



Searching for common ground. [Supplement, Vol. 17, No. 3] [June 1993]

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WIS
S E A R C H I N G



FOR COMMON
GROUND

This land is your land, this land is my land

(right) Wisconsin's natural

landscape inspires awe.

(below) Three primary land

uses — housing, transportation

and agriculture — juxtaposed

in Waukesha County.

Of the three substances that make up the planet — air, water and land — it's arguable that land inspires the broadest range of human passions. Land has been at the center of human conflict for millennia, whether nations spill blood for new borders or next-

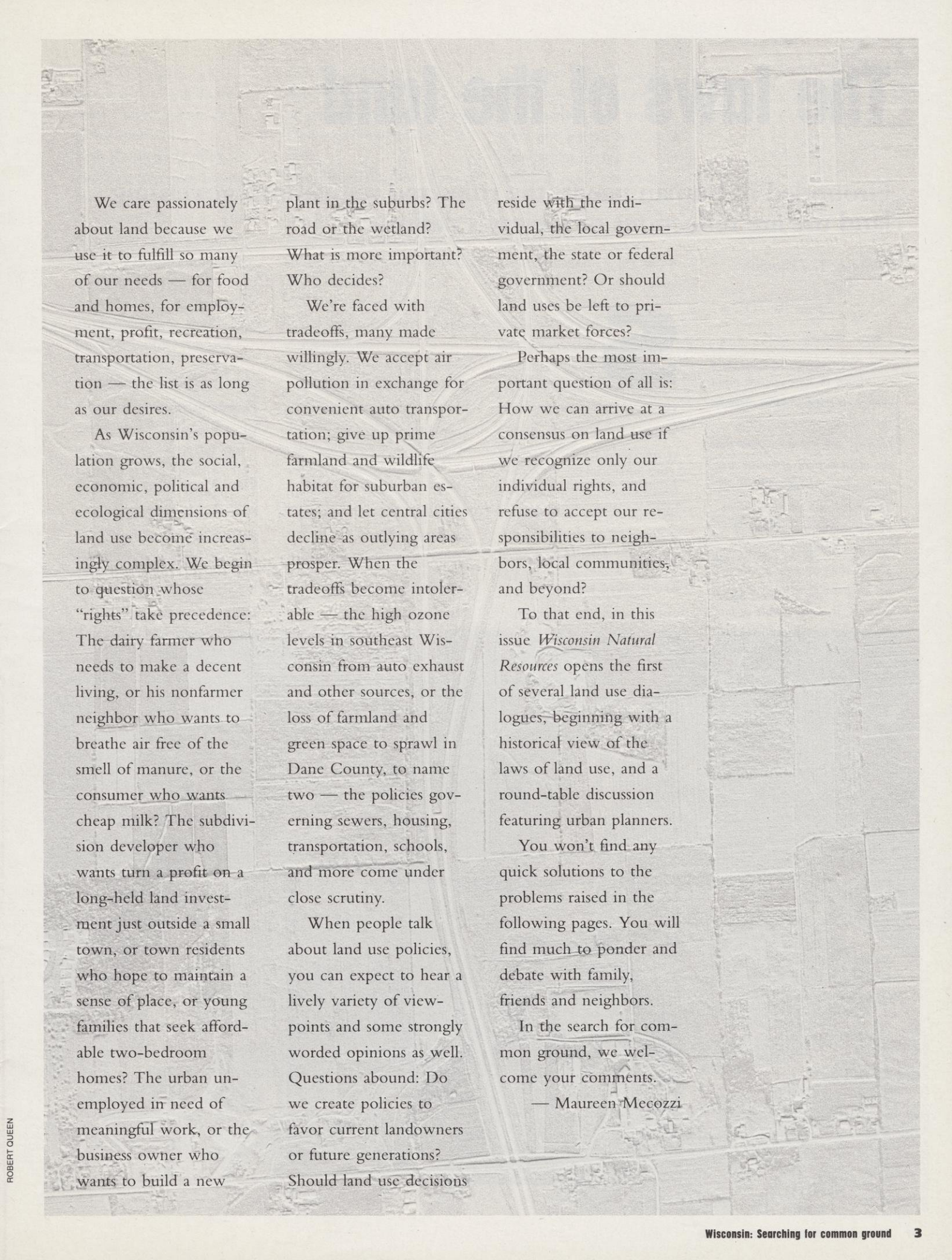


DON BLEGEN

door neighbors battle over a lot line. Yet when we reach consensus on an issue, we say we have found “common

ground,” and few things showcase the nurturing side of human nature as well as a lovingly tended garden plot.





We care passionately about land because we use it to fulfill so many of our needs — for food and homes, for employment, profit, recreation, transportation, preservation — the list is as long as our desires.

As Wisconsin's population grows, the social, economic, political and ecological dimensions of land use become increasingly complex. We begin to question whose "rights" take precedence: The dairy farmer who needs to make a decent living, or his nonfarmer neighbor who wants to breathe air free of the smell of manure, or the consumer who wants cheap milk? The subdivision developer who wants turn a profit on a long-held land investment just outside a small town, or town residents who hope to maintain a sense of place, or young families that seek affordable two-bedroom homes? The urban unemployed in need of meaningful work, or the business owner who wants to build a new

plant in the suburbs? The road or the wetland?

What is more important? Who decides?

We're faced with tradeoffs, many made willingly. We accept air pollution in exchange for convenient auto transportation; give up prime farmland and wildlife habitat for suburban estates; and let central cities decline as outlying areas prosper. When the tradeoffs become intolerable — the high ozone levels in southeast Wisconsin from auto exhaust and other sources, or the loss of farmland and green space to sprawl in Dane County, to name two — the policies governing sewers, housing, transportation, schools, and more come under close scrutiny.

