

County ordinances zoning for agriculture, forestry and recreation in Wisconsin. 1933

Rowlands, W. A. [Madison, Wisconsin]: Committee on Zoning, College of Agriculture, University of Wisconsin, 1933

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COUNTY ORDINANCES

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ZONING for AGRICULTURE, FORESTRY and RECREATION

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By the

Committee on Zoning

of the

COLLEGE of AGRICULTURE

UNIVERSITY of WISCONSIN

JULY, 1933

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Zoning in cities is a well established method of controlling the use of privately owned land in the public interest. However, city zoning laws do not function outside of the political boundaries of the city. Areas which were in fact parts of the city from an economic and social standpoint were violating every principle of orderly land use, yet nothing could be done about it. To meet this situation, Wisconsin passed a zoning law in 1923 granting to <u>counties</u> the right to zone land outside of incorporated cities and villages. Under this law Milwaukee county passed the first county zoning law based upon a state enabling act.¹⁾ This ordinance regulated the land for residential, industrial and commercial purposes, but left agriculture and all other land uses unrestricted.

However, the need of controlling the use of land arose in an entirely different situation when tax delinquency, the reverting of land to the county, and the high costs of local government, due to scattered settlement, created problems of a different character in the North. Zoning in this area was recommended in 1929 by the Interim Committee on Forestry and Public Lands, and in the circular, "Making the Most of Marinette County Land". In the same year, the zoning act (59.97) was amended to permit regulation of land uses for agriculture, forestry and recreation.

Oneida county has enacted the first ordinance under this act as amended. Other counties have become interested, and requests for information have come to us from officials and citizens. Wisconsin's experience in this unique field has become known in other parts of the United States, and requests for copies of the statute and for the ordinance have become so fre-

¹⁾ Los Angeles County, California, had a county zoning ordinance before this, but it was under a charter, and not a general law.

quent that it was thought wise to issue this pamphlet. Others have asked for information on the method of enacting a zoning ordinance, so a few pages have been added to cover this point, based upon the experience of Oneida County. This procedure should be varied to suit particular situations, however.

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More difficult than the passing of the ordinance will be its administration. Several suggestions made in the final pages of this pamphlet are based upon the experience of Milwaukee county, but, by and large, the counties which zone for agriculture, forestry and recreation will have to develop their own administrative technique and machinery.

It should be emphasized that there are three essential features in the enactment of an ordinance (1) the ordinance, setting forth the regulations; (2) the official map, delineating the zones; (3) educational work, to familiarize the people with the purpose of zoning, with the ordinance itself, and with the areas in their county which will be affected by it.

COMMITTEE on ZONING

W. A. Rowlands B. H. Hibbard F. B. Trenk G. S. Wehrwein



THE LAW - SECTION 59.97, WISCONSIN STATUTES. ZONING POWER.

(1) The county board of any county may by ordinance regulate, restrict and determine the areas within which agriculture, forestry and recreation may be conducted, the location of roads, schools, trades and industries, and the location of buildings designed for specified uses, and establish districts of such number, shape and area, and may also establish set-back building lines, outside the limits of incorporated villages and cities, as such county board may deem best suited to carry out the purposes of this section. For each such district, regulations may be imposed designating the trades, industries or purposes that shall be included or subjected to special regulations and designating the uses for which buildings may not be erected or altered; provided, however, that the said county board shall before it adopts such ordinance or ordinances, submit the same to the town board or town boards of the town or towns in which may be situated any lands affected by such ordinance, and thereupon obtain the approval of said town board or town boards, so far as the same affects the lands in such town or towns, and in like manner any and all ordinances, which may amend any ordinance, which have been adopted as herein provided, shall be submitted to the said town boards and their approval obtained before the same shall be adopted by the county board. Such ordinance or amendments thereto may be adopted as to such town or towns which shall have given their approval thereto.

