Indiana Land use Issues

Purdue University Cooperative Extension Service
INDIANA LAND USE ISSUES

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COOPERATIVE EXTENSION SERVICE, PURDUE UNIVERSITY, WEST LAFAYETTE, INDIANA
Foreword

The earth's basic natural resources are land, minerals, water, and air. How these resources are used affects everyone. A high quality of life for Hoosiers depends upon wise management of our natural resources.

Historically, people's beliefs about land and its use have ranged from obeying the command in Genesis to "replenish the earth, and subdue it," to viewing land as sacred and change as sacrilege. Land has often been equated with power, with gaining personal identity, and with money as a commodity in the market place. Some people have seen it as a state resource, others as public wealth, and still others as space for expansion. Tolerance for different viewpoints, coupled with boundless wealth, has often led to exploitation of land in the name of individual rights and freedom. As a result we see land price speculation, urban sprawl, diminishing farmlands, and limited access to public space. The prevalence of the automobile has also intensified some land use concerns. Often there has been apathy or a reluctance to correct the harmful effects of various land uses on the environment.

Indiana citizens recognize that land use affects others besides the owners and users. Obviously, people must be open to compromise -- willing to make some trade-offs -- when it comes to their views about land, in order to achieve the necessary consensus for shaping land use policies that will bring the greatest benefit for all.

If proper consideration is given to all land use issues, active participation of all the people is necessary. This participation is needed to develop land use policy that considers the concerns of everyone.

To achieve this goal, local, state and federal agency people, local decision-makers and the general public must be informed about land, its use, its capabilities, and the people's concerns and needs.
Introduction

The Indiana Rural Development Committee is sponsor of this booklet. The Committee consists of administrators from the United States Department of Agriculture (USDA) agencies and other concerned federal and state agencies that provide assistance to rural Indiana. Committee members or their representatives meet monthly to coordinate their many varied activities and to seek ways to be of further service to rural Indiana.

Indiana's thriving agricultural economy is based upon our bountiful land resources. The Committee believes that current and future land use decisions will have significant impacts upon rural Indiana. Therefore, we are sponsoring this booklet of "Indiana Land Use Issues" with the belief that it will provide needed information relating to land use.

Howard G. Diesslin, Chairman
Indiana Rural Development Committee
The Concern

Just 350 years ago, the continental United States supported about 200,000 Indians at near starvation levels. Today, this same land resource supports over 200 million people, a thousand-fold increase in numbers of people and a complete change in levels of living and resource use.

The basis for distributing land among the 200+ million people is largely a private ownership-market exchange system, where land is bought and sold as a commodity. Land is owned as a fee simple bundle of rights, but subject to police power, eminent domain, taxation, and a few other rights held by the state. These controls and limitations allow us to live with one another in some harmony and, at the same time, enjoy the fruits of private ownership. It is a whole lot better than feudalism of the middle ages, perhaps better than the informal system of tribal ownership maintained by Indiana's first residents, the Indians.

So, what is the concern? The concern is that when everyone is allowed free and uncontrolled use of land under private ownership, difficulties can be created for the rest of society. The concern is what ought to be done to regulate the development of land for urban, commercial, industrial and other non-farm uses.

Two real-life Indiana examples illustrate the problem:

In one county, a couple retired and built their dream home by a rural country roadside. Into it went their dreams, their hopes, and most of their savings. In the ensuing years other homes were built and a mixed development took place. An automobile graveyard was located down the road, and a motel, a restaurant, and a sand and gravel plant opened nearby. The retired couple received a rude awakening, for the charm of their country home was gone. Much of their savings invested in the home was lost because residential values decreased sharply.

In another county, a farmer had been in the hog business for 20 years. His father before him had raised hogs at the same location. Then a neighboring farmer recognizing the demand for houses, subdivided a portion of his farm and built 30 homes about one-half mile from the farrowing houses. In the summer when it was hot and the wind was "just right," the homeowners put pressure on health officials to force the farmer to move his farrowing houses. The farmer was there first, but there are 30 voices and votes attempting to make him move his hog operation regardless of financial loss.

