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PRACTICE RURAL ENABLING LAWS



Model Enabling Legislation for Rural County Planning and Zoning

By Lane Kendig

Planners recognize the need to protect the character and economy of rural areas.

But the sad state of affairs is that over the last 50 years the profession has made little progress in achieving these goals. A major cause of the failure is state legislation that enables county planning and zoning.

In most states, enabling laws for planning and zoning draw little distinction between counties and municipalities. These laws are primarily based on projecting growth and accommodating demand for residential, commercial, office, and industrial uses. Consequently, contemporary county enabling laws fail to protect rural character or the rural economy.

Sustainability and smart growth both support the concentration of growth in municipalities. While planning legislation often requires an intergovernmental cooperation or coordination

plan element, these requirements are mostly platitudes with no teeth. In practice, many counties compete with municipalities for residential, commercial, and industrial development. Because municipalities have utility systems and more rigorous development regulations, municipal officials typically hold the view that growth should occur through annexation. Meanwhile, county officials may feel their power threatened by annexation. Because of these conflicts, county and municipal cooperation on growth management to preserve the rural economy is rare.

The purposes of this article are to explain how contemporary planning and zoning enabling laws are inadequate to protect rural counties and to offer a proposal for reforming state enabling legislation. To illustrate this

proposal, the article includes model provisions to enable rural county planning and zoning.

THE TROUBLE WITH THE STATUS QUO

There are a number of states with growth management frameworks that create growth boundaries around urban areas. Because state growth management laws encourage or require frequent plan updates, growth boundaries and subsequent development often quickly expand into rural areas. This consumption of rural land is compounded by the fact that counties typically plan for residential, commercial, or industrial growth, relegating the rural economy and character to a minor role. In too many cases, county zoning is designed to replace the rural economy with homes.



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➡ This aerial view of southern Stark County, Illinois, shows a patchwork of working farms.

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About the Author

Lane Kendig is the founder and former president of Kendig Keast Collaborative. He has been practicing and writing about the relationship between community design planning and regulatory tools for more than 45 years. In addition to the recent books *Community Character* and its companion, *A Guide to Planning with Community Character*, Kendig is the author of *Performance Zoning* and the PAS reports *Too Big, Boring, or Ugly; Traffic Sheds, Rural Highway Capacity, and Growth Management*; and *Performance Standards for Non-Residential Uses*.

The vast majority of private land in rural counties is used for growing crops, animals, fibers, or timber or for the extraction of non-renewable resources. With the exception of timber and mining, the rural economic unit is predominantly a family-owned agricultural operation. Even many corporate farms are family run. Rural roads are often substandard in terms of right-of-way or pavement width, drainage, and safety, and many are unpaved. Few rural counties have sewer or stormwater facilities to support urban development.

Fiscally, most rural counties are ill equipped to handle growth. Their citizens and voters are not interested in raising taxes for new infrastructure, even though some envision personal profits. These counties rarely have departments or budgets to provide the infrastructure needed to support growth. Rural residents on farms or ranches need little in governmental service other than plowed roads and minimal services from the sheriff's department. Rural fire districts lack infrastructure and equipment to provide the fire protection found in municipalities. The tax base cannot support the provision of infrastructure improvements needed to support new residents without tax increases. All this suggests that rural counties should provide for the rural economy, not growth.

Inherent in the comprehensive plan process is the problem of the 20-year plan and periodically required updates. A 20-year time horizon is too short of a period for planning to preserve the rural economy. A 100-year plan would provide better stability for financing rural businesses over several generations. When counties plan for growth, property values inflate because of an expectation of selling for



Many rural roads, such as this unpaved stretch in Dutchess County, New York, are simply insufficient for urban development.

development value rather than a value based on agricultural income. This makes rural preservation increasingly difficult.

The inevitable consequence of planning legislation that dictates planning for growth is that rural county comprehensive plans include land-use, economic development, transportation, and recreation goals and policies that facilitate the conversion of rural land uses to accommodate growth. In the best county plans there is a policy, section, or chapter on protecting the rural economy and character. But, in reviewing a succession of county plans over time, one finds every revision reduces the proposed rural area. After 20 years, little of the original rural area survives.

