

McHenry County, Illinois Farmland At Risk

by
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Introduction

McHenry County, Illinois, lies in the path of the expanding Chicago metropolitan area. Still predominantly rural, it has a reputation for its commitment to protecting farmland. Land use policies and zoning practices put in place almost twenty years ago are now facing the test as McHenry County has become the fastest growing county in Illinois and one of the most rapidly growing in the United States.

The rural, small town character of McHenry County is changing as development pressures increase. Recent public opinion polls show that "growth" issues are the greatest concern to county residents. The loss of prime farmland, however, is not one of those concerns (McHenry County Defenders).

Located sixty miles northwest of Chicago, McHenry County is about equal distance to the population centers of Waukegan, Rockford and Aurora in Illinois and Janesville and Milwaukee in Wisconsin. This location has traditionally isolated the county from the development pressures that urban areas faced during the 1970s and 1980s, but makes it perfectly situated to attract residential and industrial development in the coming decades.

The decision by Motorola Corporation to locate a major new manufacturing facility in the rural, far northwestern corner of the county, where it could attract skilled labor from throughout the two-state region while taking advantage of lower taxes, cheaper land and a good transportation system, demonstrates the attraction that the area has for developers. Motorola is just the first of many large developments that are being considered for the county.

Small but growing fast

The county contains 611 square miles, and has a population of 230,550. Most of the land in the county is rural, with several small towns, such as Marengo, Harvard, Huntley, Union and Richmond still surrounded by farmland. The southeast corner of the county has become a growing suburban area, with the City of Crystal Lake the largest municipality of 28,000 people.

The number of people in the county increased by 33% between 1970 and 1980, and 24% from 1980 to 1990. The population is projected to increase to 236,000 by the year 2010. (Northeastern Illinois Planning Commission). Based upon the current growth rate, it is likely that this figure will be easily exceeded. Put into perspective, McHenry County still has the smallest population of the six counties in northeastern Illinois; McHenry County accounts for only 3% of the total population of the Chicago region.

Farming is a big industry

Agriculture is a major factor in the local economy, and farmland is a very valuable resource in the county. In 1990 McHenry County was still in the top ten counties in the state in percent of total farm jobs, and farming was third in the county in terms of percentage of jobs, after construction and manufacturing. (County Data Book, Legislative Research Unit, 1993, September. Illinois General Assembly, Fourth Edition.)

Farms in McHenry County generate about ninety five million dollars in cash receipts each year. Corn and soybeans account for 58% of the receipts and livestock, dairy and poultry 42%. About 12,625,000 bushels of corn were harvested on 101,000 acres in 1996, and 2,529,600 bushels of soybeans were harvested on 74,000 acres. In addition, 151,800 bushels of wheat were grown in the county in 1996. (Illinois Agricultural Statistics Service) Hogs, pigs, cattle and calves are the primary livestock sold.

The county was once a major milk producer for the Chicago market, but only 133 farms had milk cows, according to the 1992 Census of Agriculture. In addition to corn and soybeans, the county has a large number of nurseries, greenhouses, and vegetable growers. Together, these high-value crops accounted for \$21,507,000 of sales in 1992. (Census of Ag)

Net cash returns to farmers decreased between 1987 and 1992, from \$20,019,000 to \$13,998,000, as government payments diminished and expenses increased. (Census of Ag) These figures are obscured by the fact that twenty one percent of the farms had less than \$2,500 in sales. These so-called "hobby" farms, consisting of less than 50 acres, account for almost forty percent of the total farms in McHenry County. (Census of Ag) About one-half of the farms had a net gain in cash returns, with an average of \$37,191 per farm. Farms with net losses averaged \$10,969 per farm.

Farms getting bigger

Eighty percent of the county is unincorporated, rural land, and more than two thirds (68%) of the land is farmland or forest. The number of farms in the county has steadily decreased over the years as farm size increases, and farm values escalate. The 1992 U.S. Census of Agriculture counted 985 farms in McHenry County with an average size of 253 acres and an average value of \$659,000, or \$2,746 per acre. This compares with the remainder of Illinois where the average size is 351 acres and the average value per acre is \$1,548.

The total farm acreage has also decreased since World War II, from 350,900 acres in 1945 to 233,500 in 1995. McHenry County lost about 23,500 acres of farmland each decade since the war, with a slight increase in acres during the boom in crop prices in the late seventies. During the last decade farmland has decreased by 32,450 acres as development expands out from the towns and cities. In the last six years alone, 18,625 acres of land was annexed to municipalities, and another 2,682 acres was incorporated into new villages (McHenry County Department of Planning and Development).