On a larger scale, as the Indiana land base becomes more valuable, mistakes in its use become more expensive. These costs are often borne by the public rather than individuals. For example, if roads, houses, and airports continue to be built on level and fertile soils, eventually food will have to be produced on less productive land, causing food to become more expensive. The public cost of providing services and facilities to scattered, uncontrolled developments is higher than for areas of greater densities, so quality of service is compromised.
If the public is to undergo a cost of private land use decisions, it is only fair that there be mechanisms through which the public can participate in making these decisions. Free market sales, purchases, and development of land, motivated by profit, may lead to the highest and best use of land from the individual owner's standpoint, but there is no guarantee that the resulting growth will be orderly or desirable for the public. Therefore, if maximum public, as well as private, benefits are to be derived from land, the public must become involved in planning and deciding upon land use.

Until the mid-twentieth century, land use policy was designed to encourage land settlement. Taming the frontier and moving people west was the prime objective. One of the earliest experiences of land use policy came from Thomas Jefferson who saw each man as a "free-holder," a full owner-operator who was monarch on his own land.

The Jeffersonian free-holder concept remains dominant with many people today. The idea that a "man's home is his castle" is still a strong belief and part of our philosophy regarding land and property rights. This concept was reflected in land use policies such as the Land Grant Act of 1789 and the Homestead Act of 1862, to encourage settlement and development. For years we have had policies that moved land from public ownership to private use. At one time the Federal government owned about 80 percent of the United States mainland, having acquired the vast territory through purchase, seizure and annexation.

The sparse and scattered population minimized problems of competition over land and the impact of one land use on another. A low level of public services was provided the largely self-sufficient citizens of the 1800s, keeping public expenditures down. Congestion, urban sprawl and environmental degradation occurred only in the largest urban areas.

ONE LAND OWNER SHOULD NOT USE HIS LAND OR RIGHTS SO AS TO INJURE THE PROPERTY OR RIGHTS OF ANOTHER
Land Use in Indiana

There are more than 23 million acres of land in our state. Today agriculture uses the largest share of land, with about 58 percent in crops and another 9 percent in pasture. One-sixth of the land is in forests. Farmsteads, marshes, swamps, and idle lands account for about 5 percent of the rural land area. Urban uses require about 10 percent including roads, airports, and other transportation facilities. Compared to the entire country, Indiana has less forest land, but more in crop land and developed uses.

Indiana land is moving out of open space and agricultural uses at a fairly rapid rate. Recent estimates from USDA-Soil Conservation Service show significant changes from 1958 to 1977.

Comparison of Land Uses in Indiana (acres)

<table>
<thead>
<tr>
<th></th>
<th>1958</th>
<th>1967</th>
<th>1977</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cropland</td>
<td>14,199,000</td>
<td>13,881,000</td>
<td>13,312,000</td>
</tr>
<tr>
<td></td>
<td>61.3%</td>
<td>60.0%</td>
<td>57.7%</td>
</tr>
<tr>
<td>Pastureland</td>
<td>1,857,000</td>
<td>2,298,000</td>
<td>2,148,000</td>
</tr>
<tr>
<td></td>
<td>8.0%</td>
<td>9.9%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Forest Land</td>
<td>3,693,000</td>
<td>3,761,000</td>
<td>3,533,000</td>
</tr>
<tr>
<td></td>
<td>15.9%</td>
<td>16.2%</td>
<td>15.3%</td>
</tr>
<tr>
<td>Other (Farmsteads, wetlands &amp; other land in rural areas) (1)</td>
<td>1,916,000</td>
<td>1,364,000</td>
<td>1,251,000</td>
</tr>
<tr>
<td></td>
<td>8.3%</td>
<td>6.0%</td>
<td>5.4%</td>
</tr>
<tr>
<td>Urban &amp; Built Up (including Transportation)</td>
<td>1,189,000</td>
<td>1,487,000</td>
<td>2,364,000</td>
</tr>
<tr>
<td></td>
<td>5.2%</td>
<td>6.4%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Federal Land</td>
<td>303,000</td>
<td>340,000</td>
<td>464,000</td>
</tr>
<tr>
<td></td>
<td>1.3%</td>
<td>1.5%</td>
<td>2.1%</td>
</tr>
<tr>
<td>Total Land</td>
<td>23,157,000</td>
<td>23,131,000</td>
<td>23,072,000</td>
</tr>
</tbody>
</table>


(1) Includes: Small water areas of 87,000 acres for 1958 and 95,000 acres for 1967.