Planners have known since at least the mid-1960s that the ideal rural zoning would be exclusive agricultural zoning. In that same 50 years planners have embraced *growth management*, *impact zoning*, *smart growth*, and *sustainable development*, but urban encroachment in rural areas continued apace until the housing bust. Sadly, the most common contemporary rural zoning designation is a large-lot residential district that permits, but does not require, agriculture. In some western states, lots over a certain size (e.g., 35 acres) are even exempt from subdivision regulations. Such zoning weakens the ability of counties to preserve the rural economy by displacing agricultural uses.

Even exemplary rural zoning seems to erode over time. In the late 1970s Illinois planners were excited when McHenry County, Illinois, in the northwestern part of the Chicago metropolitan area, adopted a 160-acre minimum lot size for its agricultural district. This was a radical departure from the five-acre agricultural zoning in other counties. The rezoning even withstood a regulatory takings challenge. To the surprise of many, it was upheld in the state's courts, which accepted that agriculture was a reasonable use of rural land. Within a decade, though, the 160-acre minimum was reduced to 40 acres. McHenry County now provides for residential zoning in unincorporated areas for 10- to quarter-acre lots, and each year the county board has approved rezonings and planned unit developments converting land from agriculture to residential use.

A PROPOSAL FOR REFORMED ENABLING LAWS

If planning and zoning legislation plays a major role in the inability to protect rural areas, how



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Like many rural counties, Story County, Iowa, is struggling to strike a balance between demand for new development and rural preservation goals.

should the legislation change? First, county planning must be directed to preserve the economy and character of rural areas and be prohibited from competing for growth with municipalities. Correspondingly, municipal legislation must task them with accommodating growth. Second, the legislation must create a long-term framework for municipal growth areas, providing county and regional agency control so as to enable long-term preservation. Third, municipalities need to have annexation limited to their long-term growth areas. Fourth, the comprehensive plan needs to be a 100-year plan. Finally, the legislation must provide a way for rural land owners to share in some of the value created by development occurring in municipalities through taxes or transferable development rights. Without that, rural landowners will oppose the legislation.

There will be concerns over the 100-year planning horizon. Is it possible to plan in this manner?

A couple of examples should illustrate this. Assume a county population growth of 500,000 or 150,000 dwelling units at 2.5 dwelling units per acre would consume 94 square miles over 100 years. Dane County, Wisconsin, (whose largest municipality is Madison) has an area of 1,238 square miles, so 94 square miles is less than eight percent of the county area. In Albany County, Wyoming, (whose largest municipality is Laramie) similar growth would use two percent of the county's land area.

A 100-year planning period provides a long lead time to adjust. Many rural counties have been losing population, and the number of counties that grew more than 10 percent in the last decade is small. These examples are conservative. The most rural counties have

small populations, so even high growth rates result in little consumption of land. Only in the fastest-growing metropolitan areas does the problem become difficult. But in these areas the need for some agricultural land and greenbelts is a justification for this long-term planning.

The term *rural county* is used here to focus on rural preservation. In practice, modifications are required in both county and municipal planning and zoning legislation. For the sake of space and simplicity, the following sections present only the legislation for county planning and zoning.

MODEL RURAL COUNTY PLANNING LEGISLATION

Purpose

The purpose of county planning is to plan to preserve and enhance the rural economy and rural community character. This includes promoting the sustainable use of rural land for food and fiber production and the responsible extraction of nonrenewable resources. The rural economy must be sustainable, creating value without destroying the county's water or air or degrading land for future use. It shall protect the rights of existing residents and unincorporated places. It shall provide for long-term municipal growth areas for the expansion of municipalities while protecting the resources needed for the rural economy.

County Plan Elements

The county plan shall contain the following elements.

