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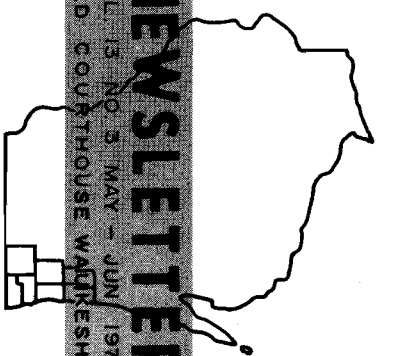
OLD COURTHOUSE WAUKESHA



THE LEGAL BASIS AND LIMITS FOR NATURAL RESOURCE CONSERVATION

By Richard W. Cutler

Introduction

One of the important developments of our time is the growing recognition by the vast majority of the American public that a pressing need exists to conserve our remaining natural resources. This growing public awareness of the need to protect the underlying and sustaining natural resource base from unchecked despoilation by man has, in turn, raised the basic legal question: "How can government control the rapid conversion of floodlands, shorelands, woodlands, wetlands, and prime agricultural lands to incompatible rural and urban land uses which forever remove these lands from the role for which nature intended them?" The key word in this question is "control" because in many instances the resource conservation objectives can be met by regulating the manner of development rather than prohibiting such development.

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Government control over land use development can be accomplished in many ways, including purchase for public purposes of all or part of the rights attendant to the land ownership; by the regulation of the timing, location, and design of land subdivisions; by enactment of sanitary and building codes; and by enactment of comprehensive or special purpose zoning regulations.

An increasingly large number of lawyers and political leaders are concluding that zoning is the best way to properly control the development of floodlands, shorelands, woodlands, wetlands, and prime agricultural lands because it provides the necessary control in an orderly and democratic fashion without the expense of purchase and the loss of tax base which accompanies control by means of public acquisition of lands. In Wisconsin and elsewhere legislative bodies are taking dramatic steps to increase the extent to which zoning can be used to preserve the natural resource base. In 1965 Wisconsin adopted a Water Resources Act which required the counties of the state to properly zone the shorelands and the counties and municipalities to properly zone the floodlands of lakes and streams or have the State of Wisconsin enact such zoning regulations at the expense of the nonacting counties and municipalities. California, Maine, Massachusetts, Oregon, and other states have recently enacted legislation to protect their coastal shorelines from development without state approval as distinguished from local approval. Congress is presently considering a number of bills which would require states, as a condition for the receipt of federal financial aids of many kinds, to take state action to assure the protection of floodlands, shorelands, woodlands, wetlands, and prime agricultural lands.

In the Southeastern Wisconsin Region, many local municipalities have by zoning sought to protect the floodlands, shorelands, woodlands, wetlands, and prime agricultural areas against incompatible development. Some municipalities, like the Town of Belgium in Ozaukee County and the Town of Polk in Washington County, have zoned against urban land use development in certain agricultural areas. Some counties, like Racine

and Walworth Counties, have acted to restrict development to protect the floodlands and shorelands against incompatible development. Other counties, like Waukesha and Walworth Counties, have enacted county-wide sanitary codes which regulate the use of onsite sewage disposal systems in areas covered by soils poorly suited to the use of such systems. Figure 1 illustrates how zoning districts can be used along with special floodland regulations to avoid improper and unwise use of floodlands.

Legal Basis for Zoning for Conservation

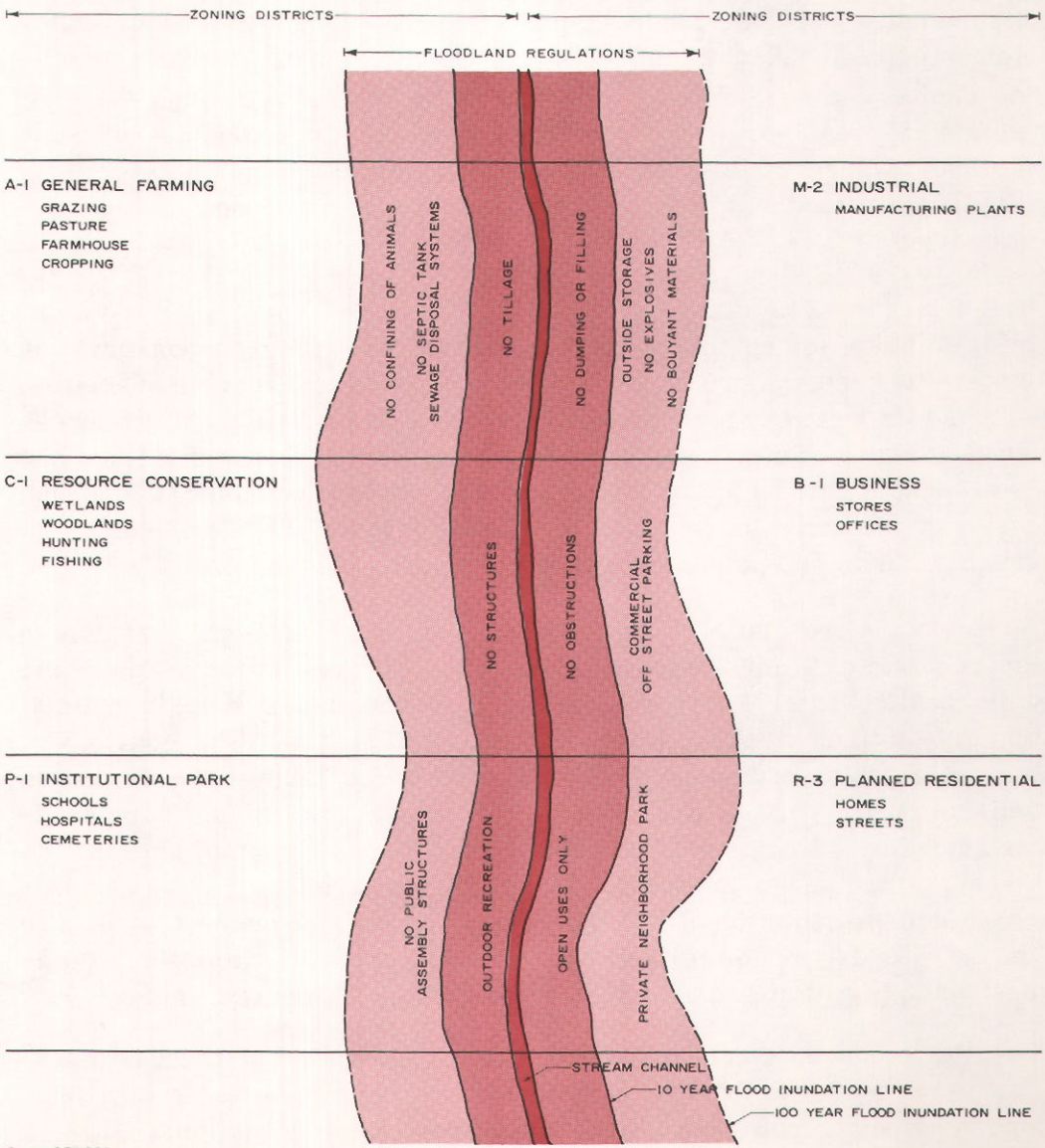
The legal basis for controlling the use of land for resource conservation purposes becomes more important as increased reliance is placed on zoning as the primary means of control. The exact dividing line between valid and invalid conservancy zoning is elusive. To locate that line, one has to make a careful analysis of the many relevant court decisions and develop experienced judgment as to how the rules of those cases apply to particular facts and particular proposed land use regulations.