When people talk about land use policies, you can expect to hear a lively variety of viewpoints and some strongly worded opinions as well. Questions abound: Do we create policies to favor current landowners or future generations? Should land use decisions

reside with the individual, the local government, the state or federal government? Or should land uses be left to private market forces?

Perhaps the most important question of all is: How we can arrive at a consensus on land use if we recognize only our individual rights, and refuse to accept our responsibilities to neighbors, local communities, and beyond?

To that end, in this issue *Wisconsin Natural Resources* opens the first of several land use dialogues, beginning with a historical view of the laws of land use, and a round-table discussion featuring urban planners.

You won't find any quick solutions to the problems raised in the following pages. You will find much to ponder and debate with family, friends and neighbors.

In the search for common ground, we welcome your comments.

— Maureen Mecozzi

The laws of the land

Grounded in human needs, the rules and regulations governing land use are reflections of society's desires.

Richard A. Lehmann

"Even in time of such rapid change as marked Wisconsin in the second half of the 19th century, the record suggests that the main pattern of events was set more by inertia and undirected drift put in motion by the cumulative impact of countless narrowly focused actions than by plan or conscious choice of values. ... In contrast, it is the nature of law to promote and protect rational decisions for deliberated ends of human welfare."

After the vast Pinery was razed in the late 1800s, government encouraged settlers to farm the northern stump lands. Nature did not cooperate with the plan.

So wrote University of Wisconsin Law School Professor James Willard Hurst in *Law and Economic Growth*, a legal history of the lumber industry from 1836 to 1915. Then, society's needs were settlement, entrepreneurial opportunity, and capital. These needs were met by making land available to homesteaders and logging companies for little or no cost, by offering subsidies for draining swamps and cutting timber, and by emphasizing private

property rights in preference to governmental control of property.

The focus on immediate needs, although successful in the short term, resulted in the clearcutting and then the abandonment of the Northwoods. The cutover, in turn, presented Wisconsin with its first major land use decision: whether to convert the stump lands to farming (Plan A, which proved in short order to be a disaster), or whether to begin reforestation and

cluster settlements (Plan B, put in motion when Plan A failed).

Methods to encourage Plan A and Plan B were remarkably aggressive, including the nation's first rural land use zoning laws, projects for roads, schools and fire protection, deferred taxation programs to make long-term reforestation economical, and resettlement efforts to move families from remote homesteads to selected communities.

Near the turn of the century, a new land use event of major proportions hit Wisconsin: Urbanization, fueled by waves of immigrants. The real estate market, left to its own devices, piled urban densities higher and higher, creating chaos and crowding.

Reformers enthusiastically pursued remedies through the newly found tools of city planning and



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zoning. In 1909, Wisconsin passed one of the nation's earliest city planning laws. Shortly thereafter, Milwaukee, with state backing, went beyond regulation into public land banking and developed a model "garden homes suburb" on Teutonia Avenue to show the real estate market how to achieve the new land use goal: moving the population from the crowded core to the urban outskirts. History repeated itself on a

grand scale when the Resettlement Administration built the planned model community of Greendale, southwest of Milwaukee, as part of the New Deal.

The garden homes and Greendale, however, were exceptions to the general rule, which was that private property rights and individual freedoms had to be respected, even by urban zoning. Partly, the deference was for legal reasons: Zoning was not

declared legal as an intrusion on private ownership until 1923 in Wisconsin and 1926 nationally. Mostly it was for practical reasons, to get the reforms enacted.

The zoning laws were infused with softening devices, such as the appeals board, variances and nonconforming clauses, and were placed firmly under the control of local levels of government.

Professor Hurst pointed out that when a problem reaches the

Home Sweet Home: In the 1950's and '60s, suburbs spread as consumers took advantage of long-term mortgages, new highways and cheap gas to buy land and build homes away from city problems.

point where society sees it, the rush is on to a remedy, without a pause to ponder the causes and the alternatives. So it was when the turn-of-the-century urban society saw a problem with congestion. The solution was a rush to zoning — and a trust, but not an insistence, that zoning would be disciplined by deliberate thought and planning.

Ignoring, then recognizing, the limits

The next major land use event in Wisconsin was the return of veterans from World War II. Land use planning and zoning was 35 years old by the end of the war, well-established and available to every municipality, including the brand-new suburban communities springing up like dandelions. Suburban growth was fueled by long-term mortgage lending, a secondary mortgage market that set standards favoring zoned suburban developments, state and federally financed roads, new sewer and water systems, and plenty of consumers anxious to establish new lives and lifestyles in new communities.

Reformers fretted about the ringing of the

central city, the balkanization of the metropolitan fabric, the neglect or abandonment of streetcars and schools in the core, the lack of coordination between communities. But every effort to create metropolitan governance to match metropolitan reality crashed on the rocks of apathy and support for the status quo. A few key areawide functions were adopted, such as metropolitan sewerage systems, consolidated school districts and advisory regional planning. Control of land use remained local.

People frustrated by the lack of attention on issues of greater-than-local scale framed the land use issues of the 1960s and '70s. Remedies were sought by asking the state to retrieve and exercise some of its long-delegated authority over selected land use questions.

In the early '70s, Wisconsin joined several other states in pursuing the "Quiet Revolution." The state identified lands of regional significance, such as the Lower St. Croix Riverway. Land uses of more than local impact were also scruti-

nized, such as construction in floodplains and on shorelines.