Rural Economy. This element shall identify the various types of agriculture, forestry, or other rural economic sectors that provide food, fiber, wildlife, or nonrenewable resources. It shall evaluate the potential for recre-

ational or tourist sectors of the economy and link those sectors to unique features of the environment. It shall document the current and future economic value of the rural uses. It shall evaluate the rural workforce and assess needs for housing that workforce. It shall identify both ways to strengthen the rural economy and areas or conditions unsuited for rural businesses.

Natural Resources and Sustainability.

This element shall identify all the natural resources in the county and their value for different uses. It shall evaluate the suitability of soils and land ownership for agriculture or forestry. It shall document surface and subsurface water resources and, to the extent possible, evaluate their capacity, flows, seasonal issues, and long-term changes in rainfall for impact on agriculture and the municipalities. It shall evaluate the current carbon balance and assess threats to this balance from development. It shall review air quality, weather patterns, and the potential for air-quality degradation. It shall catalog and map geologic conditions that provide risks to life or property and materials that may be suited for extraction. It shall document wildlife and habitat conditions.

Historical, Cultural, or Scenic Resources.

This element shall identify all federal, state, and local historical and cultural resources in unincorporated areas. It shall identify resources that are scenic and offer potential for tourism or recreation, or that should otherwise be preserved, and develop a protection plan for these resources.

Growth. This element shall provide a 100-year growth projection for the county and its municipalities, prepared in coordination with regional or state agencies. It shall evaluate this growth projection in light of resource

limitations, such as water and prime land for agriculture, to determine whether that growth is sustainable. It shall separate growth or decline in the workforce of the rural economy from total growth. Tourist or recreational growth shall also be separately identified.

Municipal Growth Areas. This element shall designate the area needed to provide for the county's 100-year growth projection, including non-overlapping growth areas for each municipality. The growth area shall relate to the intensities and services the municipality provides. In developing the growth areas, areas best suited for rural uses shall be avoided. Growth areas and intensities shall be in line with state mandates (where they exist) and promote sustainable communities. The county plan may propose transferring the zoning authority in the growth area to the municipalities or provide for an incremental expansion of the growth area to make it easier to expand utility service.

County Land Use. This element shall designate areas for different rural economic uses: agriculture; forestry; mining of resources; and wildlife, scenic, or resource protection. It shall identify existing non-rural uses: residential subdivisions, unincorporated places, rural support industries, resort areas, and rural interstate highway uses. Existing land uses, subdivisions, and unincorporated places shall be mapped. In mapping growth areas these areas shall have priority for inclusion in municipal growth areas where full ser-

vices can be provided. Where unincorporated tourist or recreation destinations are remote from municipalities, the plan for growth of these areas shall include a threshold for incorporation.

Housing. This element shall document the quantity and quality of existing rural workforce housing and project future needs. The municipalities are responsible for the housing needs of municipal growth areas. It shall determine, in coordination with municipalities,

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whether new rural workforce housing is best located in unincorporated or incorporated areas with respect to infrastructure and provision of services. It shall determine the type of workforce housing necessary to facilitate the extraction of nonrenewable resources. Distinctions should be made between permanent housing needed for long-term workforce housing and temporary housing that is needed during rapid exploitation. An analysis of the

need for police and fire services, utilities, and other infrastructure shall be conducted. If the workforce housing is to be in unincorporated areas, it shall include a strategy to control growth so as to reimburse government for provision of all infrastructure, ensure adequate housing, and remove and restore the land when the housing is no longer needed.

Transportation. This element shall evaluate the county transportation system to determine the need to improve state and county arterial and collectors for rural needs and municipal growth. Improvement of local county roads shall be related to maintenance, replacement, and new construction for rural needs. Improvements needed for municipal growth shall be identified, and the county ability to make improvements shall be evaluated. If there are plans for nonrenewable resource extraction, the plan shall address improvements to county roads needed to sustain heavy traffic and a means of paying for these improvements.

Services and Utilities. This element shall review services currently provided by the county or other districts such as schools, health, libraries, fire districts, rural water districts, or others for future needs and coordination with municipalities. Public sewers or water supply should be considered only where needed to eliminate current threats to public health.

