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LAND USE CONTROLS AND RECREATION IN NORTHERN WISCONSIN*

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The attractions of a region for outdoor recreation are determined in the first instance by its natural endowments, and its degree of accessibility to persons desiring to indulge in such sport. Northern Wisconsin has been fortunate in offering pleasing scenery and climate plus a variety of fish and game at a location close to sizable population centers. Just as the presence of man is necessary to impart economic value to the most beautiful sylvan setting, so it is man's activity in the region that constitutes the major threat to the continuance of the beauty of the area.¹ The purpose of this article is to consider some of the means

* The term "Northern Wisconsin" as used in this article refers to nine counties of the state: Bayfield, Sawyer, Washburn and Burnett, forming a contiguous area in the West stretching from Lake Superior south and west to the St. Croix river; and Vilas, Oneida, Forest, Langlade and Oconto, forming another contiguous area in the East stretching from the border of Upper Michigan southeast to the shore of Green Bay. Recreational development is more nearly completed in the eastern area than in the western, in the sense that there are many fewer sites suitable for recreation still to be exploited in the east than in the west.

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¹ For instance, many persons desire to build a summer home on the lakeshore and as more and more persons do so, the amount of lakeshore available for new development becomes less, the total length of shoreline being a fixed quantity. The result is a gradual rise in value of undeveloped shoreline. Less desirable shoreline comes into the market, and pressure rises to sell lots having a shorter water frontage than is desirable, either from the point of view of beauty or sanitation. Interview with Perry Risberg, realtor, in Hayward, Wis., Oct. 31, 1956.

Building on low land may create problems of sanitation and water pollution as well as destroy the beauty of the region. With more people in the area there may be expected to be more instances where the physical mixture of forms of recreational enterprise causes a deterioration in the value of one or both of the neighboring properties. A dance hall near a group of house-keeping cottages or summer homes may well cause the cottage dweller to wonder to what extent he has been able to get away from the city and to make a note not to come back to that particular resort again.

Industrial developments, such as milk processing plants, dump refuse in the watercourses, in some areas in such quantities as to spoil the recreational value of the water. Interview with Victor Lanning, author of *The Wisconsin Tourist*, 1 WIS. COMMERCE STUDIES No. 3 (1950), Madison, Dec. 12, 1956. Diversion of water for agricultural use is another human activity that may harm natural beauty.

presently available for the control of human activity so as to preserve the recreation base of the region.

THE FOREST SEVERANCE TAX

The basic method of taxing land in Wisconsin is to take a uniform percentage of the assessed valuation of the land.² The value the assessor strives to set is the full amount that ordinarily could be obtained for the land at a private sale.³ The tax is collected each year.⁴ Since timber is a crop that takes many years to mature, the method of taxation just described taxes the trees' accumulated growth of previous years again and again. It has been said that taxing a stand of timber in this fashion is equivalent to taxing a farm plus all the crops it had grown for half a century.⁵

The tendency of the tax when applied to growing timber is to encourage quick cutting in order to avoid further taxation. To discourage the destruction of the remaining forests of the state and to encourage the growing of timber as a crop on lands that were not suitable for other purposes, the legislature enacted the Forest Crop Law.⁶

This law distinguishes between the land, which is capital, and the timber, which is the crop or income. An annual tax called the "acreage share" of 10c per acre is levied on the land, if privately owned. The acreage share is in lieu of the general property tax and will not vary so long as the land remains under the statute.^{6a} No tax is imposed on the timber until it is cut. A severance tax is then imposed amounting, if the land is privately owned, to ten per cent of the stumpage value of the timber removed.⁷ If the land is county owned, the tax is fifty per cent of the stumpage value.⁸ The stumpage value of forest products is fixed by the Conservation Commission, no later than September 1 each year, after public notice and hearing.⁹ Forestry must be practiced on lands entered under the law.¹⁰ The law further provides that if the entry of land under the law is cancelled by the Conservation Commission within 5 years following the date of entry, the owners shall repay to the Commission all money paid by the state thereon,

² WIS. STAT. § 70.66 (1955), WIS. CONST. art. VIII, § 1.

³ WIS. STAT. § 70.32 (1955). The statute has been interpreted to mean the assessment must be a price the land would sell for on negotiations between an owner willing but not obliged to sell and a willing buyer not obliged to buy. *State ex. rel. New Lisbon State Bank vs. New Lisbon*, 260 Wis. 607, 611, 51 N.W. 2d 509, 511 (1951), and cases there cited.

⁴ WIS. STAT. § 74.02 (1955).

⁵ WIS. CONSERVATION COMMISSION, BIENNIAL REPORT FOR FISCAL YEARS ENDING JUNE 30, 1931 AND JUNE 30, 1932 at 23 (1932).

⁶ WIS. STAT. c. 77 (1955).

^{6a} WIS. STAT. c. 77 (1955).

⁷ WIS. STAT. § 77.06 (5) (1955).

⁸ *Ibid.*

⁹ WIS. STAT. § 77.06 (2) (1955).

¹⁰ WIS. STAT. §§ 77.02 (1), 77.10 (1) (1955).

plus interest.¹¹ The failure to practice forestry is one reason for cancellation of the entry.¹² The counties for this purpose are treated like private owners.¹³ If at any time after 5 years following entry of the land, the owner uses it for purposes other than forestry, the Commission shall order the land withdraw from the law and the owner is liable for the amount of real estate tax that would have been charged against the land had it not been under the Forest Crop Law. Again, interest is charged but credit is given for taxes already paid under the Forest Crop Law. The same liability is incurred if the owner voluntarily elects at any time to withdraw the land from the law.¹⁴ Logically enough, the counties are not liable for the real estate taxes on lands on which they do not practice forestry, or which they withdraw from the law.¹⁵ If an owner of forest crop lands cuts more timber than the Conservation Commission may have allowed, he is liable for twice the usual amount of severance tax,¹⁶ and this also applies to the counties.¹⁷ To aid collection of the severance tax, the owner is required to report to the Conservation Commission the amount of timber cut, on penalty of fine, imprisonment or both.¹⁸ The severance tax is a lien on the wood products cut until paid.¹⁹

The tendency of the tax features of the Forest Crop Law is to encourage owners to allow timber to mature before cutting and to follow good forestry practices while the trees are growing. To the extent that owners do use the land for forestry purposes, its recreational potential is protected and enhanced through the exclusion of conflicting uses of an industrial, agricultural or commercial nature. The land entered under the law is open to the public for hunting and fishing.²⁰ The acreages entered under the law by private owners are listed in Table 1.

In a sense, economic conditions in northern Wisconsin in the 1920's were ripe for the development of public forests. Tax delinquency of

¹¹ WIS. STAT. § 77.10 (1955). A credit will be allowed for any severance tax paid for timber cut from the land.

¹² WIS. STAT. § 77.10 (1) (1955) requires cancellation if the requirements of § 77.02 are not met. § 77.02 requires the owner to state in his petition for entry of the lands that he intends to practice forestry, which petition § 77.03 becomes, if granted, a contract between the state and owner running with the land.

¹³ WIS. STAT. § 77.13 (1955).

¹⁴ WIS. STAT. § 77.10 (1), (2) (1955).

¹⁵ WIS. STAT. § 77.13 (1955).

¹⁶ WIS. STAT. § 77.06 (1) (1955).

¹⁷ WIS. STAT. § 77.13 (1955).

¹⁸ WIS. STAT. §§ 77.06 (4), 77.09 (1955).

¹⁹ WIS. STAT. § 77.07 (1) (1955). The lien is effective no matter where the wood products are located or what form they have taken. If the products are comingled with other products, the lien applies to the common mass. The lien is effective against everyone who may possess the wood products to which it applies, with the exception of a purchaser for value without notice in the usual course of business.

Table. 1. ACREAGE IN SELECTED COUNTIES ENTERED UNDER FOREST CROP LAW AS OF JUNE 30, 1957.*

<i>County</i>	<i>County Acreage</i>	<i>Private Acreage</i>	<i>Total</i>
Bayfield	162,625	9,904	172,529
Sawyer	111,588	928	112,516
Washburn	139,529	2,095	141,624
Burnett	101,960	2,011	103,971
Vilas	32,441	2,064	34,505
Oneida	80,817	62,248	143,065
Forest	10,695	38,018	48,713
Langlade	122,626	10,676	133,302
Oconto	40,103	3,532	43,065

* Data supplied by the Wisconsin Conservation Department.

cutover land was widespread and there was no market for the land if offered for sale. In this state, title to land on which the taxes are not paid goes to the counties, but in the '20's counties were reluctant to take title because there was no authority for the counties to manage the tracts. Even if the counties had the funds to manage the land, how long would the towns have money to carry out the routine functions of government if the tax base were reduced by the passing of land from private to public ownership? Legislation in 1927 gave the counties the needed authority to manage timberlands,²¹ and amendments to the Forest Crop Law provided funds for county management and for the support of local governments, insofar as the county forest lands were entered under the law.²²

In connection with the administration of county forests, the county board has powers important in determining the use of land. For instance, it may designate a committee to establish regulations for use of the forests by the public, together with penalties for their breach.²³ The board may also appropriate money to purchase land for use as a county forest or to exchange other county owned land needed to consolidate and block county forest holdings.²⁴ The board may establish

²⁰ WIS. STAT. § 77.03 (1955).

²¹ Wis. Laws 1927, c. 57, WIS. STAT. § 59.98 (1927). The authority is now found in WIS. STAT. § 28.11 (1955).

²² Wis. Laws 1929, c. 343, now WIS. STAT. § 77.13 (1955), excepts the counties from payment of acreage share taxes; Wis. Laws 1931, c. 39, now WIS. STAT. § 77.05 (1955), requires the state to pay annual aids to the towns of 10c per acre on county lands entered under the Forest Crop Law; and Wis. Laws 1931, c. 455, now WIS. STAT. § 28.14 (1955) requires the state to pay annually to the county 10c for each acre of county owned land entered under the Forest Crop Law, to be used for the development and maintenance of the county forest.

²³ WIS. STAT. § 28.11 (1) (1955).

²⁴ WIS. STAT. § 28.11 (2) (1955). It is said that counties can acquire land by exchange, under the authority of this section, only for the purpose of blocking our county forests. 40 OPS. WIS. ATTY. GEN. 57 (1951). Nor may new lands be purchased with state contributed funds, except for blocking. WIS. STAT. § 28.14 (2) (1955).

reserve strips along roads and waters.²⁵ Finally, it may establish forest management.²⁶

Public hunting grounds and public access to lakes and streams is often accomplished through county forest land on which, of course, the public have a right to hunt and fish.²⁷ Perhaps of even greater importance, the land included in the county forests is used to grow trees, thereby helping to restore the recreational value of the area involved, both as a scenic attraction and as a suitable habitat for wild life. Approximately 2,200,000 acres of county forest land are registered under the Forest Crop Law, as of June 30, 1957.²⁸ For the acreages entered in the various counties of northern Wisconsin see Table 1. If tax delinquency in northern Wisconsin should again become widespread, it may be expected that even more land will pass into county forests. The county forest program provides a means of getting tax delinquent lands off the market. Hence the program may lessen the depressing effect of large amounts of tax delinquency on the value of land which itself is not yet delinquent.²⁹

RURAL LAND ZONING

The control of land use effected by the terms of the Forest Crop Law itself is bolstered and supplemented by the zoning regulations enacted by the various counties pursuant to the enabling statute.³⁰ The original purpose of rural zoning in northern Wisconsin primarily was to discourage the farming of sub-marginal land, to separate the forest and recreation land from the farmland. With that object in mind, the different zones of land use set up in the northern counties have been Forestry, Recreation and Unrestricted. Land in the Forestry district may be used for forestry and forest-connected industries, the harvesting of wild crops, and recreational activities, including part-time residence. Agriculture is prohibited, as is year-round residence. The use of land in the Recreation district is subject to the same restrictions, except that caretakers of recreational property may maintain a year-round residence. There are no zoning regulations in the unrestricted district.³¹ With the adoption of such zoning regulations, legal restraints

²⁵ WIS. STAT. § 28.11 (4) (1955). Other provisions allow the board to enter into cooperative agreements with the Conservation Commission for fire protection of the county forests WIS. STAT. § 28.11 (3) (1955), to allow the Conservation Commission or the Lake States Forest Experiment Station to use tracts of county forest in forest management research WIS. STAT. § 28.11 (4), landscape stock is produced WIS. STAT. § 28.11 (5) (1955).