The reform proposals drew brief but intense opposition. Yet over the past 20 years, virtually all of the particulars of the Quiet Revolution proposals have become law.

Two decades ago, bitter battles were waged over county control versus town control versus municipal control, not to mention state control. Back then, few would have imagined that the federal government would directly regulate many of the wetlands within the state, or that federal mandates derived from the Clean Water Act and the Clean Air Act would affect local land use. It's significant that these federal intrusions are now debated on their merits, instead of on the propriety of the federal government issuing the commands.

Needs govern laws

The laws of land use change with the times. When the wilderness was settled, the laws encouraged and supported expansion. When a generation returned from a long, costly war, local planning and zoning was

shaped to provide a safe, mobile, fashionable family lifestyle and security for real estate investments in housing and schools. When the environmental movement emerged and the idea took root that some land use questions are larger than local, laws were adapted to allow all levels of government to play stronger roles to support broader societal or global needs.

Today, the issue has returned to questions of urban form. Our urban centers are hurting, and

suburbia needs new directions to be socially and environmentally responsible. The spiraling public costs of servicing a shifting, decentralized population are hitting taxpayers hard.

As we near the end of the 20th century, we must acknowledge that conscious, deliberate decisionmaking — planning — still plays second fiddle to directions set by cumulative inertia and undirected drift. Countless small decisions are still adding up to patterns

that do not serve us as well as they might.

The challenge remains: to shape the laws of land use to better serve the deliberated needs of human and global welfare.

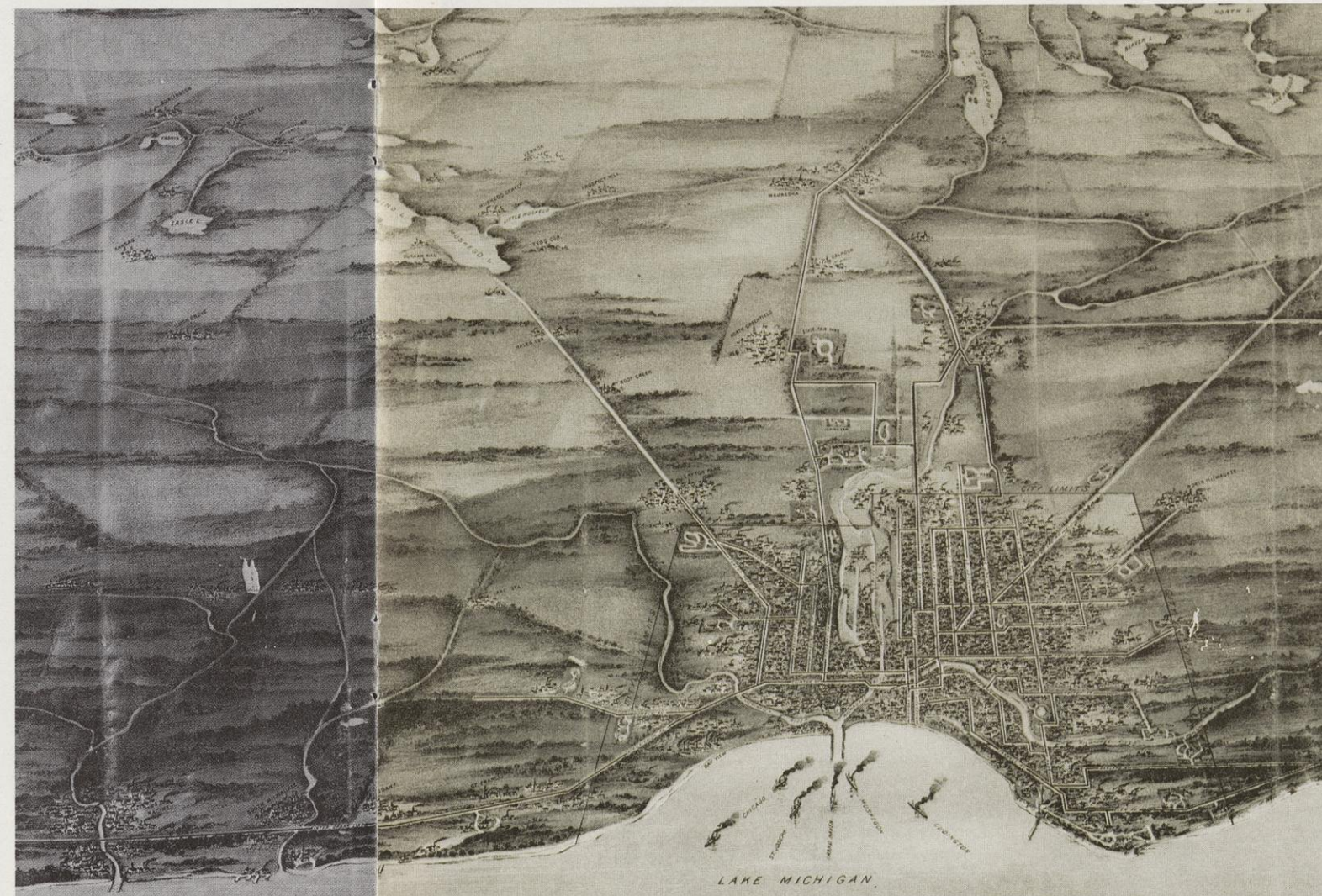
Richard A. Lehmann is a planner and lawyer specializing in land use issues for the Madison firm of Boardman, Suhr, Curry & Field.



