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Recent Changes in Governmental Mechanisms for Modifying Rural Land Use Decisions in New York State

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RECENT CHANGES IN GOVERNMENTAL
MECHANISMS FOR MODIFYING RURAL LAND USE DECISIONS
IN NEW YORK STATE

by

Howard E. Conklin

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east Regional Resource Economics Committee, Boston,
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My objective in this paper is to outline briefly the several major recent efforts that have been made in New York to superimpose some type of public preference upon private land use decision-making in rural areas. I will attempt also to deduce from the outcomes of these efforts some of the parameters for success in such undertakings within New York.

Bosselman and Callies have highlighted selected changes that have been made recently in governmental mechanisms for modifying land use decisions in the United States as a whole, but they did not treat in detail all individual state changes or try to generalize on the factors that determine success and failure in attempts to make such changes [2].

Change, Challenge, and Response

The New York State Office for Regional Development issued a report in 1964 titled Change, Challenge, and Response, A Development Policy for New York State. This was an impressive publication, printed in an elaborate format, with a highly symbolic message that began with the broad sweep of history, world geography, and surging population numbers. For New York, the report focused on transportation and urban agglomerations, forecasting vast further increases in urban populations. The challenges it discussed were framed in general terms and were related exclusively to the problems of city people at home in the city or seeking recreation in the countryside. Agriculture was not mentioned and no rural activities were considered to have an integrity of their own.

Today, this report reads more like a promoter's brochure than a realistic look at future possibilities and problems. But those were the days of great growth and great optimism; remember? There was no limit to what we could do, to the suburbs we could build, and to the levels of living we could attain. Much of New York was to become wall-to-wall city and the rest was to be playgrounds. And everybody had such wonderful ideas for progress that a minimum of guidance would be necessary.

New York State Office of Planning Coordination

In 1966, the Office for Regional Development was replaced by the Office of Planning Coordination (OPC) with generous infusions of additional money from both state and federal sources. State planning activity increased many fold. The Albany office was expanded rapidly and quickly staffed with bright young men on a mission. Regional offices were opened and the presence of OPC began to be felt throughout the state.

Special Farm Assessment Laws Vetoed

Unconnected with the planning effort, but justified on the grounds of preserving a desirable land use pattern, was an organized effort in the mid-sixties to create arrangements for the present-use assessment of the state's farmland. Present-use assessment of farmland had been practiced in much of the state for a long time but it had lacked the legal backing this movement sought and was coming under increasing pressure in the areas of speculative enthusiasm adjacent to most cities and suburbs.

Special farm assessment bills were passed by the New York State legislature in 1965 and 1966 [12, 14]. They were promoted by farm organizations and were patterned closely after the law that had been put into effect in New Jersey a few years before. Both of these efforts to gain special farm assessment arrangements were opposed by many persons in both state and local governments and were vetoed by Governor Rockefeller.

Commission on Preservation of Agricultural Land

Vetoed of the special farm assessment bills were followed by the creation of a Governor's Commission on the Preservation of Agricultural Land in New York. Governor Rockefeller was sympathetic to the idea of preserving agriculture in the state and charged this commission to examine broadly the various steps that might be taken to that end [11].

This commission very soon promoted the passage of one special farm tax law that proved acceptable to the legislature and the Governor [18]. It provides for the exemption from taxation of new farm buildings, or major improvements to old ones, for a period of 5 years after they are constructed. The commission stressed the fact that such a law would help to promote new investments which are needed to keep farming viable under conditions of rapid innovation in farm materials handling systems. They stressed the further fact that such a law could in no way contribute to an expansion of speculative activities in farmland. Preliminary studies of the effectiveness of the law do indicate that it is in fact accomplishing its objectives [9].

The Governor's Commission on Preservation of Agricultural Land was replaced by a permanent commission - the New York State Agricultural Resources Commission (ARC) - in 1969.

Urban Development Corporation

An agency called the Urban Development Corporation (UDC) was created by the New York State Urban Development Corporation Act of 1968 [17]. This agency was promoted as offering possibilities for solving a variety of inner city problems, making these areas better places to live. The principle influence UDC was to have on rural uses was to be the result of reducing the flight to the fringe areas.

Lysander near Syracuse and Audubon near Buffalo, however, are two attempts by UDC to develop new towns in suburban regions. It was hoped by some that UDC might help to reduce urban scatteration into good agricultural areas

by attracting people to locate in new towns. This has not come to pass on a large scale, however, primarily because UDC's powers to create new towns are limited -- it must borrow and repay most of the money it makes available for such projects, so its function is largely one of providing "catalytic" services. It also now seems clear that a fairly large group of people have a strong preference for life in a scattered arrangement. We have interviewed many rural nonfarm people for whom only strong pressure could provide sufficient incentive to live in any town new or old [3].