Parks and Recreation. This element shall document the quantity and quality of regional parks and recreational facilities and project



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Some rural areas contain historic hamlets, such as Scotchtown in Orange County, New York, that would benefit from an unincorporated place zoning designation.

future needs. Neighborhood and local facilities are municipal, except that local facilities to support unincorporated places maybe developed. Greenways connecting municipalities with foot and bicycle trails along county highways or scenic corridors should be evaluated.

Transferrable Development Rights. This element shall explain the primary implementation strategy for municipal growth areas. It shall describe a system of transferrable development rights that recognizes existing zoning in the municipalities at the beginning of the planning process. This system shall assure a market for all development rights allocated to rural landowners, and it shall be coordinated with the long-term growth of the municipalities. The analysis shall look at the inequity in value between the rural areas and growth areas and provide a means of compensating the rural land owner.

Plan Revisions

At least every 10 years (to be tied to the federal census) the county planning commission shall develop a report that evaluates how closely total county growth is to the projected 100-year growth. It shall also evaluate the rural economy and determine if there are any significant changes that should be addressed. Monitoring growth provides early recognition of conditions that could impact the 100-year growth areas. This element is likely to be very important when a natural resource that has not been tapped suddenly appears likely to lead to a land rush. Municipal growth areas should not be increased until there is less than half the growth area remaining.

MODEL RURAL COUNTY ZONING LEGISLATION Purpose

The purpose of rural county zoning is to provide zoning tools appropriate to implement the adopted rural plan. The zones, uses, and standards are intended to control and promote the character and economy of rural counties. The residential, commercial, and industrial uses normally found in municipalities are severely limited and undesirable in counties. Special controls ensure that uses that impact a rural county's ability to support new development are provided for along with power to transfer the zoning jurisdiction in unincorporated parts of the municipality growth areas to the municipality. Transferable development rights are created, and municipalities are required to provide the receiving area.

Rural Zoning Districts

The county is only permitted the following zoning districts. Rural economic districts are the core districts with others being optional or used only when they meet existing conditions.

Rural Economic Districts. One or more districts shall be provided for farming, agriculture, forestry, or natural districts. This can range from a single rural district to multiple districts designed to meet the unique needs of widely varying agricultural operations, such as orchards and ranches. Districts shall distinguish between rural uses that are owner-operated businesses where the business owner lives and works on the land and those where owners, operators, and workers live off-site. The housing in these districts shall be limited to a single-family residence and related accessory structures. The unit would normally

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require from 120 to 640 acres; although, for some specialty crops, smaller sizes may be appropriate. Provisions for noncontiguous ownership may be provided. There are special provisions for housing in the rural economic zones:

Family Housing. Farms and ranches have a generational turnover problem. Transferring ownership from generation to generation creates a need for a second single-family unit on the farmstead. A demonstration of the ownership transfer conditions that uniquely require more units are permitted. No new lot shall be provided and shall not be subdivided. The second unit may not be sold to a person not working on the farm. Rental of the unit when a family member no longer lives on the property is permitted.

Rural Workforce Housing. Counties may adopt special provisions for workforce housing to support the rural economies for agriculture, timber, or conservation uses either on-site or in camps serving multiple uses.

Nonrenewable Resource Extraction.

The purpose of this district is to permit the extraction of nonrenewable resources while at the same time protecting residents and the rural economy from water and air pollution and subsidence, so the rural economy continues to function. These districts shall be tied to unique geologic formations where the resource is concentrated. Where large portions of the county are underlain by the resource and extraction is widely distributed, the zoning shall treat extraction as a use rather than a district. Subsurface extraction controls maybe provided to ensure that extraction of subsurface resources does not severely damage the rural economic uses on the surface. (Note: Some states may have sole control of these activities.) Extraction operations may provide housing on-site for full-time security workers. Crew housing, camps, or other housing for groups of workers or their families are best provided in municipalities that provide full public facilities and commercial and other services for these people. These shall only be permitted in rural economic districts where a municipal location is not feasible.