(2) If such county has a county park commission or rural planning board organized as provided by law, such commission or board shall recommend boundaries of such districts and appropriate regulations and restrictions to be imposed therein. The county park commission or rural planning board shall first formulate a tentative report and shall hold public hearings thereon before submitting a final report to the county board. After

such final report is submitted, and the ordinance pursuant thereto adopted, the county board may from time to time alter, supplement or change the boundaries or regulations contained in such ordinance in the manner herein set forth, but not less than ten days' notice of any such proposed changes shall first be published in the official newspapers for publication in such county, and a hearing be granted to any person interested, at a time and place to be specified in the notice. Each such notice shall be published at least three times during the ten days prior to the date of hearing.

(2a) When any county acquires lands by tax deeds, the county board may exchange any such lands for other lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands.

(3) In case a protest against a proposed amendment, supplement or change be presented, duly signed and acknowledged by the owners of twenty per centum or more of the frontage proposed to be altered, or by the owners of at least twenty per centum of the frontage immediately in the rear thereof, or by the owners of at least twenty per centum of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by a three-fourths vote of the county board of supervisors.

(4) The county board shall prescribe such rules and regulations as it may deem necessary for the enforcement of the provisions hereof, and of all ordinances enacted in pursuance thereof. Such rules and regulations and the districts, set-back building lines and regulations specified in sub-section (1) shall be prescribed by ordinances which shall be designed to promote the public health, safety and general welfare. Such ordinances shall be enforced by appropriate fines and penalties. Compliance with

such ordinances may be also enforced by injunctional order at the suit of such county or the owner or owners of such real estate within the district affected by such regulations. Such ordinances shall not prohibit the continuance of the use of any building or premises for any trade or industry for which such building or premises are used at the time such ordinances take effect, or the alteration of, or addition to, any existing building or structure for the purpose of carrying on any prohibited trade or industry within the district where such buildings or structures are located.

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(5) The powers herein granted shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by any such county.

(6) The county board may by ordinance zone any lands owned by the county without necessity of securing the approval of the town boards of the towns wherein such lands are situated and without following the procedure outlined in subsection (2). (1923 c.388; 1927 c.375; 1929 c.279, 356; 1931 c.236)

PREPARING the TENTATIVE ORDINANCE:

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When a county has a county park commission or rural planning board, the procedure for enacting the ordinance is prescribed by the Statute under sub-section (2) of section 59.97. These bodies shall first formulate a tentative report and shall hold public hearings thereon before submitting the final report to the county board. (1)

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If a county does not have a county park commission or a rural planning board, it is suggested that the county board designate a committee of the board to do this work. The authority of the committee should be sufficiently broad to permit it to carry out the procedure herein suggested. This procedure has been outlined on the premise that a committee of the county board is promoting the enactment of a tentative ordinance instead of a board or commission, which latter arrangement might involve changes in the form in which the several reports and resolutions are submitted to the county board.

The committee should prepare a tentative ordinance and map showing the boundaries of the proposed districts. Although not required by law, the committee for the purpose of promoting the adoption of an ordinance so wholly new to the thought of most citizens of the state, might authorize a series of educational meetings to be held with town boards to explain the purposes of the ordinance and the principles involved in county zoning. Experience with such meetings indicates the desirability of town boards inviting citizens and property owners to these meetings.

In addition the committee might conduct one county-wide hearing, at which any land owner or resident may have an opportunity to express his or her views relative to the proposed ordinance.

(1) County park commissions are provided for by statute (27.02-06) for counties of 150,000 or more population, but any county board is empowered to provide such a commission if they so desire.

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(1) County par counties of 14 to provide and These educational meetings and the county hearing should be held prior to the first report of the committee to the county board on a tentative zoning ordinance; in fact, should such meetings indicate an overwhelming opposition to such an ordinance, the committee would necessarily take cognizance of this fact in making its recommendations to the board.

Below is a tentative county zoning ordinance districting the county for agriculture, forestry and recreation, based upon the one already enacted in Wisconsin. It will be noted that only one restricted district, called the "forestry and recreation district" has been set up. In Section II (p.7) the 'permitted uses" are given in detail. However, the committee need not be limited to designating <u>one</u> restricted land use district, and they may designate other 'permitted uses' to solve the problems which prompt the necessity of zoning. The number of districts and the restrictions applying within each district may be as extensive as the committee feels necessary within the provisions of the state zoning law. All restrictions, however, must meet the test of reasonableness.

