A zoning administrator's view of farmland zoning

By Jack D. Kartez

Soil Conservation Service photo

PLANNING literature that deals with farmland preservation techniques often concentrates on efforts to purchase development rights (PDR) or to transfer development rights (TDR). Most examples cited come from such rapidly urbanizing metropolitan areas as King County, Washington; Suffolk County, New York; and Howard County, Maryland. PDR and TDR are appealing techniques because they are innovative and produce dramatic results.

In the farming counties of America's heartland, however, less-than-fee techniques are often financially, administratively, and politically unrealistic. People question why any unit of government should buy development rights for a small fortune when there are several hundred thousand acres of similar land in the county. Most rural counties, therefore, are limited to conventional policy tools, such as zoning, in their pursuit of farmland preservation.

For two decades urban planners have analyzed the flaws of zoning as a planning tool. Rural planners likewise have experienced frustration with the vagaries of zoning applied to rural conditions. The result has been an effort to mold zoning into a workable tool for agricultural areas. What follows are but a few examples of problems and solutions that may be encountered in attempting to zone agricultural land.

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Distinctiveness of rural planning

Municipal zoning traditionally regulates density by establishing minimum lot-size requirements throughout a use district. This approach can prove counterproductive in rural areas. Limited numbers of small homesites can be mixed in with large farm tracts at acceptably low densities over a large area. Applying the homogeneous lot-size restrictions of zoning to such situations can be unsatisfying.

For example, allowing small-acreage lot sizes, 2 to 5 acres, for example, throughout a district ruins the effectiveness of zoning to protect farmers from incompatible neighbors and speculative pressures. On the other hand, large minimum lot sizes, 20 or more acres, may be effective but create other problems. Farmers who wish to deed a homesite to children or retiring parents suddenly find intractable obstacles in the way. Also, farmers often hold unproductive or isolated corners of land that they wish to get rid of from time-to-time. When required to sell 15 acres of good land to get rid of 5 acres of scabland, they feel their common-sense is being assaulted. In such cases, the farm community can become bitterly opposed to land use planning in general.

Moreover, many rural areas want to provide for residential uses at locations and densities that do not conflict with farm uses. Rural zoning administrators are all too familiar with the results of trying to work with conventional zoning codes in such situations. Circumventing codes through "use variances," "spot zoning," "family exemptions," and other methods of dubious legality bring about many an unhappy experience.

Some counties attack the problem by restructuring the concept of density controls so the controls fit rural needs. In each case the definition of a limit on density has been changed from the lot size to the total number of lots created.

One example is the effort in Latah County, Idaho, to find an alternative to countywide five-acre zoning. The county's zoning ordinance was recently amended to reduce the minimum lot size from 5 acres to one, but subdivisions are now prohibit-

ed in the countywide agriculture/forestry district for the first time. The key to the acceptance of this change is a new subdivision ordinance that provides for the farm community's needs. Previously, even the most limited land divisions required a lengthy subdivision approval process, and farmers were expected to meet the same five-acre minimum required of developers. The new subdivision ordinance provides for a limited number of "land partitions" for each farmholder through a streamlined administrative process. Each farmer is permitted to create one new lot for his first 5 to 30 acres, a second lot if his farmholding is greater than 30 acres but less than 100 acres, three lots if the acreage is up to 220 acres, and a maximum of four lots for any holding greater than 220 acres. For the first time, these provisions separate the farmer who wants one or two lot-splits for family reasons from the developer who wants a full-scale subdivision.

Placing a single limit on all land divisions within the agricultural zone is another, slightly different technique. Whitman County, Washington, for example, adopted a countywide 20-acre minimum lot size several years ago. In updating the county plan in 1978, county officials recognized that some provision must be made for residential uses on less than 20 acres. The result was a new policy in which all farmowners are limited to creating two new lots of one acre or more from their landholdings. The policy also requires that such lots be located on soils that are marginal for farm use.

Other variations of new density provisions, such as "quarter-quarter zoning," can be found in the report *Saving Farms and Farmland: A Community Guide*, which is available from the American Planning Association. Responsiveness to the problems of the farm community can save rural planning programs as well.