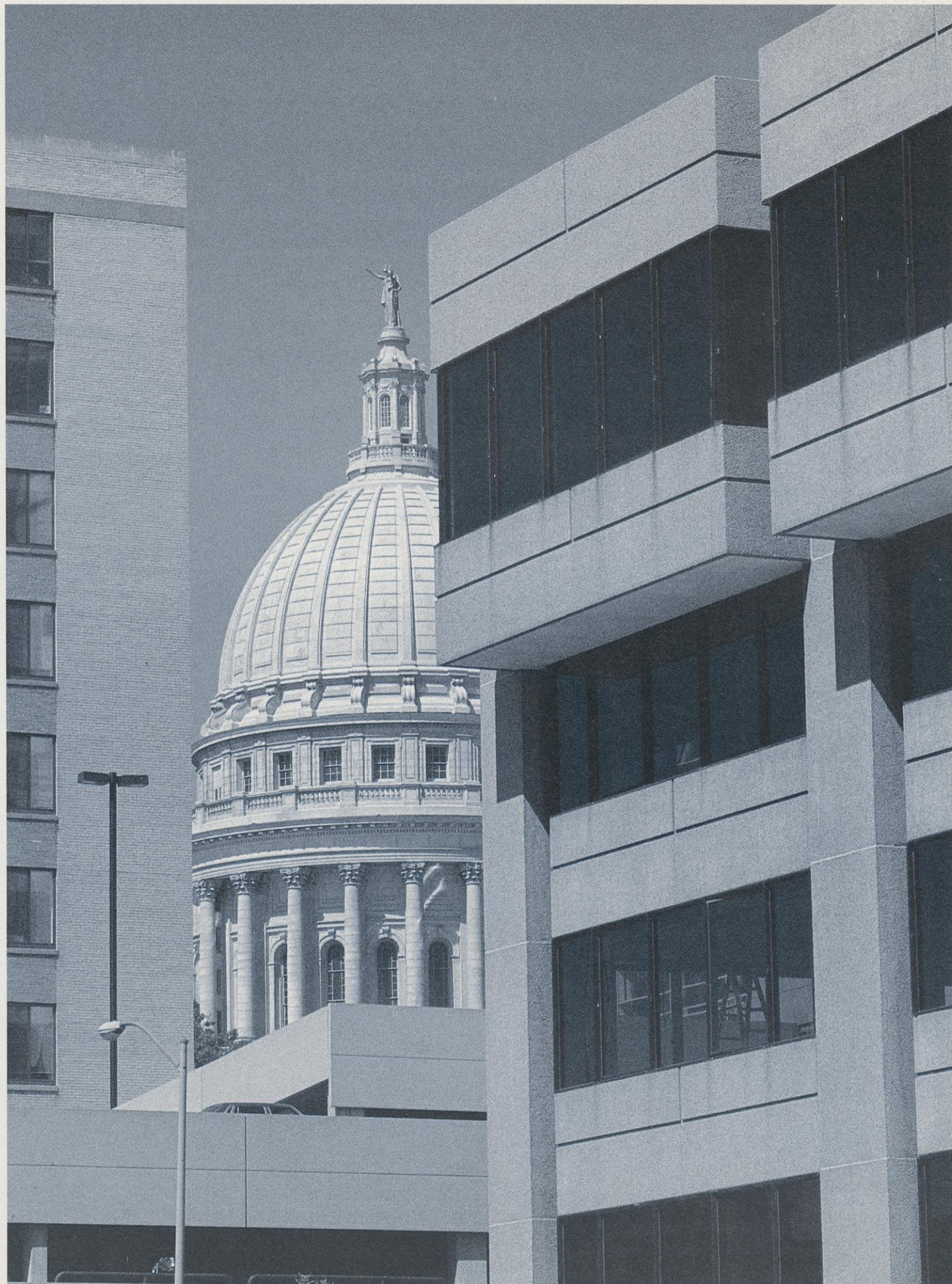
JEAN B. MEYER

(above) Milwaukee's new spruced-up riverfront attracts a crowd.

(left) One urban amenity the city lost as cars took precedence: An extensive public transportation network of electric trains and streetcars that stretched throughout the downtown, into the suburbs and even out to such far-flung places as Racine, Sheboygan and Watertown.



MAP OF ELECTRIC RAILWAY SYSTEM
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A whole-some discussion

By handling concerns about housing, transportation, jobs and the environment separately, we've missed the big picture.



DAVID L. SPERLING

To what degree are the facets and angles of urban land shaped by government? Panelists Dick Lehmann, John Stockham and Rob Kennedy (l to r) discuss urban concerns on a range of land use issues.

The panel:

Gene Bunnell, instructor in the Department of Urban and Regional Planning at UW-Madison.

Tom Harnisch, former state legislator currently representing the Wisconsin Towns Association.

Rob Kennedy, land use and transportation consultant to the Wisconsin Public Intervenor and statewide environmental groups.

Dick Lehmann, planner and lawyer specializing in land use issues.

Jim Siepmann, realtor and developer with Siepmann Realty in Waukesha County.

John Stockham, president of the Discovery Group, an urban planning and design consulting firm for small- and medium-sized municipalities.

Talk is never cheap when a free-flowing exchange of ideas is the result.

Wisconsin Natural Resources brought together a group of planners, lawyers and developers to discuss current land uses. Associate Editor Maureen Mecozzi served as moderator. Here are excerpts from the discussion.

Environmental degradation, crime, unemployment, you name it — how many of those things can be attributed to current land uses?

Gene Bunnell: I think so many of the problems we are facing are related to the way communities are grow-

ing and the way uses are being separated from one another. When I think about stress on families, I think about the separation of people from where they work, the distances they have to travel. In bedroom communities, everyone is gone during the day; there isn't any interaction between people of different ages. There is spatial segregation of just about every social strata.