A TENTATIVE COUNTY ZONING ORDINANCE:

Zoning Ordinance for _____ County, Wisconsin An ordinance regulating, restricting and determining the areas within the county in which agriculture, forestry and recreation may be conducted, the location of roads, schools, trades and industries, and the location of buildings, designed for specified uses, and the establishment of districts for such purposes and the establishment of set-back building lines outside of the limits of incorporated villages and cities, pursuant to section 59.97 of the Wisconsin Statutes.

The county board of supervisors of _____ county does ordain as follows:

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Section I

6.

Districts and District Maps.

For the purpose of promoting public health, safety and general welfare and regulating, restricting and determining the areas within which agriculture, forestry and recreation may be conducted, and establishing districts which are deemed best suited to carry out such purposes, outside of the limits of incorporated villages and cities, and in accordance with the provisions of section 59.97 of the Wisconsin Statutes, the territory included in the boundaries of the following towns, to-wit: (Names of towns in the county) are hereby divided into two classes of use districts, as follows, to-wit:

1. Forestry and recreation district, and

2. Unrestricted district.

The boundaries of the aforesaid two(2) use districts are shown upon the official map of ______ county, attached hereto, being designated the "Zoning Map showing Use Districts" _____ County, Wisconsin, dated _____, 19__, and made a part of this ordinance. All notations, references and other things shown upon said zoning map showing use districts shall be as much a part of this ordinance as if the matter and things set forth by said map were all fully described herein.

No land or premises shall be used except in conformity with the regulations herein prescribed for the use districts in which such land or premises is located.

No building shall be erected or structurally altered or used except in conformity with the regulations herein prescribed for the use districts in which such building is located.

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Section II.

Forestry and Recreation District.

In the forestry and recreation district no building, land or premises will be used except for one or more of the following specified uses:

1. Production of forest products

2. Forest industries

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3. Public and private parks, playgrounds, camp grounds and golf grounds

4. Recreational camps and resorts

5. Private summer cottages and service buildings

6. Hunting and fishing cabins

7. Trappers' cabins

8. Boat liveries

9. Mines, quarries and gravel pits

10. Hydro-electric dams, power plants, flowage areas, transmission lines and sub-stations.

(Explanation -- Any of the above uses are permitted in the Forestry and Recreation District, and all other uses, including family dwellings, shall be prohibited.)

Section III.

Unrestricted District.

In the unrestricted district, any land may be used for any purpose whatsoever, not in conflict with law.

Section IV.

Non-Conforming Uses.

The lawful use of any building, land or premises existing at the time of the passage of this ordinance, although such use does not conform to the provisions hereof, may be continued, but if such non-conforming use is discontinued, any future use of said building, land or premises shall be in conformity with the provisions of this ordinance.

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The lawful use of a building, land or premises existing at the time of the passage of this ordinance may be continued although such use does not conform with the provisions hereof, and such use may be extended through out such building, land or premises.

Whenever a use district shall be hereafter changed, any then existing non-conforming use in such changed district may be continued or changed to a use permitted in the new use district, provided all other regulations governing the new use are complied with.

Whenever a non-conforming use of a building, land or premises has been changed for a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use, unlass the district in which such building, land or premises is located, is changed to a less restricted use.

Nothing in this ordinance shall be construed as prohibiting forestry and recreation in any of the use districts nor a change from any other use to forestry and recreation.

Section V.

Boundaries of Districts.

District boundary lines shall follow along the lines, or along lines extended, indicated on the United States General Land Office survey maps, or along meandered streams.

Section VI.

Interpretation and Application.

The provisions of this act shall not apply to buildings, land or premises belonging to and occupied by the United States, the State of Wisconsin, any town or any school district.

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Section VII.

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Changes and Amendments.

