

DeKalb County, Illinois First in Agriculture

by

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Room to Grow

DeKalb County, located approximately 50 miles west of downtown Chicago and 25 miles from the rapidly growing suburbs of Aurora, St. Charles and Elgin, has some of the best farmland on earth. It is also a prime target for future development. With only 82,000 people and most of its land in farms, DeKalb County has the smallest population of the eight counties in the Chicago region. With 249,000 acres it also has ample room for residential, commercial and industrial development.

The area is serviced by two interstate highways, a small airport and four railroad lines. Currently, the railroads are used exclusively for freight. However, the extension of a commuter passenger line from Geneva to the City of DeKalb, the largest municipality in the county, is projected for sometime in the next 10 years.

With abundant land, cheap housing costs and adequate transportation, DeKalb County's attraction as a bedroom community of Chicago's western suburbs and for businesses and industry is growing. Northern Illinois University, located in the City of DeKalb, the largest employer in the county, also attracts people and businesses to the area. Local officials are bracing for the growth. They have adopted land use plans and zoning ordinances to control development, and prevent loss of prime farmland. The question is, how long can farming the richest farmland on earth compete with demands for residential, commercial and industrial development?

Agriculture plays an important role in both the history and economy of DeKalb County. The rich prairie soils that cover most of the county made this one of the wealthiest farming regions in the Midwest. DeKalb County was the first in the nation to create a county Farm Bureau and appoint an Agricultural Extension Advisor. Barbed wire, which along with John Deere's mold board plow, made cultivation of the open prairies possible, was manufactured in the county. In more recent years DeKalb Agricultural Research Corporation, a producer of hybrid seed corn, has grown into a major center for genetic research of crops, swine and poultry.

Farmland and buildings contribute almost \$115 million in assessed valuation to the county property tax base (10.4 percent). In 1992, although farmers made up only 3.5 percent of the local work force, they paid \$3,217,000 in property taxes and had a net cash return of \$24,853,000, making them a major part of the local economy.

Farms in DeKalb County were generally larger than 180 acres in size, according to the 1992 Census of Agriculture, with about one-third of the farms more than 500 acres. Two-thirds of the farms made an annual profit averaging almost \$50,000 in 1992. Most of the farms grew corn and soybeans, while 20 percent raise livestock. There were only 12 dairy farms in the

county in 1992. About one-third of the farmers owned all of their land (53,295 acres) while one-third were part owners (65,051 acres owned, 152,046 acres rented) and one-third were tenants (107,120 acres). More than two-thirds (69 percent) of the farmland in the county was rented, while 70 percent of the farmers listed farming as their principal occupation and lived on their farms. Most of the farmers in the county (67 percent) had farmed more than 10 years, and the average age in 1992 was 51.

Like most areas of the Midwest, the number of farmers in DeKalb County has declined as the size of farms increased (Table 1). About 90 percent of the county is farmland, and 98 percent of the farmland in the county is classified as prime by the U. S. Department of Agriculture.

Table 1 - Number and size of farms in DeKalb County 1969-1992

Census Year	<u>1969</u>	<u>1974</u>	<u>1982</u>	<u>1987</u>	<u>1992</u>
Number of Farms	1,438	1,248	1,150	1,063	942
Number of Acres	383,103	378,114	395,767	384,277	377,512
Average Farm Size	270 acres	303 acres	344 acres	362 acres	401 acres

Source: U.S. Census of Agriculture

The amount of land classified as farmland has fluctuated over the years largely in response to federal farm programs. As of the 1992 Census of Agriculture, DeKalb County had 942 farms and 377,512 acres of farmland, a reduction of 18,255 acres from 1982.

Population increased during the same period from 71,654 in 1970 to 77,932 in 1990. It is projected to reach 91,530 people by the year 2000 and 107,847 by 2010. Most of the projected population increase is expected to occur within the municipalities of DeKalb, Sycamore, Genoa, Cortland, Kirkland, Kingston, Hinckley and Sandwich, according to the county's comprehensive plan.

Leader in Farmland Preservation

DeKalb County has been a leader in the state in efforts to preserve farmland. It was one of the first counties to limit building of non-farm dwellings in areas zoned for agriculture, and to make preservation of prime farmland a basic goal in its land use plan and policies. Over the years the county board has sustained its commitment to farmland preservation, while new development was directed to municipalities where public sewer and water was available.

