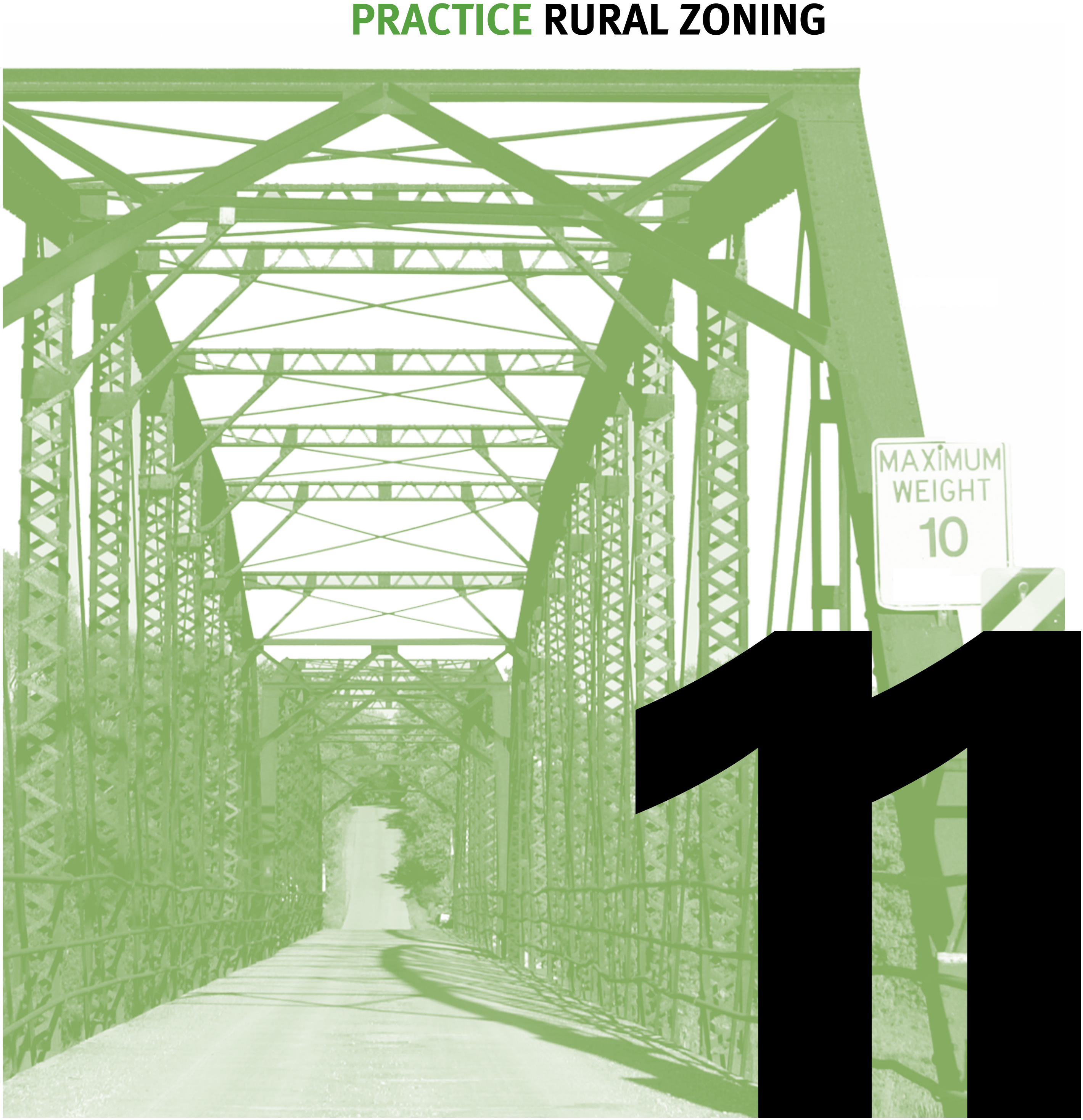
ZONINGPRACTICE November 2008

AMERICAN PLANNING ASSOCIATION

APA

ISSUE NUMBER ELEVEN

PRACTICE RURAL ZONING



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Rural Zoning: Return to the Village

By Tom Daniels

Villages hold a special place in America's heritage.