The board of supervisors of ______ county may from time to time amend, supplement or change by ordinance the boundaries of districts or regulations herein established. Any proposed changes shall first be submitted to the county

Any and all ordinances, which may amend this ordinance which have been adopted as herein provided, shall be submitted to the town boards governing the territory affected thereby, and their approval obtained before the same shall be adopted by the county board.

Section VIII.

Enforcement and Penalties.

The provisions of this ordinance will be enforced by and under the direction of the county board of supervisors. Any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be subject to a fine of not less than ten ((10) dollars nor more than two hundred (200) dollars, together with the costs of action, and in default of payment thereof, to imprisonment in the county jail for a period of not less than one (1) day nore more than six (6) months, or until such fine and costs be paid. Compliance therewith may be enforced by injunctional order at the suit of the county or the owner or owners of land within the district affected by the regulations of this ordinance.

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Section IX.

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Validity.

Should any section, clause or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section X.

Definitions.

Certain terms and words used in this ordinance are defined as follows: Words used in the present tense include the future; words in the singular number include the plural number, and words in the plural number include the singular number; the word "building" includes the word "structure" and the word "shall" is mandatory and not directory.

FOREST PRODUCTS -- Products obtained from stands of forest trees which have been either naturally or artificially established.

FOREST INDUSTRIES -- The cutting and storing of forest products, the operation of portable sawmills and planer, the production of maple syrup and sugar.

PUBLIC and PRIVATE PARKS, PLAYGROUNDS, CAMPGROUNDS, and GOLF COURSES ---Areas of land with or without buildings designed for recreational uses.

RECREATION CAMPS and RESORTS -- Areas of land improved with buildings or tents and sanitary facilities used for occupancy during a part of year only.

PRIVATE COTTAGES and SERVICE BUILDINGS -- Buildings designed for seasonal occupancy only and normally used by the owner together with additional structures to house materials and services.

HUNTING and FISHING CABINS -- Buildings used at special seasons of the year as a base for hunting, fishing and outdoor recreation. TRAPPERS' CABINS -- A building used as a base for operating one or more trap lines.

BOAT LIVERIES -- Establishments offering the rental of boats and fishing equipment.

BUILDING -- A structure having roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels.

NON-CONFORING USE -- A building or premises occupied by a use that does not conform with the regulations of the use district in which it is situated.

FAMILY DWELLING -- Any building designed for and occupied by any person or family establishing or tending to establish a legal residence or acquiring a legal settlement for any purpose upon the premises so occupied.

Section XI.

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Adopted

Chairman, Board of Supervisors County, Wisconsin.

County Clerk,	County
Wisconsin.	

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The Official Map

The official map is an important part of the zoning ordinance. It delineates the boundaries of the zones, and thus shows exactly the relation of each tract of land to the districts as set up by the board of supervisors. These zones or districts must stand the test of reasonableness. In other words, if land has been zoned against agriculture, it must be truly nonagricultural in character. "Non-agricultural", however, must be interpreted not only from the standpoint of soils, topography, stoniness, etc., but also from the economic standpoint such as cost of clearing, access to transportation, markets and schools. A small tract of good land surrounded by a large area of non-agricultural land is not "agricultural land". Since economic conditions are subject to change, provision is made in all zoning laws for change in the boundaries of the zones, or in the restrictions. This is provided for in subsections 2 and 3 of 59.97 cited above, but section 59.99 also provides for a board of adjustment which the county board of supervisors may appoint.

In order that the map may be drawn in conformity with present and anticipated land uses (and thus stand the test of reasonableness), a thorough study of the physical and economic factors affecting such uses is necessary. In Oneida county the study made in 1930 at the request of the county board and published as a circular, "Making the Most of Oneida County Land", became the basis for the zoning map. Similar studies have been made in five other counties. For counties in which surveys have not been made, the gathering of similar data (more or less depending upon