In the 19 year period, about 1,175,000 acres were changed to "urban & built up" uses, or about 61,842 acres per year. Much of this came from cropland pasture and forest lands, but some switching between these last three categories took place also. The almost doubling of land in urban and built up uses represents a faster withdrawal than was suspected or predicted by most authorities. The high rate of use was due to urban growth in rural areas plus thousands of acres for the interstate highway system, several new man-made reservoirs, stripmining of coal and expansion of parks and outdoor recreation facilities.
Historic Document

Forecasts of land use changes have been done by the Center for Agricultural and Rural Development (CARD) at Iowa State University and by the Economic Research Service, USDA. They predict somewhat slower conversion rates than we have experienced in recent years: 924,000 acres will be withdrawn in 33 years (1967-2000). This is 4 percent of the state's total land area. Expected withdrawal of agricultural and forest land for non-agricultural use:

<table>
<thead>
<tr>
<th>Acres</th>
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</thead>
<tbody>
<tr>
<td>298,700</td>
</tr>
<tr>
<td>32,600</td>
</tr>
<tr>
<td>70,700</td>
</tr>
<tr>
<td>182,400</td>
</tr>
<tr>
<td>340,000</td>
</tr>
<tr>
<td>924,400</td>
</tr>
</tbody>
</table>

The study assumes:
1. About a 30 percent increase in states population. (which may be high)
2. Very large increases in the need for recreation, wildlife and open space.
3. Some increase in farm product exports and some highway and airport development. Large increases in farm exports and farm prices would cause conversion of considerable marginal lands into crop production.

If 924,000 is withdrawn from farm uses, this would be an area equal to twice the size of Allen County, our largest county in the state.

As population growth rates decline, we may see some slackening in the demands for development land. Recent USDA studies indicate we should have plenty of land in total, but we cannot afford to waste land.

Our state has several strong, viable growth areas: the eight-county Indianapolis region, Porter county and the area south and east, Ft. Wayne and northeast Indiana, plus some others outside of Evansville, Louisville, and Cincinnati. Almost every large urban center is experiencing rapid growth in the outer rural-urban fringe around the central city. This is where the "action is" in development and growth. The land market is also active in scattered parts of the state where unique developments create a spurt of growth change. In all parts of the state, land use changes are occurring as public and private development proceeds, but the conflict and competition are greatest in particular choice locations. There is a saying among real estate dealers that the three factors affecting the value of land are location, location and location!

Pressure on land resources also comes from the competing demands for land with special qualities. Well-drained, easy-to-develop land is at a premium in many areas. Prime farm land is desired not only by farmers putting together larger units, but by builders who can put in subdivisions, sewers, water and roads on level land at lower cost than in hilly areas. "Prime" farm land is land best suited for producing food, feed, forage, fiber and oilseed crops. It may be in cropland, pasture, range, forest or other non-urban uses. It has the quality, growing season and moisture supply needed to produce high yields of all kinds of crops, when properly managed.

Increasingly, the term "areas of critical concern" is being used to describe land that has unique qualities that may make urban development undesirable.
Fragile environmental areas like wetlands, wildlife habitats and shorelines; commercial forest land, recreational and open space areas, and historical areas are either already damaged or threatened.

Another way to consider land uses is to consider four different land markets. The first of these is public lands which are outside of any private economic market. The second class is the urban land market where land is bought and sold for urban development. The third class is production land that includes agriculture, mineral extraction and forestry. Conflict between production land and urban land is common, for the latter can outbid the former. The fourth category is protection lands or critical areas where development should be prohibited or regulated in order to protect natural resources, or historic, scenic and aesthetic values. Public intervention into an essentially private land market would be needed to preserve land in its present use.

Major Land Uses - 1977

<table>
<thead>
<tr>
<th></th>
<th>U.S.</th>
<th>Indiana</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2,264,000,000</td>
<td>23,072,000</td>
</tr>
<tr>
<td>acres</td>
<td></td>
<td>acres</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cropland</td>
<td>20%</td>
</tr>
<tr>
<td>Pasture</td>
<td>28%</td>
</tr>
<tr>
<td>Forest</td>
<td>28%</td>
</tr>
<tr>
<td>Urban</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>14%</td>
</tr>
<tr>
<td>Special Uses</td>
<td>7% *</td>
</tr>
</tbody>
</table>

*Recreation, Parks & Wildlife
Transportation
Public Installations

**Federal Water

**Federal Water
Indiana Land Use Issues

Land Use Decisions in the Market Place - With many concerns about land use, there are many voices to be heard. The problems and pressures are so great that some authorities are arguing that we can no longer treat land as a commodity freely exchanged for economic gain, but that we must move more to the political-governmental arena to guide land use changes. There is doubt that market place decisions alone, through the free-enterprise system and the price mechanism, can satisfactorily allocate land.