Assessment Improvement Law Passed

A new law to improve tax assessing procedures in the state was passed in 1970. It was the culmination of a long effort to improve these procedures and was strongly supported by the State Board of Equalization and Assessment and other agencies of state government.

The assessment improvement law was not intended directly to influence private land use decisions. The intent instead was to bring assessing procedures more nearly in line with those contemplated in the state constitution and presumably to assure more equitable treatment of all taxpayers.

The few years of experience we have had with the assessment improvement law indicates, however, that it is bringing an end to the de facto present-use assessment policy for farmland that has been traditional in most of New York. It is tending to bring assessed values more nearly up to current market prices and thus to make them reflect more closely the effects of speculative activities. Whereas previously assessors were inclined to keep a farm assessment on any farm until the owner began selling lots, now the tendency is to assess all farmland at houselot prices as soon as an appreciable amount of farmland anywhere in the taxing jurisdiction is sold for nonfarm development.

The consequence of the assessment improvement law in many instances apparently is to raise farm taxes many years in advance of the time when all of the land actually can be converted to nonfarm uses at the prices being paid for the small areas now being converted. This magnifies the detrimental effect of speculation on farming and brings about its discontinuance long before the land really is needed for other purposes. Instead of remaining in the hands of farmers, the land passes to those who are willing and able to gamble on the possibility that a particular piece of it will sell for a high price though not all can -- to those, in other words, who play real estate roulette. These owners seldom maintain or update farm improvements, so the land soon becomes unsuitable even for use under lease by a farmer.

OPC's Proposal to Restructure the State Planning and Land Use Control Law

One of OPC's most important efforts to contribute to improvements in the land use patterns of the state consisted of a proposal for a new law to control planning and land use control processes at all levels of government within the state. The development of this proposal received high priority within the organization and was undertaken by a team of lawyers and planners in a deliberate and well organized manner. Preliminary efforts were followed by an

extended series of semi-public meetings, and progressive revisions were made to reflect a wide spectrum of knowledge and preferences. The final product was introduced as study bills in both houses of the legislature in 1970. Senator LaVerne, as chairman of the Joint Legislative Committee on Metropolitan and Regional Areas Study, held a series of hearings on the proposal during the summer and fall of 1970. [5].

I shall refer to this proposal as Senate Bill 9028 [20].

Bill 9028 consisted of over 90 pages and would have brought about a large number of specific changes in planning and land use control functions at many points. Its general thrust was two-fold: (1) It would have moved planning and control functions upward from local to county and state levels of government. (2) It would have moved a considerable amount of responsibility for planning and control from the hands of elected officials and lay boards to the hands of employed professionals.

Bill 9028 certainly was the most sophisticated planning and land use control proposal that has been written in New York and probably one of the most sophisticated in the nation. It reflects a full recognition of the generally accepted basic principles of the planning profession and at the same time bears the mark of attempts to adapt to political realities within the state. It was personally though not publicly supported by Governor Rockefeller.

Bill 9028 would have widened planning horizons far beyond the narrow confines of towns, villages and cities to the broad sweep of regional and state concerns. And this widening would have extended to the temporal dimension as well, providing that the welfare of generations unborn would have been considered in the planning processes of today. But to accomplish its lofty purposes, 9028 would have created a board of 7 members in Albany that would have had more power than has ever yet been concentrated in one place in the State of New York.

Bill 9028 not only never came to a vote but the agency that sponsored it lost 60 percent of its budget and had its name changed (from Office of Planning Coordination to Office of Planning Services).

New York State Development Plan

OPC, as its final act, published the first in a proposed series of three major planning reports for the state. This publication dealt with physical aspects of the state while the others were to deal with social and economic aspects. It was entitled New York State Development Plan - Phase I [21].

This report was very much more factual and specific than Change, Challenge, and Response. It still carried some measure of the enthusiastic growth psychology of the earlier report. Preliminary reports on the 1970 census of population were released just before its publication, however, and an admission of some exaggeration in its growth estimates occurred in the letter of transmittal contained in the report.

Rural resources and rural people also were treated with much more understanding in this later planning report. Even the presence of agriculture was documented at some length and recommendations reflected a desire to

maintain the integrity of this industry. Unfortunately, the recommendations in the New York State Development Plan were tied somewhat closely to the ideas embodied in Bill 9028 and the prestige of the report as a whole appears to have suffered as a result.