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the nature of the county) is essential before zones can be established. It is suggested that at least three preliminary maps be prepared: (1) a map showing the location of tax delinquent land by stages of delinquency; (2) the location of farms (operating and abandoned); (3) the location of public lands especially the forest crop lands, private and public. A recreational land map may be necessary in counties with lakes and rivers on which large numbers of summer homes and resorts have been built. These maps can be made from the public records in the court house with the assistance of the town officials. In making these maps, it is advisable to use a base map which correctly shows all government survey lines, including the "lots" on meandered streams and lakes. Town boundaries, cities, villages, highways and railroads should be included on one or more of the maps, but especially on the final map showing the zones. A map with a scale of one inch to the mile has been found most practical for this purpose, particularly for the zoning map. This map should show the boundaries of the zones with absolute accuracy. There should be no doubt as to whether a given forty is in one zone or another. After the ordinance is adopted, it may be well to make a fifth map showing all the "non-conforming uses" as a part of the record suggested under the administration of non-conforming uses (p. 16).

It will not be necessary for the committee to make the physical maps since soil maps are available either as detailed or as reconnoissance maps. Forest cover surveys have been completed in five counties, and both types of surveys are valuable aids in delineating districts or zones. Topographic maps have been made by the Wisconsin Geological and Natural

History Survey, but mostly for southern counties or parts of counties.⁽¹⁾ Where detailed maps are not available, additional work may be necessary on soils, forests and other physical factors which determine land uses. The educational meetings help to bring out much of this information for the towns in which they are held.

It should be emphasized again that every zoning ordinance should be "tailor made" to suit the particular county. The number of zones or districts, the restrictions for each type of zone, the lands to be included in each district, the non-conforming uses must fit the needs and conditions of the county. The ordinanco used by Oneida county should serve merely as a pattern.

The work begins with the preliminary draft of the ordinance and map by the rural planning committee, the county park commission, or the committee designated to zone the county by the board of supervisors. Since this has many technical aspects, the procedure followed so far has been to call into cooperation the College of Agriculture and the staff of the Conservation Department. The former can assist with the soils, land economics, tax delinquency, and local government, while the Conservation Department is constantly dealing with forestry, fire protection, the forest crop law, county and state forests, fish and game. These services have been coordinated through the office of the county agricultural agent.

When the first draft of the ordinance is completed and the official map is made, the committee is ready to bring them before the town boards

1) See bibliography in the appendix.

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and citizens of the towns to be affected by the ordinance. This was done in Oneida county where a series of 16 meetings were held to explain the matter to the people and where the maps and the ordinance were discussed. Changes were suggested in the ordinance, and boundaries of zones were altered as the meetings proceeded in the light of new facts presented by the local people. The extension specialist in land economics of the College of Agriculture accompanied the county agent at these meetings which were authorized by the committee and attended by one or more committee members in person.

County board committees charged with sponsoring zoning ordinances will naturally consult the district attorney of the county on the legal aspects of such ordinances which can be formally set up after the educational meetings have been held. As suggested earlier (p.4) a public hearing might be held as a further safeguard, and then the ordinance is ready to follow the procedure outlined in the statutes. (Sect.1)

After the committee reports the ordinance to the county board, this body submits it to the towns involved. After their approval has been secured, the board of supervisors passes the ordinance in the usual manner and after publication it becomes a legal enactment of the county. It will be noted in the last section of the statute that the zoning of county owned lands does not require the approval of the town boards.

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ADMINISTRATION of COUNTY ZONING ORDINANCES:

The adoption of a zoning ordinance is not the end of a project, rather it is the beginning. As agriculture, industry and population growth take place, changes in the boundaries of use districts as well as amendments to the ordinance itself will need to be made. The administration of the ordinance will require a degree of care equal to that put into the original draft.

Committee in Charge:

In the absence of either a county park commission or a rural planning board, the county board committee which sponsors the county zoning ordinance, might well be the appropriate committee to administer the ordinance under the direction of the board of supervisors.

Such committee should be required to keep a complete record of the minutes of all meetings, and make a report to the county board of supervisors on the status of the zoning ordinance at each annual meeting. The administration of the ordinance will involve, first, the preparation of a record of non-conforming uses existing at the time of the enactment of the ordinance; second, the detection and prosecution of all violations of the ordinance. In this second function the statutes provide that the owner or owners of real estate within the district affected by such regulation as well as the county itself may secure compliance by injunctional order. The county committee should consult regularly with the district attorney in the enforcement of section VIII of the tentative ordinance.