The authority to guide the pattern and pace of land-use decisions lies with state government. However, Illinois has delegated most of its land-use decision making power to the counties and municipalities. Counties, cities and villages are authorized to adopt and enforce zoning and subdivision ordinances within their respective jurisdictions. In addition, every municipality is given the power to annex land contiguous to its boundary if the majority of landowners within that area consent.

In order for land to comply with municipal regulations and to prevent substantial redevelopment at the time of annexation, municipalities can also engage in extraterritorial

planning, zoning and subdivision control. With extraterritorial power, municipalities can control certain land-uses on unincorporated land within 1.5 miles from the city boundary. Township governments in Illinois have recently been given the ability to plan for the use of land within the unincorporated areas of the township, but have little power in regard to growth management decisions.

In 1972, DeKalb County adopted its first land-use plan and accompanying zoning ordinance to direct and manage growth in the unincorporated areas. The basic goal of the plan was to preserve prime agricultural land and protect natural resources while simultaneously allowing for limited development. The plan was designed to prevent scattered subdivisions by promoting development near or within existing municipalities on the assumption that they were best suited to provide new residents with needed services and utilities. Despite the intentions of the plan, however, some scattered development continued to occur within agricultural areas.

The original zoning ordinance allowed rural residences to be built on five acre lots in the agricultural zone. This did little to discourage people from building in rural areas. The county quickly recognized the negative implications of this rule, and, in 1976, the minimum lot size was increased from five acres to 40 acres to discourage development within agricultural districts. The county has recently tried to increase the minimal lot size to 80 acres or 100 acres, but this suggestion was tabled because farmers objected to the change.

Despite the change in lot size to 40 acres, development continued to occur in rural DeKalb County. Between 1972 and 1978, the county board approved numerous rezonings of small parcels of land from agricultural to residential in areas considered unsuitable for farming. In 1977, the county created the Rural Residence District to reflect the practice of allowing development on land deemed unsuitable for farming regardless of the plan's zoning designation, and the presence of non-prime soils. These were usually wooded sites in the northern part of the county. The county board believed that landowners should have the right to convert marginal farmland to a more profitable use. Thus, it was easy for a landowner in an agricultural area to sell a one acre parcel by claiming that it was unsuitable for farming.

In 1991, the county board adopted a new land-use plan. This plan is essentially the same as the previous one, but, there is no longer a Rural Residential District. In addition, the members of the present county board appear to be committed to preventing non-farm development in agricultural areas. The county board now rarely grants rezonings in the agricultural district. As a result, scattered rural residential development has diminished.

The county's land use plan sets the goals to preserve prime agricultural land while allowing for development and growth in designated zones near municipalities, discourage scattered development in rural areas of the county, and develop policies which protect standard farm operations from unwarranted complaints made by adjacent residential areas against normal farming practices. The plan recognizes the economic value of farming and the potential for conflicts between large farm operations and rural residential development. It encourages keeping new development away from agricultural areas and towards areas adjacent to municipalities to reduce pressures for development in outlying parts of the county, and

provide adequate buffering between homes and sometimes offensive agricultural operations. The plan also acknowledges the costs of non-farm developments in terms of increased traffic, repair and upgrading of rural roads, and policing of scattered rural home sites in farming areas.

The 1991 DeKalb County zoning ordinances divides land into the following districts:

A-1	Agricultural District
A-2	Agricultural District
R-1	Single Family Residential District
R-2	Single Family Residential District
B-1	Business District
M-1	Light Industrial District
PD	Planned Development
FP	Flood Plain District

In the A-1 district, agriculture is considered the primary and permanent use of the land. To obtain a building permit for a new home, the land must be used for farming and the farm must be a minimum of 40 acres in size. Only one farm dwelling unit is allowed on each farm. Most land in the county is in this district. The A-2 district consists primarily of agricultural lands; however, the county does not regard agriculture as the permanent use of the land. The county plans to rezone the A-2 to residential or commercial use after land closer to municipalities is developed. The minimum lot size for a residence in this district is 15 acres. Both farm and non-farm dwellings are allowed in this district. The A-2 district consists primarily of land surrounding the outlying regions of municipalities. The R1 and R2 districts provide for detached single family dwellings on a minimum of one acre and 1/2 acre lots respectively. The B-1 and M-1 districts provide for business and industrial development. All four of these districts are concentrated around existing municipalities.