Neighborhood Conservation. Each existing residential subdivision shall be recognized with a neighborhood conservation district confined to the subdivision boundaries. The priority shall be to include such districts in municipal growth areas.

Unincorporated Places. When an existing freestanding hamlet, consisting of a mix of nonresidential uses and residences on small lots, cannot be placed in a municipal growth area, it shall be zoned as an unincorporated place. The boundaries of the district shall allow for some expansion and a range of nonresidential uses tailored to the unique character of these places.

Support Facilities. A district or overlay that permits only support facilities for agriculture or forestry, such as grain storage, processing, and shipping, may be provided in the county where reasonably proximate rail or other essential transportation facilities are not available within municipal growth areas. Similar provisions for forestry, mining, or other extractive uses may be applied where appropriate.

Resort. In counties where the natural environment, state, or national lands provide a location that is ideal for tourist-oriented communities a resort district may be provided. These districts are to have urban intensities. A special taxing district shall be established for



➡ Rural resorts, such as the Massanutten ski resort in Rockingham County, Virginia, deserve a special zoning designation.

such areas with a requirement for incorporation when a threshold population is reached if they cannot be placed in municipal growth areas.

Transferable Development Rights

The county shall create a transferable development rights (TDR) program. The rural land owners shall be allocated development rights. The municipal growth areas, both incorporated and unincorporated, are designated as receiving areas for the purchase of development rights. This provision must be in municipal statutes.

Allocation. Each landowner in a Rural Economic District shall receive an allocation of development rights based on the property's proportional share of the Rural Economic District. Existing homes shall be subtracted from any allocation. Water bodies, utility easements, and land in highway rights-of-way are excluded. The county may also exclude floodplains and wetlands. Landowners in Nonrenewable Resource Extraction, Neighborhood Conservation, Unincorporated Places, or Support Facilities districts are excluded from receiving development rights. The allocation of development rights shall be made by the county to all unincorporated land included in the municipal growth areas. Allocations shall be rounded to tenths of a development right.

Sales. The county may create an agency to sell development rights and annually distribute the money proportionally to all owners of development rights. The county assessor shall identify minimum sales price and hold a public hearing before each calendar year. The county shall require a management fee up to one half of

a real estate commission for the administrative costs of the sale and distribution.

Purchase of TDRs. Whenever a property in the municipality and its growth area is rezoned, the owner or developer of the rezoned property shall have to purchase development rights for one-half of the increase in intensity of the rezoning. The purchase shall be finalized as a condition of approval of any development after the rezoning.

SUMMARY

The benefits of rural planning and zoning legislation are numerous.

Counties would be required to protect the rural economy, character, and natural resources. Preserving the rural economy of agriculture, forestry, and conservation activities is more

effective because the planning horizon allows for landowners to make multigenerational commitments to their businesses without pressure from urbanization.

Sustainability would be enhanced by focusing development in municipalities. Concentrating development in municipalities results in higher intensities and coordinated extension of utilities. The sprawl created by counties competing with municipalities for development is eliminated. Municipal growth boundaries also prevent sprawl driven by annexation battles.

Setting municipal growth boundaries would make for more effective municipal planning. This reduces the ability of developers to shop for the best deals from the county and municipalities. Municipal boundary maps that look like wrestling octopi would be eliminated.

Infrastructure costs would be reduced. Infrastructure is more efficiently provided in municipal growth areas. The county would not have to provide for local access roads for development over large areas. Counties would not be in the sewer and water business. This greatly reduces the need for new infrastructure spread across the county.

The division of planning responsibilities between county, municipalities, and regions will provide for an opportunity to do effective regional planning in metropolitan areas. Greenbelt planning becomes possible.

The long-term planning emphasis on natural resources and nonrenewable resources offers an ability to plan for the wise use of these resources. Finally, because it requires the protection of water and air, it creates an opportunity to manage exploitation through anticipatory planning.

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HOW COULD STATE ENABLING
LAWS BETTER SUPPORT RURAL
PRESERVATION?

7