The basic general rule of past court decisions has been that zoning may regulate or limit the use of land only if the regulation furthers the public health, safety, and general welfare and meets certain judicial standards commonly applied to all zoning legislation. The courts will not uphold zoning ordinances which amount to the taking—that is, to the confiscation—of private property for public use without just compensation therefor. The courts reason that all governments possess an inherent police power to protect the general welfare by adopting restrictions which promote the public health and safety and prevent threats to life and property. Police power, however, does not extend to regulations which constitute an uncompensated taking of property.

These legal concepts are so general that any statement of them is apt to mislead persons into thinking that they, depending upon their own personal viewpoint, can apply them to a particular situation. Thus, a property owner will often say that any regulation restricting the use of

Figure 1

RELATIONSHIP BETWEEN ZONING DISTRICTS AND FLOODLAND REGULATIONS



Source: SEWRPC

his property is a "taking" of his property rights and is, therefore, invalid. Such a property owner may be as wrong legally as is the elected official who may agree with him for reasons of sympathy or the same innocent assumption that any layman can interpret the law relating to zoning as well as can the most scholarly attorneys in this specialized field. At the other extreme, planners and conservationists anxious to protect the natural resource base may give opinions that the law will uphold proposed regulations in a given instance when, in fact, it probably will not. This article will enumerate the judicial standards against which zoning for conservation purposes is most often judged, and will provide some general guidelines as to the probable validity or invalidity of particular types of zoning for conservation.

Judicial Standards Most Often Applied in Conservation Zoning Cases

A careful analysis of court decisions inside and outside Wisconsin leads to three general cautions about the limitations of looking for a hard and fast precedent as to the validity of a particular land use regulation. These are: 1) no two land use regulations involved in the court decisions are exactly alike; 2) potential uses of the particular piece of land involved in the court decisions are not exactly alike; and 3) even when the land use regulations and the potential land uses are approximately comparable, the Supreme Courts of different states have often disagreed as to what constitutes valid zoning—with Wisconsin leaning toward more liberal interpretations of validity than states such as Maine or New Jersey. More recent court decisions, however, generally are inclined to be much more liberal in upholding land use regulations than earlier decisions, a sign of the changing times.

The guidelines used by the courts in their decisions have not been developed with mathematical precision. If, for example, 18 decisions disclose that the courts mention seven guidelines in the aggregate, one may find that the individual decisions may mention only a few of those guidelines. This does not necessarily mean that the courts were unaware of the other guidelines but only that they chose not to mention them in

the decision. Indeed, it must be assumed that the courts were aware of all of the guidelines; and in predicting the validity or invalidity of a proposed ordinance, all of the guidelines must be considered. In summary form, the most important of these guidelines are:

1. Reasonableness of legislative objectives. The courts have assigned considerable weight to the reasonableness of the legislative objective underlying the particular zoning regulation being challenged. Protecting against the threat to public health and safety or against damage to property caused by flooding is clearly a permissible objective in most states. So is seeking to prevent soil erosion or in Wisconsin to protect aesthetics. Increasingly, however, the courts are looking at more than the noble objectives which may be stated in the zoning ordinance itself to determine if the true purpose of the legislation may be some other unstated objective which the courts consider improper, such as the exclusion of low or moderate income families for whom the use of the particular land might otherwise be completely rational. A Michigan court, for example, has invalidated a zoning ordinance outlawing mobile homes, and an Illinois court has invalidated a zoning ordinance prohibiting apartments in a particular municipality for this reason.