The classic New England village, with its tree-lined streets, village green, and houses close to the street, suggests a slower pace, a sense of community, and the ability to walk to shops, schools, and playgrounds. But for most Americans, the village is a nostalgic tourist attraction rather than a place to live and work. In the 1990s, new urbanists cited the village as their model for redeveloping cities and building new suburbs. Yet there was little effort to use zoning and other planning techniques to revive villages in rural areas or to protect villages within expanding metropolitan regions.

Many villages have actually lost population or grown slowly while populations surged in outer suburban regions. For example, according to a Brookings Institution study of Pennsylvania, in the 1990s nearly three-quarters of the new housing in the state was built in the rural townships, but less than 10 percent in villages. This "rush to the countryside" was made easy because of zoning that typically required a one-, two-, or three-acre minimum lot size to support a house. Zoning ordinances that promoted cluster development or "conservation subdivisions" only added to automobile-dependent development in the countryside.

With the coming of $3 to $5 per gallon gasoline in recent years, the attraction of living in the countryside has started to wane. The long commute has become a major drain on household budgets. The rise in gasoline prices combined with the subprime mortgage crisis has caused a sharp drop in home prices, particularly on the fringe of metro areas. At the same time, greater interest in health and convenience are attracting households to places where they can walk or ride a bike to parks, stores, or schools.

Villages can be good places to live and work if local planners and elected officials can avoid ugly commercial strip development at the entrance to the village and poorly designed housing at the village edge, promote their downtowns, and discourage scattered housing in the countryside. New development should reinforce the compact pattern, human scale, mixed use, and pedestrian-friendly aspects of village life that the residents cherish.

A MORE REGIONAL APPROACH

The Town of Richmond, Vermont (population 4,090), is located in Chittenden County in the northwest corner of the state. Chittenden County contains about one-quarter of Vermont's 640,000 residents and has grown rapidly over the past 25 years. In 1990, the Village of Richmond (population 1,000) and the adjacent Town of Richmond (population 3,000) voted to merge into a single government, known as the Town of Richmond. One reason for the consolidation was to better manage growth.

The town lies in the Winooski River valley and contains a significant amount of floodplain. Most of the buildable land is on the north and south sides of the old village, away from the floodplain and steep slopes. The 1996 zoning ordinance included a gateway commercial zoning district north of the village that requires parking behind buildings as a way to minimize the feel of a commercial strip. East of the village, Interstate 89 in effect forms a growth boundary. North, west, and south of the village, the town has used agricultural/residential zoning with a one-acre minimum lot size and a flood hazard overlay zone to keep land open.

The merged government has maintained the boundaries of the former village as the central sewer and water service area. Moreover, the town offices have remained within the village. Some infill residential projects have been built within the village, but development adjacent to it has been sparse because the town does not allow new residential or commercial development within the 100-year floodplain or on steep slopes, based on a maximum eight percent grade for new roads.

The Richmond example can serve as a model for dozens of villages and towns throughout the northeastern states. A consolidated government has greater control over future development, and zoning can help to maintain the village as the primary settlement and commercial center, thus limiting sprawl.

HOW CAN ZONING PROMOTE VILLAGE DEVELOPMENT?

Zoning is the most widely used land-use control in America. The traditional purpose of zoning is to separate conflicting land uses, such as an elementary school and a factory, in order to protect the public health, safety, and welfare. After World War II, planners took the separation of land uses—conflicting or not—as gospel, and used zoning to keep residential and commercial areas apart. This greatly increased the use of the automobile for shopping and commuting.

A comprehensive plan sets the legal foundation for the zoning ordinance, and the zoning ordinance puts the comprehensive plan into action. The future land-use map of the comprehensive plan forms the basis for the zoning map and the various zoning districts. The text of the zoning ordinance contains specific standards on permitted uses,

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About the Author

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special exceptions, conditional uses, and density, and building height, setbacks, and lot coverage.