Economic decisions are generally made between buyer and seller with little concern for others. When land is the commodity, a third party is frequently affected and the economic system isn't equipped to consider gains and losses to the third party. At times, sale of land and subsequent land use changes can lead to damaging impacts on adjoining property. Property values can be hurt and the character and quality of a neighborhood drastically changed. Environmental damage can occur that reduces the value of land to third-party users.

Some public rights in land use are now recognized. These rights are reflected in laws concerning soil conservation, pollution control, zoning, eminent domain and taxing power. But in recent years, the trends of court decisions appear to indicate that the public has more rights in relation to property than we have thought or assumed in the past.

And while observing trends, there also appears to be a relationship between population, congestion and third-party effects. An increasing population increases congestion and also increases demand for regulation and controls of land use.

The public reaction has changed some of the trends in the United States. Ten years ago, most of the nation was in favor of unrestricted economic growth and development. Today, the approach is far more cautious. There is a growing list of examples where public concern and pressure -- a third-party effect -- have halted proposed development projects.

The Push to Intensive Land Uses - Another concern is that land seeks its most intensive use under the price mechanism or market system when there are competing demands. This occurs because the intensive use usually gives the highest return for each dollar invested. Therefore, a wildlife area will become farming land if it is suitable. Farmland will be developed into commercial feedlots, and feedlots will become residential, industrial or business sites. Since the more intensive use returns more on the investment, the buyer for a more intensive use can outbid all others.

Actually what would happen in this example is that as farmland disappeared, food prices would increase, and there would be an effort to produce more food on the limited land. Thus, farming would intensify and become a more intensified use of land and possibly change the hierarchy of uses as we know them today.
These adjustments of the price mechanism to allocate the use of resources have made our economic system workable in the past. When we have attempted to modify the price mechanism, as in times of war, many side effects have created problems. Through the price mechanism these side effects have been resolved -- almost unnoticed. While some people were not totally satisfied with the results of the price mechanism, most found it an acceptable means of resolving problems of resource allocation.

So what is wrong with intensity of use determining land use? Nothing, if everyone is satisfied with the results.

**Land Use Changes Are Often Irreversible** — Someone has compared land to a pie that can only be cut up once.

Many of the land use changes cannot be reversed -- or at least, not easily. Once farmland becomes a reservoir, a residential or industrial area, it cannot be easily changed back to farming. Thus, we could find in the future that, while farmland may become scarce and farming more intensified, we cannot reverse our land uses. Then the buyer of farmland would not only have to outbid the other potential users, but he also would have the land reclamation costs. Thus, the economic system may not be able to make needed adjustments as it has in the past. Because land uses may be irreversible, we're letting the economics of today dictate land use patterns for tomorrow.

Economic decisions place a priority on the short-run result. The short-run result usually gets priority in the economic system because of the uncertainty of the future and the immediate demanding needs of today. Future returns are often ignored. Long-term conservation practices, for instance, may be discounted in favor of current yields.

This short-run attitude causes people to view land as a commodity to be bought and sold. Many people are now saying that land should be considered a natural resource to be conserved for the future good of society.

"Son, there is the fertile valley our ancestors grazed upon."
Windfalls and Wipeouts - Some properties can become very valuable because of location of an interstate highway, an airport, the growth of the city, or the location of a lake. The increase in value has nothing to do with the quality of the land, or the quality of the management. The owner has done nothing -- it is a matter of the accident of location. Often gains occur because of a public decision on zoning that designates land for more intensive and thus more valuable use. It is argued that such gains belong to society which created the gain and not to individual landowners.

The reverse of the windfall gain is the "wipeout," or loss that comes about because of a public decision. Some public action reduces the value of land to the owner. There is considerable interest in the possibility that land use policies can become a "taking" when they restrict property rights in land and thus land value.

Specifically, a knotty political-legal issue is to what extent can the police power be applied constitutionally before it becomes a "taking" under the 5th and 14th Amendments to the U.S. Constitution. Under eminent domain, property can be taken for public use -- but the landowner is compensated or paid for the property.

But what if you take only some of the landowner's rights to the property? Is zoning taking some of the rights? And at what point is the landowner entitled to compensation -- or how much regulation can be allowed before the landowner is damaged? Should the windfall gains that happen because of zoning, land use or an interstate highway go to the owner or to society? And on the other side, what if someone's property value is reduced or nearly voided because of land use or zoning? This is the opposite of a windfall -- it could be a wipeout.