2. Relationship of means to ends. The courts will look at the relationship between the regulations in a zoning ordinance and the stated objectives of that ordinance to determine if the ordinance is reasonable and valid. If, for example, prohibiting structures in the floodway of a stream valley is shown by sound engineering study to be necessary to protect the inhabitants of the structures from danger and to protect those upstream against higher flood stages caused by the structures acting as a restriction to flood flows, the connection is direct, clear, and reasonable. If the prohibition is against filling in the fringe area of the floodplain and in a particular case it can be shown by careful engineering

study that filling of the site and all similar sites would have an insignificant effect on upstream or downstream flood stages, then the connection or relationship may not be direct, clear, and reasonable; and the ordinance may be held invalid in terms of the particular application.

3. Discriminatory regulations. If the legislative objectives would logically require that the zoning regulation against a given use apply with equal force against another use and the ordinance does not, the courts may consider that there is discrimination in favor of the second use and, therefore, invalidate the regulation against the first use.

4. Taking of property without compensation. The judicial guidelines concerning what constitutes the taking of private property for a public purpose without just compensation is the most difficult to apply. Courts have not held zoning regulations invalid only when some precise proportional value of the property is lost because of public regulation. Generally, however, the larger the loss in value, the more likely that the regulation will be held invalid. The greater the threat to public health and safety or to property which may result if the regulation is not applied, the greater the loss in value which the court will tolerate.

If, for example, the prohibition of structures on a particular parcel of land in a floodway would reduce the market value of that land 80 percent, the courts may not be sympathetic to the private owner's assertion that he has lost a large proportion of the market value. The courts will not only recognize that the original market value was based upon the ignorance of potential buyers about the flood hazard but will also recognize that the public health, safety, and welfare will be threatened by the flow-restricting effect of any structures built in the floodway. The public and the courts are also becoming increasingly aware of the fact that building on floodlands often necessitates large expenditures of

public funds for flood control works to protect the individuals who so foolishly built in the path of the flooding.

In discussing "taking," the courts have expressed certain rules in deciding some of the cases. If the zoning regulation results in the physical entry of the public onto the land, there is a taking. For example, a taking occurs when a waterfowl refuge is created next to a farmer's cornfield and the farmer is prohibited from shooting waterfowl on his farm, with the result that the waterfowl eats his corn crop.

If the regulation prevents all use of the land, it is a taking. This rule led to the invalidation in the East of early wetland conservancy regulations. The Wisconsin Supreme Court, however, in 1972 in the now famous Just v. Marinette County case refused to follow these earlier decisions. It upheld the validity of the county zoning ordinance which prohibited the filling in of wetlands near a shoreland without a conditional use permit. The court in this case stressed that the value of the land in its natural state was the value to be considered in the question of taking rather than the value of the land were it first filled and then built upon. Since some courts in other states have declined to make this distinction, the Wisconsin decision can be considered a landmark decision, resulting either in a turning point in American law or in Wisconsin law, being more liberal than that of other states on this point. Finally, it should be noted with respect to taking that the courts will deal much more harshly with zoning regulations if the government is acting in a "proprietary" or landowner capacity rather than in a public regulatory capacity. For example, if the zoning of land for conservancy purposes is intended to hold the price of the land down so that the regulating government can acquire the land at a lower price for a public purpose, the courts will be apt to strike the regulation down. This is an example of the guideline that the legislative objective or motive underlying the regulation is important to its ultimate validity.

Application of General Legal Guidelines to
Specific Types of Conservation Land Use Regulations

More resource conservation regulations are probably valid than is generally accepted by landowners, real estate brokers, and elected local officials. It is true that every regulation must be judged in the context of both its particular language and the particular circumstances that surround the specific parcel of land to which it is being applied. A regulation may be perfectly valid with respect to 10 specific parcels of land and invalid with respect to one. Therefore, it is difficult to cite broad examples relating to this factor unless the examples tend to be near the extreme level of clear validity or clear invalidity. Nevertheless, some examples illustrating this consideration are provided below:

1. Prohibit structures and fill in the floodway.[1] Valid if there is clear evidence of the threat to life and property either on the parcel, upstream or downstream, or all three. This evidence is available if the regulation was based on careful engineering studies, such as made by SEWRPC in its various comprehensive watershed studies.

2. Prohibit filling in floodplain[2] unless the storage capacity is not substantially changed. Valid if a substantial change in floodwater storage would result from similar filling on all similar parcels—

[1] *The floodway area may be defined as that portion of the floodlands, including the channel, required to carry and discharge the 100-year recurrence interval flood. If development and fill are to be prohibited in the floodplain, the floodway may be delineated as that area subject to inundation by the 10-year recurrence interval flood. (SEWRPC Planning Guide No. 5, Floodland and Shoreland Development, November 1968.)*

[2] *The floodplain area may be defined as that portion of the floodlands, excluding the floodway, subject to inundation by the 100-year recurrence interval flood, or, where such data is not available, by the maximum flood of record. (SEWRPC Planning Guide No. 5, Floodland and Shoreland Development, November 1968.)*

that is, on parcels at the same elevation on the flood profile of the river on both sides of the river. Invalid if the change in floodwater storage would be insubstantial.

3. Prohibit gasoline storage tanks or septic tanks in the floodplain. Valid if there is evidence that flooding would make them breach and become a fire hazard or a source of pollution.

4. Prohibit residences within 75 feet of the Lake Michigan shoreline. Valid if based on evidence that in 50 years 75 feet of shoreline will erode and endanger the house. A 100-foot setback would probably also be valid under these conditions.