John Stockham: One of the things that makes the concept of land use so challenging is the interconnectedness between land use, transportation, and infrastructure, like sewer systems. There's an interesting cause and effect: Does the land use problem cause the transportation problem? Does our transportation system cause the land use problem? It's difficult to isolate land uses. We are really talking about something broader.

Rob Kennedy: Here are two related concerns that show the range of land use problems. One is the loss of jobs in Milwaukee and other urban centers. The second is the air quality issue. We have created through our land use patterns a system that almost requires that people get in their cars. I don't think that we can fault people for not



(above) A farm hemmed in by new construction seldom remains a farm for long. People in search of country lifestyles often decry the elements of country life, such as slow hay wagons on the roads, early-morning plowing, or the fragrance from 40 Holsteins.

(right) Ozone alerts are part of summer in the city. Using public transit can help clear the air.

being conservative enough about resources when you simply cannot avoid hopping in your car even to get a loaf of bread. More drivers mean more exhaust emissions, and that gets us into trouble with the Clean Air Act. Which then gets us into trouble with who will take on the biggest burden to deal with this — the manufacturing sector, the transportation sector, or the real estate folks?

Tom Harnisch: Land use is not just a simple question of urban and suburban. One has to look at the rural perspective. We have groups living in very undesirable settings in our state because LULUs (locally undesirable land uses) were put there, often times not at their request, but by some



JEAN B. MEYER

overlying entity.

Let's focus for a moment on urban concerns. Why aren't people building in cities any more?

John Stockham: Business or individual, you have to work very hard to survive in the city, to deal with the crime, congestion and high

costs. For businesses, there's the issue of contaminated land. It's become a major impediment to rebuilding. No one wants to take the risk of having to pay for the clean up of hazardous wastes left by a prior owner.

At the same time, we have made it very easy to

live in the suburbs. The subsidized highway system made it very cost effective for people to live outside of the central city. Whether you're a home builder or whether you're in industry, it's so much easier to build in a corn field where you don't have to worry about contamination or other problems.

Dick Lehmann: The other factor pulling people out to the edge is the inability of agriculture to sustain itself. It is the ease with which farmers sell land and get out of farming. The thing that I hear at every public hearing I go to is that a farmer's land is a farmer's retirement program. If they don't have a son or daughter or a young person who can take over, they have

no choice but to sell the land to the highest bidder. You can't morally blame them. Demographic forces are at work here as well. There are people who want that land: young families, retirees, empty nesters looking for safe and comfortable settings in which to live.

Jim Siepman: I agree with both of those comments. We deal with farmers on a day-to-day basis. If they can't pass the land on to the children, they have problems. Other farmers may not have enough acreage to till if it's been sold in pieces; they don't have enough to make a viable farm. They have to sell, and move out that next step further so that they have enough acreage to work. I also work with people from Milwaukee County on a daily basis. They want to leave behind the cost and crime. They want more area around them, more space around them. That's why they're moving out to the countryside.

Tom Harnisch: I think government makes it easy to expand outward in this state. That is not true in every state in this country. At the same time we don't have major incentives to fill in our cities.

Rob Kennedy: Just a couple things. I don't think that we're going to be able to deal with this just by concentrating on the land uses. If we want to turn this trend around, then we're going to have to bite the bullet at some point and start reinvesting in our cities to make them livable — and address social issues at

the same time.

Dick Lehmann: I'd like to remind us of some history here. Back in the 1910s, the problem was too much urban concentration. Lower density, open green space, garden suburbs — that's what public policy wanted to encourage. Talk about strong measures! It was

"...a farmer's land is a farmer's retirement program. If they don't have a son or daughter or a younger person to take over, they have no choice but to sell to the highest bidder. You can't morally blame them."

Dick Lehmann

government that bought land and developed subdivisions on the fringe to show the private market how it should be done. It was a government-sponsored reform of the way land was used.

What should the role of government be now?

Dick Lehmann: If the trend toward suburban growth has gone too far, maybe government needs to reel it back in.

Gene Bunnell: We need a positive approach to reinforce the quality of urban neighborhoods. The priorities for public spending have often favored development on the fringe; it's time to balance that by targeting

resources to create urban amenities and to beautify urban spaces. It's more costly, it's more difficult, and perhaps contentious — but I think that would be a contribution.

It's also true in terms of environmental policy. When people think of the environment, they think of trying to protect those things that are unspoiled, that are natural, to keep them in a pristine state. In many ways it's easier and less expensive to acquire those areas. It's much harder to think about open space policy and acquisition in an urban, developed area, where the land is more expensive, and there's more pressure from competing uses. But even if it's difficult, it's worth the effort.

John Stockham: I think we need to have an all-inclusive urban strategy that draws from a number of different sources, whether it's the "stick" regulatory approach or the "carrot" incentive approach, or models, like those built a century ago. I think a very interventionist policy on the part of government, and a very conscious policy to resurrect the urban areas is the only thing that will work.

Tom Harnisch: One of the things I worry about is who is going to pay for these regulatory land use practices. Maybe we should set aside money at the state and local level to buy some of those rights and amenities we want, rather than say we'll use the heavy hand of regulation, zoning, or whatever to make sure we have



DAVID L. SPERLING

It's easy to overlook larger environmental and social concerns if planning is done in a piecemeal fashion, says John Stockham. Future generations are left to deal with the unanticipated consequences. (above) John Stockham (l) and Rob Kennedy.

an adequate amount of land used in a way that we like. I want to make sure that we don't forget that the people who live there on those lands are taxpayers. Their land is a nest egg, whether a person owns two or three lots in downtown Milwaukee, or 200 acres in Waukesha County. We have to always be mindful of that.