²⁶ WIS. STAT. § 28.11 (6) (1955).

²⁷ WIS. STAT. §§ 77.03, 77.13 (1955).

²⁸ Data furnished by Wis. Conservation Dep't., Madison 1, Wisconsin. The actual figure was 2,178,826.52 acres.

²⁹ SOLBERG, NEW LAWS FOR NEW FORESTS (unpublished manuscript in University of Wisconsin Law School Library 1956), Chapter X, at 308 of the type-script.

³⁰ WIS. STAT. § 59.97 (1955).

³¹ THE NATURAL RESOURCES COMMITTEE OF STATE AGENCIES, THE NATURAL RE-

on land use were created which enhanced the effectiveness of the Forest Crop Law in changing the land use pattern from agriculture to forestry. The acreage subject to zoning in northern Wisconsin is indicated in Table 2. The data applicable to the entire state is given in Table 3. By totaling the acreages in some form of restricted use district and dividing the total acreage of the eight counties, it is found that about 44% of the area is subject to zoning restrictions, compared to about 33% for the 25 counties that have zoning ordinances of the forestry-recreation type.

Of course, zoning regulations must be policed to achieve compliance with them. Outside northern Wisconsin, zoning ordinances frequently are administered by the issuance of a use, occupancy or building permit for each individual user of land within the zone. Under such a system, a positive check is kept currently on land use. But instead of using a building permit system in the administration of their zoning regulations, the northern counties rely on a listing of uses of land not conforming to the uses permitted in the zone involved, the list being made at the time the ordinance became effective. The idea is that the uses so listed, although non-conforming, are permitted because existing at the time of zoning. Any non-conforming use not listed is presumed to be in violation of the zoning ordinance although the presumed violator is given a chance to prove that his use of the land existed at the time of zoning.³² The county board³³ is allowed to provide such regulations, procedures, personnel, and penalties for the enforcement of the ordinance as it deems necessary.³⁴ Compliance may also be enforced

SOURCES OF WISCONSIN at 99-101 (1956). Although every county in Northern Wisconsin has enacted a zoning ordinance, not all the land in these counties is covered by the ordinances. This is true because the ordinance must be approved by each town before it is effective within that town, and many towns have failed to approve their county's ordinance. In Washburn county, for instance, only 13 towns out of a total of 24 have given their approval. Although this county has the greatest number of non-approving towns of any of the nine counties with which this article specifically deals, if the situation of all the counties with ordinances is considered, the Washburn proportion of town approval is higher than average. In the 45 counties with some type of zoning there are 854 towns of which 413 have approved, or 48%. Sixteen towns in counties with no ordinances have adopted ordinances of their own, making a total of 429 towns with zoning of some sort. Wisconsin has 1282 towns. Thus only 33.4% of the towns in the state have zoning in any form.

County or town ordinances are not effective within the limits of incorporated villages and cities. Except where the town board has been granted the powers of village boards, the town zoning ordinance would not be effective in the villages of the town. See WIS. STAT. § 59.97 (1) (1955) as to area where county ordinance is effective; §60.74 (1) (a) (4) as to area of effect of town ordinance, and §60.74 (7) and statutes there cited as to situation when town ordinance may be effective within incorporated village. Of the 539 incorporated villages and cities in the entire state, there are only 137 that have adopted zoning ordinances.

³² WIS. STAT. § 59.97 (7) (b) (1955).

³³ WIS. STAT. § 59.97 (c) (1955).

³⁴ WIS. STAT. § 59.97 (8) (1955).

Table 2. EXTENT OF RURAL LAND ZONING IN NORTHERN WISCONSIN*

County	Acreage in combined forestry and recreation district	Acreage in forest district	Acreage in recreation district	Acreage in unrestricted district	Acres in county
Bayfield ...	.....	504,848	33,040	419,839	957,727
Burnett ....	.....	128,640	6,960	399,939	535,539
Forest	350,320	.....	.....	305,392	655,712
Langlade ...	.....	251,800	2,880	300,136	554,816
Oconto	203,640	.....	.....	509,844	713,848
Sawyer	237,480	.....	.....	599,947	730,150
Vilas .....	.....	298,503	167,935	93,338	559,776
Washburn .	149,400	.....	.....	381,812	531,212

(Oneida county is omitted because its zoning ordinance is now being revised.)

Towns that have no restricted forestry or recreational use district:

Bayfield	—Eileen, Kelly, Mason
Burnet	—Grantsburg, Trade Lake, Wood River, Anderson, Daniels
Forest	—Wabeno, Caswell
Langlade	—Rolling, Norwood, Polar, Antigo
Oconto	—Brazeau, Maple Valley, Gillett, Spruce, Lena, Little River, Oconto Falls, Oconto, Pensaukee, Chase, Little Suamico.
Oneida	—Stella, Pine Lake, Crescent
Vilas	—None
Washburn	—Wood, Barnett, Sarona, Bashow, Beaver Brook, Spooner, Evergreen, Trego, Brooklyn, Long Lake

(No data was obtained with respect to Sawyer county.)

Table 3. EXTENT OF RURAL LAND ZONING IN WISCONSIN.

Total acres in combined forestry and recreation districts.....	2,482,872
Total acres in forestry districts	2,195,611
Total acres in recreation districts	327,335
Total acres in unrestricted districts	9,886,367
	<hr/> 14,892,185

* All data shown in Tables 2 and 3 was furnished by Mr. W. A. Rowlands, Coordinator, Land Use Planning & Development, Agricultural Extension Service, State of Wisconsin, Madison. Mr. Rowlands points out by letter to the writer dated April 21, 1958 that the information is only approximately correct, and additions or deletions to the zoned area frequently occur.

by injunctive order at the suit of either the county or an owner of land within the district affected the regulation.³⁵

Rural zoning in northern Wisconsin has not been as effective as it might be in controlling land use. The listing of non-conforming uses has not been carried out, with the result that the counties have lost the advantage regarding burden of proof that the statute attempted to confer on them.³⁶ Administration of the ordinances has been informal, largely depending on the voluntary efforts of interested persons—usually the town chairman. An effort was made in 1951 to strengthen administration by requiring the zoning agency designated by the county

³⁵ *Ibid.*

³⁶ SOLBERG, NEW LAWS FOR NEW FORESTS (unpublished manuscript in University of Wisconsin Law School Library 1956), Chapter XIII at 445-446 of the typescript. Mr. Solberg's remarks apply specifically to Langlade and Oneida counties and the town of Washington in Vilas county.

board to oversee it, and to this end to meet at least once a year.³⁷ However, this change seems to have had little effect.

The informality of administration of the zoning laws has made it easy to accommodate the strong demand of recreation interests for some of the sub-marginal farmland for uses not allowed by the ordinances as enacted. Although sometimes the ordinances were amended to allow the new land uses, in other instances family dwellings, gas stations, restaurants, taverns, and commercial stores have been allowed to flourish in restricted recreation districts simply by the refusal of the authorities to prosecute the illegal use. The lax administration of zoning ordinances, at least with respect to violation by recreational enterprise, has generally been a reflection of the eagerness of northern counties to embrace a new activity that produces wealth both for the individual residents of the north and for their county and town governments.³⁸

It may be doubted whether the proper method of dealing with the impact of zoning on recreational construction and enterprise was simply, in effect, to abandon zoning as far as it concerned these activities. Considerable freedom from existing restraints, designed to discourage agriculture, might be appropriate, but extensive construction of resorts, summer cottages, restaurants, and taverns create their own problems of land use control, problems which require amendment of the existing ordinances, not their abandonment. For instance, the Forest-Recreation ordinances today prohibit full-time residence in the restricted zones but allow part-time residence. But today a major problem of land use control in the north is to guide the development of a recreation industry, so as to minimize destruction of scenic beauty. Instead of refusing to enforce the prohibition of full-time residence, it may be necessary in some areas to prohibit structures of any type, the question of the permanency of residence being irrelevant. In other situations construction may be allowed, with the requirement that the building be erected a specific minimum distance from the shore of a watercourse and from side-lot lines. If construction of properly placed buildings is allowed, to achieve the maximum enjoyment of the development possible it usually will be necessary to impose use restrictions also. Recreational dwelling facilities—family cottages, resort hotels, motels, camp grounds—need to be separated from one another to avoid frictions between the occupants of each type. Still more, perhaps, does the location of retail service and entertainment establishments need to be controlled, relative to the location of dwelling facilities, to ensure a

³⁷ Wis. Laws, 1951, c. 490, now found in Wis. STAT. § 59.97 (2) (a) (1955).

³⁸ BIXBY, SOME GOVERNMENTAL SOLUTIONS TO THE PROBLEMS OF LAND USE ADJUSTMENT IN THE CUTOVER AREA OF WISCONSIN (unpublished thesis in the Harvard University Library 1950), at 38-41. See also ROWLANDS, TRENK, AND PENN, RURAL ZONING IN WISCONSIN at 23-24 (1948).

community harmonious with its various components and with its natural surroundings. To meet any of these situations, new zoning regulations are called for, not just the abandonment of the old.

The examples of undesirable land use that have been suggested can be met through the creation of zones in which any type of construction or residence is prohibited, the imposition of building set-back and side-lot lines in zones where construction is allowed and the further refinement of zoning to particular land uses.³⁹ Further revisions in the ordinances may be needed to provide controls associated with urban developments.⁴⁰

A casual visit to the North country leaves one with the impression that little or no attention is paid to the number of buildings placed on a lot, or the minimum size that a lot should be in the first place. Nor do there seem to be regulations channelling the location of different types of recreational enterprise within a district zoned to recreation use, with the result that a dance hall may be within close proximity to summer cottage properties, or a tavern may be close to a children's camp. Sanitation deteriorates in an area without sewers when cottages with septic tanks are allowed to be built on land barely above the surface of a lake or stream and which is divided into lots too small to absorb the effluent from the tank before it reaches the watercourse. The increased use of land for recreation as a commercial enterprise in Northern Wisconsin and the manner in which county zoning ordinances have accommodated it are factors creating a need for modernization of the ordinances to deal more adequately with industrial, residential and recreational uses of the land.⁴¹ In order that the economic value and

³⁹ WIS. STAT. § 59.97 (1) (1955) gives authority to the county board to establish such restrictions.

⁴⁰ Replies to a questionnaire prepared by the writer and mailed to 23 persons who operate resorts or are otherwise associated with the recreation business indicate a personal knowledge of problems affecting the business arising in these general areas: inaccurate location of lot boundaries, location of dilapidated buildings right on the shoreline, pollution of water by raw sewage and beer cans, inappropriate mixing of different types of enterprise—a sawmill next to a resort, for instance—and destruction of natural beauty. In this connection, overbuilding on small lots, shoddy construction, lack of effort to beautify secondary roads, poor roadside forestry practices, and excessive clearing of trees and brush by lot owners were specifically mentioned. Suggestions made to improve the situation included strict enforcement of county zoning ordinances by county rather than town officials, roadside beautification, and the laying out of roads in the first place with an eye for beauty. This suggestion is noteworthy in its acceptance of the idea elaborated in the text, *infra*, of planning developments for beauty. Another suggestion was to prohibit the sale of a lakeshore lot smaller than 100 feet front and 200 feet depth with a good road and private acceptable garbage dump. A copy of the questionnaire, and discussion of the replies to it are set out in WAITE, LAW AND THE DEVELOPMENT OF NORTHERN WISCONSIN'S RECREATION INDUSTRY (unpublished thesis in the University of Wisconsin Law School Library 1958) in Appendix A. It is understood that a detailed study of the land use pattern around a typical lake of the North is now being made by the Department of Agricultural Economics, College of Agriculture, University of Wisconsin.