The final zoning district, the planned development district, was created to provide a means of achieving greater flexibility in the development of land in a manner not possible in the other zones. For example, development within a planned development district can have a combination of residential and commercial structures. Most of the planned development districts were rural residential districts on the previous land use plan. Therefore, these districts are often found in the middle of agricultural areas. The boundaries for all of the districts are designated on the DeKalb County Zoning Map.

The flood plain district is an overlay of the other seven districts. DeKalb County's flat land and rich fertile soils are prone to drainage difficulties; therefore, zoning ordinances regulate activity in the flood plain district in order to prevent and/or minimize flood damage. This district consists primarily of low-lying land adjacent to rivers and drainage channels. If intense development of the flood plain district were allowed, drainage would be obstructed and flood height and water velocity would increase. Land use in the flood plain district is limited to things such as parks, farming and public utilities. The ordinances applicable to this district overrule conflicting regulations.

City-County Planning

The philosophy behind the county's 1991 land-use plan and accompanying zoning ordinances is compatible with the land-use plan for the City of DeKalb. Both the city and county plans agree that the land immediately surrounding the City of DeKalb should be zoned for residential, commercial or industrial development. In addition, the city and county currently recognize that all of the unincorporated land under the city's 1.5 mile planning jurisdiction is not yet needed for development.

Since January 1990, the City of DeKalb had annexed 2,738 acres of land into the city, most of it in the last two years. About two-thirds of that land has remained undeveloped and much of it is zoned as agricultural. The city's comprehensive plan, adopted by the city council on January 22, 1996, acknowledges that more than three square miles of land within the city limits is undeveloped, which is projected to be enough land to meet the city's growth needs for 20 years or more. The plan also designates prime farmland within the city's 1-1/2 mile extraterritorial planning area as "agricultural/undeveloped," a land use category that excludes any type of urban development "in the interest of preserving prime agricultural land in DeKalb County." This designation closely follows the county's land use plan designations for the same areas. The city, however, does not go as far as putting a moratorium on further annexations of farmland.

The main difference between the county and city plans is the designated densities of the residential areas. The county plan provides for single family dwellings on 1 acre and 1/2 acre lots, whereas, the city plan allows for denser housing developments. Single family dwellings can be built on lots as small as 6,000 or 10,000 square feet depending on the zoning. The county does not encourage higher density developments primarily because it would be obligated to provide sewer services and water. In contrast, the city has the infrastructure, funding and desire to provide sewer and water to any development within the city limits.

The City of Genoa, a small town located northeast of the City of DeKalb, has taken an even more aggressive stance towards protecting prime farmland from development. Genoa's Comprehensive Plan, adopted on December 3, 1996, states as one of its fundamental policies guiding future growth:

"Preserve as much prime agricultural cropland as possible to: protect this natural resource and maintain the agribusiness component of the local economy, maintain the views and vistas around Genoa, and contribute to the rural character and feeling that characterizes the city. Agriculture is one of the industries and lifestyles which gave rise to the city and gives definition to the city's character and appearance."

To implement this policy, the Genoa plan makes agricultural preservation in the outlying areas paramount and directs development to those areas which "have less than prime agricultural productive soils." It also sets a "Cropland Preservation" goal:

"In recognition of the important economic function the existing agricultural business performs in the local economy, and the significant role of the rural landscape in contributing to the appearance of the community, the city seeks to

preserve prime agricultural cropland within the planning area."

To accomplish this goal, the plan recommends that the city: 1) establish areas within the planning area to be designated as cropland; 2) support and encourage sound soil conservation practices; 3) establish design guidelines to reduce the conflict between development and agricultural practices on cropland; 4) supports farmers' right to farm and increase community awareness of the rights and privileges of farmers in the planning area; and 5) encourage the use of environment friendly agricultural practices and development of alternative agricultural crops and products to contribute to a healthful environment and to diversify the local agriculture economy. These goals and objectives are very compatible with the county's land use plan. Other cities and villages in the county are updating their land use plans and zoning ordinances.