Rob Kennedy: What about the notion of providing some sort of pension, some sort of insurance for farmers in that kind of a situation?

One of the reasons why I think a lot of environmentalists are concerned about directly compensating property owners is that we could be setting a precedent for something which is going to be hugely expensive each time we want to protect a piece of land. But I agree that we've got to

get beyond the stage that we're at right now, where it's property rights versus the environment or whatever. We need to float a lot of balloons and different ideas for what might be done.

Gene Bunnell: Some public purchases are in fact very beneficial to private property owners. We tend to focus on what people lose, on what property rights are taken away — but oftentimes, acquisition of land by public agencies for conservation enhances the value of the nearby properties. We should consider ways to equitably share the costs of purchasing public land with nearby property owners — perhaps as DOT (Department of Transportation) is doing with road improvements that enhance the value of adjoining properties. Public coffers are not unlimited.

John Stockham: I'm a little bit concerned that if our finite financial resources go toward compensation for land, we're going to spend so much money that we won't have any left to address the social inequities that exist. A program of compensation would just exacerbate the problem of making the poor poorer and the landed, who tend to have more money to begin with, richer.

There's been a lot of land-use planning done over the years. But does anyone pay attention to it? What is the purpose of creating plans if we just ignore them?

Tom Harnisch: Today there is more interest out at

the local level, from the town and small village governments, to look seriously at planning. We should be doing more planning. Maybe our state laws ought to be built with a stronger planning bias. We don't do that, unlike some other states.

Should more planning take place on a local level rather than on a regional or statewide level?

John Stockham: I've seen just a tremendous change in

"I'd like to see more planning of transit-oriented development ...the kind of development that is attractive enough to people so they wouldn't mind living in slightly higher densities and where they don't have to get into a car to get a loaf of bread."

Rob Kennedy

attitudes over the past 18 or 20 years. I started in the state of Oregon working on a state land use plan back in the early 70s, and planning at that point was a real pull-and-tug job, forcing the municipalities to do planning. Now, many urban fringe communities have very much embraced planning. But some of it is very exclusionary planning, a very self-centered type of planning. I hope the next

round of progress in the planning field will be toward a more holistic or global approach.

Rob Kennedy: I think John's getting into the issue that's of primary importance to a lot of folks in the environmental community — which is that planning itself is not an answer, if it's planning that's not going to produce positive land uses. In other words, you can plan sprawl.

I'd like to see more planning of transit-oriented development. When there is a particular area that we know is going to grow, I'd like to see more cluster sorts of development — the kind of development that is attractive enough to people so they wouldn't mind living in slightly higher

densities and where they don't have to get into a car to get a loaf of bread. That kind of planning makes sense.

Gene Bunnell: One of the problems about planning is that its successes are difficult to appreciate. When something *doesn't* go wrong, you don't notice it. In fact, if you look around the state, you'll find some very livable communities.

There needs to be incentive and encouragement for cooperation between adjoining local units of government. Counties can play a very constructive role here.

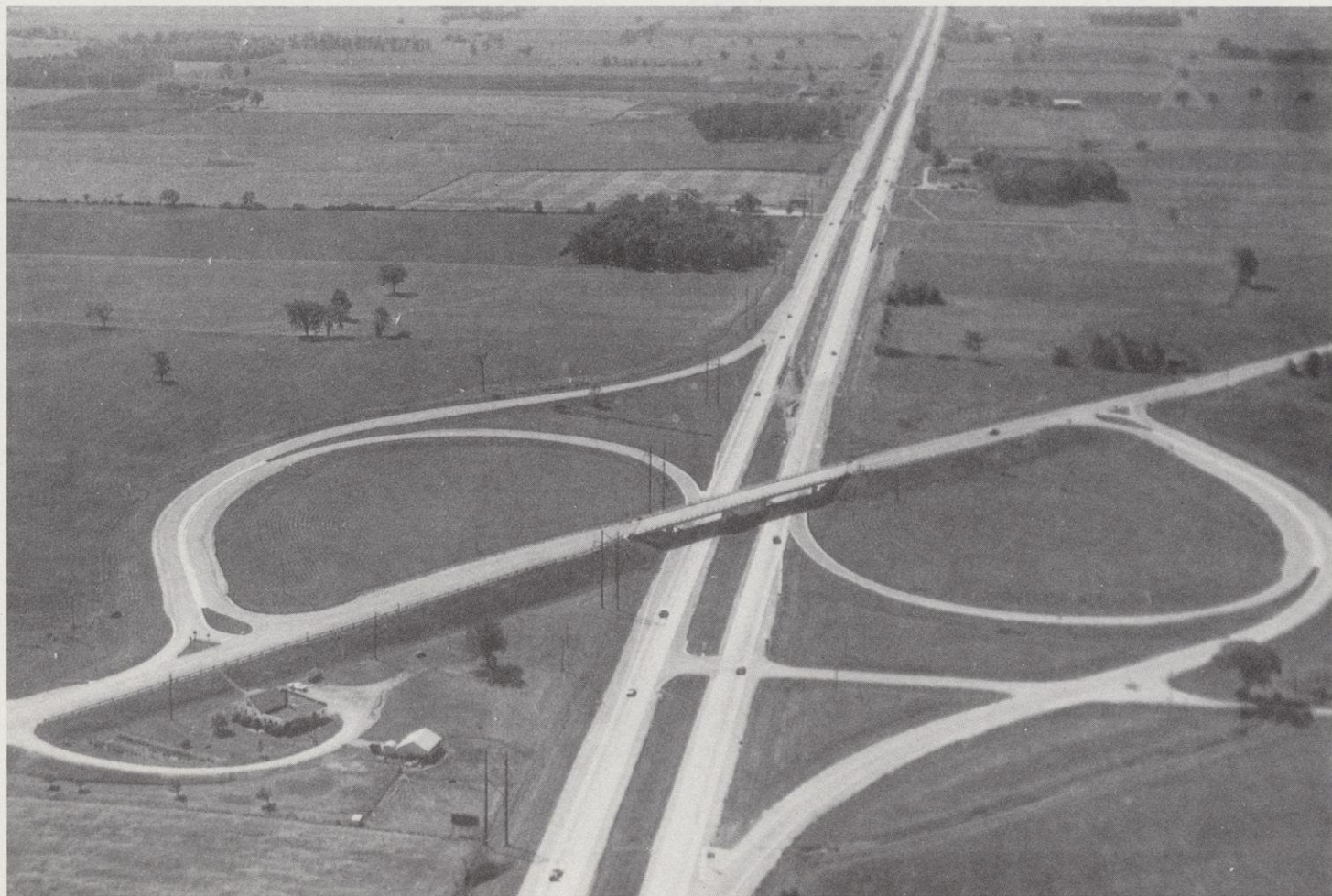
Tom Harnisch: From the standpoint of state planning, I think there should be a statewide effort on farmland preservation and sewers. If