⁴¹ THE NATURAL RESOURCES COMMITTEE OF STATE AGENCIES, THE NATURAL RE-

future of recreational enterprise in the North may be made more secure, it is to be hoped that the task of revising the ordinances and tightening their administration will soon be undertaken.

MASTER PLANNING

To be most effective, the revision of the county zoning ordinances must be carefully thought out so that a pattern of land uses consistent with each other is achieved for the entire county. The plan of revision must try to allow for the future needs of the community as well as the present ones, but only the controls planned to affect existing and immediately anticipated conditions need to be presently effective.

The statutes provide a procedure by which comprehensive planning of land use may be pursued methodically and continuously by local government.⁴² The method is basically the same for city, village or county or for regional plan commission. Attention is first given the law relating to cities and villages because it is more explicit than are the other statutes.

The idea of master planning is simple. After creating a body responsible for planning, the first thing done is to make and adopt a scheme, called the master plan, for the physical development of the community. The master plan amounts to the detailed recommendations of the planners, who may be experts hired for the job, for such development. The plan may be made more detailed or more extensive as circumstances warrant.⁴³ It may be adopted piecemeal by functional subdivision, or in its entirety, but the result of such adoption is only to help the body to perform its duties.⁴⁴ However, those features of the master plan established by resolution of the city council or village board as part of the official map of the city or village become binding as to location and width or extent of streets, highways, parkways, parks and playgrounds.⁴⁵ With respect to changes and additions to the official

SOURCES OF WISCONSIN, at 102 (1956). A general discussion of zoning and land use planning, with some reference to rural conditions, and which tends to bear out my comments in the text, appears at 100-103. It is believed the presentation of the Natural Resources Committee is a bit misleading with respect to its remarks that the sanitation code of the State Board of Health is effective in its application to lakeshore plats (at 103). The answers to the questionnaire described in note 40, *supra*, raise considerable doubt in the matter. The explanation probably lies in the fact that considerable lakeshore land is not platted but divided by metes and bounds without coming to the attention of the Board of Health. See THE NATURAL RESOURCES COMMITTEE OF STATE AGENCIES *Op. Cit.* *supra* at 102.

The conditions of sanitation along the shores of the streams and lakes of the state are still the subject of speculation. Further study is needed in the field, as well to determine the extent of unplatted parcellization of land as the extent of water pollution caused by riparians avoiding or flaunting the regulations of the Board of Health.

⁴² WIS. STAT. §§61.35, 62.23 (villages and cities); 236.46 (counties); 66.945 (regional plan commission) (1955).

⁴³ WIS. STAT. § 62.23 (2) (1955).

⁴⁴ *Id.* subsec. (3).

⁴⁵ *Id.* subsec. (6) (a).

map, a public hearing after notice must first be held by the council or village board.⁴⁶ Integrity of the map is protected by subjecting the actual locating, closing or widening of the enumerated land features controlled by the map to the provisions of the official map law.⁴⁷ Further protection to the map is provided through the law's command that no permit shall be issued for the construction of a building in the bed of a street shown or laid out on the map except in certain stated circumstances. If a person builds a structure in the bed of such street without a permit he cannot recover compensation for damage to his building caused in constructing the street.⁴⁸ No permit is to be issued for a building to be erected without access to a street placed on the map, although variances may be allowed to avoid unnecessary hardship where the building is of a type that does not require access to existing streets.⁴⁹

The features of the master plan made binding by inclusion in the official map are only streets, highways, parkways, parks and playgrounds. Other features relating to the use of other land in the village or city acquire coercive effect if adopted as zoning regulations. Conditions the city or village can regulate through zoning are the height and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.⁵⁰ If the zoning regulations enacted by the city or village conflict with the provisions of another statute or local ordinance, whichever provisions impose the higher standards govern.⁵¹ Various methods of enforcement are provided.⁵² The area subject to planning by the city or village includes the regions outside the boundaries of the municipality that the planners deem related to its development.⁵³ An interesting further extension of the area subject to municipal planning is implied by the grant of power to cities or villages situated on or astride a navigable stream to make improvements in the stream throughout the county in which the municipality is located, in aid of navigation, public health, and wild life.⁵⁴

⁴⁶ *Id.* subsec. (6) (b). This subsection also points out that the mere placement of lines on the official map does not itself amount to the opening of or the taking or acceptance of land for the street, park, or other feature the lines represent.

⁴⁷ *Id.* subsec. (6) (c).

⁴⁸ *Id.* subsec. (6) (d).

⁴⁹ *Id.* subsec. (6) (g).

⁵⁰ *Id.* subsec. (7) (a).

⁵¹ *Id.* subsec. (7) (g). "Higher standard" means requiring more open space, lower buildings, and the like.

⁵² *Id.* subsecs. (7) (f) (injunctive relief); (8) (building structure in violation of zoning regulations a misdemeanor punishable by \$500 fine for each day construction continues); or (9) (withholding building permit).

⁵³ *Id.* subsec. (7) (c).

⁵⁴ *Id.* subsec. (18).

Counties are allowed to make regional plans for the future platting of lands in the county but outside the limits of cities or villages, or for future location of streets, highways or parkways.⁵⁵ The plans may be adopted by ordinance passed by the county board after holding public hearings on them and obtaining the approval of the plans by the town boards of the towns in which the lands affected are located.⁵⁶ The ordinance may be amended only with approval of the towns involved.⁵⁷ The ordinance with amendments governs the platting of all lands within the area to which it applies,⁵⁸ which, in northern Wisconsin, is exclusive of the extraterritorial plat approval of any municipality that does not approve the ordinance.⁵⁹

The master plan technique is also contemplated to be used by regional planning commissions, when and if any are established.⁶⁰ The method of making the plan and the purpose and effect of its adoption are essentially the same as in the case of the city or village plan.⁶¹ Any local governmental unit within the region may adopt all or any portion of the regional master plan.⁶² No means exist by which the features of the plan can become binding land use regulations by virtue of action by the regional planning commission itself.

Although the master plan generally is not itself legally binding as a control of land use, failure of a subdivision plat to comply with a local master plan is a basis for disapproval of the plat.⁶³ As a matter of fact, the effect of the master plan on landowners is much the same as if it were legally coercive. Most people will not build on a proposed public site, since they want to avoid the necessity of erecting another building when the land is actually taken for public use.⁶⁴ The master planning process also provides continuing surveillance of the community's evolving land use pattern, and assures that the actual controls imposed will be kept abreast of actual needs. In these ways it contributes to the job of controlling land use, as well as by promoting methodicity of planning.

ENCOURAGEMENT OF DESIRABLE LAND USE

In connection with the work of revision of rural zoning ordinances, it is suggested that the feasibility of a community program to improve

⁵⁵ WIS. STAT. § 236.46 (1955). The uses that may be controlled are discussed in the description of Rural Land Zoning in the text *supra*.

⁵⁶ *Id.* subsec. (1) (a).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Id.* subsec. (1) (b).

⁶⁰ WIS. STAT. § 66.945 (9) (1955). As of Oct. 1, 1958, no regional planning commission had been created in northern Wisconsin.

⁶¹ *Id.* subsecs. (9), (10).

⁶² *Id.* subsec. (12).

⁶³ WIS. STAT. § 236.13 (1955).

⁶⁴ Kucirek and Beuscher, *Wisconsin's Official Map Law*, 1957 WIS. L. REV. 176, 179.

the aesthetics of layout and construction of recreational developments be explored. Lots for cottage developments are customarily located along the lake shore in a line as straight as possible, each lot being rectangular in shape and virtually identical in size to its neighbors. Such a layout has the virtue of simplicity in surveying, but does it promote the beauty of the resulting development? The urban subdivisions where the most desirable residential districts are found frequently are composed of lots of different shapes and elevations fronting on a curving street whose course has been largely influenced by the natural terrain of the area. Instead of lots so alike that the similarity of homes built on them seems inevitable, the lots created in such a higher-valued subdivision are individualistic and create opportunity for individual architectural treatment of the residences which will occupy them.⁶⁵ It is suggested that the planning of lakeshore developments to take best advantage of the vegetation and terrain natural to the area, disturbing it as little as possible, makes as much sense or more than does such treatment of urban residential districts. Persons who, at home, live in the traditional, straight-street type of neighborhood, may welcome the opportunity to be individualists in building their summer retreat—it will provide part of the break from routine that constitutes a considerable portion of the value to be derived from recreation. Persons so fortunate as to live at home in the type of district described will want nothing less attractive for their summer cottage. Where housekeeping cottages are to be built for rental purposes, the same approach to layout seems likely to prove meritorious through the enhancement to beauty that will be possible if the planning is skillful and imaginative. In fact, it is suggested that any type of development may benefit from having been planned from its inception by persons trained to take advantage of the beauty of the terrain and to minimize the impact of whatever unattractive ground features may be present. Where the development is for lakeshore recreational dwellings, whose value is to a considerable extent determined by the beauty of the setting, it is particularly desirable to offer the prospective purchaser or renter the optimum beauty the locality can afford, together with assurance that the scene will not be spoiled in future years by unsightly, inappropriate neighboring land uses.

One hears the reply made to a suggestion that land use be planned with an eye for beauty that it would cost too much. There is no doubt the costs would be substantial, but it is hard to say how much higher they would be than if a rectilinear layout is surveyed. One surveyor estimated in 1956 that if the cost of a rectilinear plat in comparatively level, open terrain, surveyed to an accuracy of no more than one foot

⁶⁵ An architect's appraisal of one such development, Hollins Hills in Alexandria, Va., is found in CALLENDER, *BEFORE YOU BUY A HOUSE*, 67-76 (1953). See especially p. 76 for comments on the site plan.

deviation from closure for every 3,000 feet of traverse run, is taken to represent 100 per cent, then the field surveying costs of a similar plat with curved streets and irregular lots would be represented by 150 to 300 per cent.⁶⁶ No breakdown of costs for surveying lakeshore property is offered, but for an urban situation where a rectilinear layout is used on average terrain presenting no unusual problems, the costs for surveying plats containing up to 32 lots is estimated as follows:

Preliminary investigation, conferences	
1 day, 8 hours at \$4 an hour.....	\$32
Boundary Survey	
1 day, surveyor and helper.....	50
Layout and preliminary conference	
with city and owner—4 hours.....	16
Office: drafting, computations, certificates—3 days draftsman at \$3 per hour..	72
—4 hours surveyor on certificates.....	16
Tracing reproductions.....	10
Prints	4
	<hr/>
	\$200

Field work, labor and materials, \$7 per lot. This man guesses the cost of a similar survey on lakeshore property would run 50 per cent to 100 per cent higher, and even more if all streets are curved.⁶⁷ Taking the estimate at face value, and assuming the worst situation, this would put the cost of surveying a curved, lakeshore subdivision of 32 lots at more than \$848 or more than \$26 per lot.