Single-family residential is the second most common land use, after agriculture, covering about 7.5 percent of the county. High density residential development is mostly confined to the municipalities where it is served by public sewer and water. Lower density development on lots of one-half acre or more is scattered throughout the county. The McHenry County septic system code requires a minimum of one-half acre of suitable soils, which has pushed the residential lots in the unincorporated areas to larger sizes. There is an inventory of more than 2,000 buildable subdivision lots, and about 1,000 undeveloped 5-10 acre parcels which can be used for residential development.

Only about 2.2 percent of the land in the county is devoted to commercial, industrial or gravel mining activities. Of this, about 40 percent are mined to extract the abundant sand and gravel resources left behind by the glaciers. McHenry County is the number one producer of sand and gravel in Illinois. Mining activities are largely concentrated in the southeast, northeast and southwest parts of the county. Most of commercial and industrial areas are located in or near municipalities, or along the major railroads or highways. Although this land use represents a small percentage of the total land in the county, there are more than 2,000 acres of vacant land in the unincorporated area zoned for commercial or industrial uses. Much of this land is currently being farmed.

McHenry County has a good transportation system served by U.S. Highways 12, 14 and 20, and State Routes 23, 31, 47, 120, 173, and 176. Interstate 90 provides easy access to Chicago and the northwest suburbs around O'Hare International Airport for people living in the southern part of the county. The Union Pacific Railroad provides commuter service from Harvard, Woodstock, Crystal Lake, Cary, Fox River Grove and McHenry to Chicago, and freight service on this line and another line through Marengo and Huntley. Commuter service is also available into Chicago from Fox Lake. Residents living in the county are only about one hour from either O'Hare International Airport in Chicago or Mitchell Field in Milwaukee. County economic planners are concerned that exploding residential development in the county is clogging local roads, making it harder to attract and retain businesses that rely on trucks to ship goods and supplies in and out of the county. (Chicago Tribune, April 29, 1997)

Governmental Structure

The use and conversion of farmland in McHenry County is influenced by federal, state and local laws, policies, programs and ordinances. The greatest influence on a decision by a farmer to continue farming or to sell for development is exerted by federal farm programs and tax policy, and by local zoning ordinances. State law controls farmland assessments and property taxes, sets policy on farmland conversion by state-funded projects, funds road improvements, regulates sewer and water system expansions and mining activities, but has no direct authority over land use decisions made at the local level.

State Farmland Assessment (PA 82-0121)

Illinois assesses farmland based upon its soil productivity index, which is determined through a complicated process by the University of Illinois, Department of Agriculture and the Illinois Department of Revenue. This information is provided to each county assessor, who determines the equalized assessed value for cropland, taking into account such additional factors as slope, drainage, ponding, flooding, and field size and shape. Permanent pasture is assessed at 1/3 of its debased productivity index, and other farmland (forests, wetlands, etc.) is assessed at 1/6 of its value. Wasteland is assessed based on what it contributes to the value of the farm, if anything. Farmsteads and homes on farms are assessed separately as improved land.

State law gives farmland a significant break on property taxes because of this assessment procedure. In 1996 farmland in McHenry County was assessed at an average value of \$162.22 per acre, using the productivity index. The total equalized assessed valuation for farmland in the county was \$43,768,500, while the total value of farms, including improvements was \$171,773,069. This was only 3.83 percent of the total assessed valuation of the county.

Illinois Farmland Preservation Act (PA 82-945)

This Act establishes state policy to protect farmland from conversion by state funded projects, and directs certain state agencies that impact farmland to prepare policy statements about farmland preservation, and establish working agreements with the Illinois Department of Agriculture to implement the policy. The Act says that the policy statement shall include an analysis of the impact of agricultural land conversions attributed to the agency's programs, regulations, procedures and operations, and detail measures that can be implemented to "mitigate conversions to the maximum extent practicable". The Director of the Department of Agriculture reviews projects of other state agencies that affect farmland, and if the project is not in compliance with the agency's policy, conducts a study of the agricultural impacts of the project. The law states: "No agency may commit State funds for land acquisition or construction unless it is provided for in an exception contained in that agency's working agreements or until the study of agricultural impacts has been completed by the Department of Agriculture."