Rural zoning has generally not promoted villages as places to live and work. Zoning initially came to rural areas about 50 years ago as a way to regulate the creation of new building lots in the countryside. Typically, a farm couple would want to subdivide a few lots for their children, without using much valuable farmland. Because the new lots would rely on on-site septic systems and wells, local governments employed zoning that usually allowed a minimum lot size of between a half-acre to three acres in size. This so-called "large lot" zoning became popular in part because the residents did not have to pay municipal sewer and water bills, and could live outside villages and cities where property taxes were higher.

In its landmark 1973 state planning legislation, Oregon required commercial farm and forestland to be zoned for very low densities, such as one house per 40 or 80 acres in the case of farmland, and one house per 80 acres and 160 acres for forestland. Yet the Oregon legislation recognized what some have termed "the right to a rural lifestyle" by allowing counties to designate rural residential zones with three- to five-acre minimum lot sizes. For instance, there are more than 250,000 acres of rural residential zones in the Willamette Valley, where most Oregonians live. But the rural residential zones consist mainly of lower quality soils and are situated in areas where the rural residences will not conflict with commercial farm and forestry operations. In short, Oregon-style rural residential zoning is an attempt to bring some order to rural housing, rather than to encourage development in villages.

Town of Richmond's government offices have remained within the old village area.

Farmland north of Richmond's village area. Much of the land is zoned as a floodplain overlay to discourage commercial strip development.

Photos this spread Tom Daniels

Similarly, residential cluster development—also known as open space zoning—became popular starting in the late 1980s as a way to minimize cookie-cutter-style residential development in the urban fringe. Open space zoning began in Massachusetts in response to two-acre minimum-lot-size zoning with the idea of clustering houses on part of a site and keeping much of the site open for environmental protection and amenities. Yet, most cluster developments were built at a distance from existing settlements, thus adding to automobile dependence.

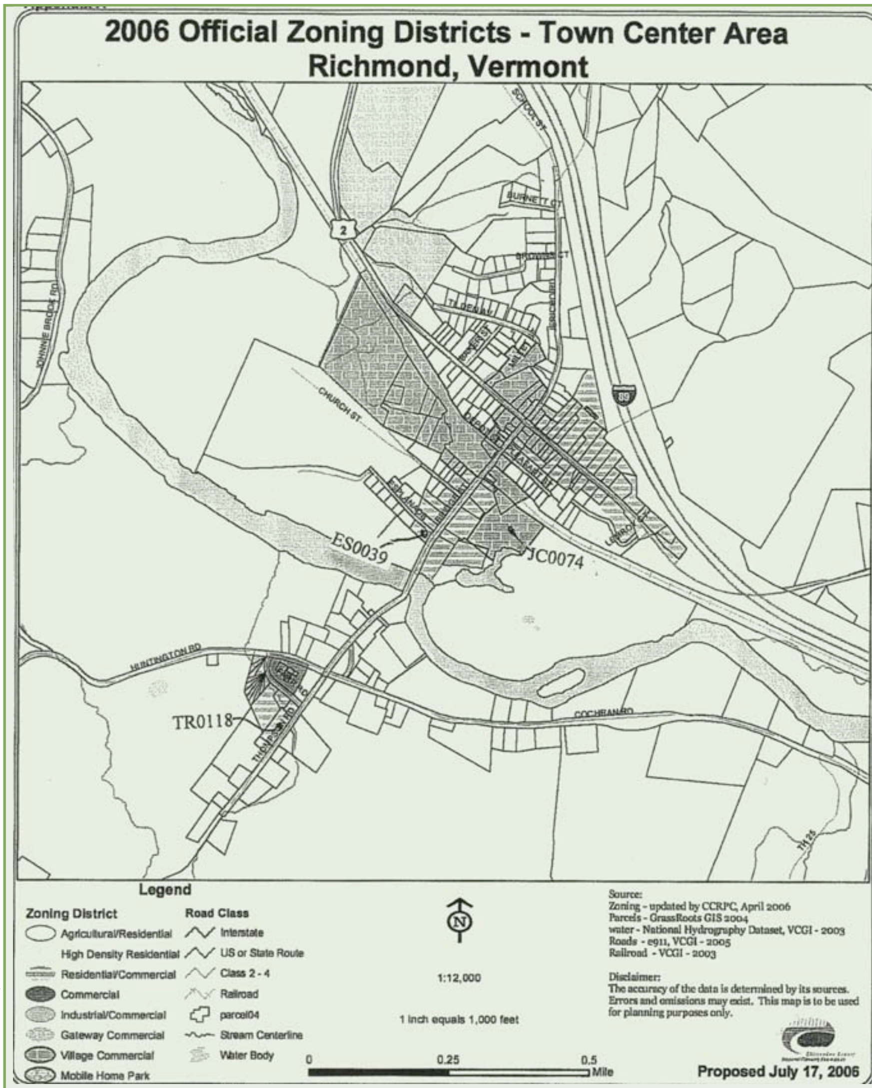
A distinguishing feature between Europe and the United States is commercial strip sprawl, especially in rural areas. In the U.S., strip sprawl is common along major arterials leading to and from a village; in Europe it is hard to find. Commercial strip sprawl draws tax base and economic activity away from the village and makes shoppers and businesses rely upon the automobile.