Although in the absolute surveying costs for a beauty-preserving layout such as here suggested are likely to be sizable, when considered in relation to the value of the lots created their amount seems negligible. Prices of lakeshore frontage for cottage development in Northern Wisconsin may run from \$10 to \$25 per running foot, with the price closer to the higher figure more often than to the lower.⁶⁸ Realtors vary in the minimum frontage they will sell as a lot,⁶⁹ but if a serious

⁶⁶ R. P. Boyd, professional engineer and surveyor, Eau Claire, Wis., in a talk "Economics of Surveying," given at the Surveyors Institute conducted by the Extension Division and the College of Engineering, University of Wisconsin, 1956.

⁶⁷ *Ibid.* The speculative element in an estimate of this nature should be emphasized, as Mr. Boyd did in his talk, remarking that the Federal Housing Authority guesses that only 10 per cent to 15 per cent more time is spent in the field survey in laying out curved streets and irregular lots than in laying out a rectilinear plat. Mr. Boyd's guess was that some curved layouts might take more than twice the time.

⁶⁸ Interview with Thomas Peterman, Madison, retired realtor from Tomahawk, Wis., July 19, 1957.

⁶⁹ Interview with Perry Risberg, attorney and realtor in Hayward, Sawyer County, Wis., Oct. 30, 1956. Mr. Risberg stated 75 feet was the least amount of lake front he would sell as a lot and that he preferred 100 feet, but that there was no uniform practice among the realtors of his county.

effort to preserve beauty is being made it would seem a minimum frontage of 100 feet is on the small side. But taking that figure as the lot size, the price at which the broker can sell the lot is from \$1,000 to \$2,500. The surveying costs in the 32-lot subdivision example, then, represent only 2.6 to 1.04 per cent of the selling price. These costs, it is to be noted, include a figure for the surveyor's time in preparing certificates, indicating compliance with the platting statute⁷⁰ is contemplated. The actual costs of surveying an actual rectilinear subdivision of lakeshore lots not required to be platted, hence only a rough sketch of the subdivision being made, amounted to \$553 for 1500 feet of lake shore.⁷¹ In order that the per lot costs of this rough survey be as low as those estimated for the elaborate one contemplated by the estimate, the lots could have only 70 feet of lake frontage each. Furthermore, the survey for which the actual costs are given did not include the work necessary to comply with the platting statute, so if the substance of the work purchased from the surveyor is considered the disparity in favor of the expensive, curved layout survey is even greater. Of course, a comparison between an estimated minimum price of a hypothetical survey and an actual price for a somewhat different survey at a different locality by a different surveyor can hardly be considered a rigorous demonstration of the economic feasibility of surveying to preserve beauty. But it does suggest that the idea of its costing more than traditional surveying has been over-emphasized, and in some instances may be downright erroneous if the enhancement to the value of the lot caused by the curved survey is taken into consideration.

There are other costs involved in creating a subdivision apart from those of surveying. The layout must be planned in the first place. Although rectilinear layouts can be planned by anyone with a little experience, it probably would require the services of a landscape architect to plan a lakeshore subdivision so as to blend the structures with the terrain in the most eye-pleasing fashion. Persons trained professionally to do this work are not found in Northern Wisconsin and their fees no doubt would be substantial if they were. It is suggested that the creation of a regional planning commission, as is presently allowed by the statutes,⁷² offers a way in which the services of a professional planner could be obtained at a reasonable cost. The creation of such a commission allows the comprehensive planning of land use for an area determined by elements of similarity in social, geographic and economic conditions,⁷³ rather than by the limits of county, town, city

⁷⁰ WIS. STAT. c. 236 (1955), discussed in the text, *infra*.

⁷¹ Interview with Mr. Risberg in Hayward, Oct. 30, 1956. The work of the survey had been done shortly before my visit, so the time in which the costs were incurred was comparable to that in which Mr. Boyd made his estimate.

⁷² WIS. STAT. § 66.945 (1955).

⁷³ *Id.* subsec. (2).

or incorporated village. As such, it provides an opportunity to increase the benefits to be derived from rural land use zoning through elimination of distinctions in treatment of similar land that have arisen because of differing attitudes among county zoning authorities toward the land used involved.⁷⁴ A regional planning commission is authorized to hire such employees, experts and consultants as are necessary for its work and responsibilities.⁷⁵ It is authorized to give advice to local governments within the region on regional planning problems, and to advise "other public and private agencies in matters relative to its functions and objectives,"⁷⁶ among which is the making of plans for the physical, social and economic development of the region.⁷⁷ Such authority would appear to be ample for the hiring of a landscape architect or other person professionally trained in layout design who could provide planning services to persons interested in obtaining them. The costs of such a commission are to be borne by the local governmental units within the region that have not elected to remain outside its jurisdiction,⁷⁸ prorated in the proportion of the equalized value of the land of such unit to the total equalized value of all land within the region.⁷⁹ No local government will be charged in any year more than an amount equal to .003 per cent of the equalized value of the land under its jurisdiction without its consent.⁸⁰

A regional planning commission might also offer means in certain circumstances to reduce the costs of surveying recreational subdivisions. In some areas of Northern Wisconsin there appears to be a scarcity of surveyors, particularly of those able to perform high quality work.⁸¹ A commission could hire a surveyor whose duties would include surveying subdivisions as requested by developers. It would seem fair to charge each developer the cost of the boundary survey and the lot fee for field work, labor and materials. In the example previously discussed of a curvilinear lakeshore subdivision of 32 lots, this would reduce the charge borne by the developer for surveying from a figure in excess of \$848 to one in excess of \$548 or more than \$17 per lot.

⁷⁴ A field for further study might be the extent and specific form of existing inconsistencies of this nature.

⁷⁵ WIS. STAT. § 66.945 (6) (1955).

⁷⁶ *Id.* subsec. (8).

⁷⁷ *Ibid.*

⁷⁸ Authority to make such an election is contained in WIS. STAT. § 66.945 (2) (1955). Although the authority is in the best tradition of keeping government close to the people, it is certainly inconsistent with the concept of planning land use on a rational, regional basis which pervades all other portions of the statute. It provides a challenge to regional planners to formulate suggestions for land use controls, the wisdom of which is so striking as to elicit general support throughout the region. Whether such a challenge can be met will largely be determined by the care and patience in which the plans are explained to the people of the region.

⁷⁹ WIS. STAT. § 66.945 (14) (a) (1955).

⁸⁰ *Ibid.*

⁸¹ Interview with Fred Evert, county agricultural agent for Burnett county, in Webster, Wis., Oct. 31, 1956.

This charge is sufficiently substantial to protect against the possibility of developers having unnecessary surveying work done, while at the same time representing a reduction in cost to the developer of about 35 per cent. The remaining portion of the cost would be paid by the regional planning commission. In regions where the work load provided by the commission for the surveyor is light it might be more economical to retain him on a part-time basis rather than as a full-time employee. In either situation the costs of overhead in surveying may be smaller when paid directly by the commission than when they are included in the surveyor's bill to the customer, since in the latter case the surveyor may be charging on profit on those costs also.

In regions where surveyors already are available who are capable of good work, it probably will not be politically feasible for the commission to hire a surveyor itself. However, much the same effect in terms of cost to the individual developers might be achieved if surveyors were all offered a fixed fee to be paid by the commission for each surveying job undertaken for a subdivider, which resulted in a plat filed according to statutory requirements, and for which the surveyor charged the developer a reduced price similar to that suggested for the situation where he was hired by the commission itself.

The recreation industry has grown up haphazardly in Northern Wisconsin largely because the means of land use control were geared to correcting improvident use of land through agriculture. The revision of county zoning ordinances and the opportunity to create regional planning commissions can be the occasion for conscious effort to create land use regulations conducive to the sound growth of commercial recreation and the continued prosperity of the region in which such enterprises are located. The regional planning commission in particular seems to hold promise of providing a device for balancing at a relatively local level the conflicting demands for the use of water and land.

THE PLATTING STATUTE

A. STANDARDS FOR COMPLIANCE

A further tool for public control of the use of rural land is provided by Chapter 236 of the Wisconsin statutes. This statute requires land divided for sale or building development to be surveyed and platted when the division either creates five or more parcels of less than one and one-half acres each in area, or successive divisions create five or more such parcels within a period of five years.⁸² The chapter does not apply to cemetery plats and only applies to assessors' plats⁸³ in certain

⁸² Wis. STAT. §§ 263.03 (1) and 236.02 (7) (1955). Chapter 236 was extensively revised in 1955, partially as a result of the study by Marygold Shire Melli, *Subdivision Control in Wisconsin*, 1953 WIS. L. REV. 389.

⁸³ Assessors' plats are provided for by Wis. STAT. § 70.27 (1955). They may be drawn at the order of the governing body having taxing jurisdiction when such body believes the description of one or more parcels of an area of land

aspects of monumenting the survey and drawing the plat.⁸⁴ Those plats which are subject to the statute must have the approval of local governmental authorities, which, in accordance with the location of the land platted and other circumstances described in the statute, may be only the governing body of a municipality, or that plus the town board and the county planning agency; or it may be that the only local approvals required are those of the town board and the county planning agency, if any.⁸⁵ Provision is made allowing the various units of local government to exercise their approval authority jointly⁸⁶ but this is the only chance apparent in the statute of avoiding the necessity of multiple approvals at the local level.

The subdivider is given some help in complying with the law through being allowed to submit a preliminary plat showing enough detail to determine if the final plat will be approved.⁸⁷ The preliminary plat must be approved or rejected by the approving authority within forty days following submission, with a written statement of the conditions of approval, if any, or reasons for rejection of the plat. If no action is taken in the time allotted, the preliminary plat is deemed to be approved. If the preliminary plat is approved, the final plat substantially conforms to the layout thereof and is submitted within six months of the last required approval of the preliminary plat, then the final plat is entitled to approval with respect to the layout; but if it is submitted more than six months following preliminary approval, the final approval may be refused. The approving authority may permit the filing of a final plat covering only part of the preliminary plat, however, thus enabling the subdivider to gauge his platting activities to the speed with which lots are sold. Sixty days is given the approving authorities to act on the final plats, unless the time is extended by agreement with the subdivider, with the provision that failure to act in this time constitutes approval.⁸⁸

Although local government has approving authority for plats, an

owned by two or more persons in severalty cannot be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the parcel. The costs of the plat are ultimately borne by the land platted, as a special assessment. The plats are recorded by the register of deeds where approved by the governing body, and land so platted is to be described in conveyances by reference to the plat, on penalty of refusal of recordation of the purported instrument of conveyance. The statute appears to have been designed to ensure accurate description and marking in the field of the boundaries of lots created prior to the enactment of Chapter 236 or which do not come within the scope of its application.

⁸⁴ WIS. STAT. § 236.03 (2) (1955).

⁸⁵ WIS. STAT. § 236.10 (1955) as amended by Wis. Laws 1957, c. 88, § 1. Plats of land in counties over 500,000 in population must pass muster with the county board and county park commission as well as with the town board. § 236.10 (1) (d).

⁸⁶ WIS. STAT. § 236.10 (4) (1955).

⁸⁷ WIS. STAT. § 236.11 (1) (a) (1955).

⁸⁸ The statements in this paragraph are based on WIS. STAT. § 236.11 (1955), as amended by Wis. Laws 1957, c. 88, § 2.

opportunity to object must be given to several state agencies. For this reason, the subdivider is required to submit copies of the plat in sufficient number to provide two for each of the agencies which must review the plat. In addition to the state Director of Regional Planning, this includes the Highway Commission if the subdivision abuts a state trunk highway or connecting street and the state Board of Health if it is not to be served by a public sewer. If the subdivider wants to do so, he may submit the original plat to each of the agencies for examination rather than furnishing the copies. A more important alternative for the North country, but on which no action has been taken, is the authority of the agencies to designate local officials to act as their agents in approving the plats. Such designation can be made simply by filing a written delegation of authority to the approving body.⁸⁹ Two copies must also be provided the county park commission if the subdivision abuts a county park or parkway. Objections to the plat must be made known to the subdivider within twenty days following the date of forwarding the copies by the local approving authority.⁹⁰

To be approved, a plat must comply with applicable ordinances of local government, any local master plan or official map, the rules of the state Board of Health as to lot size and elevation where the subdivision is not to be served by a public sewer, the rules of the state Highway Commission as to safety of entrance upon and departure from the abutting state trunk highways or connecting streets and as to preservation of the public interest and investment in the highway system, the requirements of the town or municipality as to installation of public improvements, and the requirements of the platting statute itself.⁹¹ The requirements of the Board of Health and of the Highway Commission are published in the Wisconsin Administrative Code.