5. Prohibit use of wetlands for more than private recreational use fish hatcheries, and raising natural crops (like wild rice). Valid if there is relatively little loss in value to the property owner and relatively great ecological advantage to the community such as protecting the local water supply (underground sources). This type of regulation is particularly difficult to judge in the abstract.

URBAN DEVELOPMENT ON FLOODLANDS

Urban development in southeastern Wisconsin has been allowed to preempt the natural floodplains of the streams in many areas without regard to the inevitable periodic flood hazards and concomitant dangers to property, health, and life. The fact that such development is continuing to take place despite the known hazards was one of the factors that led the Wisconsin Legislature in the Laws of 1965 to, in effect, require local enactment of adequate floodplain zoning ordinances.

6. Prohibit cutting of trees on the lakeshore or stream bank except to a reasonable minimum extent required for access by the homeowner to the water. Probably valid because of control of erosion and aesthetics (when viewed from the navigable water which all the public has a right to use and enjoy). (See Figure 2).

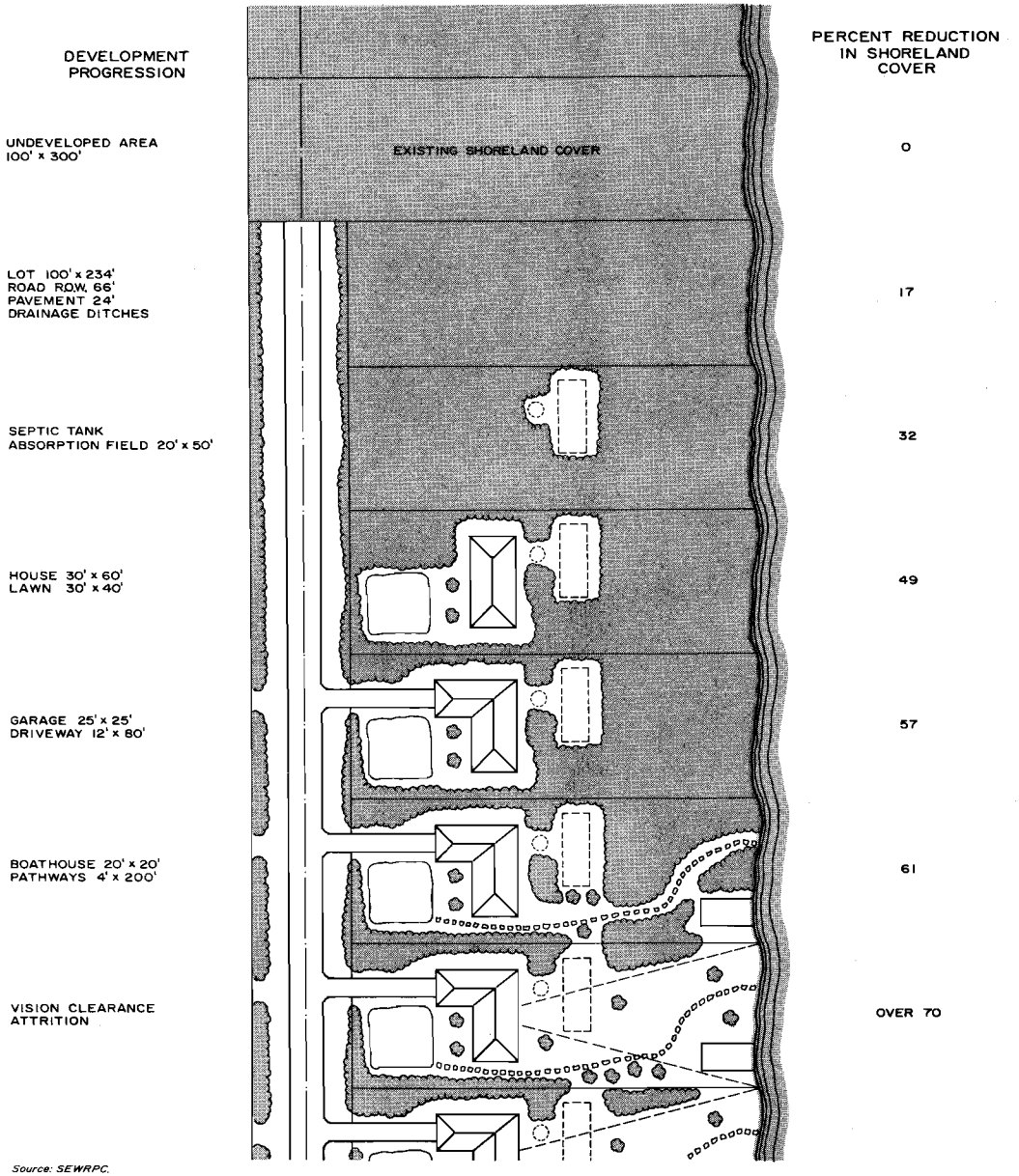
7. Zone exclusively for agricultural use. Valid if the area contains prime agricultural land and little residential development and soils are ill-suited for septic tanks so that residences would necessitate expensive sewer systems. Invalid if near a city and land values for residential purposes are already five times those for agricultural purposes and land is suitable for septic tank purposes.

8. Zone woodlands for residential uses on lots of minimum size of five acres where there is a strong demand for "second homes" for weekend or seasonal use. A federal court in Boston in 1972 held a six-acre minimum lot area requirement valid when it was clearly aimed at stopping a 535-lot second home subdivision from changing the quiet character of a rural New Hampshire town and destroying some of the woodlands in the process. The court said the result would have been different if the subdivision were serving persons who needed a place in which to live near their work.