Rising Costs of Public Services - It is difficult to provide high quality public services to all our citizens, regardless of where they choose to live. The cost of extending services from existing urban centers to outlying development severely taxes many municipalities. A recent study by the Department of Housing and Urban Development (HUD) concluded that scattered, "sprawl" development that is typical in many communities is the most expensive form of residential growth in terms of public service, environmental, natural resource and personal costs. Higher density patterns of growth are more economical, particularly when carefully planned. Obviously, very high densities lead to many problems associated with congestion and large urban concentration.
Low density, scattered development can involve minimal public costs when a low level of public service is provided. But for a given level of services, planned, clustered development reduces public cost of providing services.

A number of fast-growing communities are beginning to adopt policies that allow development to occur only where public service costs can be minimized, and only when funds are available for expansion of sewer, water, schools, police protection and other necessary services. Another approach is to make sure the new development bears all the additional costs, and the burden of providing expanded services does not fall on the rest of the community.

**Current Indiana Land Use Policies**

The State of Indiana has delegated considerable authority to county and municipal government for land use policy making. Enabling legislation passed over the years has encouraged local governmental units to set up the machinery to develop land use plans and controls. Seven different kinds of planning agencies can be created under these laws to guide the physical development of the areas they serve. Planning commissions serve local officials in an advisory capacity. They study and recommend policies affecting location and construction of new private and public structures for their jurisdiction. Regional agencies supplement the work of local planning units, focusing on regional planning problems, helping secure federal grants and reviewing federal programs.

In 1979 the state was served by about 275 planning units that together cover most of the state:

<table>
<thead>
<tr>
<th>Kind of Planning Unit</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional (Multi-county) Agencies</td>
<td>20</td>
</tr>
<tr>
<td>County Plan Commissions</td>
<td>52</td>
</tr>
<tr>
<td>Area Plan Commissions</td>
<td>33</td>
</tr>
<tr>
<td>Metropolitan Plan Commissions</td>
<td>2</td>
</tr>
<tr>
<td>City Plan Commissions</td>
<td>71</td>
</tr>
<tr>
<td>Town Plan Commissions</td>
<td>97</td>
</tr>
</tbody>
</table>
The local planning units develop comprehensive plans and ordinances that become law when approved by elected officials. The nature and extent of these policies are related to the density and growth of population; the length of time the agency has been active, and the budget available. Various elements are found in the documents, but they typically include land use plans and maps, specific requirements on improvements and other regulations. About three-fourths of the counties have policies being formulated and implemented by an active local planning unit for cities and counties.

Few local units have well-defined, general policies on land use that reflect the thinking of a large segment of the population and can serve as a basis for land use planning over time.

At the regional and state levels, policy planning relating to various functional planning areas has taken place. Implementation and enforcement powers are vested in local units of government. The Housing and Urban Development (HUD) Comprehensive Planning Program is being used at the regional and state levels to prepare policy recommendations. Regional agencies are serving as forums for local officials to meet and discuss policy directions, and they are being assisted in decision making by state and federal agencies.

Land use planning is plagued by all the problems mentioned earlier. Diverse, special interests compete with each other over land use controls, negotiating new policies and modifying old ones. It is a constant, continuing process.
Alternative Policy Directions

A number of public policy instruments can be used to affect land use choices. The challenge is to select the most appropriate combination of policies and effectively use them. Specific policies need to be part of a comprehensive planning package that is far broader in scope than most programs in use today. Most of these policies are in use now, but some specific policies are not used in Indiana at the present time. The policies are classified into four major groupings: (1) public regulation; (2) public investment; (3) taxation; and (4) public ownership and development rights.

Public Regulation - Based on the "police power" of the state to regulate land use for the "public health, safety, comfort, morals, and welfare" of the community, these regulations represent the most controversial of the alternatives available to "control" land uses. Yet, for the purpose of control, these regulations are the most consistently and widely used. Included within a broad range of regulatory devices are zoning ordinances, subdivisions' regulations, and various nuisance ordinances. Pollution control legislation, a relative newcomer, also affects the broader problem of land use.