Only the rules of the Board of Health will be considered here, since most shoreline developments neither abut state trunk highways nor have streets connecting thereto and therefore usually are unaffected by the Highway Commission. The Board of Health, on the other hand, has laid down requirements relating to subdivisions not served by a public sewer, which therefore very much do affect typical lakeshore developments. The Board of Health's requirements fix minimum lot areas⁹² based upon soil percolation tests prescribed by the Board to be performed on the land subdivided, in sufficient number to show adequately the character of the soil, the ground water level, and the ability of the soil to absorb sewage effluent.⁹³ The rules also demand that 90 per cent of the minimum lot area be at least 2 feet above the

⁸⁹ WIS. STAT. § 236.12 (1) (a) (1955).

⁹⁰ WIS. STAT. § 236.12 (1955), as amended by Wis. Laws 1957, c. 88, §§ 3 and 4.

⁹¹ WIS. STAT. § 236.13 (1955).

⁹² WIS. ADM. CODE, § H 65.03 (1957).

⁹³ *Id.*, § H 65.06.

approximate high water elevation of any lake or stream affecting the plat, and that a contour line two feet above the high water level be shown on the plat.⁹⁴ Finally, eighty per cent of the minimum lot area must be at least three feet above the highest ground water level as estimated from soil boring test data, no part of the lot less than two feet above such highest ground water level being considered in determining the minimum lot area.⁹⁵ Although most of these requirements apply only to land platted under the statute, the soil percolation tests are required wherever a septic tank or other private sewage treatment tank is installed.⁹⁶ The location, material of construction, design, and maintenance of the tanks are prescribed, as well as the location and method of disposal of effluent from them.⁹⁷ A poor feature of the existing situation is the lack of provision for notification to the Board of Health of the creation of lots that do not come within the platting act. As a result, conditions contrary to the regulations may exist for some time before the Board knows of them.⁹⁸

The requirements of the platting statute itself are directed toward two different objectives, the chief one of which is accurate, identifiable boundaries. To a much lesser extent attention is paid to land use planning to achieve a "livable" community, one to which municipal services are inexpensively provided. To accomplish the first objective the legislature has prescribed that the survey be done by a registered land surveyor, and has set out detailed standards for monumentation and accuracy of the survey, applicable to every subdivision.⁹⁹ The standard of accuracy—not more than one foot of error in closure for every 3,000 feet of line run—is not stated in mandatory terms, the language being only that if the standard is not met, the plat "may" be rejected.¹⁰⁰ This possibility for the exercise of administrative discretion has been used where lakeshore plats were made over rough, brushy terrain.¹⁰¹ Further requirements relating to accuracy apply to the drawing of the plat, both as to type of paper and ink used and as to the substance and form of the information presented.¹⁰² Requirements peculiar to shoreline plats include the depicting of meander lines and the distance between the ordinary high water mark and the point of intersection of the meander lines with the lot lines,¹⁰³ the area over

⁹⁴ *Id.*, § H 65.05 (1).

⁹⁵ *Id.*, § H 65.05 (2).

⁹⁶ WIS. ADM. CODE, § H 62.20 (2) (1957).

⁹⁷ *Id.*, § H 62.20. The regulation prohibits the use of cesspools, defined as seepage pits for disposal of untreated sewage.

⁹⁸ Interview with Harvey E. Wirth, Ass't. State Sanitary Engineer, Environmental Sanitation Sec., State Board of Health, Madison, Wis., July 11, 1957.

⁹⁹ WIS. STAT. § 236.15 (1955) as amended by Wis. Laws 1957, c. 88, § 5.

¹⁰⁰ WIS. STAT. § 236.15 (2) (1955).

¹⁰¹ Interview with Henry M. Ford, Director of Regional Planning, State Bureau of Engineering, Madison, Wis., Feb. 19, 1957.

¹⁰² WIS. STAT. § 236.20 (2) (1955), as amended by Wis. Laws 1957, c. 88, § 7.

¹⁰³ WIS. STAT. § 236.20 (2) (g) (1955) as amended by Wis. Laws 1957, c. 88, § 9.

which public access is provided to the water together with a drawing showing the location of the subdivision with respect to the watercourse and the location of the public access route,¹⁰⁴ and the water elevation of the adjoining lake or stream at the date of survey, as well as its approximate high and low water elevations.¹⁰⁵ Authority has recently been given the Director of Regional Planning to waive strict compliance with the very detailed requirements of the statute when it is unnecessarily difficult to follow the rules, or when to do so will make the plat harder to read, but only when the plat gives enough information to permit exact retracement of the measurements and bearings.¹⁰⁶

Only three specific land use planning features are found in the statute. A minimum lot width and depth is imposed,¹⁰⁷ as well as a minimum street width.¹⁰⁸ Lake and stream shore subdivisions must also provide public access to the water at least sixty feet wide and at intervals of not more than one-half mile along the shore.¹⁰⁹

Among the certificates that are to appear on the plat to entitle it to be recorded¹¹⁰ are those from the proper officials of local government that there are no unpaid taxes or special assessments on any land included in the plat.¹¹¹ An Opinion of the Attorney General has been given that the phrase "unpaid special assessments" applied to future installments of the special assessment although not delinquent.¹¹²

If this formidable gauntlet is successfully run, the final plat is to be recorded in the county where the subdivision is located,¹¹³ but only if it is presented for recording within six months following the first approval and thirty days following the last one.¹¹⁴ If a plat is recorded that is not entitled to be, the effect is to allow rescission of the sale of or contract to sell the subdivision or any lot contained in it, at the option of the purchaser within one year following execution of the document or contract.¹¹⁵ Recording of an improper plat does not affect the donation or dedication of land made by reference to the plat, however.¹¹⁶

¹⁰⁴ WIS. STAT. § 236.20 (3) (d) (1955).

¹⁰⁵ *Id.* subsec. (5) (c).

¹⁰⁶ Wis. Laws 1957, c. 88, § 11.

¹⁰⁷ WIS. STAT. § 237.16 (1) (1955), as amended by Wis. Laws 1957, c. 88, § 6. These requirements are of little use in lakeshore subdivisions, the minimum width of lots being only fifty or sixty feet, depending on county population. Such widths are much too narrow to allow efficient land use in a summer colony development.

¹⁰⁸ WIS. STAT. § 236.16 (2) (1955).

¹⁰⁹ WIS. STAT. § 236.16 (3) (1955), as amended by Wis. Laws 1957, c. 88, § 6.

¹¹⁰ WIS. STAT. § 236.21 (1955), as amended by Wis. Laws 1957, c. 88, § 9.

¹¹¹ WIS. STAT. § 236.21 (3) (1955).

¹¹² 38 OPS. WIS. ATTY GEN. 559 (1949).

¹¹³ WIS. STAT. § 236.25 (1) (1955).

¹¹⁴ WIS. STAT. § 236.25 (2) (b) (1955).

¹¹⁵ WIS. STAT. § 236.25 (3) and 236.31 (3) (1955).

¹¹⁶ WIS. STAT. § 236.25 (3) (1955).

B. BENEFITS TO BE DERIVED BY COMPLIANCE

Surveying and platting a shoreline subdivision in accordance with the statutory requirements protects the subdivider by reducing the possibility of future litigation over lot boundaries since the standards of surveying are generally higher than those typical of surveying that does not meet the statutory requirements. It greatly simplifies the description of land and therefore makes conveyancing easier and less likely to produce errors that will result in future profit-sapping litigation.¹¹⁷ It also protects the investment of the subdivider by assuring that neighboring land is not subdivided in a manner likely to create undesirable conditions that will diminish the value of the first subdivision—in the case of lakeshore property an example of such an undesirable condition is the absence of sufficient lot area to absorb the effluent from a septic tank.

The same advantages accrue to the persons who buy lots in the subdivision, and perhaps the protections so provided are even more important to the individual lot owner than to the subdivider, since to the former the property represents in many cases an investment of a greater proportion of total capital than does the subdivision to the subdivider. In any event, the person has bought the lot to build a type of home on it, which not only increases the individual's investment in the lot, but also means the formation of a certain sentimental attachment to the property, both of which factors increase the purchaser's desire to be assured of his rights to the property and to have its value maintained at a stable level.

An example of the costly, needless expenses that may be faced by purchasers of unplatted land is afforded by the case of *DeByle v. Roberts*.¹¹⁸ There, a subdivider who had not platted his subdivision, sold lots with the representation that he was going to build a road along a certain marked route to provide access to them. The plaintiff purchased one of these lots, graded it and supplied some dirt as fill on the roadway graded by the subdivider in accordance with his representations. After the road was built and had been used for about three years, the defendants purchased two lots from the subdivider facing the road. Then a Federal highway was relocated so as to run through the entire subdivision, with lots on both sides, and which included the end of the subdivider's road within its boundaries. Defendants had built their home on the subdivider's road a considerable distance from the new highway. Plaintiffs then bought the subdivider's road by quit-

¹¹⁷ Land not platted, either by subdivider or assessor, must be described by metes and bounds. One such description found at page 352 of Miscellaneous Book 26 filed in the office of the Register of Deeds, Washburn County, Shell Lake, Wis., contained twelve surveyor's calls just to reach the place of beginning. Had the lot been platted, it could have been described simply by block and number and the name of the subdivision.

¹¹⁸ 274 Wis. 113, 79 N.W.2d 115 (1956).

claim deed, blocked the road and instituted proceedings to have the title quieted in themselves. The defendants sought to have the road reopened since the subdivider had in effect dedicated it to public use through his representations that it was to continue to be a road for ingress and egress to the defendants' property, on which they relied in making the purchase, and through the fact of public use for that purpose. If the road were closed, the defendants would have to build a new road at their own expense to reach their home. An appeal to the Supreme Court was necessary before the defendants' position was sustained. Had the subdivision been platted and recorded in accordance with the platting statute, the town would have held title to the road in the first place in trust for the purpose of being used as such.¹¹⁹ The street could lawfully have been closed only if first vacated from the plat;¹²⁰ since the statute does not allow vacation under the circumstances present in the *DeByle* case,¹²¹ closing the street would have been a violation of the statute which the local government or state agency with subdivision review authority could enjoin.¹²² The defendants would have been spared the very considerable costs of pursuing their remedy in the courts. In the face of incidents such as this, the failure of lot purchasers to insist that the subdivision be platted and recorded in accordance with the statute can be explained only by the general ignorance among laymen of the existence either of the hazard or the availability of protection against it.¹²³

The community is rewarded also if rural subdivisions are platted by the subdividers in compliance with the platting statute. The need for making an assessor's plat is eliminated, thereby avoiding the uncertainties of collecting the expense of its production from the land involved, with its accompanying annoyance to the owner, who frequently is the grantee of the subdivider. More important, there is provided a means for prevention of conditions of land use inimical to health and highway safety. Such prevention is cheaper than correcting dangerous conditions once established and therefore reduces the cost of government. It also helps protect property values and, where recreation is an important business, it protects the future earning

¹¹⁹ WIS. STAT. § 236.29 (1955).

¹²⁰ *Randall v. Milwaukee*, 212 Wis. 374, 249 N.W. 73 (1933).