9. A regulation prohibiting building in a town until sewer, roads, schools, and other public capital improvements have been provided for the area, and the town has an approved capital budget program by which within 18 years all of the areas will be so served and the developer can get a permit sooner if he will install earlier the needed capital facilities. Held valid by the New York court in 1972 by a 5-2 decision in a landmark case.

Figure 2

TYPICAL SHORELAND COVER REDUCTION



Source: SEWRPC.

10. Prohibit all residential development on soils which are poorly suited for septic tanks. Probably valid if evidence clearly shows that there would be a threat to public health and the public treasury (in having to build expensive sewers to serve scattered development) and there were adequate other places for persons to live within a reasonable distance of employment. It would be helpful to validity if either the municipality had plans for the orderly extension of sewers or if there is little growth in the community (because the loss in value would not then be as great).

Conclusion

If land use regulations directed at natural resource conservation and environmental preservation are based on sound planning and engineering evidence that they will accomplish a legitimate public purpose without an undue decrease in the property value of unfettered use, the regulations will be valid. The key is sound planning and engineering plus—and this is less important—sound legal advice. The trend in legislative bodies at all levels—the Congress, the State Legislature, and the local governing bodies—and in the courts is to not only allow, but to require, more stringent zoning to conserve the natural resource base. That applies especially to lands near navigable waters, but also to any land where misuse threatens harm to others through erosion, sedimentation, needless loss of aesthetics, pollution, or the large expense of curing private pollution or private foolishness in building in nature's floodplain. Less clearly but probably zoning also can, in well-planned instances, restrict the use of land to agricultural or five-acre minimum residential uses.

SEWRPC SURVEYS SENIOR CITIZEN RIDERS DURING PILOT HALF FARE BUS RIDE PROGRAM

A recent pilot program to provide half fare bus rides for senior citizens in the Milwaukee area did not significantly increase the number of senior citizen riders, according to a user survey conducted by the Regional Planning Commission. The survey was undertaken at the request of

Milwaukee County Executive John Doyne to provide information useful in evaluating the effectiveness of the program.

The Milwaukee County Board earlier this year appropriated $50,000 for the pilot program which allowed senior citizens 65 years or older to ride Transport Corporation buses during nonrush hours at half fare. Subsequent contributions from the City of Milwaukee and from 16 of 18 Milwaukee County suburbs, as well as the transfer by the County Board of $380,000 from its contingency fund, will allow the program to continue through the end of 1973.

The survey design sought to measure the change in bus ridership which might occur as a result of the reduced fare program by counting transit ridership both before and during the reduced fare program. In addition, senior citizens were interviewed during the period in which reduced fares were in effect to obtain information relating to the type of fares paid, whether the trip would have been made at the full fare, whether reduced fares resulted in a shift from peak to off-peak riding, and whether the reduced fare resulted in a shift to mass transit riding from some other means of transportation.

Because the survey had to be conducted on very short notice and without any "out of pocket" expenditure of public funds, the sample size had to be set at a minimum level which would permit identification of a significant change in transit use as a result of reduced fares given the day-to-day changes which normally occur in transit use. Accordingly, the SEWRPC, with the aid of the University of Wisconsin-Social Survey Research Laboratory, set a sample size which would assure, within 95 percent confidence limits, that a change in total senior citizen ridership of 15 percent or more would be detected.

The first survey, consisting of onboard counts of bus passengers in the two age categories under 65 years and 65 years or older, was conducted during the week of May 7 through May 13, just prior to the start of the reduced fare program. The second survey, conducted from May 17 through May 23, shortly after the start of the program, repeated onboard counts of passengers by age groups on the same bus routes, the same bus trips, and for the same time and day of the week, and included personal interviews with senior citizen riders. Both surveys were conducted from approximately 9 a. m. through 6 p. m., including, therefore, the main nonrush and rush hour periods of the respective weeks.

No Significant Increase Found

A comparison of passenger count data obtained in the two surveys indicates that there was no significant increase in senior citizen ridership during the period in which reduced fares were in effect, and that a small decrease in such riders actually occurred, from approximately 4,607 senior citizen riders in the first survey to 4,332 in the second survey, a decrease of approximately 6 percent. The meaning of this decrease must be interpreted, however, in light of a decrease in total ridership on the entire system amounting to about 3 percent experienced during the second survey period and in light of the effects of sampling variability.

One important fact derived from survey findings was that a surprisingly large number of senior citizens preferred the economy and convenience of a weekly bus pass and apparently will continue to use such a pass even if the cash fare is reduced. The survey results indicate that approximately 38 percent of senior citizen riders used weekly passes, 6 percent paid full fare, and only 56 percent took advantage of the reduced fare.

Other results from the personal interviews obtained from those using half fare indicated that:

- Approximately 42 percent of senior citizen riders said they had changed from peak riding to off peak riding to take advantage of the reduced fares, while 58 percent said that they had not.

- Approximately 14 percent of the senior citizen riders said they had changed from riding by auto, walking, or other means of travel to riding the bus because of reduced fares, and 86 percent said they had not.

- Approximately 67 percent of the senior citizen riders said they would have made the trip even if the bus fare had been the full 50 cents, while 33 percent said they would not.

