lands with berries. Is the cutting of hay or picking of blueberries an "agricultural use?" It was held that such uses are consistent with the spirit of the ordinance since actual cultivation and residence are not involved. However, in the Vilas County ordinance and the other ordinances now in the process of enactment it was considered wise to allow another use in the restricted zones—the "harvesting of any wild crop such as marsh hay, ferns, moss and berries."

In Vilas County where recreational land is of great importance a third district was provided for, namely, a separate "recreation district." The other districts were called the "forestry" and the "unrestricted" districts. In the recreation district all buildings, lands or premises may be used for any of the purposes permitted in the forestry zone but in addition, family dwellings are allowed. All other uses, including farms, are prohibited. The reason for permitting family residences is that many of the resort owners and owners of summer homes have caretakers who remain on the ground all the year and whose children must have schools. The recreation districts, however, are small in area and embrace primarily riparian lands. Rec-

reation districts are being provided in several of the other county zoning ordinances now being drawn up.

Since the ordinance could not be made retroactive, farms and other non-conforming uses now in the restricted districts were permitted to continue, but under section four of the Oneida County ordinance, if the use is discontinued for a reasonable length of time it cannot be restored. This emphasizes the fact that zoning in itself does not reduce the excessive costs of government which was the very reason for starting the movement. Zoning merely prevents future costs by restricting future uses. But the provision in the zoning law under which the county can trade county-owned land lying in an unrestricted area for privately owned land in a forestry and recreation zone offers an opportunity for taking settlers out of the restricted areas. Counties can also trade land lying in a county forest in a similar manner to aid in blocking up these forests.

At the time of this writing (March 1, 1934) two other movements are under way which fit into the zoning program, the establishment of "subsistence homesteads" and the program announced by the Secretary of Agriculture for the purchase of submarginal land by the federal government. It is contemplated to establish a limited number of farm-forest settlements, giving the men part-time work in the national forests in Wisconsin. During the remainder of the year they are free to work on their own holdings. It is planned to recruit these farm-forest workers from the farmers now in the federal purchase areas and in the restricted areas of zoned counties. The other program will permit the direct purchase of the property of the settler who wants to move out of a forestry zone. The zoning ordinance steps in at this point to prevent new settlers from entering the restricted areas and repeating the costly mistakes of the past, costly both to themselves and to the community.

According to the state zoning law, (59: 97) the administration of the ordinance rests with the county board of supervisors. In the absence of a rural planning board or a county park commission, the actual administration will no doubt rest with the Oneida County Colonization Committee, the one

which sponsored the enactment of the ordinance in the first place. The statute provides that the county park commission or rural planning board of counties that have them shall do the preliminary work of delineating the districts and prescribing the regulation and restrictions for each zone. However, in most of the counties the zoning has been done by some committee whose previous work dealt with land, colonization, forestry or agriculture. No doubt the enforcement and administration of the ordinance will fall to these same committees. The state law also provides for enforcement by injunctive proceedings by any owner of real estate as well as by the county acting through its board of supervisors. Enforcement and penalties are provided for in Section 8 of the Oneida County ordinance.

The second part of the task was the delineating of the districts or zones. Using the data available in "Making the Most of Oneida County Land" the college committee made a tentative map showing the boundaries of the two districts. The ordinance and map were then sent to the county board of supervisors.

#### PROCEDURE FOLLOWED

Ordinarily the procedure of enacting a county ordinance is purely a political matter, a legislative act of the board of supervisors. In this case, however, the zoning law provides that the ordinance must be submitted to the town boards of the towns affected by the ordinance for their approval. County owned land may be zoned without the approval of towns, but this does not mean very much. But, it was also felt that the people should have a clear understanding of what zoning really means and should have a part in drafting their own ordinances and in delineating the districts within their own towns. It was in this way that the College of Agriculture was again brought into the picture.

In Oneida County, the county agricultural agent was also secretary of the colonization committee. He arranged a series of local meetings in the towns which he and the extension specialist in land economics of the University of Wisconsin, College of Agriculture, attended. Members of the town board and citizens of the community came

to hear zoning discussed. Their comments and criticisms were helpful in making the final draft of the ordinance and the official map. Thus zoning became essentially a democratic procedure. To the surprise of the colonization committee and others who had helped in making the preliminary ordinance and map, the local people insisted on placing 80,000 more acres in the "forest-recreation" zone than the first map called for.

After these meetings were held the enacting of the ordinance by the county board of supervisors and the subsequent approval by the town boards followed almost automatically.<sup>4</sup> The Oneida County ordinance was passed May 16, 1933, and became effective July 13, after official publication.

Up to date all other counties have followed the procedure used in Oneida County. The county asks for a model ordinance from the College of Agriculture and the Conservation Department. Then preliminary meetings are held in the towns. The calls for men to hold these meetings have come so fast that not only the extension specialist in land economics (who attended the meetings in Oneida County) but the extension forester of the College of Agriculture and a member of the Conservation Department have all been busy during the winter meeting with county boards, conducting local meetings and attending final hearings before the ordinance is enacted.

The status of the movement is now as follows: Vilas, Oneida and Langlade counties have zoning ordinances; two counties will soon have completed the work, the ordinances having been approved by the town boards; two have submitted ordinances to the towns. Zoning committees have been appointed in nine counties and in eight other counties the boards are considering the matter, making a total of twenty-four counties which have passed ordinances or taken some steps toward controlling the use of land for agriculture, forestry and recreation.

<sup>4</sup> In Wisconsin, towns are civil units of rural government, subdivisions of counties and are governed by town boards consisting of a chairman and two other members. The chairman of the town represents his town on the county board of supervisors which consists of one representative from each rural town, each incorporated village and every city ward. Because of the double duties of the town chairman the expression of opinion at the local meetings described above makes the work of the town boards and of the county board of supervisors much easier.