Spring

THE LAND USE DIGEST

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UW Extension

THE LATEST NEWS ON CELL TOWERS

Will cell towers soon be replaced by satellites? What about airborne cellular antennas on planes? Are antennas on blimps a possibility? All of these scenarios have received mention at one time or another as the “solution” to the “problem” of cell towers popping up all over the countryside. Are any of these options close to becoming reality?

Satellite phone service has existed for several years, but its potential for replacing land-based towers any time soon is slight. "While we cannot foretell the future, it would seem that the [major providers] have satisfactorily proven the non-existence of a mass market for satellite personal telephony," said Ahmad Ghais, President of the Mobile Satellite Users Association. Why haven’t consumers responded? Primarily due to expensive airtime rates (over $1 per minute) and the larger size, weight, and cost of satellite phones.

In 1998, two companies were on the verge of offering phone service using specially equipped **airplanes**. Such a system, in principle, is basically the same as beaming signals off satellites. Using planes, however, would significantly lower costs and enable communications packages to be much more powerful than that of conventional satellites.

However, since it would take thousands of planes to duplicate the coverage towers provide today, a realistic plane-based system would be limited to providing service to major cities like New York and Chicago. So far, no plane-based systems are in operation, even though it has been five years since specific deployments were proposed.

Finally, there’s the **blimp** option, proposed by a Canadian company, which is building a prototype. This strategy is similar to the one involving planes. Once again, however, unless thousands of blimps are deployed, coverage would be limited to major cities. Using solar power, the blimps could stay aloft for years, but due to ever-changing communications technology, some way to update the equipment on the blimp would be required.

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Spring comes to the Milwaukee River, Town of Trenton.

Tower heights: According to Mark Reider, Head RF engineer for Alamosa Wisconsin, a tower construction firm, ". . . we really want to bring the height of our towers down. We don’t want tall towers in cities anymore. We want lower heights because our problems coming up are not the coverage of these cities. Our problems that will be coming up are issues that will be happening with supporting the customer base within those core units and core cities. We want to add capacity, we don’t want one tower higher than another one and it is over-shooting. . . . We are building towers like at 80 feet rather than the 170 feet that would have been built say two to three years ago.

“An antenna has a finite data carrying capacity. Consequently, in built-up areas the problem is not so much broad coverage of the extent of the area, but rather sufficient *depth* of coverage. This has become of greater importance as a higher percentage of people buy cell phones. It will also grow in importance as customer expectations increase."

"At some point in time I see some version of a shorter tower on possibly every 3rd or 4th block in a residential neighborhood to provide broadband wireless service. That may be 3 to 5 years in the future, but the younger generation growing up with this technology will one day control the economy and the government and they will demand the same service in their residential homes that is available in their business offices," said John Santroch, a telecommunications consultant. ■ *K.S.*



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Three Planning Scenarios, Revisited

Kewaskum village trustee Kevin Scheunemann phoned me and asked whether he could respond to my last article with an article of his own. Below is his article, unedited and reproduced in its entirety.

Mr. Struck detailed 3 community-planning scenarios in the last issue as Inactive, Reactive, and Proactive. I will mainly be dealing with the Reactive and Proactive part of his article. The Inactive planning scenario is nice in theory, but every community in Wisconsin practices at least some form of Reactive planning as the result of "poorly designed" development that may occur from an Inactive scenario. If such things as "narrow roads" from heavy traffic as a result from development were to occur, almost all elected bodies would do something about it if the problem was demanded by the local marketplace to be solved. This local unit would then become a Reactive community. I challenge Mr. Struck to name a community in Wisconsin that is representative of the Inactive planning scenario.

A Reactive scenario as summed up by Kevin Struck means the local government unit is dealing and managing with the results of market development and consumer demands.

The Proactive scenario means market development and consumer demand is run through an ad-nausem lengthy political process for constituent input and ultimately approved (or disapproved) by a central governing committee of some form. As a business owner, and what seems like the last person in local government to believe in the concept of private property rights, the Reactive scenario is much better than the Proactive scenario.