you want to deal with urban sprawl, you'd want to have a serious state plan on those two points, with local government having the ability to comment on it, and have some form of appeal to make major changes.

Gene Bunnell: What about a statewide open space plan?

John Stockham: You know that's probably the area where there's been the most success in planning. Open spaces for parks and river corridors are very popular. I agree with you, Tom, on the need for a state plan for farmland and sewers. I would add a third area: our central cities. They really have to be tackled at a statewide level. We can't say, "well, City of Milwaukee, that's your

Roads sculpt the physical
landscape and the social
and economic terrain of the
state. We prize the
individual freedom cars and
highways bring, but the
freedom comes at a cost.



STATE HISTORICAL SOCIETY OF WISCONSIN

problem — go deal with it.” This ignores the economic reality and magnitude of the problem.

Dick Lehmann: Open space planning may have

kind of tradeoff for the greater environmental good makes a lot of sense to folks, including environmentalists. It gets back to the idea that some of the regulating we’ve done may have in fact exacerbated the problem. It would be smarter to look at things as a whole.

Tom Harnisch: I would like to carry that beyond the suburban rural areas into the far reaches of the north. Maybe there is where we should really be planning. You can talk about all the urban sprawl and zoning, but you get up into the town of Cedar Rapids in Rusk County, with 29 people — if you said “You ought to have a town plan,” I don’t think it would receive a very great welcome. But that may be the one place where there’s the greatest need for a plan, to help protect wolves or preserve important habitat. But the small towns can’t afford planning.

Dick Lehmann: Why do communities plan to begin with? So they can air the issues once and for all, so everybody knows what’s permissible and what isn’t. That’s the motivation. Have one big fight over what can happen, and from that point on it will be ministerial instead of refighting the issue every time there’s a new subdivision or whatever.

Where plans fall apart is when something happens six months later, and a bunch of neighbors who didn’t live here six months ago want to refight the battle. They don’t respect

the plan because they weren’t there when the plan was made. Pretty soon the plan’s out the window.

Gene Bunnell: We use

“We use plans to stop things in their tracks, or keep them the same. We haven’t used them as a very positive force. It’s difficult for people to envision possibilities and to share what that vision is.”

Gene Bunnell

plans to stop things in their tracks, or keep them the same. We haven’t used them as a very positive force for shaping development. A plan as an agent for improvement, for changing the conditions of communities — that’s different, and more difficult. It’s difficult for people to envision possibilities and to share what that vision is. And some people don’t get mobilized until something that they value is threatened.

Tom Harnisch: Have you ever asked people, at the local level, to plan for a worst-case scenario in their communities? To consider where in the community they would place the hazardous waste facility, the mine, and so on, should it come a-knockin’ six weeks or six months or six years from now? Those are the land uses we don’t like to talk about.



DAVID L. SPERLING

Tom Harnisch reminds panel members to be mindful of rural Wisconsin's needs. Small communities may not have the financial resources to plan for future growth, says Harnisch.

gone too far. There is a clash between compact urban development and the setting aside of wetlands and lands for drainage purposes. Green space and set-aside drainage areas for stormwater management punch gaping holes in compact urban growth patterns. We’re pushing the fringe outwards to protect wetlands and end up with ozone. Our wetland programs do not allow trading-off a wetland in the interest of maintaining contiguous development.

Rob Kennedy: I think this



DON BLEGEN

suburbs or a house in the country, not much will happen. We are pushing against a very strong stream of very common sense concerns about those two investments.

Jim Siepmann: I really like that word 'fashionable.' Particularly in our urban situations — we need to make them more fashionable again. You have to give that developer or that

Living in concert with the land
requires commitment and effort
from rural and urban residents
alike. (left) Carefully tended
fields on a Pierce County farm.
(below) Shore cleanup on
Green Bay's East River.

Rob Kennedy: Or even a big positive development. Communities should be talking about where to put the next giant hotel, or insurance company headquarters. Those things can also break the bank.