¹²¹ WIS. STAT. § 236.42 (1) (b) (1955) says parts of the plat dedicated to public use shall not be vacated except as provided in § 236.43, which says streets may be vacated if the plat has been recorded more than forty years prior to the filing of the application for vacation, during which time the dedicated area has not been improved as streets, the area is not necessary to reach other platted property, and all owners of all the land sought to be vacated have joined in the application.

¹²² WIS. STAT. § 236.31 (2) (1955), as amended by Wis. Laws 1957, c. 88, § 14.

¹²³ It is interesting to speculate on the possible liability of the subdivider to persons in the position of the defendants in the *DeByle* case for the costs of defending their rights. Might there be a fiduciary duty of the subdivider towards his purchasers to exercise superior knowledge and experience in a technical field for their protection?

power of the residents of the area. All these results promote a stable level of prosperity, of private business and community alike. A potential source of further benefits to the local community from the platting statute is found in its provision allowing any local government with a planning agency, which includes a county or town zoning committee,¹²⁴ to govern the division of land by ordinances more restrictive than the provisions of the platting statute.¹²⁵ The flexibility and effectiveness of land use control in rural areas is further promoted by authorization of the county planning agency to prepare regional plans for the future platting of land within the county and outside the limits of any municipality, or for the future location of streets and highways.¹²⁶

C. RECORD OF COMPLIANCE AND WAYS OF IMPROVEMENT

With all these advantages, either present or potential, to be derived from platting and recording subdivisions in accordance with the statute, it would be expected that compliance would be quite general. Such is not the case in Northern Wisconsin, however. Tables 4 and 5 show the number of plats which have been filed from the counties of the North since 1946 that comply with the statute. Although it seems very likely that this constitutes only a portion of the total number of lots that have been created in this period, further study is needed before an assured statement can be made of the amount of parcellization occurring outside the purview of the statute.¹²⁷ However, this is not to say that widespread violation of the statute is being practiced. Rather, the statute is being avoided, usually in shoreline developments by creating lots slightly larger than one and one-half acres in area.¹²⁸

One of the reasons frequently heard for not platting in accordance with the statute is that excessive delays are incurred before approval is granted.

A check of the plats that have been approved under the law since 1950, and the correspondence relating thereto, fails to furnish substantiation of the charge, at least so far as it is directed at the actions of the state reviewing agencies today. One surveyor complimented the Director of Regional Planning for the fast service rendered by the Director's office in checking the plat.¹²⁹ It is true that in this instance

¹²⁴ WIS. STAT. § 236.02 (1), (8) (1955).

¹²⁵ WIS. STAT. § 236.45 (1955).

¹²⁶ WIS. STAT. § 236.46 (1955).

¹²⁷ THE NATURAL RESOURCES COMMITTEE OF STATE AGENCIES, *THE NATURAL RESOURCES OF WISCONSIN* 102 (1956), says that the amount of land division without platting is very great, perhaps more than the amount that has been platted.

¹²⁸ Interview with Perry Risberg, attorney and realtor, Oct. 30, 1956, and with Sherman Weiss, Sawyer county agent, Oct. 29, 1956, in Hayward, Wis.

¹²⁹ Letter from Carroll A. Grubb, River Falls, Wis., to Dir. of Reg. Planning dated Dec. 14, 1956. Mr. Grubb had submitted a plat of sixteen lots with a curved road situated on Wood Lake in the town of Wood River, Burnett county. The plat was received by the Director's office on Dec. 11, 1956. By letter of the following day, Mr. Grubb was informed of several deficiencies

TABLE 4

PLATTED PARCELIZATION OF LAND IN SELECTED WISCONSIN COUNTIES, 1946-1956

<i>Year & County</i>	<i>Plats</i>	<i>Exam.</i>	<i>Rejects</i>	<i>Acres</i>	<i>Lots</i>	<i>App.</i>	<i>Acres</i>	<i>Lots</i>	<i>Total</i>	
									<i>Acres</i>	<i>Lots</i>
<i>1946</i>										
Burnett ...	6	7	7	50.78	109	None			50.78	109
Langlade ..	5	9	3	19	58	6	35.34	94	35.34	94
Oconto	1	2	2	13.69	37	None			13.69	37
<i>1947</i>										
Burnett ...	7	14	9	83.69	167	5	58.80	117	91.12	184
Forest	1	2	1	5.86	25	1	5.86	25	5.86	25
Oconto	1	4	3	73.41	32	1	73.41	32	73.41	32
Oneida	1	1	1	14.92	13	None			14.92	13
Vilas	1	2	1	51.51	30	1	51.51	30	51.51	30
Washburn..	1	4	3	9.11	14	1	9.11	14	9.11	14
<i>1948</i>										
Burnett	1	4	3	12.90	40	1	12.90	40	12.90	40
Forest	1	2	1	8.59	34	1	8.59	34	8.59	34
Oconto	4	8	4	38.02	64	4	38.02	64	38.02	64
Oneida	2	5	2	34.52	33	3	34.52	33	34.52	33
<i>1949</i>										
Burnett ...	1	1	None			1	10.94	21	10.94	21
Oconto	1	1	1	.23	1	None			.23	1
Oneida	1	1	1	2.01	5	None			2.01	5
Vilas	1	3	2	7.80	8	1	7.80	8	7.80	8
<i>1950</i>										
Burnett ...	1	1	None		1		42.52	51	42.52	51
Forest	1	1	1	12.56	33	None			12.56	33
Langlade ..	1	2	1	12.27	23	1	12.27	23	12.27	23
Oconto	3	5	2	11.40	27	3	11.61	28	11.61	28
Vilas	1	1	None			1	49.30	19	49.30	19
Washburn ..	1	2	1	15.98	69	1	15.98	69	15.98	69
<i>1951</i>										
Bayfield	1	1	None			1	3.50	8	3.50	8
Oconto	1	2	1	5.43	14	1	5.43	14	5.43	14
Oneida	1	2	1	5.60	35	1	5.60	35	5.60	35
<i>1952</i>										
Forest	1	1	1	5.53	15	None			5.53	15
Langlade ...	2	2	2	40.56	49	None			40.56	49
Oconto	1	2	1	18.01	19	1	18.01	19	18.01	19
Oneida	(Reapproved the plat approved in 1951—same acreage and lots)									
<i>1953</i>										
Langlade ...	3	4	1	5.62	13	3	46.18	62	46.18	62
Oconto	1	1	None			1	6.81	11	6.81	11
Oneida	2	5	3	18.11	37	2	18.11	37	18.11	37
Washburn ..	1	2	1	3.29	6	1	3.29	6	3.29	6
<i>1954</i>										
Burnett ...	2	5	3	26.89	27	2	26.89	27	26.89	27
Oconto	1	2	1	4.53	17	1	4.53	17	4.53	17
Oneida	1	1	1	43.54	27	None			43.54	27
Sawyer	1	2	1	34.26	42	1	34.26	42	34.26	42
Vilas	1	1	None			1	9.20	13	9.20	13
<i>1955</i>										
Bayfield ...	1	1	1	9.30	28	None			9.30	28
Burnett	3	6	3	81.42	75	3	81.42	75	81.42	75
Oconto	2	2	2	13.15	37	None			13.15	37
Oneida	1	1	None			1	43.54	27	43.54	27

Year & County	Plats	Exam.	Rejects	Acres	Lots	App.	Acres	Lots	Total Acres Lots	
1956										
Burnett	3	6	3	26.54	51	3	26.54	51	26.54	51
Oconto	2	2	2	14.26	33	None			14.26	33
Oneida	4	6	4	50.19	90	2	25.55	57	50.19	90

Notes:

"Exam" means Examinations, "App." means Approvals.

The Total of Acres and Lots refers to total content of the plats submitted from one county in one year—usually the totals are the same as the area and lots in the plats approved. The selected counties are Bayfield, Burnett, Forest, Langlade, Oconto, Oneida, Sawyer, Vilas and Washburn. If one of these counties is not listed for any year, it means no plat was filed from that county in that year under Chapter 236, Wisconsin Statutes.

The information tabulated above was obtained from the records on file in the office of The Director of Regional Planning, Bureau of Engineering, Madison, Wisconsin.

TABLE 5

TOTAL ACREAGE & NUMBER OF LOTS PLATTED, 1946-1956, BY
SELECTED COUNTIES.

County	Plats Approved	Acreage	Number of Lots
Bayfield	1	3.50	8
Burnett	15	240.59	366
Forest	2	14.45	59
Langlade	9	93.79	181
Oconto	12	171.06	206
Oneida	8	127.32	179
Sawyer	1	34.26	42
Vilas	4	117.81	70
Washburn	3	28.38	89

The foregoing tables represent urban as well as rural platting in the North. It is beyond belief that they represent all the new lots created in the period.

the surveyor had requested special attention be given his plat, but in the routine situation, the times elapsed from date of first submission until date of notification of no objection do not appear excessive.¹³⁰

in the plat, chief of which was curve data required by the statute. The Director's office computed a portion of the data required and sent the computations to the surveyor for inclusion in the corrections of the plat. By letter of Dec. 14, 1956, Mr. Grubb returned the corrected plat, and he was notified by letter five days later that no objection would be made by the state reviewing agencies. The total time elapsed from first receipt of the plat by the Director until notification of no objection was issued amounted to only eight days. The correspondence is filed with the plat of the North Shore Island View Subdivision in the office of the Director of Regional Planning, State Office Building, Madison.

¹³⁰ The plat of Holiday Acres, Town of Webb Lake, Burnette county, shows a surveyor's certificate dated Sept. 6, 1956. By letter dated Sept. 7, 1956, the surveyor was informed of certain deficiencies in the plat. The deficiencies were supplied and notification of no objection was issued by letter dated Oct. 1, 1956. The Plat consisted of twenty-four lots along the shore of Webb Lake. This transaction illustrates two typical situations. The first is that the correspondence filed with the plat sometimes does not include any letter of transmittal from the surveyor and therefore the date of first submission is hard to determine. The second is that the Director of Regional Planning has sometimes issued notification of no objection although noting additional corrections to be made before the plat could be recorded. In this instance, the description of the area surveyed appearing in the surveyor's certificate did not agree with the description on the plat itself.

The Board of Health has been unable to obtain an engineer to work on the review of plats, although active recruitment efforts are being made. As a result, it has been taking the Board from 15 to 23 days following receipt of a plat to inform the surveyor of the results of the review. It is anticipated that if the Board is able to hire an engineer for the review work, the time may be reduced to four days.¹³¹

It is also said in the North that the requirements of the statute are administered by the state reviewing agencies in a rigid manner, without due allowance for the peculiarities of the local situation. But correspondence of the Director with surveyors whose plats were ultimately approved affords instances showing flexibility of administration with respect to the degree of accuracy of the survey¹³² and engineering data to be shown on the plat.¹³³ No rejection of a plat was found that was based entirely on such things as the failure to underscore a word. However, such objections were found in conjunction with more substantial ones.¹³⁴ There were also occasions found where the office of the Director of Regional Planning offered suggestions as to how objectionable features could be corrected.¹³⁵ The objection of the State Board of Health typically was that some lot in the plat did not contain the minimum area of land at least three feet above the ordinary high water mark of the adjoining lake or stream.¹³⁶ Other objections of

¹³¹ Interview with Harvey E. Wirth, Ass't. State Sanitary Engineer, Environmental Sanitation Sec., State Board of Health, Madison, Wis., July 11, 1957.

¹³² Letter from Dir. Reg. Plan. to Evan Hayner, St. Croix Falls, Wis., date Jan. 21, 1955, relating to Hanscom Lake Shores, Town of Scott, Burnett County.

¹³³ Letter from Dir. Reg. Plan. to DuPont Company, dated July 2, 1951, relating to the plat of Barksdale subdivision, Bayfield County.