The Proactive scenario has the following major problems:

1. Conflict over what the community goals are and what they should be.
2. Private property becoming subjected to the ever-changing whims of the political process.
3. Complicated laws that only career bureaucrats can understand and interpret very differently.
4. Much needed market development (usually undesirable being derailed.
5. Conflicting planning and bickering between local government entities.
6. Repair, maintenance, and improvement may be put off or abandoned by property owners for fear of "disapproval".
7. No central governing committee can even come close to absorbing the trillions and trillions of market decisions made Americans every minute of every day.

Most of my points are self evident by the colossal failure of all the other intensive Proactive central planning nations such as the Soviet Union and former Eastern European Bloc nations.

I really would like to concentrate on #4. What I mean by undesirable development is: Power plants, Windmills for generating power, Apartments, Multi-family housing as examples. Many (but not all) politicians and local citizens practice exclusionary politics in their community when it comes to these items as the result of the power over private property proactive planning grants the political process. We all know we need electricity. We all know of the market need for affordable housing. When proactive planning is involved, we all tend to fall back to NIMBY (Not in my Backyard). Sure, politicians pay lip service to NIMBY and how it has to stop. The only way to stop NIMBY is to restore property rights and let property owners decide what is the highest and best use for their property should be.

A reactive approach is the only answer. Yes, that means affordable housing may come to your community. Yes, a power plant may be coming to your community. But this is all part of the <u>market risk</u> of owning property. To eliminate that risk through massive central planning means to destroy one if the basic tenets this country was founded on: the ability to own property without government interference. Risk is a part of life and it is not the job of government to eliminate it through regulations that cost community more than they benefit the community. Development you may not like may move next door. You always have the option to sell your property if you wish. If you want to prevent something undesirable moving in, be proactive on a private level, but the property for your desired use. Make it green space if you wish, <u>but don't take the property away from the owner through the local regulatory political process without paying</u>

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[Planning Scenarios continued]

for it for your desired use. In non-government circles, taking or denying use of private property without the permission of the owner is known as theft.

I will be the first to agree that freedom is messy. Freedom does not have the appeal of the perfect utopian social order. Utopia through central planning is unachievable. Freedom does bring innovation, improvement, and progress on a much quicker and more efficient scale than central planning. Market freedom does make the job of local politicians much harder. Central planning is easy for lazy local politicians. Instead of dealing with problems as they come up, its easier to just say no. Deny new ideas, deny progress, deny diversity, deny the human spirit. That is the legacy of central planning! With all the taxing and regulatory mandates inflicted on property owners already, to subject the poor property owner to a sometimes completely clueless local planning board can be summed up in one word: torture.

Legitimate land use regulation is the kind of regulation that has a clearly defined benefit that EXCEEDS the cost of that regulation. Much of the kind of land-use anti-property right regulation that Mr. Struck talks about is regulation where COST exceeds the benefit. Many of the "Stupid" Growth mandates from the state and other regulations advocated by professional local bureaucrats are never held to or completely fail to meet the cost/ benefit standard.

I would implore Mr. Struck to reduce his planning scenarios to 2 realities:

1. Market Oriented Scenario
2. Failed central government planning Scenario

As a parting thought, how in the world do you justify making a property owner pay such a ridiculous property tax bill each year AND then slap that same property owner with almost total loss of control over the property with asnauseum regulations only understandable by a select few professionally paid bureaucrats?

This kind of heavy-handed central planning was morally and economically bankrupt in the Soviet Union when was tried and it still is today.

Kevin Scheunemann
Village of Kewaskum Trustee

[Response at top of next column]

[Planning Scenarios continued]

I would like to briefly respond to Mr. Scheunemann's article. As the Growth Management Educator, I strive to do two things to help communities make informed decisions: 1) Provide factual information (e.g., what is the range of a digital cellular antenna; when is the deadline for coastal management grants, etc.), and 2) Present for discussion all reasonable sides of issues that are too complex to be boiled down into easy, black-and-white answers. The "three planning scenarios," for the most part, falls into category two.