To influence commercial development on the edge of the village, zoning can limit the square footage of new commercial buildings. For example, to discourage big box stores, the town of Damariscotta, Maine, enacted a limit of 35,000 square feet for new commercial buildings and got five adjacent towns to adopt similar ordinances. Zoning can also limit the number of curb cuts (driveways) and require setbacks with vegetation to create a green buffer between commercial businesses and the highway.

Some local governments have adopted fairly restrictive rural zoning to protect farmland and permit very little residential development. Large minimum lot sizes of 40 acres or more are common in the Midwest Corn Belt, Oregon, and California. California and Oregon also use large-lot zoning of 80 or more acres to protect commercial forestland. But farm or forest zoning has often proven politically difficult to do outside the West Coast and Midwest.

Villages can control their own destinies through zoning, especially in those states where villages have extraterritorial jurisdiction and annexation authority. In states where counties have zoning powers, incorporated villages are allowed to plan and zone land up to a mile or more beyond their boundaries. They can carefully plan and zone these extraterritorial areas and eventually annex part or all of them to promote the orderly expansion of the village. One way to manage the sequencing of development within an extraterritorial area is to use an agricultural holding zone or village holding zone. In order to receive permission for a rezoning to residential, commercial, or mixed use, an applicant would have to show that the property is adjacent to fairly dense development.

A village growth boundary can be an effective way to coordinate zoning and infrastructure. A growth boundary involves an agreement between neighboring jurisdictions (a village and a county or a village and a township) that identifies land needed for development over the next 20 years. In addition, the agreement states that infrastructure—especially central sewer and water—will not be extended beyond the boundary unless both jurisdictions agree. The purpose of the growth boundary together with the village zoning is to promote compact development that is cheaper and easier to service than sprawl. Within a growth boundary, local officials can grant developers bonus densities in return for certain design features or infrastructure.



Town of Richmond, Vermont

Town of Richmond Zoning Map. Note that nearly all of the commercially zoned land is within or adjacent to the village and that village residential areas are compact.

THE ROLE OF RURAL ZONING AND VILLAGES IN GROWTH MANAGEMENT

Rural zoning can play a key role in growth management on the edge of metropolitan areas. Zoning to protect farm, forest, or natu-

LEGAL ASPECTS OF RURAL ZONING

Rural residents are known for their skepticism toward government and rules that limit what they can do with their land. Many rural residents are cash-poor and land-rich. Their land is often their retirement account, insurance policy, and collateral for bank loans. The idea that they should be able to do what they want with their land is ingrained in rural culture.