While there is a variety of tools or devices for regulating land use, the most prominent tool is zoning. Zoning specifies areas or districts within the community where certain uses are allowed under varying circumstances. It is this narrowing of the range of uses allowed that is often objected to. Often this device becomes a political football, with local enforcing agencies under a variety of pressures from special interest groups. Carried to extremes, zoning can become a "taking" without compensation. Changes are occurring so rapidly in many communities that the enforcing agency is hard-pressed to keep up with the changes. Often the new changes are so different from the communities' experience that the agency has little idea how to handle the situation. Many of the ordinances are so inflexible that development is inhibited. At times, even the other codes to regulate development contradict or conflict with each other and the zoning provision.

Some communities are now in the process of coordinating their development codes into a single system, and are beginning to insert flexibility through the use of performance standards as a substitute for specifications.

Several emerging techniques show promise in the use of zoning as a method of regulating land use:

1) Planned unit development. The most important aspect of planned unit development is that the proposed development is viewed and judged as a unit, not in individual parts. Uses may be mixed so long as the result is harmonious. It is not that large-scale development is automatically good, but the consideration of the relationship of the uses and the blend is important. It removes the sterile use-separation of more traditional zoning efforts, and replaces it with an interesting, stimulating mix.

2) Performance standards. Developers are asked to meet certain specific requirements for each proposal that are "tailor made" for each case. Some concessions may be granted such as allowing higher densities when the special conditions are met. This allows flexibility, but with some controls and a review of each proposal.
3) Clustering, or the grouping of buildings on a specified minimum area, allows greater densities on the developed land but maintains existing allowed densities for the total tract. Construction should be carefully related to the natural features such as the soil and the water table. The primary feature of this technique is the provision of open space and the efficiency gained through lower initial construction costs and subsequent maintenance costs—thereby the consumer, the developer and the community gain.

4) Conservation districting protects areas of particular environmental hazards, such as floodplains, steep slopes and wetlands. This technique is particularly useful because it can be related directly to the public health and the public safety. Floodplain zoning has received a great deal of attention in recent months.

5) Increasing use of exclusive agricultural districts may achieve two benefits: (a) the protection of existing agricultural enterprises; and (b) the promotion of economic and efficient delivery of public services and facilities.

Perhaps the greatest single problem with public regulation lies in the area of inconsistency—not only among the various regulatory methods themselves, though this is a continuing problem, but also in the contradictory actions of government in the development process itself: zoning land for agricultural use, extending urban services into the county, cutting up parcels by building new highways—thus confusing the local citizen and creating mistrust and bitterness. Public regulation of land use must be consistent with subsequent actions by the public.

Public Investment—Land use is influenced by the location, type, and timing of public investments for capital improvements. Roads, water, sewer, solid waste, power, and other public facilities will affect land uses and values.

Traditionally, public investments have been evaluated in terms of the direct effects of providing services and requiring revenue either from taxes or service charges. Rarely have the impacts of public investments on land use been considered. Even less frequently have public investments been regarded as an instrument of land use control. Comprehensive planning, however, includes such investments among the influences in overall growth and development.

The location of major facilities affects urban growth patterns, transportation, industry, and land available for open space, recreation, agriculture, forestry, and other extensive uses. Some public uses of land require buffers for sanitary or aesthetic reasons. Highways dissect farms. Reservoirs enhance the value of adjacent properties. Irrigation changes the type of agriculture. Studies have shown that public investment may follow as well as precede development, but that development and public investment go together. The issues of public investment and land use control revolve about the specifics of where, when, and how much. The traditional pattern is to provide public services in response to private efforts.
A new approach is "timed" or "staged" public investments determining when and where development shall occur. The purpose of this approach is to bring public expenditures into balance with public revenues. It insures that public services will be available at the time of development. Such an approach is subject to challenge if capital expenditures are at a rate substantially less than "natural growth" rate for the area or substantially less than the fiscal capability citizens would allow. The courts have upheld this approach when it is not used to deliberately exclude new residents and discriminate against certain groups.

Taxation - Some taxes influence land market decisions which buyers and sellers make, while other taxes appear to be neutral in effect. The real property tax gets more attention than income taxes, but the latter may have the greater impact on land use. Certain aspects of income taxes most certainly influence our decisions. Other taxes that may affect land use are taxes on inheritance, severance of minerals, and sales of property.

Property taxes began in most states as simply a tax on the value of land. Now more than 30 states have taxes whose announced purpose is to affect land use patterns. These laws have several different names -- greenbelt, use-value, open space, and differential taxation. All of these laws are based on a notion that land on the urban fringes can be kept in open space by giving owners a tax break. Indiana has "preferential assessment" for agricultural land, which means it is assessed in terms of its present use value for farming, and not in terms of market value for potential developed land. Other states have additional tax breaks.