Agricultural Areas Conservation and Protection Act (PA 81-1173)

This Act establishes state policy to conserve and protect its agricultural land for the production of food and other agricultural products, and as valued natural and ecological resources. It also establishes a procedure for farmers to voluntarily establish an "Agricultural Area." Agricultural Areas are established by the County Board, and must be at least 350 acres in size, compact and as contiguous as possible. Once established this special designation offers protection from state and local laws and ordinances that restrict farming, except for public health and safety, and prevents any special tax assessments to fund expansion of sewer and water lines. The landowner agrees to keep land in agricultural production for a minimum of ten years, but at the end of that time can petition to withdraw from the Ag Area. A total of twelve Agricultural Areas have been established in McHenry County since 1981, totaling 23,423 acres. Two Ag Areas, totalling 3820 acres, were dissolved after ten years, the rest remain in effect.

Protection of Farming Operations from Nuisance Suits (PA 82-509)

State law protects farmers from nuisance lawsuits when nonfarm uses, such as subdivisions, intrude into farming areas. The law limits the situations under which farming operations can be deemed to be a nuisance, as long as the farmer does not act negligently and is generally prudent in use of the land.

This is an important protection, especially for farmers who have livestock operations that produce objectionable odors.

Agricultural Land Ownership Act (PA 84–1052)

This requires all corporations, partnership, and limited partnerships, and trustees and fiduciaries of them, to report to the Department of Agriculture all acquisition or divestiture of agricultural land in the state. This law does not apply to authorized farm corporations or their agents.

Illinois Soil and Water Conservation District Act ((PA 77–1757)

Illinois law requires that anyone seeking to rezone or subdivide agricultural land must notify the county Soil and Water Conservation district, and that the district will issue a written opinion about the petition or proposal to the appropriate county agency or municipality, along with all natural resource information available about the parcel of land in question. These "Natural Resource Information" (N.R.I.) reports provide a valuable tool for use by planning and zoning boards as they consider petitions for variances, conditional use permits, rezoning or subdivisions. In McHenry County, the county board has also adopted the federal Land Evaluation and Site Assessment (L.E.S.A.) system as a tool to evaluate the effect of rezoning requests on adjoining farming operations. The L.E.S.A. scores are included in the N.R.I. reports.

Local Land Resource Management Planning Act (P.A. 84–865)

State law encourages counties and municipalities to develop Local Land Resource Management Plans. These can be developed independently, or jointly and are implemented by intergovernmental agreements. The plans may set out goals and procedures to preserve and maintain the productivity of agricultural lands, forest lands, natural resources and water resources, among other things, and can establish procedures for resolving any conflicts in goals.

FPA Agricultural Protection Area Policy

The Northeastern Illinois Planning Commission, (NIPC) a regional planning commission that includes McHenry County, Illinois, has adopted a policy to maintain areas designated as "Agricultural Protection Areas" for farming and uses supportive of the farming economy and community. Agricultural Protection Areas are based upon the McHenry County land use plan map, and generally include all of the areas in the Agriculture Zoning District. (Strategic Plan for Land Resources Management)

NIPC reviews amendments to Facility Planning Areas designated by the Illinois Environmental Protection Agency, and makes recommendations to the state for approval or denial of the amendments. FPAs are the areas that a municipality or sanitary district can serve with sewers or septic systems, and are tied to the Sec. 208 Water Quality Plan.

According to the Procedures and Criteria for proposed FPA expansions affecting identified Agricultural Protection Areas exceeding one hundred acres in size, NIPC requires a full "Level I" plan amendment process including a public hearing and action by the full Commission. The applicant for a proposed extension of an FPA into an Agricultural Protection Area must demonstrate that the proposed FPA amendment has been planned in a manner that will minimize adverse impacts on agricultural resources and farming operations. In addition, the proposal must satisfy five criteria:

1. a minimum amount of Agricultural Protection Area is included in the FPA amendment;
2. expansion of the FPA into the Agricultural Protection Area is necessary in order to accommodate growth consistent with population forecasts;
3. the FPA expansion is based upon a comprehensive planning process which considers farmland preservation;
4. the FPA is required in order to accommodate an economic development opportunity of regional significance not provided for in a county or municipal plan;
5. the applicant provides assurances that the proposed wastewater treatment and development regulations will protect water quality in the expanded FPA and in an Agricultural Protection

Area that could be affected by development within an expanded FPA. Since this policy and procedure was adopted by the Commission, the Huntley FPA was amended by the Illinois Environmental Protection Agency to remove 1,000 acres from the Agricultural Protection Area in McHenry County.