Adirondack Park Agency

1971 saw not only the issuance of the New York State Development Plan - Phase I, the defeat of Senate Bill 9028, and the conversion of OPC to OPS, but also two other significant planning and land use control actions. The first of these was the creation of the Adirondack Park Agency and the second was passage of enabling legislation for agricultural districts. Both of these would have been redundant if 9028 had passed, so in a sense they were efforts to recoup some of the losses from the defeat of that proposal. Neither of these items were being sponsored, however, by OPC. In fact, OPC originally opposed such a piece-meal approach.

Some 40 percent of the Adirondack Park is state owned and its administration is controlled in large part by a constitutional amendment that was passed around the turn of the century. Under that amendment, new amendments are needed each time any trees are to be cut for road improvements, camp sites, ski slopes, dams, and the like.

Thus, the people of New York many years ago evidenced a willingness to have the Adirondacks preserved in some absolute sense. And the acts of preservation taken then have been vigorously protected to the present, especially by several organizations composed of wealthy and near-wealthy people. Originally, many of the wealthy had summer homes in the Adirondacks. Although some still do, extreme wealth is less conspicuous now and professional people are the ones who supply the majority of the present support for preserving the park as a wilderness.

To preserve wilderness requires, of course, the near absence of people. It might seem surprising that in a state having the second largest population of any in the nation, it would be possible to gain the votes necessary for authorizing the acquisition of large areas of land that would be available to very few people. The masses, however, especially in New York City, have been carefully educated by the groups using the Adirondacks. This is well illustrated by the nature and sources of the large amounts of literature that are issued when proposals, like the proposal for the Panther Mountain Dam a few years ago, are made to modify any part of the "forever wild" preserve.

The outcome of popular referendums on matters related to the Adirondacks make it appear as though many people, especially in New York City, are convinced there are very few trees left in the world and are, therefore, willing to support their preservation in the event they should wish sometime to see them. They appear willing to overlook the actual problems they would encounter if they really attempted to make an extended visit to the park. On the other hand, prior to the creation of the Adirondack Park Agency, even moderate income people could find satisfactory roads, campgrounds, motels, and related facilities within the area in spite of the constitutional restrictions that applied to the 40 percent of the park that was public.

In more recent years, especially with the rise of environmentalism as an ethical movement, there has been increasing concern with the possibility of controlling the owners of the private lands in the Adirondacks. In the view of many of the new-movement supporters, too many people had easy access to the park and too many "honky-tonk" types of amusement were being created. This was due to the availability of facilities, services, sites, and rights of passage on the private lands.

Very few of those who sought to restrict the private landowners in the Adirondacks live in the park area. They include some who are wealthy -- a remnant from older days -- but their largest membership now probably consists of professionals and other upper middle income people. They are a minority within the state but they are well acquainted with political processes and are highly articulate.

This group had two alternatives for the accomplishment of further preservational steps in the Adirondacks. They could have taken a page from Vermont's experience and launched a program to convince the people who live within the park that they too, like the Vermonters, would be better off in the longrun if they restricted access to higher income people [22]. On the other hand, they had the opportunity of taking further action along the lines established by those who promoted the preservation of the state lands, namely to convince the lower income urban people that they should support the exclusion of large numbers of people from the area in exchange for dreams of seeing a little spot of wilderness someday. In either case, of course, some people's access had to be bared.

In either of the alternatives some "educational" efforts were needed. Those who live in the park area would have been the most difficult to educate. For the urbanites, a past educational effort only needed to be reinforced. And the permanent residents of the park are a quite miniscule proportion of the state population and possibly not able to provide enough help to get the needed legislation anyway. The promoters of private land preservation decided they probably could win even with the park residents opposing them. (The opposition of the majority of the park residents was clearly evidenced at the public hearings held on the Adirondack Park Agencies plans in 1972.)

The passage of the legislation in 1971 establishing the Adirondack Park Agency was only the first step toward "protecting" the private lands [15]. The most significant succeeding step came in 1973 when this agency was made permanent and was given extensive powers to force local governments to control the use of private land in prescribed ways [1].

Catskill Study Commission

Does this development in the Adirondacks indicate that the resounding defeat of Bill 9028 was not after all so significant as it at first seemed? Is the Adirondack Agency law part of what Bosselman and Callies term "a quiet revolution" that step by step will transform land use controls in the state? The Adirondack experience was accompanied by formation of the Temporary State Commission to Study the Catskills [8, 13]. Can we expect to see a Catskill Agency next, then a rapid succession of other measures until the contents of 9028 are in fact the law of the state?