Recognizing farm family needs

Zoning is a blunt instrument. Under the equal protection doctrine, identical restrictions must apply to each property within the same use classification. Counties grappling with farmland zoning have discovered a variety of situations that were never envisioned in model codes designed for the strict separation of uses in a municipality. A common problem arises when a farmer wishes to place a second residence on the property for an elderly family member. In a case like this, pity the poor zoning administrator who has to work with the provisions of a zoning code copied from a large municipality. He has an unhappy choice. One alternative is to follow the one-lot-one-dwelling logic of zoning and reject the farmer's request out of hand, which can create a great deal of adverse public sentiment in a rural area.

The zoning administrator's other alternative is to send the farmer's problem to the planning commission or board of adjustment as a "medical" or "hardship" variance request. This approach also makes the conscientious code administrator unhappy because it undermines the legal ground rules for variances in the jurisdiction. Technically, the approach is also likely to be unconstitutional under most state laws if offered only in family situations.

Many rural counties have opted to avoid these dilemmas by adopting agricultural zone provisions that recognize a second bona-fide farm dwelling as a permitted or conditional use. While such provisions may provide opportunities for abuse, the benefits often outweigh the problems created by stubborn adherence to municipal concepts. Counties such as Buchanan County, Iowa, and Latah County, Idaho, limit additional farm dwelling units to mobile homes, for obvious reasons.

Another kind of problem is caused by farm consolidations, which often leave the new owner with one or more unwanted homes. Rather than become landlords, many farmers prefer to sell these homes with one or two acres. However, in farmland zones with large-acreage requirements, unwanted homesteads become a problem of nonconforming use. This creates legal and procedural issues far out of proportion to the land use impacts involved. One benefit of the new density provisions is that they provide a method of solving problems, such as the unwanted homestead.

Making state measures sensitive

New York, Oregon, and Wisconsin have adopted legislation providing specific authorization for local exclusive agricultural zoning. These provisions are aimed in part at preventing abuses of the tax benefits offered by current-use value property tax assessment for farmlands. All three statutes widen the authority of the local zoning code, for example, by prohibiting special-service benefit assessments for water and sewer extensions on farmlands within agricultural zones.

Oregon's "exclusive farm use zone" (Oregon Revised Statutes 215.203) and Wisconsin's "exclusive agricultural district" (Wisconsin Statutes Annotated 91.71) are also quite specific in defining what is in the local zoning ordinance. Both statutes specify the permitted and conditional uses that are allowable within the locally adopted agricultural zone. These provisions are careful to avoid unnecessary problems. For example, farm-related commercial uses are provided for in both statutes.

How do these statutes deal with other problems? Wisconsin's statute specifically provides for the unwanted homestead. It states that "for purposes of farm consolidation, farm residences or structures may be separated from a larger farm parcel."

Oregon's statute is silent on this provision. Is it a matter of local concern? Judging from the 1979 Oregon legislative session, it is. Three bills were introduced to allow creation of a nonfarm homesite in an exclusive farm use zone in cases of farm consolidation. Although these bills were tabled in committee, they obviously addressed a locally perceived need.

Neither the Oregon or Wisconsin statutes include provisions for additional farm dwellings on a single lot. Is it a problem? One Oregon county that moved early to adopt exclusive farm use zoning faced a problem in 1975 when a farmowner requested an additional mobile home for a family member. The request left local officials in doubt as to how to comply with state law and still accommodate a need. Amid local fanfare, the dilemma was resolved when one of the original legislative sponsors of the bill reassured local officials that special provisions for bona-fide farm families were consistent with state law.

States entering a partnership with local governments in writing the zoning code must try to anticipate the unexpected, troublesome situations that zoning administrators know are a predictable burden of planning implementation. This is no criticism of state agricultural zoning statutes, which are a real boon. But local officials face difficulties when state-mandated agricultural zoning provisions do not foresee local farm community needs.

A rural zoning literature needed

Municipal zoning has spawned considerable literature on practices and problems over the past 50 years. This is a valuable resource for those involved in code development and administration. There is no less a need to share experience with rural zoning. The problems are somewhat different though, and the literature is limited. The foregoing examples represent but a few considerations that rural counties have found important in developing workable agricultural zoning. Foreseeing problems can prevent them from dominating the time and energy of tiny rural planning agencies. □