McHenry County Land Use Plan: Year 2010 Update

The McHenry County Land Use Plan Year 2010 Update was adopted by the County Board in 1993. It reaffirms the policy set in 1979 of allowing the limited conversion of agricultural land use only in those areas which are accessible to public services and only in those areas which are not economically viable for farming based on such factors as soils, slopes, tree cover, and which will not adversely affect the productivity of adjacent agricultural lands. The plan recognizes agricultural as an important economic activity, not as vacant land that is waiting for development. It promotes a "Centralized Node Growth Strategy" that encourages development to grow out from existing towns and cities while discouraging scattered subdivisions and leapfrog development. Prime farmland that lies beyond potential municipal service areas is to be maintained.

The Plan designated two agricultural land uses on the Land Use Plan Map: "Agriculture" and "Agriculture/Rural". Farming operations are protected from non-farm land use activities in "Agriculture" areas, but single-family residences are allowed to be built on parcels in either the "Agriculture" or "Agriculture/Rural" areas on sites where agricultural activities are limited by natural or man-made factors. Residential parcels in the "Agriculture" areas should maintain agricultural uses to the greatest extent possible to insure compatibility with surrounding uses, while residential conversion in the "Agriculture/Rural" areas should be compatible with the surrounding area.

McHenry County Zoning Ordinance

The McHenry County Zoning Ordinance provides for two agricultural zoning districts: "A-1" and "A-2". The A-1 Agricultural Zoning District is designated to maintain an environment where agricultural purposes may be served and restrict those uses which would conflict with these purposes. Forty (40) acres is the minimum lot or parcel size allowed in this district for a single family residence. This minimum lot size was reduced from 160 acres in 1994.

The A-2 Agricultural Zoning District is designed to permit individual residences in areas zoned as A-1 Agriculture. One (1) acre is the minimum parcel size, but the land rezoned under any single A-2 rezoning petition may contain no more than one single family residence. Only land that is "unsuitable" for agricultural use may be designated A-2, and all activities within this district must be compatible with surrounding agricultural operations, and shall maintain, preserve and enhance agricultural land. The "A-2" zoning does not allow subdivision developments, limits the exceptions to the Illinois Plat Act that are allowed to create new parcels, requires a minimum of one-half acre of suitable soils for a septic system for each parcel created, and establishes minimum frontage requirements. At least one of the following criteria must be met prior to rezoning property to "A-2":

1. Existence of man-made and natural physical features which serve as barriers to agricultural use on a majority of the property.
2. Mature tree cover, either covering the majority of the property or the location of which serves as a barrier to agricultural use on the property.
3. Topography and slope uncondusive to agricultural use even under conservation practices.
4. Existence of USDA-NRCS non-prime farmland soil types and low productivity of soils based on University of Illinois farm productivity index.

Planned Development District is a special zoning designation that the County Board can approve in Agriculture and Agriculture/Rural areas to allow the use of flexible land development techniques and site designs that would not otherwise be possible for the purpose of providing open space areas, preservation of natural features and prime agricultural land, rational and economical development of public infrastructure and services, and efficient traffic circulation. Rezoning of land to a PD district is "strongly discouraged for land that is designated as Agriculture" on the land use map. However, PD-Estate districts may be established on land that is designated as Agriculture/Rural where impediments to farming exist. The County Board can waive these locational limitations as part of the PD approval process. One PD-Estate District has been allowed in an agricultural area since the

zoning ordinance was amended in 1994.

The zoning ordinance also allows for one to five-acre "Estate" zoning in Agriculture/Rural Areas, while residential zoning is restricted to areas located adjacent to or near municipalities where services are available. Business, Office/Research and Industrial Zoning Districts are allowed anywhere, but are generally encouraged to be located near municipalities and transportation routes.

Township Planning Commissions

Illinois law allows Township Boards to prepare and adopt "a Comprehensive Plan for the present and future development or redevelopment of the unincorporated areas of the township." Once the plan is adopted, the Township can object to a proposed zoning change in the unincorporated areas of the township and force a 3/4 majority vote of the county board to approve the zoning change. Several townships in McHenry County have created plan commissions to prepare comprehensive plans, and some plans have been adopted.

Municipal Planning Jurisdiction

Under Illinois law, a municipality that has adopted its own zoning ordinance can object to rezoning of any unincorporated land that lies within one and one-half miles of its corporate limits, and force a 3/4 majority vote of the County Board on the rezoning petition. This is an important tool that municipalities can use to prevent premature development of farmland on the edges of towns and cities, or to block developments that would interfere with the implementation of their land use plans or plans for annexation. Several municipalities have designated areas lying within their 1 1/2 mile planning jurisdiction to remain in agricultural use in their land use plan.