Annexations Ignores Best-Laid Plans

According to Illinois statutes, a municipality has the power to annex unincorporated land contiguous to its boundary if the landowner or a majority of landowners within the annexable area consent. The newly incorporated property is immediately subject to municipal ordinances and regulations. Although annexation occurs primarily through the consent of both the landowner and the city or village, mandatory annexation can occur when an area of land 60 acres or less is bordered on all sides by a municipality or a municipality and a natural barrier such as a lake, river or forest preserve. Land in excess of 60 acres can remain unincorporated if either the city or the landowner refuses to approve annexation.

The annexation of land contiguous to municipalities is generally inevitable because annexation is almost always advantageous to both the city or village and the landowner, provided they intend to sell or develop the land. The City of DeKalb actively encourages voluntary annexation through the provision of quality public services and improvements upon annexation. Although the specific terms of annexation are negotiated each time, the city does not normally impose impact fees or annexation fees to offset city services. However, tap-in fees are often required and the city charges its own general property tax, in addition to the taxes charged before annexation.

Annexation is also financially beneficial to the landowner. Although landowners are not obligated to sell their land for development, most choose to sell their land for a high price rather than keep it for farming. Farmers who want to continue farming buy land elsewhere, while other farmers retire or find a new job. When land is slated to be developed, annexation is always sought because the city provides necessary services such as water, sewer, police and fire protection, while the county provides few services. Sometimes, municipalities can use the landowner's desire to annex as a bargaining tool. If the city does not like the proposed development and is not competing for the annexation of the land with another municipality, the city can elect not to annex the land until the development is acceptable.

Although DeKalb County does not have the legal power to prevent or promote the annexation of land to a municipality, the county board has taken a verbal stance in regard to annexation. The county actively encourages the annexation of developable land contiguous to municipalities because the county does not have the funding or infrastructure to provide sewer, water and other services, and has no desire to provide these services in the future.

Cheap Farmland Driving Development

In DeKalb County, land and housing are cheap compared to other areas to the north and east of the county. Undeveloped land is available for approximately \$4,000 an acre and improved sites are \$18,000 an acre--less than half the price of Aurora's west side. In 1996 housing prices range from \$50,000 to \$300,000 with the average price of a home being \$81,000. Both people and businesses are moving to DeKalb County to take advantage of this low cost of land and housing. For example, Vail Industries, Inc., a producer of steel cutting machinery, recently moved to DeKalb, instead of the Chicago suburbs, because of the availability of cheap land and low housing costs. Low housing costs for employees translates into lower pay and a higher profit margin for the company. In addition, with its proximity to a major interstate highway, many people working in the western suburbs of Chicago are finding that it is financially advantageous to live in DeKalb and commute.

Because of the expected population growth several large commercial stores were constructed in DeKalb between 1991 and 1996. Although the city may not yet have the population necessary to make these stores financially viable, their presence in the city discourages other stores from locating there and should ensure profitability in the future.

Residential vs Commercial Development

The City of DeKalb is highly interested in promoting industrial and commercial development, according to the city's planning and zoning director. DeKalb is becoming a bedroom community to the suburbs and downtown Chicago, and the city hopes to offset the costs of residential development by increasing the tax base with industrial and commercial development. To attract commercial and industrial development the city has not imposed impact fees and has established Tax Increment Finance Districts and a venture capital start-up fund. Although the city is interested in economic development, growth is very structured. The city and county plans are strictly followed; if a proposal goes against the comprehensive plan, it will not get approved.

In addition to cheap land and low housing costs, there are other financial incentives for businesses to move to DeKalb County:

No Impact Fees

To generate revenue to build or improve facilities or services needed for new developments, counties and cities have the power to impose impact fees on developers. The primary purpose of an impact fee is to shift the cost of development away from current taxpayers to the developer and the new resident. Because impact fees increase the cost of development for the developer, they have the potential to discourage or slow development. Currently, the City of DeKalb and the county would like to attract commercial and industrial development to the area; so, neither the county nor the city requires developers to pay impact fees. However, the city's planning department has recommended assessing impact fees for residential developments as these developments often impose costs on the community greater than the revenues generated from the development.