In my original article I identified three scenarios. From the examples I gave it would be easy to conclude that Inactive and Reactive were bad, and Proactive was good. This was an error on my part, which I regret. I should have also listed examples where Inactivity and Reactivity led to positive results and Proactivity led to negative results. Readers could then decide for themselves about the merits of each.

For clarification's sake, I will add a few points to Mr. Scheunemann's article. These are not criticisms, but additional points to consider.

1) Are there communities that are representative of the Inactive scenario? In reality, most communities are a combination. No community is always Inactive, Reactive, or Proactive (with the possible exception of the communities that were so Inactive they are now nothing but ruins near a crossroad).

2) Market forces are not a cure-all. Today's markets are influenced by many factors, including the weather, media, and government regulation (not only our own, but also foreign). If government influences were completely removed, private forces would likely manipulate the "free" market as they did with monopolies and other practices in the late 1800's.

3) We should at least consider that private responses to unpleasant new land uses nearby are not always practical. Most people cannot afford to buy enough land to buffer their property. Nor is selling one's home an easy option when few would buy it due to its suddenly negative location.

4) Private property rights are still held dear by many elected officials. However, most recognize that these rights cannot be absolute without creating unworkable situations. Drawing the line between "private property rights" and public good is difficult.

5) Being Proactive need not equal "centralized planning." A community that tries to expand existing businesses is being Proactive (a Reactive approach would wait until existing businesses moved or went out of business). Even something as simple as buying road salt before it snows is being Proactive. ■

FEDERAL FUNDING FOR PDR

The 2003 USDA-NRCS Farmland Protection Program (FPP) allocation for Wisconsin is **$1,351,000**. This should help protect about 1,000 acres this year.

These funds will be distributed to state, tribal, non-profit, and local farmland protection programs in Wisconsin, to help fund up to 50% of the purchase price of agricultural conservation easements (also known as purchase of development rights or PDR) on productive farmland. For future reference, please note that applications for funding are due in the NRCS State Office each spring. (This year's due date is May 19, 2003.) Funding is usually approved for the highest priority proposals by mid-summer of each year.

$1,351,000 is 42% of Wisconsin's request for $3.2 million, which was based on results from a pre-application survey conducted last November. The allocation, although significant, does not fully meet the need in Wisconsin. National FPP staff were asked how Wisconsin might more effectively compete for FPP funds in the future. Here are their thoughts:

Most states receiving more funding have one or more of the following:

1) Many well funded applicants with an excellent track record.
2) PDR programs that have strong public support and target areas with strong planning and zoning support.
3) A statewide farmland protection program that dedicates significant state funds to PDR.
4) A significant number of applicants that guarantee a higher degree of leveraging (they don't ask for the full 50% from FPP).
5) Applicants that can purchase easements for a low average cost per acre.

The $100 million Congress approved in FPP funds for 2003 was reduced to $70 million during budget negotiations. Wisconsin was 19th of 44 funded states: 18 states received more funds, 25 received less.

For more information, check the Wisconsin NRCS Web site or contact:

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Ask the Expert

(Answer based on input from selected "experts" in the field of growth management.)

Question: Can a town sell a parcel to a developer or private landowner and deed restrict it to prohibit future owners from petitioning for annexation to a neighboring village or city?

Answer: Prominent Wisconsin land use attorney Richard Lehmann is in the process of researching this question for a client. He is not sure what the answer is, but his hunch is "No." Watch this section in future newsletter issues for updates.

Question: Can a town, village, or city create a for-profit subdivision on a property that it owns?

Answer: Public funds can only be expended for public purposes — and even then such purposes cannot be ones that private parties would usually be expected to accomplish. However, according to the Wisconsin Supreme Court, if a community seeks to create a subdivision for the purposes of job creation, expanding the local tax base, promoting orderly growth and environmental conservation, such an activity would be acceptable — if there were no proposals from private developers, or their proposals were inadequate. *(Town of Beloit v. County of Rock, 2003 WI 8, decided March 4, 2003.)*

Question: Can property in a tax incremental financing district (TIF District) suited for industrial use and zoned industrial at the time the TIF District was created later be rezoned to some other use?