I do not think New York State has embarked on a revolution. The Adirondacks clearly occupy a special place in the hearts of New Yorkers. I doubt that a constitutional amendment is needed to cut a tree anywhere else in the country. Large numbers of people are content to love the Adirondacks from a distance and there are small but resourceful and dedicated groups who feel they have a vested interest in reserving the Adirondacks for themselves.

The Catskill Study Commission may be able to encourage some local governments to institute more vigorous land use controls, but I doubt that it ever will attain the status of legal reviewer of local government actions. The Catskill Park encloses some state preserve lands but many people in New York City think of the Catskills as being in their backyard. Resort hotels, bungalows, motels, ski developments, less expensive summer homes, and "honky tonk" amusements occur in many areas already. Many New Yorkers dream of retiring in the Catskills. We can afford to have some of the state held as a keepsake forever, but for most people the Catskills are to use. And it is middle to lower income and definitely urban points of view that are setting the standards for the Catskills. They will get into local fights about land use in the Catskills and some controls will be passed, but plans and regulations on a grand scale are only for the true wilderness of the Adirondacks.

I once tried to convince people in Delaware County that they would be financially better off in the longrun if they took action on land use controls before the big urban flood hit them. They are on the west side of the Catskills and the area was primarily in agriculture and extensive forestry and recreation until five years ago. I tried to scare them by pointing to the "honky tonks" in Sullivan County next door but to no avail. Now the speculators are probably so strong that no very restrictive ordinances can be passed. If local people take no interest in longrun comprehensive plans under these circumstances, too few of the urban new-comers will do so to create them.

Agricultural District Legislation

The last remaining action of the 1971 New York legislature that I will discuss here is the passage of agricultural district enabling legislation. This legislation was sponsored by the New York State Agricultural Resources Commission, but farm organizations and several units of state government made inputs into it. It was supported by the Governor (as was 9028 and the Adirondack Agency) and passed unanimously by the legislature [10].

The agricultural district legislation was designed to keep good farmland in farming until it really is needed by other uses. Its goal is to minimize the disruptive influence of speculation on farming. It does not authorize any police power actions but it does provide for drawing lines somewhat in the manner of zoning. It contains both positive and negative components in the package of provisions it makes for districts, while zoning, of course, is only negative (prohibitive). One provision requires the real estate taxation of farmers on the basis only of the farm value of their farms, though it puts the state, rather than local assessors, in the position of determining farm value and for most practical purposes limits farm value

taxation to the districts.^{1/} This provision of the law is more important than it would have been prior to passage of the assessment improvement law.

The law, in addition to the tax incentive, encourages farmers by prohibiting ordinances that restrict normal farming activities, by instructing state administrative agencies to act to encourage farming in districts, and by increasing the difficulties government agencies encounter if they try to take land by eminent domain within a district. The law also provides that farmers may not be taxed by water, sewer, and other special service districts except for their house and a small lot. The most direct discouragement to nonfarm development, however, is provided by a restriction on the availability of public monies for creation of services that would encourage nonfarm building within the districts.

Two methods are provided for the creation of agricultural districts. but the second one is not authorized until 1974. The presently available method requires landowner initiative followed by county reviews, hearings and decisions, followed in turn by state reviews and decisions. The total process often takes more than 6 months but over 100 districts, approximating a million acres, have been formed to date. Farmers have taken a strong interest in the program, the press has been sympathetic, and both Cooperative Extension and state and county planning agencies have played active roles.

The agricultural district program offers farm people the opportunity to take concerted action in the face of advancing speculation but it does not create high and impenetrable fences around farmland. It creates a spirit that encourages aggressive investment in farming and stimulates agribusinesses to continue to provide the kinds of service and marketing supports that modern farming needs.

While agricultural districts come far down the list of preferences for most planners -- well below Bill 9028 --, it is likely that it will do more to encourage continuance of a strong agriculture in New York than police power regulations could have done. Agriculture is like a living organism. We speak of preserving organisms in formaldehyde but this substance preserves only the form, not the life. So it could be with police power regulations.

Land Purchase and Lease-Back in Suffolk County

A strong movement has been developed recently to preserve agriculture in Suffolk County on Long Island through public land purchase and lease-back [7]. This almost surely will completely fail to preserve the living component of this industry unless the government is willing to operate the farms itself at considerable loss. Once the public owns farmland there likely will be many restrictions placed on the use of fertilizers and pesticides, selection of crops and rotations, employment of migratory labor and the like.