Use-value tax laws are of such recent vintage that research as to their impacts is inconclusive, but preliminary findings suggest that such laws appear inadequate to preserve open space. This is not surprising, for the size of the tax break is small in comparison to the amount of money to be made by transferring land into higher-valued uses. The tax break is simply swamped by the capital gain. There is an additional side effect from use-value taxes of rural land: the use-value tax shifts the tax burden onto properties that do not qualify for the tax break and onto other taxes.
The use-value tax may slow down transitions in land use if (a) the open space area to be protected is planned in advance; (b) the benefits can be confined to "bonafide" agriculturalists. Under present laws speculators can qualify for the use-value tax by holding the land in open space while it "ripen." Land held for second homes, recreation, mining, and development may masquerade as agricultural land.

Income taxes also have an impact on land use. The impact comes from the way the capital gains are taxed and from opportunities to deduct interest and property taxes from individual income taxes. By adopting a progressive income tax and a flat-rate capital gains tax, we have made the rewards from capital gains exceedingly rich for the high income investor. By this reward system we have ensured that the wealthiest investors can bid the highest prices for the opportunity to share in prospective capital gains. This policy has made it inevitable that ownership of real estate with the ripest prospects for capital gains will concentrate in the hands of a small number of wealthy owners.

The impact of capital gains could be removed by changing the tax law. This would remove a tax benefit from agricultural producers as well as from outside investors. Such preferential treatment could be removed by reforming the federal income tax law, or, alternatively, states could tax capital gains in land. Massachusetts and Vermont have initiated such taxes on capital gains.
Public Ownership and Development Rights - Land use planning, regulation, and control are often inadequate for achieving publicly determined goals. Partly because of the restrictions on regulation traceable to the "taking clause" and partly for other reasons, state and local governments, often with federal aid of various kinds, have sought to buy rights in land rather than simply to regulate land uses.

Present government land holdings (largely federal) represent more than one-third of the total area of the nation. But these lands are not necessarily located where they are needed for public programs, or they may not be of the quality or type desired. Hence, acquiring land is often one of the necessary steps to policy planning.

State ownership of land is sometimes considered the opposite of private ownership. But in the mixed U.S. economy, public land acquisition is usually not approached ideologically, but rather as a practical alternative for achieving public purposes. Where feelings run high, however, loose allegations are sometimes heard suggesting that public ownership and even regulation are not in keeping with our democratic system. But even where controversy is not intense, acquisition, at whatever level and for whatever purpose, poses difficult policy and procedural problems.
To begin with, the acquiring government must decide among several alternatives: whether to seek fee simple title, or some lesser form of rights in land. And if the latter, then a choice must be made between the established and traditional forms -- such as easements or restrictive covenants -- or the newer forms, many of which have scarcely gone beyond the discussion stage but which are attracting considerable interest and attention. Two of these newer forms are purchase and lease-back arrangements and development rights.

Purchase and lease-back arrangements are simple. Planning agencies in Europe use this technique extensively. American citizens have been reluctant to grant purchase rights to planning agencies, excepting urban redevelopment agencies. It is clear, in any case, that if purchase and lease-back powers are to be used, the quality of comprehensive planning will need to be improved considerably. In some discussions, purchase and lease-back arrangements are considered as a type of "land banking" -- a general term suggesting that governments or government agencies be given the authority and funds to buy lands in anticipation of future needs, leasing or renting them out until needed for the designated future purpose. Land banking also requires rigorously prepared comprehensive plans, as well as adequate funds for the initial land purchases. Lack of funds, in fact, is often the most serious problem for agencies seeking to acquire land and land rights.

In several states, legislation has been considered for establishing a system of purchase or transfer of development rights in land. Some limited applications are now in use for special purposes.

A development right is basically a creature of property law. It is one of the numerous rights included in the ownership of real estate. A mineral
right (i.e., the right to mine and remove minerals from the land), an air right (i.e., the right to utilize the air space above the land's surface), or the right to travel across another person's property are examples of the various rights of land ownership. A development right is the right that permits the owner to build upon or develop his land. Rights of ownership in land may be separated from other rights and regulated by government or sold by the owner and transferred separately.