A Zoning Fluke

McHenry County is known throughout the United States for its strong commitment to protection of agriculture and prime farmland. It has gained this reputation because of its land use policy and its 160-acre large lot agricultural zoning. In 1979, McHenry County was one of the first counties in the U.S. to adopt large lot agricultural zoning, and through a stroke of luck, gained national attention by adopting 160 acres as the minimum size lot needed to build a single family residence in an Agricultural Zoning District.

A brief history of how this came about is useful to understand the link between land use policy and zoning in McHenry County, and how that link is being weakened as development pressure increases. Like many rural counties on the edge of large urban areas were doing in the late 1970s, the McHenry County Board began discussing how it could stop leap-frog subdivision development in rural areas, and the proliferation of small "hobby farms" that were allowed under the Illinois Plat Act. The Plat Act (765 ILCS 205/0.01 et. seq. as amended) allows the division of land into smaller parcels as long as it does not involve any new streets or easements of access. The county had no control over the creation of these new parcels, which were proliferating along rural roads as demand for owning a house in the country increased in the 1960s and 70s. The county board decided that the best way to stop this practice, and control the problems that this type of development caused, was to use what was known as "large lot residential zoning."

This zoning technique requires that a new single family residence in certain zoning districts must have a minimum number of acres of land to conform to the zoning, and be able to obtain a building permit from the county. In 1974 the County Board increased the minimum lot size for single family residences in agricultural zoning districts to 5 acres. After much discussion and several public hearings, the county planning department recommended that the minimum lot size be increased to thirty-five acres. This recommendation was drafted as an amendment to the county's zoning ordinance, and presented to the county board for approval in a special meeting held on October 4, 1979. An unusual thing happened at that point.

As the county board members debated the pros and cons of adopting the 35-acre minimum lot size in agricultural areas, one of the farmers on the board made the comment that 35 acres was too small to farm efficiently, you needed at least 160 acres. He made a motion to increase the minimum lot size to

160 acres, and the amendment was passed by an 11 to 9 vote (3 members were absent). A motion to reconsider the vote once he realized what he had just done was defeated with 13 nays and 7 ayes. McHenry County gained instant notoriety for adopting 160-acre large lot residential zoning in agricultural areas, and has maintained a reputation for being a leader in farmland preservation ever since.

The 160-acre, large-lot agricultural zoning stood up to legal challenges, (*Wilson vs. McHenry County* and *Voss vs. McHenry County*) and set a precedent for other counties to follow throughout the country. It was recently argued that the zoning followed the precedent set by the U.S. Congress when it passed the Homestead Act, which established 160 acres as the size of a farm that could be legally taken over from the government by homesteaders.

But, the debate about the 160-acre zoning didn't end. Real estate interests in the county continued to push to reduce the minimum lot size back to five acres. In 1994, the Board of Realtors mounted a campaign to change the size of residential lots allowed in agricultural areas, and reopened the whole issue. Realtors and developers aligned themselves with private property rights groups on one side of the debate, with the county farm bureau and conservation groups on the other side, fighting to maintain the status quo.

As the debate continued the county's planning department staff determined that there were only thirty four parcels in the county that conformed to the 160-acre zoning, and that only twenty four percent of the parcels zoned A-1 were more than forty acres in size. This information, convinced the County Board that the 160-acre zoning requirement in agricultural areas was no longer practical in the face of mounting development pressure, and on November 3, 1994, the board voted to reduce the minimum lot size needed to build a single family residence in an agricultural zoning district to 40 acres.

Unsuitable for farming

At the same time the county board adopted the 160-acre zoning requirement in agricultural areas, they created a second agriculture zoning district to allow farmers to split-off a small parcel of land to build a second house for a son or daughter, or a retired farmer and his wife whose son or daughter was taking over the farm, or to allow a farmer to sell-off a piece of marginal farmland as a source of cash to keep the farming operation going. This new "A-2" Agriculture Zoning District required that the land use be compatible with surrounding agricultural uses, and that it "maintain, preserve and enhance agricultural land." Over the years, this zoning classification caused considerable debate as it was used to circumvent the restriction on new five-acre parcels in agricultural areas.

The A-2 zoning was designed to permit individual residences in areas zoned as A-1 Agriculture. A minimum lot size of two acres and maximum lot size of 5 acres was required, and the lot had to have sufficient road frontage. To qualify for this zoning, the landowner had to present "...clear and convincing evidence that the property sought to be rezoned is not suitable for agricultural use," and that use of the land would be compatible with surrounding agricultural areas.