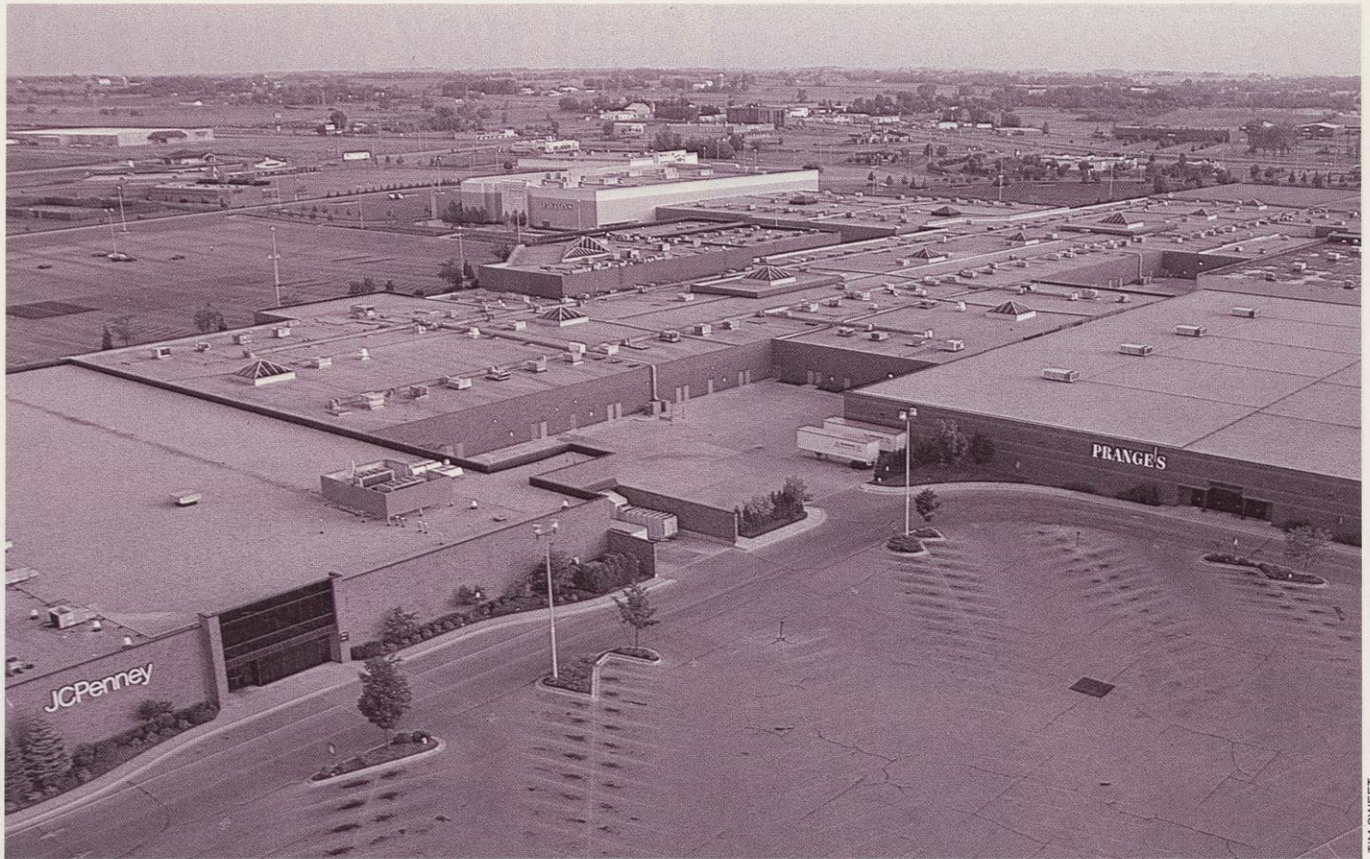
Given your experience, your knowledge of what's happened in the past and what's going on right now — would anyone be willing to make a prediction about what our landscape might look like in 20 years?

Dick Lehmann: We aren't going to change anything until we are able to deal with the two major investments people make: Investments in families and in real estate. People want to raise families in comfort and safety; they want safety for their dollars tied up in homes and businesses. These are investments that produce a return, and people want to protect them. That has a lot to do with what's fashionable.

Until we listen to those two needs, and can assure people that investments in higher-density developments or in the cities will be as positive an investment prospect as investing in the



DARRYL R. BEERS



TIM SWEET

person a reason or desire to come back in — and that's where state and local governments can help.

John Stockham: My crystal ball is half clear and half foggy. One half of it says we're going to see lots of little suburbs, increasingly beautiful places in the suburbs. But I'm not very optimistic about the central cities. I'm not sure that we're really ready to grapple with the transportation issues — certainly we're making a start, but we have a long way to go before we invest enough in mass transportation as opposed to the highways.

Gene Bunnell: I'd like to close with some thoughts on the unintended consequences of environmental regulation. We've had major breakthroughs in environmental awareness and

regulation; I think the Clean Air Act is one of those. In practice, the application of the act could be to make it more difficult to develop in dense areas, and easier to develop in counties outside of the heavily polluted areas. Which creates more sprawl. So we have to look at the spinoff effects, the unintended consequences, because the immediate reasons for adopting requirements for growth management and environmental protection sometimes have the adverse effect on development decisions.

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Edited by Maureen Mecozzi

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Cover photos: (center) Rolling hills of southwestern Wisconsin by Robert Queen. (background) Badger Interchange, I-90/94, Madison. DNR Photo.



JEAN B. MEYER

(top) Malls are the new downtowns, where people shop, meet and eat.

(above) Planning should take into account the regional as well as the local significance of large commercial and residential developments.