Federal law has dealt with rural zoning obliquely rather than head-on. First, there is a well-established legal principle from common law that a person cannot use his or her land in ways that harm others. Second, the *Village of Euclid, Ohio v. Ambler* Realty case (272 U.S. 365 (1926)), in which the U.S. Supreme Court upheld zoning as a legitimate use of the police power, applies to rural areas as well as to urban and suburban places. Third, in *Agins v. City of Tiburon,* 447 U.S. 255 (1980), the Aginses were allowed to build five houses on their five acres, but they charged that this was a taking because of the high value of their property. The U.S. Supreme Court ruled that, "although the [local] ordinances limit development, they neither prevent the best use of the . . . land, nor extinguish a fundamental attribute of ownership." In other words, a reasonable and beneficial economic use of the property remained, and no taking had occurred.

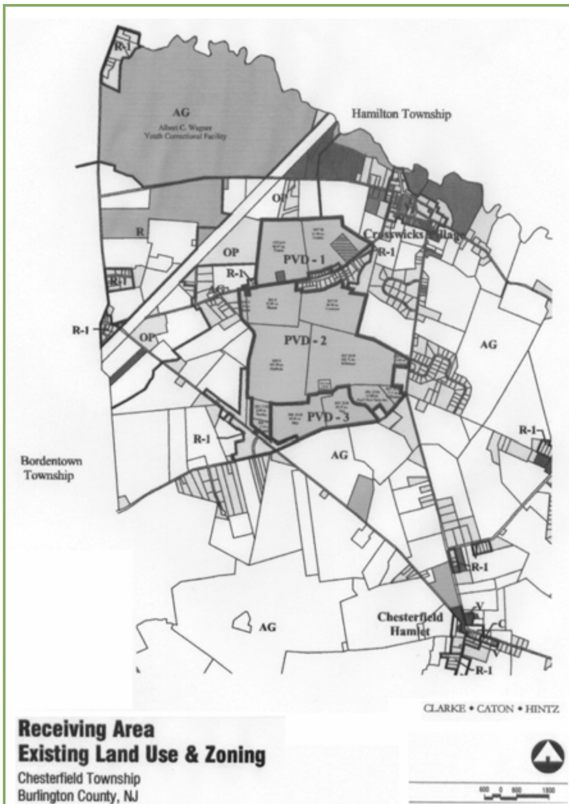
Nonetheless, the most common problem with rural zoning is the delicacy of the takings issue. And as Justice Lewis Powell wrote in the *Agins* case, "[N]o precise rule determines when property has been taken."

State laws and legal rulings about rural zoning vary considerably, although zoning is generally legitimate if it advances a state legislative purpose. In Pennsylvania, for instance, the state supreme court recently ruled that farmland is "developed land" and not vacant land (*Petition of Dolington Land Group and Toll Brothers from the Decision of the ZHB of Upper Makefield Township*, 839 A.2d 1021 (Pa. Dec. 30, 2003)). Pennsylvania courts have also upheld agricultural zoning (see *Boundary Drive Associates v. Shrewsbury Township Board of Supervisors*, 507 Pa. 481, 491 A.2d 86 (PA 1985)). By contrast, Connecticut does not allow agricultural zoning. The point is that zoning that might be considered a taking in one state may not be in another.

A further complication arises from the compensation laws that have been passed in 26 states. These laws require a government agency to pay compensation to landowners if a government regulation reduces the value of the landowners' property beyond a certain percentage. Although very few compensation cases have occurred, the effect of these laws has been to deter local governments from downzoning private property. As a result, rural residential sprawl continues to be a threat in many places, to the detriment of villages.

ral lands can be combined with village zoning that encourages growth to help implement a transfer of development rights (TDR) program. Chesterfield Township, a rural community in northern Burlington County, New Jersey, adopted a TDR program in 1997 and then made zoning changes to create a 560-acre "receiving area" that would be developed as a neotraditional settlement called Old York Village. Architectural design standards were added to the township's zoning ordinance to ensure that the residential and commercial buildings are consonant with the architectural styles and details, building materials, and colors found in Chesterfield's historic villages.