For example, an owner of land may sell his mineral rights or air rights and still retain ownership and use of the land surface. A common example involves an owner's sale of an access easement to a public utility so that utility lines can be established and maintained on the owner's property. Similarly, an owner may sell all of his rights to develop his land, and these rights may be bought and sold by persons other than the owner who still retains the ownership to the land.

Development rights are conceived in a variety of ways for a variety of purposes. Under one system, a government unit purchases the development rights (much the same as the purchase of easements), then either develops the land itself or leases the rights to private parties for their use. The purpose may be to encourage and control urban development, or it may be the opposite, to preserve the land in its present state, and prevent development. This, of course, requires considerable public funds.

Another system can be designed to create a market in development rights where they can be transferred between individuals, but subject to control of government. Owners of developable land are required to buy development rights from owners in areas designated as "preserved open space." This sharing of development rights value compensates land owners who hold their land in agriculture or open space. It also means developers pay directly for the rights instead of government.

Development rights is a new concept that may solve some of the problems in traditional zoning and taxation schemes. It combines planning with certain aspects of property law.
Who Will Decide Land Use?

One of the hottest debates going on is the controversy over who should be making land use decisions. Earlier we discussed the pros and cons of letting individuals, acting through the land market, allocate land. The concept of individual property rights is involved, and so is the belief that private interests and personal choice should govern land use. So, one of the options is to let private interests make the majority of decisions. We have seen some of the problems with this concept and the need for at least partial public control to bring in the interests of the total community. But, if public decision making is to play a role, at what level of government should public decisions be made?

Historically a state's right, land use regulation has been exercised at the local level through state legislation delegating this authority to county and municipal government. So ingrained has this tradition become that the level of regulating responsibility is a major issue of the times. All levels of government -- federal, state, and local -- have become embroiled in bitter controversy over who should do what. The question is not whether "something" must be done, but rather how, at what level, and by whom.

Adding to the complexity and to the confusion is the rising tide of regionalism within both state boundaries and multistate organizations. Many fear these agencies as "super" governments intended to replace the levels of governments below them.

In the summer of 1974, a National Land Use Bill was defeated in the House of Representatives. The Senate's version was passed in the summer of 1973. Both bills attempt to encourage state government to establish serious land use planning procedures.

Two major factors seem to contribute most to the question of which level of government is most appropriate to exercise land use regulations:

1. The sheer size of some developments simply overwhelms some government entities -- new towns, for example, or mining on a large scale seems to be beyond the power of the local level of jurisdiction.

2. Technology, in the form of monitoring equipment and in the form of data manipulation, has increased our capacity to analyze the impacts of development on a broader scale than was possible just a few years past. Thus our awareness level has been increased considerably.

Some land use issues affect only a neighborhood, others an entire region or state. National policy may conflict with local and state initiatives. Actions of federal and state regulatory agencies indirectly affect land use.

At times the issue comes down to choosing between no land use controls at all, when local units refuse to act, and some higher level of government coming in to administer controls. Citizens take their land use concerns to that unit of government that shows the greatest concern and responsiveness.
Summary

In the process of working out land use decisions there is no substitute for adequate information and an understanding of the issues at hand and the implications that follow decisions. Our ability to understand and predict consequences has improved, and new policy instruments can be created if we want to use them. Policies need to be coordinated into a complementary, total system.

When citizens understand the issues, the roles they play in policy formulation, and the tools available, they can make better decisions. What is needed is willpower and brain power to get on with the job.
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"Iowa 2,000," Cooperative Extension Service, Iowa State University, Ames, Iowa. Illustrations used in this publication come from materials in two programs just listed.


Published and unpublished material from Professor Eber Eldridge, Iowa State University, Ames, Iowa, 1975.

This booklet was prepared by the Land Use Task Force of the Indiana Rural Development Committee. Membership –

Robert V. Bollman, Chairman
Soil Conservation Service

Ellsworth P. Christmas
Cooperative Extension Service

Charles A. Sargent*
Cooperative Extension Service

Earl L. Hogan
Farmers Home Administration

Jack B. Jacks
Forest Service

Edgar L. Whistler
Agricultural Stabilization and Conservation Service

Raymond L. Loehl
Rural Electrification Administration

William C. Moldenhauer
Agricultural Research Service

Thomas E. Keesling
Indiana State Board of Health

T. Russell Miller
State Planning Services Agency

William D. Schrand
Indiana Department of Natural Resources

Charles C. McKee
Indiana State Soil and Water Conservation Committee

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