The ordinance established six criteria for the Zoning Board of Appeals and the County Board to use in determining the suitability of property for agricultural use:

1. Existence of man-made and natural physical features which may serve as barriers to agricultural uses.
2. Topography and slope
3. Tree and shrub cover
4. Septic system suitability
5. USDA - SCS farm productivity index and soil interpretation
6. Plat Act.

In 1989, the County Board reduced the minimum acreage of a lot in an A-2 zoning district to one acre, removed the five-acre maximum limit, and required a minimum of one-half acre of suitable soils for a septic system for each parcel created. The Board also limited the "exceptions" allowed in the Plat Act to three:

1. Parcels of five acres or more which do not involve any new streets or easements of access;

2. Division of a parcel into no more than two parts not involving any new streets or easements;
3. A single lot of less than five acres from a larger tract when a survey is made by an Illinois Registered Land Surveyor.

They further defined what would make land unsuitable for agricultural use. Although the McHenry County Zoning Ordinance clearly defines agricultural uses broadly to include farming, horticulture, livestock production, forestry, butter and cheese making, horse husbandry, etc. in practice the term was applied primarily to production of corn and soybeans.

The "A-2" zoning ordinance soon was being used to allow homes to be built on "marginal farmland" without getting residential zoning and other approvals for a subdivision from the county. The County Board was reluctant to approve new subdivisions in agricultural areas, but readily approved proposals to create several small parcels of land for residential use under the "A-2" zoning. They argued that the land was not suitable for growing row crops but was still zoned for agricultural use, therefore the rezoning would not conflict with the county's land use plan or create an incompatible use in an agricultural zone. Between 1990 and 1995 when the ordinance was finally changed to prevent such abuses, 1250 acres of farmland was rezoned from "A-1" to "A-2" including entire farms that had a long history of growing corn on them, or had viable livestock operations.

At a meeting of the Zoning Board of Appeals where the Board voted on a controversial application to rezone 112 acres of prime agricultural land from A-1 to A-2 to allow ten building lots on the property, the members debated the issue of whether the criteria in the ordinance only applied to row-crop agricultural, or to other types of agriculture. The ZBA did not approve the rezoning, but their decision was overruled by the County Board, and the A-2 zoning to allow ten lots in the middle of an agricultural area was approved by a eleven to eight vote (five members were absent).

The controversy about this decision prompted the County Board to again amend the zoning ordinance to allow rezoning of only one "A-2" parcel at a time. It does not prevent a landowner from requesting rezoning of other parcels of land at another time.

Land Use Policies

Ever since McHenry County adopted its first land use plan in 1979 it has maintained a strong commitment to protecting the economic base that agriculture provides the county and the region, and to preventing the premature conversion of prime farmland. It established land use policies, and adopted a land use plan that: 1) encouraged residential developments to locate in or adjacent to existing municipalities; 2) discouraged scattered residential development in areas that are viable for agriculture, and; 3) limited development of prime agricultural land, except where it is located next to existing towns or villages and can be served by public sewer and water facilities.

The County Board did this by adopting several policy statements that placed agriculture on an equal footing with development in the county:

Agricultural Areas Goals: Preserve suitable land areas for agricultural uses and associated land uses by:

- ◇ recognizing that agriculture is a key element in the County's economic base;
- ◇ recognizing that highly productive prime agricultural lands and other farmlands are a finite natural resource, resolve that these prime agricultural areas should be protected and maintained;
- ◇ recognizing that the agricultural usage of such prime agricultural lands is appropriate and in the public interest;
- ◇ protecting this resource by allowing the limited conversion of agricultural land use only in those areas which are accessible for reasons of public safety and convenience of services, and only in those areas which are not economically viable for farming based on such factors as soils, slopes and tree coverage, and which will not adversely affect the productivity of

adjacent agricultural lands.
(McHenry County Year 2000 Comprehensive Land Use Plan. Adopted October 4, 1979)

In the County's Year 2005 Update of the land use plan (adopted November 26, 1985) these policies were continued, but a new "Agriculture" designation was added to the existing "Agriculture/Rural" designation on the land use map. This new designation was based upon an evaluation of each quarter section of undeveloped land using the U.S. Department of Agriculture's "Land Evaluation and Site Assessment System" (LESA). The LESA system is designed to identify areas which should be protected from nonfarm uses and areas where individual residences on non-prime farmland will not significantly affect agricultural operations. It emphasizes both physical features, such as soils, and such factors as land use, zoning, adopted land use plans, and transportation. The results of the LESA evaluation found that much of the agricultural land in the county had the potential for limited development, while some areas of prime farmland, mostly in the western and northern parts of the county, should remain in agricultural use.