The survey findings also indicated that there was an appreciable increase in the number of senior citizen riders on five of the 34 regular bus routes operated weekly. These include routes No. 21, North Avenue, 3.1 percent; No. 20, Wisconsin-Muskego-South, 3.4 percent; No. 35, 35th Street, 6.1 percent; No. 80, Teutonia, 6.7 percent; and No. 14, Holton-Mitchell, 7.6 percent. There was also a significant decrease in the number of senior citizen riders on six bus routes. These include routes No. 23, Fond du Lac-Wisconsin, 3.3 percent; No. 19, 3rd-Greenfield-South 13th, 4.1 percent; No. 15, Oakland-Delaware, 6.1 percent; No. 57, Walnut-Lloyd-Center, 8.1 percent; No. 31, Wisconsin-Washington-Wauwatosa; 8.2 percent; and No. 53, Lincoln Avenue, 13.7 percent.

From the survey findings it is estimated that the continuation of the reduced fare program for senior citizens would cost approximately $750,000 annually. The survey findings also indicated that very marginal transportation benefits, including a modest shift in peak to off-peak period transit riding by senior citizens and increased mobility for some

senior citizens, would accrue from such a program that, if continued, should be regarded as a social welfare, rather than a transportation improvement, program.

One measure of the total potential mass transit use by senior citizens in the Milwaukee area is 1970 U. S. Census data which indicates that there were 111,338 persons 65 years of age and older residing in Milwaukee County. Of this total, approximately 100,000 resided within the mass transit service area, that is, within one-quarter mile of a regularly established mass transit route. The user survey found that an average of 58,000 half-fare rides were made per week during the reduced fare program. This average use amounted to an equivalent of half-fare round trips by about 4,200 senior citizens daily, or only 4 percent of the more than 100,000 senior citizens eligible for the program and residing within the transit service area.

MILWAUKEE COUNTY ADOPTS MASS TRANSIT PLAN

The Milwaukee County Board on May 8 adopted the Milwaukee Area Transit Plan, which recommends the use of flexible, rubber-tired vehicles to provide transit service. The Board, however, directed the staff of the Milwaukee County Expressway and Transportation Commission to restudy alternate ways for buses to be used in rapid transit service other than on the separate transitways recommended in the original plan, and to report the results of the restudy to the Board before proceeding to implement the busway proposal.

The adoption clears the way for the Expressway and Transportation Commission to begin implementation of portions of the plan, including the preparation of an application for federal funds to buy the existing assets of the Transport Company and to build parking facilities and waiting stations for users of freeway flyers.

The plan as adopted includes an action program for improved transit service, which proposes immediate steps to improve the quality and level of transit service in Milwaukee County. The proposed steps include:

- County purchase of new buses to be leased to the Transport Company at a nominal fee, in an effort to modernize the bus fleet and reduce maintenance costs.

- Provision of bus shelters at major loading and transfer corners.

- Conduct of a major informational program about bus service, and distribution of schedule and route information.

- The initiation of a city flyer service to provide frequent, express bus service over existing surface transit routes in the Milwaukee area to complement the successful freeway flyer service.

- Development of four park and ride lots to expand freeway flyer type service into presently unserved areas. The lots were recommended to be built at the IH-94—College Avenue interchange, the IH-94—Holt-Morgan Avenue interchange, the USH 45-Watertown Plank Road interchange, and the USH 141—Brown Deer Road interchange.

The transit plan was adopted by the SEWRPC in March 1972.

CORPS OF ENGINEERS TO BE ASKED TO STUDY LAKE MICHIGAN SHORELINE EROSION

A resolution asking Congress to authorize and fund a comprehensive study by the U. S. Army Corps of Engineers of the Lake Michigan shoreline erosion problem in Ozaukee, Milwaukee, Racine, and Kenosha Counties has been prepared by the Commission for adoption by the four county boards concerned and the Commission itself, and subsequent transmittal to all members of the Congressional delegation representing the four counties.

Kenosha News Photo

Waves on Lake Michigan have destroyed part of the Southport Park parking lot in the City of Kenosha and undermined the rest of it.

The action to seek federal help was taken by the Commission at its annual meeting. The action followed a June 1, 1973 meeting in the Commission offices to discuss the shoreline erosion problem, attended by representatives of the four county boards, the Corps of Engineers, the U. S. Soil Conservation Service, the University of Wisconsin-Extension, the University of Wisconsin-Milwaukee Center for Great Lakes Studies, the Wisconsin Department of Natural Resources (DNR), and the Commission.

The June 1 meeting was held in response to requests from the Kenosha, Ozaukee, and Racine County Boards that the Commission undertake a comprehensive Lake Michigan shoreline erosion study and prepare a shoreline erosion abatement plan; and a request from the Milwaukee County Board that the Commission undertake a study of the problem of restricting buildings and construction on vulnerable Lake Michigan property from the Illinois state line to the northern extremity of Ozaukee County, and of the possible use of these lands for development of a system of parks, parkways, and lagoons.

Discussion of the nature of the problem and the jurisdictions involved at the meeting resulted in a consensus that the Commission was not the most appropriate agency to undertake such a study, and that the following short-term and long-term courses of action should be taken relative to this matter:

- As a short-term approach, representatives of the four counties agreed that a booklet be prepared by the University of Wisconsin-Extension in cooperation with the concerned county Soil and Water Conservation Districts. The booklet would be written in laymen's language to be distributed to all affected property owners. It would describe the general nature of the shoreline erosion problem, the kinds of solutions available, and the steps that must be taken to protect private property from erosion on

Milwaukee Journal Photo

Since last year, when Lloyd P. Levin began construction of his $100,000 home along Lake Michigan in Bayside, he has lost about 20 feet of bluff to erosion.

an individual interim basis, including steps to obtain a permit for shore protection projects from DNR and the Corps of Engineers.