¹³⁴ Letter from Dir. Reg. Plan. to Evan Hayner, St. Croix Falls, Wis., dated Sept. 21, 1956, relating to the plat of Loafers Bend, Town of Trade Lake, Burnett County. Other objections were that the exterior angles were inaccurately shown, and that there was a difference in one bearing as shown on the plat and on the surveyor's certificate. By letter of Sept. 27, 1956, the Supervisor of the Plumbing Division, State Board of Health, objected that there was insufficient area in one lot above three feet elevation from the ordinary high water mark. See also letter from Dir. Reg. Plan. to Evan Hayner, St. Croix Falls, Wis., dated Oct. 1, 1956, with respect to Holiday Acres, Town of Webb Lake, Burnett County, as to need for using a dashed line to show the boundary of town road leading into the plat.

¹³⁵ Letter from Dir. Reg. Plan. to Evan Hayner, dated Jan. 21, 1955, relating to plat of Hanscom Lake Shores, Town of Scott, Wis., suggests dedication to the public of a small strip of land between the shore land and a road which was neither numbered as a lot or so dedicated. Letter from Dir. Reg. Plan. to Evan Hayner, dated Mar. 9, 1954, relating to the plat of White Pine Beach, Town of Siren, suggests a method of providing entrance to several lots. The plat as submitted showed another lot as providing such entrance. The Director pointed out the lot would be taxable, since it was not a public street, and that the division of the tax among the several lot owners would be difficult. Letter from Dir. Reg. Plan. to Evan Hayner, dated Oct. 27, 1955, relating to plat of Stillson Park, Town of Trade Lake, suggested a method whereby future building could be prevented on a small piece of land not included in the plat, and a method of providing required public access to the water. The first suggestion was not followed, but the second was.

¹³⁶ Of seventeen plat files examined, there were objections made by the Board of Health in three of them. The substantial objection in each instance was the

the Board usually are based on a failure of the surveyor to provide the information required as to soil borings and percolation tests, or as to the estimated high level of ground water. Few plats are objectionable for having failed to meet minimum area requirements. The Board has recognized that soil borings to the depth of 8 feet as required by the regulations are difficult to make in sandy, rocky soil due to caving of the sides of the hole. In this situation, the Board has occasionally accepted a description of the soil revealed in highway cuts or other excavations of recent origin. As to the estimate of the ground water level, all that is expected is a reasonable estimate such as may be obtained in many cases from well drillers of the area. Although the regulations contemplate a soil boring and percolation test for each acre of area, the Board has been willing to accept fewer in almost all instances.¹³⁷ No doubt there will always be room for argument as to whether the degree of flexibility allowed by the state reviewing agencies is sufficient, or greater or less than it should be; but it seems clear that an effort is made to help surveyors comply with the statute and some account is taken of the local field conditions. The Board of Health seems to confine itself to substantial objections.

Persons involved in subdividing land in Northern Wisconsin sometimes say that, apart from whether the law is sensibly administered, the requirements written into the law are not applicable to rural areas of the North in the first place. The degree of accuracy required of the surveys is said to be too high, for instance. Yet of the seventeen plat files examined relating to plats to which eventually no objection was made by a state agency, two met with no objection when first submitted and the rest when submitted a second time, thus indicating the requirement is not at all impossible to meet. Particularly is this evident when it is remembered that of those meeting objection on the first submission, an excessive error of closure figured in only two plats.¹³⁸ If there is a shortage of surveyors in the northland capable of doing work that meets the standard of the statute, it appears that the reason is not to be found in the standard itself. Maybe the recruitment program by a group of local communities would attract additional young talent to the area.

Perhaps a more fruitful field for possible slackening of statutory

deficiency of high land. The requirement today is that ninety per cent of the minimum lot area be at least two feet above the high water mark of the watercourse. WIS. ADM. CODE, § H65.05 (1) (1957).

¹³⁷ All statements following footnote 136 are based on an interview with Harvey E. Wirth, Ass't. State Sanitary Engineer, Environmental Sanitation Sec., State Board of Health, Madison, July 11, 1957.

¹³⁸ Loon Lake Plat, Town of Elco, Langlade County, objection made in letter of Dir. Reg. Plan. to Genisot Engineering Co., Rhinelander, Wis., dated Oct. 8, 1952; Russell Spencer's Subdivision, Oneida County, objection made in letter of Dir. Reg. Plan. to R. A. Sayers, Jr., Tomahawk, Wis., dated Dec. 10, 1956.

requirements lies in the engineering information required to be shown on the plat. The 1957 session of the legislature eliminated the requirement that the area be shown for each lot containing an acre or more of land,¹³⁹ and reduced the amount of curve data required,¹⁴⁰ as well as making other minor changes in the platting act. Is there room for further loosening of the requirements as applied to shoreline plats for recreational development? Further study is required before an answer can be given to this question. Assuming an affirmative answer, would it be wise to draft an entirely separate statute to cover the platting of shoreline subdivisions in rural areas for recreational development? There would be ample room for valid distinction between the situation of these lands and other lands to be platted, thereby avoiding the stigma of arbitrary classification of the lands. Certainly many a statute in Wisconsin applies only to counties with a population in excess of 500,000.¹⁴¹ If special legislation for Milwaukee county can be made valid through the use of this device, there is surely room for the consideration of a special platting statute for recreational, rural subdivisions if such a law is believed otherwise to be desirable. The resolution of this more difficult question must be left to joint effort by surveyors, lawyers, subdividers, and governmental authorities involved in reviewing and approving plats.

In the meantime, life under the existing statute continues, with the North adding to the complaints mentioned, the additional one that the statute is administered in Madison rather than through a series of branch offices scattered over the state, with, of course, a representation in the North. Such a move would place the reviewing authorities in a community closer to the area where the platting is taking place and perhaps take some of the curse off the statute that it now receives as a regulation imposed by outsiders. To the extent that this result is achieved no doubt it would be all to the good, and over the years it might help to improve the receptiveness of Northern Wisconsin to platting. Apart from this possible psychological effect there would be added convenience to subdividers and surveyors in that the trip to the reviewing authorities' office that is sometimes necessary would be considerably shortened. Under the present state of the law other advantages are hard to foresee. There would be no discretion in the interposing of objections to plats beyond the leeway that now exists. There seem actually to be no major delays in the present review procedure to be shortened, except by hiring additional personnel by the Board of Health. Actually the creation of branch offices might result, for a time anyway, in lengthening the time of meeting the objections of the state agencies since new men, unfamiliar with review techniques, would

¹³⁹ Wis. Laws, 1957 c. 88, § 8, deleting § 236.20 (2) (f) of the 1955 Stats.

¹⁴⁰ Wis. Laws, 1957, c. 88, § 10, amending § 236.20 (2) (1) of the 1955 Stats.

¹⁴¹ *E.g.*, Wis. STAT., § 236.03 (2) (1955).

have to break into the work now handled, in the office of the Director of Regional Planning, by an experienced specialist. Furthermore, it is doubtful that the efficiency in review now maintained by one expert working full time could be achieved by the new people, no one of which in Northern Wisconsin could now anticipate sufficient work to keep him busy throughout his work day.¹⁴²

Then, there is the question of expense. Some subdividers will not plat according to the statute because they believe it results in higher tax assessments on their lands.¹⁴³ This problem arises as soon as land is parcelled into lots and results sometimes in the developer staking out the lots himself as he sells them, thereby dispensing with any professional survey. No solution to the problem is likely to be entirely satisfactory. Platting of land into lots does add to its value to some extent and therefore justifies a certain increase in assessed valuation. But who is to say with assurance how much the increase actually is? From the subdivider's point of view, the justification of the larger assessment is not significant, anyway; it is the fact of the increase itself. If assessors are instructed to treat newly platted, rural land on which no further improvements have been made just as though it had not been platted,¹⁴⁴ assuming that such classification of the land could be justified, some risk might be run of inducing subdividers to plat beyond the reasonable expectation of demand for lots. Excessive platting would inhibit sound development of the area, since many times the demand for land that eventually arose would not fit the subdivision platted, with the further consequence of vacation of the early plat. Perhaps, though, it is more likely that subdividers wise in the ways of assessors would remain unconvinced that the new instructions would be followed, and therefore would not alter their policy of avoiding the platting requirements. Apart from higher tax assessments there is the expense of performing the soil boring and percolation tests required by the Board of Health, but this is estimated at the modest figure of \$50.¹⁴⁵

It is probably not the professional subdivider that would suffer additional expense in complying with the platting statute, however, so much as the person who simply decides to divide a portion of his farm into a few lots and sell them, really as a side line to farming. If he

¹⁴² Interview with Henry M. Ford, Director of Regional Planning, Bureau of Engineering, Madison, July 9, 1957, revealed that consideration has been given by his office to setting up a series of branches as suggested, but that the idea had been rejected because of the efficiency factor, among other reasons.

¹⁴³ Interview with the Register of Deeds, Washburn County, Shell Lake, Wis., Nov. 1, 1956.

¹⁴⁴ It seems this practice is now followed in some areas of the state on an informal basis. See Marygold Shire Melli, *Subdivision Control in Wisconsin*, 1953 Wis. L. Rev. 389, 439-440.

¹⁴⁵ Interview with Harvey E. Wirth, Ass't. State Sanitary Engineer, Environmental Sanitation Sec., State Board of Health, Madison, July 11, 1957. Mr. Wirth mentioned one instance where only \$30 was charged for three bore holes and six percolation tests.

creates less than five lots under one and one-half acres in size in five years, he will not be required to comply with the statute, anyway. If he is a typical farmer, he will naturally expect to mark the boundaries of the lots himself with the help of his hired hand or neighbor, just as he does many of the other chores of farming, and therefore is not planning to have a surveyor do any of the work.

There is statutory provision¹⁴⁶ for a somewhat simplified survey where only four or fewer parcels of land are involved, resulting in a map which may be recorded and used in conveyancing, but this survey and map must be made by professional talent which, of course, commands a professional's price. It is suggested that the creation of a regional planning commission and the hiring of a professional surveyor by the commission may offer a workable solution to the situation. The surveyor so hired should have included in his duties the making of these certified surveyor maps for any landowner not regularly engaged in the business of subdividing land and selling it. No charge to the landowner for this service should be made if the lots so created comply with the requirements of the Board of Health and the Highway Commission, otherwise only the cost of materials used and the lot charge for field work should be borne by the owner. Probably a limit should be imposed on the number of such surveys and maps that would be made for the same owner in any one calendar year. Such a plan would have the virtue of encouraging both accurate surveying and compliance with the health and safety features of the platting statute. The present statute only tries to encourage accurate surveying, and makes no pretense of helping the sanitation problem. Surveyors who are steadily employed in platting work have relatively little trouble in passing the scrutiny of the state reviewing agencies. This plan would help to keep surveyors busy in platting work and thus would improve their efficiency in laying out, surveying and platting the larger subdivisions contemplated by the statute.

As much as anything else, the platting statute, it is suggested, needs the benefit of methodical education of lot buyers, subdividers and the citizens of local communities generally in the advantages the statute offers to persons who comply with it. Coupled with such an informational program must be publication of the record of the state reviewing agencies in cooperating with the attempts of surveyors and subdividers to comply with the statute. The platting act provides a tool for the implementation of desirable land use development that should not be allowed to remain unused.