The distinction between the two agricultural designations was described as follows:

"Agriculture" represents large, continuous areas of farmland composed of (predominantly) prime farmland soil types. Farm operations tend to be large in size, utilizing modern farm technology. A commitment to future agriculture has been made through large capital investments and through participation in farmland protection programs (i.e. soil conservation, agriculture intensive use affidavits, and agricultural areas). Few nonfarm land uses have located in areas designated as "Agriculture" on the Plan Map.

Areas designated as "Agriculture" have top priority for protection. Any nonfarm development may be incompatible with agricultural operations because of the intensity of farming practices. Nonfarm development in this land use category is discouraged.

The "Agriculture/Rural" land use category denotes agricultural land, agriculture related activities, rural residences, and privately owned natural areas that do not meet the criteria of environmental corridors.

Within the "Agriculture/Rural" land use category, areas of prime farmland have priority for protection. All prime farmland beyond planned municipal growth areas should be protected. Rural residential uses should be located on non-prime farmland in areas where slope, extensive tree cover, or poor soils restrict agricultural activities. A list of prime farmland soil types is included in the Technical Appendix. (McHenry County Land Use Plan: Year 2005 Update)

This additional designation was intended to give greater protection to areas of prime agricultural soils and large-scale farming operations, while still discouraging scattered residential development in rural areas. It also reflected the reality that much of the rural area of the county had been divided into smaller parcels before the adoption of the 1979 zoning ordinance, which limited new residences in agricultural areas to 160 acres. An inventory of 5-10 acre parcels completed by the McHenry County Planning Department in July, 1984, found 1,628 potentially buildable, non-conforming lots in the county.

During the next update of the land use plan, there was a lot of debate over protecting "agriculture" versus preserving the "rural character" of the county. Real estate interests defined "rural character" to include large, estate developments on individual parcels. At the same time the private property rights issue was reopened, reflecting the renewed debate about regulatory "takings" brought on by the Endangered Species Act and federal wetlands programs.

The County Board eventually adopted the McHenry County Land Use Plan: Year 2010 Update on October 20, 1993. The updated plan maintained the Board's commitment to protection of prime farmland, but expanded the area that potentially could be developed with "rural residences" to include prime agricultural areas. The policy that discouraged residential development in areas designated "Agriculture" was changed to a weaker statement:

Rural residential uses may be located in the "Agriculture" and "Agriculture/Rural" areas where slope, mature and extensive tree cover, or poor soils restrict agricultural activities, and all rural residences in the "Agriculture" areas should maintain agricultural uses to the greatest extent possible in order to ensure compatibility with the surrounding areas.

The amended plan also introduced another way that residential developments could be allowed in agricultural areas—"Planned Developments." Envisioned as a zoning technique that would encourage innovative development that could preserve open space and maintain farmland in rural areas, conservationists saw Planned Developments as opening the barn door to developers. The plan allowed Planned Developments in "Agriculture/Rural" areas,

"where preservation of rural character is an important requirement of the approval process. The practice of agriculture remains a primary land use within the "Agriculture/Rural" areas. Within this land use category, areas of prime farmland also have priority for protection."

But it also left the door open to "Planned Developments" in areas designated as "Agriculture", a major change in policy. Although the Board continued to discourage residential developments in agricultural areas, when it came down to making recommendations on implementation of the amended plan, the Board's long-standing policy of protecting prime agricultural land was replaced by a confusing and much weaker statement:

The Plan recommends that the conversion of agricultural land to alternative uses be permitted only in areas where such conversion does not adversely affect the local practice of agriculture. Thus, conversion will be more readily supported in areas designated as Residential on the Land Use Plan map; it will be discouraged in areas designated as Agriculture. In areas designated as Agriculture, it is important that converted parcels maintain an agricultural use to the greatest degree possible. Such agricultural uses are not limited specifically to row-crop farming, but may include: horticulture, floriculture, mushroom growing, forestry, native plant cultivation, orchards, nurseries, animal husbandry, fish hatchery, and game breeding, to name a few. In the Agriculture/Rural areas, conversions should be compatible with the surrounding uses. (p. 43)

The first test of this confusing policy, and the County's new Planned Development ordinance, came two years later when a developer submitted a proposal to plat lots for twenty three homes on seventy acres of land located in an area designated as "Agriculture" on the land use map. The development was ultimately approved, but not without much debate and discussion about the meaning of the new land use policy and implementation of the Planned Development ordinance. When the debate was over, and the votes cast, it was clear that the horse was out the barn door.