Tax Increment Financing

Tax increment financing is a financing mechanism used by municipalities to attract private development to run-down and abandoned urban areas through the use of public investment.

In Illinois, the funds to finance the public investment are generated by the taxes collected on the increases in property values and retail sales until the area is no longer blighted or for 23 years (whichever comes first). Specifically, the city issues bonds to generate money to pay for necessary improvements such as public parking, street sidewalks, landscaping, sewer and water. With these public improvements, private investment returns to the TIF districts, the value of the property rises and, in some cases, additional retail sales are generated. The levels of taxes collected from the property within a TIF district at the time of its creation continue to be distributed among the various taxing jurisdictions. However, the incremental tax revenues derived from the increased value of the property and the increases in retail sales are used to pay the bondholders.

Although Tax Increment Financing was created to revitalize depressed urban areas, in many areas it has been used to develop farmland. Some public officials claim that farmland is not the highest and best use for the land, therefore, tax resources are allocated to develop it. Currently, farmland is a small part of a TIF district in the City of DeKalb.

Tax Deferred Exchanges

Tax deferred exchanges, under Internal Revenue Code 1031, allow businesses to move from one location to another without paying a capital gains tax. Specifically, the property surrendered and the property received must be of like-kind and must be used in a trade or business, or for investment. For example, Target can sell land in Chicago and buy new land in DeKalb without paying the capital gains tax on the sale so long as the purchase price approximates the sale price. Furthermore, farmers can sell their land for development and move further west to buy new land under the same conditions.

According to a local developer, most land sales in DeKalb County are a result of tax deferred exchanges. For example, many businesses have the desire to relocate to DeKalb County due to lower property taxes and lower costs of living. The tax deferred exchange makes a relocation financially feasible because the businesses do not have to pay the capital gains tax. Without the tax deferred exchange, a relocation would be a less viable option.

State Farmland Preservation Programs

Currently, there are two state wide programs that aid in the preservation of farmland in DeKalb County. These programs were created by the Agricultural Areas Conservation and Protection Act and the Illinois Farmland Assessment Act.

Agricultural Areas Conservation and Protection Act

The Agricultural Areas Conservation and Protection Act, passed in 1980, gives county governments the authority to establish "agricultural areas" with the consent of landowners. Land used solely for farming and in excess of 350 contiguous acres can be designated as an agricultural area. Farming operations within these areas are protected from local ordinances and local initiatives that restrict or destroy normal farming practices. For example, farmers are protected from nuisance ordinances and projects seeking to convert farmland to other uses such as parks or landfills. In addition, farmers are exempted from special benefit assessments for sewer, water, lights or non-farm drainage if the farmer does not directly benefit from these public improvements. Assessments imposed prior to the formation of the agricultural area remain in effect. Although state agencies try to avoid selecting agricultural

areas for public projects, the act does not prohibit state acquisition of these areas.

Agricultural areas are established when landowners petition for an area to be designated as an agricultural area and the county board approves the request. However, if any land slated to be in an agricultural area falls within 1.5 miles of a municipal boundary, the municipality has the right to prevent this land from entering into the agreement. Agricultural areas are adopted for 10 years initially and can be subsequently extended for eight year periods thereafter. At the end of each period, the county or 2/3 of the landowners can disband the area. There are provisions to add or withdraw land during the eight or 10 year period under county approval. Although there are no restrictions on buying and selling land within an agricultural area, a transfer of ownership does not terminate the existence of the agricultural area.

Since the act's conception in 1980, only one agricultural area has been established in DeKalb County. This agricultural area consists of 710 acres and was formed in 1995 by one hog farmer near Shabbona. A petition to establish a second area consisting of 3,200 acres and 35 landowners in Esmond, on the far western edges of the county, is currently being reviewed. Both groups desire protection of their operations from possible problems associated with potential urban growth. Neither area is currently in a high growth area.

Illinois Farmland Assessment Act

The Illinois Farmland Assessment Act, passed in 1977, provides property tax relief to farmers. The provisions of this act were designed to make it more financially feasible for farmers to stay in business rather than sell to a developer by lowering one part of farming costs, the taxes. Prior to the passage of this act, land was assessed at fair market value for property tax purposes. Now farmland is taxed according to its value in use rather than its value in exchange (fair market value). The use value is often significantly lower than the fair market value.