Non-Conforming Uses:

A record of all non-conforming uses in the restricted district should be made when the ordinance becomes effective and be kept annually up to date for the information of the board of supervisors. This information should be kept

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Non-Confermine Did A record of off made when the ord on file in the office of the register of deeds or county clerk. The reason for keeping this record annually and up to date is that the ordinance specifically provides that when a non-conforming use has been changed to a conforming use, it cannot be restored to its former utilization. Therefore, all such changes should be a matter of public record.

The assistance of town assessors could be utilized in obtaining such information.

Abstract of Title:

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Since zoning restrictions constitute an encumbrance on use of land, each abstract of title should carry a notation similar to the following:

"This property is subject to a county zoning ordinance adopted by the board of supervisors of ______ county at an annual meeting (continued) of said board held on ______ which ordinance and accompanying map made a part thereof was approved by the town of ______ on _____, and was filed in the office of the register of deeds of ______ county, on ______

Register of Deeds:

It is desirable in counties which maintain a tract index that the register of deeds post against each legal description of land in the restricted district a notation or reference to the fact that such description of land comes under the use restrictions provided in the county zoning ordinance.

WISCONSIN PUBLICATIONS ON LAND UTILIZATION, TAXATION, AND ZONING.

WISCONSIN COLLEGE of AGRICUL-TURE, MADISON, WISCONSIN

Bulletins

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Extension Circulars

Making the Most	of:			
Marinetto	County	Land	-	ME.y, 1929
Ashland	**			Uct. 1930
Taylor		. 11	-	Jan. 1931
Oneida	**			April, 1931
Forest	**			May, 1931
Washburn	. **			Oct. 1932
Langlade				In preparation

Radio and Stencil Circulars

Forestry in Wisconsin A Balanced use of land for Agriculture, Forests and Recreation What Chance has a City Man on a Wisconsin Farm?

Soil and Topographic Maps

Soil maps may be obtained by writing Professor A. R. Whitson, Soils Department, College of Agriculture, and the topographic maps are distributed by the Wisconsin Geological and Natural History Survey, Science Hall, University of Wisconsin, Madison, Wisconsin.

WISCONSIN DEPARTMENT of AGRICULTURE and MARKETS, STATE CAPITOL, MADISON, WISCONSIN

> A series of bulletins -- Land Economic Inventory of Northern Wisconsin -- containing the results of the Forest Cover Survey made in these counties with additional material on soils, lakes, wild life, etc. Detailed maps showing the forest cover are published separate from the bulletins in township units.

- # 100 Bayfield County (1929)
 - 123 Vilas County (1931)
 - 138 Sawyer County (1932)
 - 146 Douglas County (1933)
 - Langlade County (In proparation)
 - 130 Farm Prospector's Guide to Northern Wisconsin

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GENERAL STATE PUBLICATIONS

Blue Books

Report of the Interim Committee on Forestry and Public Lands, Wisconsin Legislature, Madison, March, 1929.

Forest Land Use in Wisconsin; Report of Committee on Land Use and Forestry, Executive Office, Madison, Wisconsin, April, 1932. Volume 20, Opinion, Attorney General, 751 (contains the rulings on the legality of county zoning.

COUNTY PUBLICATIONS

Proceedings of the Board of Supervisors of Milwaukee County, 1927-28.

Annual Reports of Milwaukee County Park Commission, Milwaukee County Regional Planning Department.

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The literature on zoning is very extensive. The general reader will find the May, 1931, number of the Annals of the American Academy of Political and Social Science (3622-24 Locust Street, Philadelphia, Pennsylvania) very helpful, both for the articles and the excellent bibliography. It has two articles on county zoning. City Planning, a quarterly published at Cambridge, Massachusetts, Vol. 5, has an article on planning for Milwaukee County.

A general survey of policies of the various states is to be found in W. A. Hartman's, "State Land-Settlement Problems and Policies in the United States", Technical Bulletin # 357, U. S. Department of Agriculture.

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