Investment Farms

For sale signs on farmland in McHenry County often proclaim that the land would be a good "Investment Farm." The 1992 Census of Agriculture reported that farming was not the principal occupation of 424 (43%) of the farm operators in McHenry County. Some of these owners have invested in farmland to speculate in the land market. Others have acquired farmland because it is a good investment, and provides a tax shelter for other income. The view of the future of agriculture in McHenry County is clouded as farms and investors cash-out their land for the highest price, pushing the cost of land out of reach of farmers who want to continue farming.

The case of one "Investment Farm" illustrates an increasingly common situation in McHenry County. A patent attorney who works for a large law firm in downtown Chicago bought his first farm in 1973 and moved out of the city to live. He bought a second farm in 1986 when land values were down. He now operates 380 acres of farmland, most of which is planted to row crops.

All of the cropland is custom farmed. The farmer is paid a fee for use of his equipment, labor and fuel to plant and harvest the crops. The landowner also pays a professional crop consultant to test the soil,

recommend nutrients, plan crop rotations, scout for weeds and insect pests, and recommend pesticide treatments. Pesticides and fertilizers are applied according to the crop consultants recommendations by the local farm supply cooperative, also hired under contract. The owner just writes the checks and sells the crops to the local elevator.

All of the cropland is enrolled in the federal feed grain programs, but the owner gets no government operating loans. Net profits are generally off-set by depreciation each year so the owner shows a loss on his income taxes, which he uses to shelter his other income. This allows him to reduce his income taxes and gain a valuable asset at the same time.

The Future of Agriculture in McHenry County

McHenry County has maintained a strong commitment to agricultural uses and protection of prime farmland for almost twenty years, and has been able to keep the premature conversion of farmland to a minimum through a combination of good land use planning policies and the use of large-lot residential zoning in agricultural areas. Most of the conversions of farmland that have taken place in recent years has been through annexations to municipalities.

But, the economic pressures on farmers are increasing as developers set their sights on the county and property taxes continue to increase. What do these development pressures mean to the future of agriculture in McHenry County? Will farming all but disappear like it has in Lake and DuPage counties, or will the county be able to stem the tide of suburban sprawl that has washed over the rest of the Chicago region?

Farmers will make their decisions to sell-out or stay based mostly on personal finances and economics of farming. Fluctuations in market prices of crops and livestock are a normal part of farming, while the costs of operation steadily increase. Although property taxes are only a small part of the cost of farming, increases in taxes to pay for new schools, roads and public services demanded by a growing population can push some farmers' profit margin into the red. The threat of a nuisance lawsuit from a new homeowner moving in next door, or a fine for slow-moving equipment blocking traffic on a rural road may be enough to discourage a farmer from investing in new equipment or buying more land to expand their operation. Instead they will think about selling out for the top dollar and buying cheaper land somewhere else to farm.

The escalating value of farmland in McHenry County is another major factor in the future of agriculture. Farmers who own or lease enough land can make a good living, but those who don't cannot compete with investors or land speculators who are paying up to \$7,500 an acre for large tracts of farmland in the county. With farmland selling at such high prices it also makes it difficult for farmers to pass on farmland to the next generation because of gift and estate taxes. The value of the land can easily exceed the exemptions allowed by federal tax laws, forcing the children to sell all or some of the property to pay the taxes. In that case, investors or developers are the only ones who can afford to buy the land. As long as the land remains undeveloped someone is going to farm it, but it will not be the person who owns it.

Appendicies

Conversions of A-1 Agricultural Land to other uses 1990-1995. Source: McHenry County Department of Planning and Development

Amount of Land Annexed or Incorporated 1990-1995. Source: McHenry County Department of Planning and Deveopment.

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People Interviewed

William J. Ganek, Village Manager, Village of Algonquin.

Joe Beeson, Nurseryman and publisher of the County Voice.

Jim Hough, Principal Planner, McHenry County Department of Planning And Development

Maryanne Wanaski, Planner, McHenry County Department of Planning and Development.

Diane Klemm, Chairman, McHenry County Board.

Cindy Skrukrud, Executive Director, McHenry County Defenders.

Ed Weskerna, Director, McHenry County Soil ad Water Conservation District.

Donna Schaefer, McHenry County Board, District 4.

Ann Hughes, former State Representative and County Board member; farmer.

John Pihl, farmer.

Ted Anderson, lawyer and farmer.

Views expressed are those of the author(s) and not necessarily those of the American Farmland Trust.

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