In order to prevent rural non-farmers from receiving property tax relief under the Illinois Farmland Assessment Act, Illinois statutes specifically state that for property tax purposes a farm does not include property which is primarily used for residential purposes even though some farm products may be grown or farm animals bred or fed on the property incidental to its primary use (35 ILCS 200/1-60). For example, land that houses a horse and some chickens and rabbits is not a farm. Little or no income is generated from the housing of these animals; and, thus, the primary use of the parcel is residential. Besides the qualifications as outlined by Illinois statutes, the Department of Revenue provides additional guidelines for assessors to follow when determining if a piece of property qualifies for use-value assessment. The operations on a piece of property must be categorized as conventional or intensive farming. Conventional farming is machinery intensive and consists of tending to field crops and livestock. Intensive farming is hand labor intensive and consists of operations such as nurseries, dry flower operations, vegetables farms and pumpkin farms. Furthermore, the area farmed intensively or conventionally must generally be larger than the residential area and must not be less than five acres. However, there are exceptions to this rule. For example, a four acre hog confinement operation would qualify as a farm. Finally, zoning has no effect on the assessment of the land. A farm can exist in an area zoned residential, and a residence can be in an area zoned agriculture.

Recent Court Decision Upholds Farmland Zoning

In the summer of 1996, DeKalb County, in accordance with the county's land-use plan, voted against a proposed residential development in a prime agricultural area approximately 2.5 miles from an existing municipality. Subsequently, the developer and owner of the land in question sued the county on the grounds that the county violated the Fifth and Fourteenth Amendment of the U.S. Constitution in its application of the zoning ordinance.

The Fifth and Fourteenth Amendments set the basic parameters by which zoning ordinances can be enforced. Both the Fifth and the Fourteenth Amendments state that no person shall be deprived of life, liberty or property without due process of law. Due process requires that the government be fair in both procedural and substantive matters. Under substantive due process, restrictions placed on an owner's use of his/her land must serve the public health, safety or general welfare in order to be considered fair and reasonable. Furthermore, the Fifth Amendment prohibits the acquisition of private property for public use without just compensation, and the Fourteenth Amendment requires that all citizens receive the equal protection of the laws. Therefore, government actions must not be discriminatory or arbitrary nor can they deny a property owner all profitable uses of his land. If a zoning ordinance or its application in a specific situation do not comply with the Fifth and Fourteenth Amendments, the government action may be considered an unconstitutional restriction of liberty.

The developer maintained that:

1. The county board denied his request for a subdivision while allowing residential developments on surrounding and abutting property thereby denying him equal protection under the law;
2. Leaving the land in agriculture does not benefit the public, therefore restrictions cannot be placed on his ability to do what he would like with his land; and
3. He will suffer a substantial loss of value of his property without just compensation.

The lawsuit called into question the county's land use plan and zoning ordinance prohibiting non-farm dwellings in agricultural areas. It challenged the rating system used by the county to evaluate proposals to rezone agricultural land, and it also challenged the authority of the county to establish a minimum lot size for residences on land used for agricultural purposes. On September 16, 1997, Circuit Judge John W. Countryman issued his decision on the case in favor of the county (Dennis Wolfenberger, et. al., vs. County of DeKalb). The Court found that: 1) The existing uses and zoning of nearby property are consistent with both an agricultural and a residential use; 2) The property supports a good value as farm land without further expenditure of costs to develop; 3) The public interest in protecting prime farmland is legitimate and should prevail; 4) The net revenue obtained from the farmland is sufficient not to impose a severe hardship on the property owner; 5) The property is suitable for use as agricultural land and consistent with property which immediately adjoins it as well as property which surrounds it for several miles; and 6) The fact that the county granted zoning for residential development on adjoining, less productive land, is not reason to allow development of the subject property.

The court challenge prompted the county to review its legislative authority to restrict

residential development in agricultural areas, and to seek clarification of the law. An amendment to the counties Code (House Bill 1188) to grant counties the authority to establish a minimum lot size for residences on agricultural land. The amendment passed the General Assembly and was signed by the Governor on July 30, 1997. It becomes effective on January 1, 1998.

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