^{1/} A special provision of the law permits similar arrangements for farms outside districts but the requirements of this provision are not very attractive.

Every extremist organization will be able to press its particular demands with special effectiveness on public land.

It appears, however, that some governmental mechanism other than agricultural districts will be needed in Suffolk County if agriculture is to be preserved. No action to date has been initiated to create districts in this area. All Long Island farmland could be sold immediately for prices far above farm value. Inheritance taxes are levied on the basis of sale price, not farm value, and these taxes alone could force discontinuance of farming in areas where land prices are this high, even if an agricultural district were formed.

Flood Plain Zoning, Runoff Restrictions and An Environmental Plan

Let me round out my presentation with brief references to three more items. These all bear 1973 dates. The first is a proposal to protect people from flood hazards by exercise of the power of the state to supervise local governments in their exercise of the power to control land use [19]. (This is not called state zoning but it would in effect be such. This actually would have been the device by which the state would have exercised its controls under 9028 and is the device authorized for use by the Adirondack Park Agency.) New York had a bad flood in 1972 and this proposal was made with that experience freshly in mind. The State Department of Environmental Conservation advanced the proposal and with the help of a senator whose farm was hard hit by flood waters, it passed the Senate. It was not considered by the Assembly, however. It is unlikely that it can be enacted into law in the near future.

The second of my three closing items is known as the Tills bill [16]. This bill was designated to give soil and water conservation districts the power to control runoff from farms and construction sites. Originally, it delegated some fairly strong powers, but as passed by the legislature it required farmers and contractors to file plans for controlling runoff then made provisions for enforcement only in the case of contractors. It was vetoed. It seems unlikely now that farmers will be subjected to runoff controls for some time.

The last item I wish to review briefly is the Environmental Plan for New York State. A preliminary edition of this plan was issued in June of 1973 and hearings have been held on it [21]. This report differs principally in relative emphasis from the OPC report cited above. It too calls for more public participation in land use decisions and speaks predominately of "controls" to attain this end. Many of these controls would involve exercise of the police power and a greater participation of professionals employed at the higher levels of government in the control process.

Summary

In New York as elsewhere, professional planners place great emphasis on the exercise of the police power to solve land use problems. In New York State, towns, villages and cities have full police power to control land use. Counties do not have this power and the state has not exercised its power openly and directly.

Since exercise of the police power to control land use has left many problems still unsolved, planners are urging that the control functions be raised to higher levels of government and be placed more firmly in the hands of professional employees who are more isolated from political processes. But to date the elected representatives of the people of the state have soundly rejected state zoning or any approximation thereto, except for the Adirondack Park. I have argued that its acceptance for this park is a special case and does not support a claim that we are undergoing a revolution in land use controls that will continue to spread.

The agricultural district enabling legislation of 1971 has produced a greater degree of public involvement in private land use decision processes than any other new legislative enactments in New York during the past decade. It is designed to keep good farmland in farming until it really is needed for other uses and attempts to accomplish this purpose through a package of nonauthoritarian provisions that encourage farming and discourage other uses.

UPDATE TO JUNE 1974

1. There has been a major turnabout in the willingness to accept state control of land use on the flood plains. The federal government in December 1973 passed legislation that will dry up most sources of mortgage credit in flood plain areas unless units of local government pass designated types of police power controls of land use in those areas. Stimulated by that action, the New York legislature passed Assembly bill 12370 which provides that the state may take action to insure the continued availability of mortgage money in flood plain areas if local governments fail to act quickly enough. This bill in effect provides for state zoning of flood plains.

2. I have learned that Suffolk County now is placing major emphasis on buying development rights from farmland owners, rather than buying the land outright. In this case the owners would retain the right to farm the land or to rent it to farmers for farming. In my judgment, this arrangement would be much more effective in assuring continued agricultural use of these lands. There would still be two problems:

- a) The program still will cost a lot of money.
- b) It will not be easy to arrive at an agreement on what development rights are worth. In any developing areas, some land sells for much more than other land and sometimes it is very difficult to predict which will sell for the higher price. This leaves each landowner hoping his land will sell for the high price. It leaves him, too, free to think and to argue that he should be paid a relatively high price if he sells his development rights to the government. In fact, it seems likely that the average asking price to the government for development rights would exceed the average price for which these rights in fact would sell if no government action were taken. This will lead almost certainly to the necessity for Suffolk County to use the right of eminent domain in acquiring development rights.

Suffolk County still has a major agricultural industry even though it is experiencing intensive urban pressure. It is appropriate that the people there experiment with new ideas for retaining at least some of their farming.

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