- As a long-term approach, it was agreed that the Commission, in cooperation with the four county boards, petition the Congressional delegation representing the area to obtain Congressional authorization and funding of a comprehensive study of the Lake Michigan shoreline from the Wisconsin-Illinois state line to the Sheboygan County line to define the extent of the problem and to prepare a comprehensive plan for abatement of the problem. Such a study, it was concluded, should involve local participation through an advisory committee created by the Corps of Engineers.

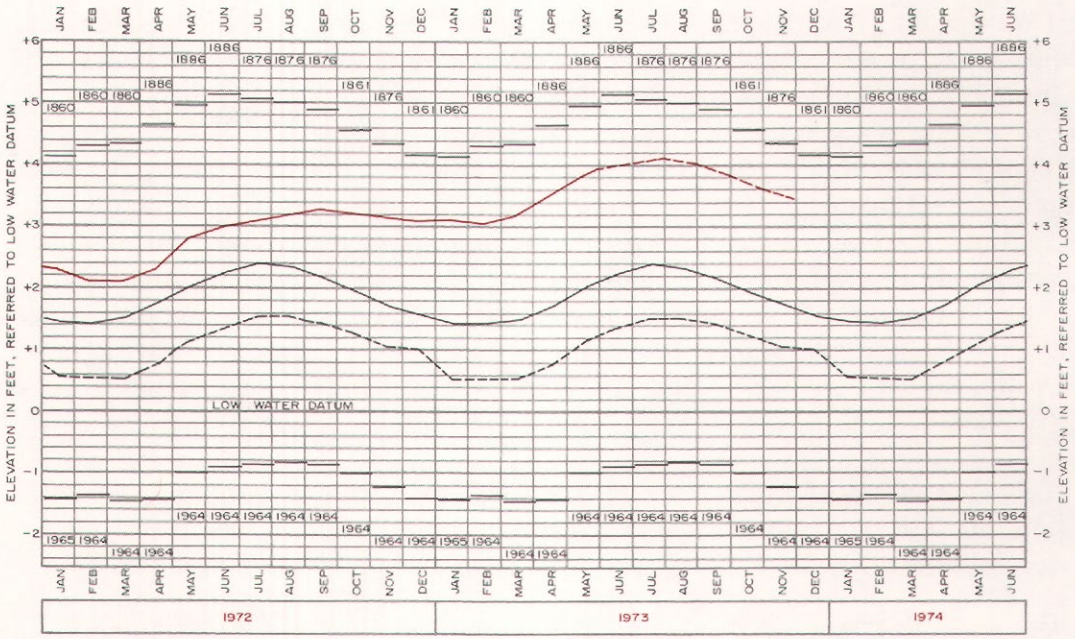
Representatives of the four counties noted that the problems of erosion were similar in their respective counties, and said that the affected property owners were demanding government help.

Colonel Richard M. Wells, Chicago District Engineer with the Corps of Engineers, said that lake levels are about 1 3/4 feet above the long-term average, and it is predicted that these levels will continue to rise until the mid or late summer when the normal winter recession begins (see Figure 3). He said that the all-time low lake levels of 1964 and 1965 may not occur again in our lifetime.

He said that with respect to shore protection measures, any solution is expensive, with costs ranging from $75 to $500 per lineal foot of shoreline. Also, a structure that protects one man's shoreline could accelerate erosion for the next man to the south. Wells estimated that the cost of providing protection to all of the developed shorelines in the Great Lakes area, which are in the category classified as emergency situations and which do not include summer cottages, is $1.8 billion.

Figure 3

LAKE MICHIGAN-HURON ELEVATION DATA
PERIOD OF RECORD: 1860-1972



The solid brown line on the graph represents the recorded monthly mean level and the end-of-month level of the current month. The dashed brown line represents the probable end-of-month level for June 1973 through November 1973. The black lines represent the monthly mean average and extreme levels recorded during the period of record.

International Great Lakes Datum (1955 Adjustment) = Low Water Datum + 576.80 Feet. Mean Sea Level Datum (1929 Adjustment) = Low Water Datum + 578.1 Feet.

LEGEND

- Recorded level
- Probable level
- Average level (period of record)
- Average level (last 10 years)
- 1860 1860 1886 Extreme high levels and year of occurrence (period of record)
- 1965 1964 1964 Extreme low levels and year of occurrence (period of record)

Source: U.S. Department of Commerce, NOAA—National Ocean Survey, Lake Survey Center.

COMMISSION ADOPTS 1974 BUDGET

The Commission at its annual meeting on June 7 adopted a 1974 budget totaling $1,236,774, an increase of approximately 27 percent from the 1973 budget of $975,142. The tax levy for the seven member counties, however, rose only 4 percent, from $408,038 for 1973 to $423,359 for 1974.

The $1.2 million figure includes $711,386 for the continuing regional land use-transportation planning program, $82,268 for a continuing regional housing study, $73,932 for a continuing environmental planning program, $60,000 for the regional park, outdoor recreation, and related open space planning program, and $309,188 for such ongoing programs as community assistance services, newsletter and annual report preparation and distribution, and A-95 review, as well as for administrative costs.

The breakdown of funding sources for the 1974 budget includes $798,415 in state and federal grants and service contracts, $423,359 in tax levies to member counties, and an anticipated 1973 surplus of $15,000.