At build out, Old York Village will have 1,200 housing units in a variety of attached (duplexes and quads) and detached single-family housing types, a new elementary school, parks and recreation facilities, and a mixed use village center with retail, office, and convenience uses to serve local market needs. The village will contain affordable housing to meet the township's state-mandated Council on Affordable Housing fair-share requirement. Also, the New Jersey State Plan calls for growth within "rural planning



Chesterfield Township, New Jersey, combined zoning with transfer of development rights to create Old York Village, identified as PVD 1, 2, and 3 on the map.

Chesterfield Township

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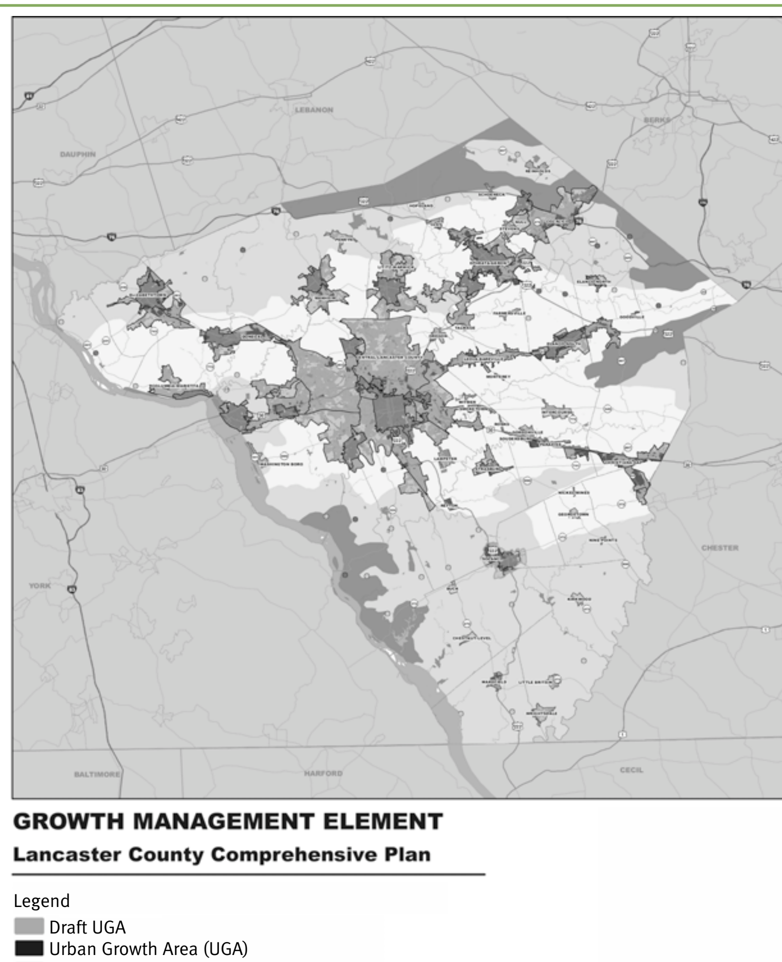
areas" to be channeled into "centers" (i.e. villages) while leaving the surrounding area for agriculture and natural open space. And to make Old York Village a reality, central sewer and water facilities were installed with the help of state funding.

The village plan received a 2004 Outstanding Planning Award from the American Planning Association. Since the adoption of the TDR program, nearly all residential development in the township has been directed into the village, despite the three-acre minimum lot size zoning in the countryside.

RURAL ZONING IN CONJUNCTION WITH VILLAGE GROWTH BOUNDARIES

Maintaining a distinct edge between the village and the countryside is a basic principle of a well-designed village. Lancaster County, Pennsylvania, has worked to enhance its villages while protecting its highly productive farmland. Located just 60 miles west of Philadelphia and famous for its Amish culture, the county has 500,000 residents and is expected to add another 100,000 people over the next 20 years. The county planning commission recognized that, if this additional population were spread across the countryside, thousands of acres of prime farmland would be lost to development and many villages could lose their distinctive edges.