PRIVATE CONTROLS OF LAND USE

Only the briefest mention can be made of the use of covenants in deeds and leases between private parties or between governmental

¹⁴⁶ WIS. STAT. § 236.35 (1955).

units and private parties as a means of controlling the manner in which land is used. An example of the activities prohibited or commanded by such covenants is found in the lease form used by Eau Claire county in renting county-owner land situated around Lake Eau Claire to private persons as sites for cabins or year-around homes. The lessee is required, in addition to the payment of rent, to comply with all sanitary regulations of Federal, state and local government, to keep the premises neat, to dispose of rubbish, and to locate all outhouses and cesspools in whatever spot the county requires. The lessee must try to prevent and suppress fires and is prohibited from cutting live timber except as necessary to clear a site for the buildings he is to erect. The construction of a dock, boathouse or other structure beyond a certain distance into the lake from the shore is prohibited, nor is the dock to extend across any lot dividing line. It is agreed that occupation of the premises by the lessee shall not be a basis for the incurring of expense for public school education or for the transportation of children to existing schools. Particular attention is paid to requiring the lessee to obey game and fish laws, to prevent violators from using the premises, and to allow fish and game wardens to come on the premises for game and fish propagation work or to enforce the fish and game laws; breach of the agreement being made sufficient reason for cancellation of the lease. This clause and the one requiring payment of taxes are the only ones whose breach is said in terms to justify termination or forfeiture of the lessee's rights under the lease. Brush and rubbish caused by building on or improving the premises are to be burned, after certain specified precautionary measures have been taken, as are garbage and refuse unless they are buried. The lessee is prohibited from doing anything to impair the purity of the watercourse abutting upon or adjacent to the premises. On the other hand, the lessee is required to construct a sanitary toilet on the premises in such a position as will not cause pollution of the watercourse and which stands specified, minimum distances from the highway and lot lines. The toilet is to comply with the requirements of the State Health Department. Garages and outbuildings are to be placed at the rear of the premises so as not to detract from the value or use of other lots. Tar paper shacks or similar structures are prohibited from the premises; no more than one cottage is to be built there and cost no less than \$500. The sale of liquor on the premises is prohibited on penalty of possible cancellation of the lease. The conducting of a public dance hall or any sort of commercial business except a boat livery authorized by the County Park Commission is prohibited, and permission to conduct a boat livery will not be granted if surrounding property owners object. The placing of any advertising sign or barbed wire fence on the property is prohibited, as is disorderly or objectionable conduct by the lessee

or other persons on the premises. Violation of the rule as to conduct is cause for cancellation of the lease.¹⁴⁷

Assuming adequate policing, the provisions of this lease indicate a practical means for the control of practices on publicly owned land that affect the public health and morals. Conservation of timber and soils, of fish and game, and of the beauty of the lot itself is promoted. The likelihood of litigation between neighboring lessees is reduced, as is the cost of local government. The character of the area as a recreational, residential region free from commercial businesses and rowdy activities is preserved. The technique of imposing controls of both a positive and negative nature on the use to which public land is put, compliance with which being made a condition of the permission to use the land, provides a means whereby the general control of tax laws, zoning ordinance, platting statute and administrative regulations of the state can be sharpened to take into account distinctions that may exist between different lots in the same land use zone. As such, it stands ready to perform valuable service for community and regional planners at small cost of enforcement, particularly where the penalty for non-compliance is forfeiture of the lease at the option of the lessor.¹⁴⁸

Similar agreements, of course, may be used where landlord and tenant are both private parties, but in this situation, the conditions imposed are those the parties to the lease desire, as modified through the bargaining process. The local community can still exercise considerable control by writing some of the more basic requirements into the zoning ordinance. An example is the requirement that buildings along the shores of a watercourse be set back a certain minimum distance from the ordinary high water mark. Or a distinction might be made in the assessed valuation of lots where commercial activities were permitted as compared to that of lots where businesses were prohibited.

Even when lots are conveyed from subdivider to individual purchasers, the same technique of land use control is available to the subdivider through the creation of covenants running with the land, binding on all purchasers of any of the lots in the subdivision to which the covenants apply and enforceable to any of the lot owners of the sub-

¹⁴⁷ The terms relating to the lessee's use of the land and conduct thereon are taken from a lease form supplied by J. B. Tasker, Eau Claire County Forestry Agent, County Extension Office, Eau Claire, Wis. By letter of Dec. 21, 1956, Mr. Tasker informed the writer that the form has been in use in Eau Claire county for about eighteen years and that no special difficulties have been encountered in its administration by the County Park Comm'n.

¹⁴⁸ 43 C.F.R. § 257.11 (1954) indicates the same technique is used by the U.S. Bureau of Land Management, Dep't of the Interior, in leasing Federal land for recreational use. Another application of the idea of imposing restrictions on land use as a condition of permission to use it at all is found in the regulations issued pursuant to the Taylor Grazing Act, 16 U.S.C. § 583a (1952), printed in 43 C.F.R. §161.11 (1954). A discussion of this and other examples of contractual restriction of the use of public land is found in Note, 1950 Wts. L. Rev. 701.

division.¹⁴⁹ Such covenants may be made equally binding on and enforceable by remote grantees from the original grantor, except where the locality has changed so as to make enforcement of the covenant unfair.¹⁵⁰ It is said that such covenants, where calculated to carry out a general scheme of development, are property rights of the various owners of the lots subject to the covenant, and as such, enforceable in equity.¹⁵¹ However, the chances that equity will enforce the covenant are stronger if it is of a restrictive nature, prohibiting some use of the land or conduct of the owners, than if it calls for some affirmative action by the various grantees.¹⁵² There are a number of other ramifications to the creation and enforcement of covenants running with the land which it is not proposed to discuss here.¹⁵³ Suffice it to say, the device is available for use by the subdivider as a means of controlling the use to which subsequent grantees may put the lot they purchase.

Use of such covenants may help considerably to assure the future contentment and enjoyment of persons owning lots in the subdivision, both in protecting them from the annoyance of obnoxious uses of lots neighboring their own land and in helping to preserve the economic value of their investment from neighborhood blight. Further study is needed to ascertain the extent and intensity to which subdividers of lakeshore property are employing covenants, but the indications are that considerable use already is being made of them, to enforce side-lot and set-back lines, to restrict the number and type of buildings allowed on a lot, and to specify the minimum cost of each structure to be built. Offensive trades or activities, taverns, dance halls, or any resort or business frequently are prohibited, as well as any form of advertising. Requirements may include compliance with the regulations of the State Board of Health or that toilets shall be sanitary.¹⁵⁴ Com-

¹⁴⁹ *Kramer v. Nelson*, 189 Wis. 560, 209 N.W. 252 (1926). Counties do not employ covenants of this nature to any great extent when selling their lands. One reason for this is lack of authority to impose covenants except where expressly permitted by statute. See Note, 1950 Wis. L. REV. 701, 705-707.

¹⁵⁰ *Doherty v. Rice*, 240 Wis. 389, 3 N.W.2d 734 (1942).

¹⁵¹ *Ward v. Prospect Manor Corp.*, 188 Wis. 534, 206 N.W. 856 (1926).

¹⁵² 3 TIFFANY, REAL PROPERTY § 859 (3d ed. 1959).

¹⁵³ See 3 TIFFANY, REAL PROPERTY c. 17 and 18 (3d ed. 1939) for a discussion of the law applicable to the creation and enforcement of these covenants.

¹⁵⁴ Note, 1950 Wis. L. REV. 709 discusses some of the activities commonly restricted, the usual methods of enforcement and the remedies available in cases of breach, together with policy limitations as to what covenants the courts will enforce and possible techniques of avoiding them. The author of the note concludes that there has been little litigation arising from the restrictions, since developers usually explain the restrictions to purchasers before sale, which makes violation rare, and enforcement usually is accomplished through the social force of neighborhood opinion. Usually where litigation does result the remedy granted is a prohibitory injunction if prevention of breach is possible. Sometimes a mandatory injunction will issue directing that the prohibited use cease, but this remedy may be withheld if the breach is trivial or the cost of complying with the injunction great. Where injunctive relief is not granted, damages are. In the rare case where

munity and regional land use planners may find it possible in some instances to persuade subdividers to include conditions and covenants as to land use in their conveyances which will help carry out the details of any land use plan developed for the area without the necessity of direct governmental intervention. The scope of activities to be affected by such provisions is to be determined by the local zoning and planning authorities, but such determination should be attempted only after the fullest explanation to the community at large has been made of the benefits hoped to be achieved by the covenants and conditions proposed. As public support for the specific land use controls proposed to be urged on subdividers grows, the job of persuading the subdividers to use them will be made easier since the subdivider will become conscious that the community may force the controls into effect by making them part of the zoning ordinance.

CONCLUSION

The law today imposes a considerable number of controls on the use of land, all of which affect the manner in which the recreation industry develops in Wisconsin. The sharpness of control effected by each of the types of restrictions presently existing varies greatly, ranging from the bluntness of the forest severance tax to the acuteness of conditions creating a possibility of reverter applicable to a single, particular lot and which may be different from conditions applicable to a neighboring lot identical in all respects except location.

In Northern Wisconsin, it is questionable whether the impact of the recreation industry on the area has not had more effect on the controls than the controls have had on the industry. Several counties have revised their zoning ordinances to eliminate apparent hindrances to the rapid development of recreational enterprises with results which are believed to be inimical to the long-term growth and prosperity of the industry and the region. The cause of the weakening of the zoning ordinances probably was the understandable eagerness of a relatively impoverished region to encourage the growth of a lucrative industry. The ineffectiveness of the platting statute and health regulations, which is suspected to be quite general in the North, on the other hand, probably was caused by failure to convince people of the merits of the statute. Whereas rural land use zoning was carefully and methodically explained to the communities of the North, the benefits that the platting statute offers to rural areas have generally not been articulated, which

a condition is used to effect the restriction in use, breach of which is to cause title to revert to the grantor, his successor or assigns, the courts usually will interpret the purpose of the condition to be to create a possibility of reverter upon election of the grantor, his successors or assigns. As a matter of policy, requirements that the permission of a certain number of lot owners within the general plan be obtained before a sale can be made by one of them are void. Perhaps where lots are leased rather than sold, the lessor can control the design of the structures built on the lot.

was particularly unfortunate in view of the administration of the statute being largely in the hands of persons in Southern Wisconsin. At the same time, so much of the record of its administration as has been examined fails to substantiate many of the reasons current in the North for frequent avoidance of the statutory and administrative requirements. It is believed that with continued or improved efficiency of the state agencies in reviewing plats submitted, a moderate increase in the number of skilled surveyors resident in the North would to a considerable extent remove whatever reasons there may be today for not platting. The increasing awareness of some citizens in communities of the lake country of the deficiencies in the present system of subdividing without platting, and of resorters of the competition for vacationers provided by other regions and other forms of recreation, may result in efforts to attract surveyors to the area. It is suggested that a means to do this is at hand in the authority of communities to form regional planning commissions which could hire a surveyor if needed and absorb some of the costs of platting. More important, the commission would increase the efficiency of land use planning through bringing a larger area within the scope of a single, comprehensive plan. An important adjunct to the use of governmental controls of land use exists in the possibility of using in leases and conveyances contractual provisions affecting land development. The necessity of persuading subdividers of the value of the specific provisions urged by planning authorities affords both an opportunity to duplicate the general success of the zoning laws and a hazard of emulating the relative failure of rural land platting.

The wisdom with which the people of Northern Wisconsin use the legal tools available to control land use must largely determine¹⁵⁵ whether the region will be spoiled for recreation, as has already happened in parts of Southern Wisconsin through the lack of vision of some members of the recreation industry, or will continue to provide a beautiful area for the enjoyment of outdoor recreation. When it is remembered that recreation is the only major source of revenue currently available to some areas of Northern Wisconsin, with little prospect of another source becoming available to take its place, the success with which the controls are used must be a matter of prime importance to the entire state.

¹⁵⁵ Another prime factor affecting the future stability and growth of the economy of Northern Wisconsin is the vigor with which state management of the use of navigable waters is pressed. See Waite, *The Dilemma of Water Recreation and a Suggested Solution*, 1958 WIS. L. REV. 542.