Answer: Wisconsin Statute 66.1105(4)(gm)5 requires that property zoned industrial remain so zoned until the TIF District is officially terminated. However, unless such a zoning change negatively affects the property value or other interests of property owners in or near a TIF District, it appears unlikely that the courts will ever address the legality of a rezoning from industrial to some other use. ■

[Based on the program "Recent Case Law," part of the UW-Extension Local Government Center's "Local Planning & Zoning Series." Updated programs are aired annually and are available for a small fee through the Sheboygan and Washington County UW-Extension offices.]



NEWS & EVENTS

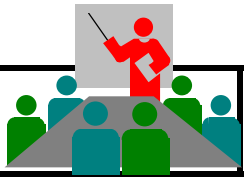
First Graduate of Educational Certificate Program
The *Educational Certificate Program in Planning & Growth Management,* launched in late 2002, awarded its first certificate to Jean Linton, secretary of the Zoning Board of Appeals in the Town of Scott, Sheboygan County. Congratulations to Jean!

Currently, there are 15 participants in the program. To sign up, contact Kevin Struck.

Groundwater Forum – May 15
Where does groundwater come from, and what can be done to keep it safe for the future? The Sheboygan River Basin Partnership is presenting a two-hour forum at Plymouth High School starting at 7:00 p.m. on May 15. State-wide experts will tackle topics such as the ABCs of wells and pumps; local groundwater conditions and known problems; public drinking water systems; well head protection plans; well abandonment; and how groundwater ties in with comprehensive planning.

Survey on Economic Development Issues
In mid-May, Washington County will survey all area businesses, as well as a random sample of residents, about economic development issues. The residents' survey will ask about quality of life and their views on residential and industrial growth. The survey for business owners will explore several items, including what Washington County can do to help their businesses succeed.

County officials hope the survey will help guide for future policy decisions affecting local economic development programs. Additional surveys will be conducted among Washington County's appointed and elected public officials, educational leaders and students. ■



Consultant's Corner . . .

(Each newsletter will spotlight a different consultant. Appearances by consultants in this newsletter does not constitute an endorsement by UW-Extension.)

TECHNICAL ASSISTANCE COMPANY

Celebrating Our 25th Year in Business 1978-2003

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Technical Assistance Company (TAC) has served many institutions, private companies, and municipalities since its start 25 years ago. The basic forces at work within its walls include drafting, scanning, plotting, and design and development of custom handheld and desktop applications.

Municipal projects focus on using CAD to consolidate existing information, such as utility "as-builts," subdivision layouts, certified survey maps, and zoning ordinances. The result of this consolidation is an electronic map containing information such as streets, property lines, house numbers, water features, storm and sanitary sewer, streetlights, zoning, and all proper labeling.

Electronic mapping/data information can be installed on the client's computer for daily use, loaded on a laptop for instant access in the field, or plotted on paper copy output maps. The most obvious output is a large wall map that is displayed in a boardroom, DPW workroom, or in a public location within the "municipal building."

Other highly useful "hard copy" products of electronic mapping information include field books and handout maps. Field books are hardcover binders, used by maintenance crews that show small areas of the community in great detail. Handout maps are smaller versions of the finished maps that can be given to delivery people, realtors, newcomers, business owners, and others. Police and fire departments also use specialized maps to insure optimum response time and job performance.

TAC's software development services include custom handheld (Palm & Pocket PC) and desktop applications. Client specifications can be used, or TAC can aid the client in determining the best application to meet their current needs. One such software product, TAC-U-Trac, is geared toward the municipalities. TAC-U-Trac is a powerful program for tracking and recording water utility (fire hydrants, water valves, water meters, etc.) feature information and maintenance data. ■



Open Meetings Law
- Quiz -

True or False?

If several board or plan commission members travel to an inspection site together, they should refrain from discussing board or commission business while in transit.

Answer: True.

Site inspections by a government body must comply with the Open Meetings Law if the purpose and numbers test are met. Even inspections where no testimony is taken and no discussions are held constitute meetings if the numbers test is met since their intended purpose is to gather information relating to board business.

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