Village growth boundaries in Lancaster County.

Lancaster County Planning Commission

Since 1993, the commission has worked with townships and boroughs (villages) to designate 18 village growth boundaries. Each boundary provides enough land around a village to accommodate expected new population growth and development over the next 20 years. During this time, sewer and water lines will not be extended beyond the boundary. Village growth areas with access to public sewer and water have a minimum density of five dwelling units per acre. In crossroads hamlets without central sewer or water service, the maximum density is two dwelling units per acre.

The purpose of a village growth boundary is to phase growth, not stop it. Ideally, a village and one or more townships can enter into an intergovernmental agreement to establish a growth boundary. But in Lancaster County, the villages and adjoining townships have entered into unwritten "handshake" agreements to create the growth boundaries. And so far, the boundaries have held.

One reason for this is the widespread use of agricultural zoning at one building lot per 20 or more acres. Many village growth boundaries are adjacent to agriculturally zoned land, which makes expanding a growth boundary difficult. Lancaster County has gone far beyond other jurisdictions that use growth boundaries by purchasing conservation easements on farmland next to growth boundaries. This has been a fairly common practice in Lancaster County, and the conservation easements in effect make parts of a village growth boundary permanent and help to direct future boundary expansions away from good farming areas.

Growth boundaries originated in Lexington and Fayette County, Kentucky, in 1958 and have been used in Oregon for more than 30 years. A number of other states, such as Washington, California, Tennessee, and parts of Florida have used growth boundaries for more than a decade. But in those places growth boundaries have been employed to control urban sprawl rather than promote the orderly expansion of villages.

To accommodate growth within a village growth boundary, it is necessary to maintain an adequate amount of developable land. Equally important is the sequencing of development within a growth area to avoid a leapfrog pattern of development within the growth boundary. An agricultural holding zone or village holding zone can limit development until a landowner can show that the property is adjacent to fairly dense development and hence ripe for rezoning to commercial, residential, or mixed use.

Photo by Tom Daniels

A growth boundary creates a clear edge between farmland and the Borough (village) of Strasburg in Lancaster County, Pennsylvania.

CONCLUSIONS AND OBSERVATIONS

Over the years, many Americans have told pollsters that they would prefer to live in a small town or village. In metropolitan regions, villages are especially vulnerable to large and sudden population increases and waves of development. In rural areas, village residents may be hungry to expand the property tax or sales tax base and accept almost any kind of new development.

Between now and 2050, the U.S. population is projected to grow by more than 100 million people. Intergovernmental cooperation and form-based zoning codes in village developments will be needed to focus rural zoning on promoting development in and adjacent to villages and to protect important natural areas and working farm and forest landscapes.

It is often said that, if a village burned down, the village could not be rebuilt to look as it did because of "modern" zoning. As in Old York Village, a village comprehensive plan can call for traditional neighborhood design that blends land uses, building types, and housing for different income levels, along with a pedestrian-friendly block and street network and a significant amount of public open space. And a village zoning ordinance can include a form-based code that regulates the appearance of buildings, rather than uses. A village growth boundary, as in Lancaster County, can help maintain village edges and control the expansion of public services. And the consolidation of local governments as in the case of Richmond, Vermont, can give greater control over the location of new development to the benefit of the village.

Cover photo: A rural iron truss bridge. © iStockphoto.com.

VOL. 25, NO. 11
***Zoning Practice* is a monthly publication of the American Planning Association. Subscriptions are available for $75 (U.S.) and $100 (foreign). W. Paul Farmer, FAICP, Executive Director; William R. Klein, AICP, Director of Research.**

Zoning Practice (ISSN 1548–0135) is produced at APA. Jim Schwab, AICP, and David Morley, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

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DOES YOUR VILLAGE STILL LOOK LIKE ONE?

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