The member counties and their respective tax levies include Kenosha County ($25,642), Milwaukee County ($235,461), Ozaukee County ($17,104), Racine County ($37,033), Walworth County ($22,180), Washington County ($18,499), and Waukesha County ($67,440).

TOUR GUIDE OF MENOMONEE RIVER WATERSHED AVAILABLE

A printed tour guide containing nearly 100 points of interest in the Menomonee River watershed has been published by the Commission and is available without charge from the Commission offices.

The tour guide is designed to provide firsthand knowledge not only of the serious water resource related problems of the watershed such as

flooding, water pollution, soil erosion, and poor land use, but also of good land use and public facility development such as reservation of floodlands for park and parkway purposes, and of the remaining opportunities to preserve and enhance the overall quality of the environment within the watershed.

The tour guide may be of interest to groups wishing to conduct their own tours of the watershed. Commission staff members may be available to conduct tours for groups who are willing to pay the tour expenses.

The Commission is in the second year of a comprehensive three-year study of the watershed. The study is intended to develop a long-range plan for the resolution of serious water and water related resource problems of the watershed.

AROUND THE REGION

NINE COMMUNITIES APPROVE TWO-PLANT PROPOSAL FOR UPPER FOX RIVER WATERSHED

Nine of the 12 communities in the upper Fox River watershed have adopted resolutions to establish two centralized sanitary sewerage systems in the upper watershed, based on an alternative plan for advanced waste treatment contained in the SEWRPC's comprehensive plan for the Fox River watershed. The nine communities include the Cities of Brookfield, Waukesha, and New Berlin; the Villages of Pewaukee, Menomonee Falls, and Sussex; and the Towns of Brookfield, Lisbon, and Pewaukee. Still to act on the matter are the Village of Lannon and the Towns of Waukesha and Delafield.

The SEWRPC and the Wisconsin Department of Natural Resources have recommended that a single plant be built downstream from the existing Waukesha sewage treatment plant to serve all of the upper watershed

area, with all of the existing sewage treatment plants above Waukesha recommended to be abandoned upon completion of the proposed system.

The resolutions as adopted by the nine communities call for two sewerage systems, one located at the existing Waukesha sewage treatment plant site to serve the City of Waukesha and adjacent urban development in the Towns of Pewaukee and Waukesha, and one to serve all remaining urban development in the upper Fox River watershed, with treatment to be provided at a single large sewage treatment plant in the City of Brookfield. Agreement must be reached by the municipalities on a course of action before federal funds can be used.

PLANS FOR NEW WAUKESHA COUNTY PARK APPROVED

Plans for a new 442-acre park in the Town of Merton in northern Waukesha County have been approved by the Waukesha County Park and Planning Commission. The site is one of 12 major public outdoor recreation areas in the Region recommended by the Regional Planning Commission for acquisition by 1990. To date, nine of the 12 sites have been totally or partially acquired.

The proposed park area includes 6,200 feet of the Oconomowoc River, and is one of the last wild areas left in the county. The Park and Planning Commission has directed Walter J. Tarmann, park and planning director, to obtain appraisals and purchase options on the land. Tarmann said the open area would be developed for recreational use such as picnicking, and that he would recommend that the rest of the land be kept in its natural state.

The proposed park includes 84 acres donated recently to the state by Mr. Norman Chester as a nature preserve, as well as 233 acres of woodland, 173 acres of open land, and 37 acres of the river's floodplain. The proposed park adjoins the unincorporated Village of Monches on the Waukesha-Washington County line.

DOES CONDOMINIUM DEVELOPMENT REQUIRE SPECIAL ZONING REGULATIONS?

No. A municipality which receives a proposal for condominium development need not enact special zoning requirements to permit the construction of condominium units. The condominium concept is one relating to ownership, not land use or housing structure type. In applying zoning regulations to condominium development, therefore, a municipality would normally use whatever zoning district is appropriate to the type of housing structure being built. A municipality should also ensure the establishment of an adequate management structure to provide for proper maintenance of the development project.

Condominium is a Latin word meaning joint ownership or control. When applied to housing, it denotes individual ownership of a single unit among several, with the land and all other parts of the project held in common with owners of the other units. Maintenance of the project is usually provided through a monthly service fee paid by those who own the units.

Condominium residential projects may consist of one or more high-rise apartment buildings, a group of low-rise (garden) apartments, a group of attached or detached single-family homes, or any combination of these. In the case of a proposed multiple-family project, the zoning requirements for multiple-family development would apply. In the case of a project with single-family detached homes, zoning for a planned unit development would most likely apply, since it does not carry with it the requirements for individual lot lines common to typical single-family zoning districts. In a project which has a combination of these building types, a combination of zoning types or a planned unit development would be used for zoning purposes.

Condominiums are also regulated by Chapter 703 of the Wisconsin Statutes.

QUOTABLE QUOTE.....

"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 regulation....

...nothing this court has said or held in prior cases indicates that destroying the natural character of a swamp or a wetland so as to make that location available for human habitation is a reasonable use of that land when the new use, although of a more economical value to the owner, causes a harm to the general public.

...While loss of value is to be considered in determining whether a restriction is a confiscative taking, value based upon changing the character of the land at the expense of harm to public rights is not an essential factor in controlling.

The land belongs to the people...a little of it to those dead...some to those living...but most of it belongs to those yet to be born..."

Chief Justice E. Harold Hallows
Supreme Court of Wisconsin
Just v. Marinette Co. (1972)
56 Wis 2d 7

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