

**VOLUME 1961
NUMBER 3
MAY**

REPRINTED FROM

**WISCONSIN
LAW REVIEW**

■ **LEGAL AND ILLEGAL METHODS FOR CONTROLLING COMMUNITY GROWTH ON THE URBAN FRINGE**

Richard W. Cutler

WISCONSIN LAW REVIEW

Published by the Law School of the University of Wisconsin

VOLUME 1961

MAY

NUMBER 3

Board of Editors

THOMAS G. RAGATZ
Editor-in-Chief

JOEL J. RABIN
Note Editor

DAVID M. HECHT
Note Editor

JEREMY C. SHEA
Articles Editor

STANLEY F. HACK
Research Editor

WILLIAM J. SULLIVAN
Managing Editor

Members

RICHARD I. AARON
THOMAS E. ANDERSON
JOSEPH M. BERNSTEIN
JOHN C. CARLSON
PETER N. DAVIS
JERRY A. FINE
WILLIAM E. HERTEL
JAMES V. HURLEY
ALLAN J. JOSEPH
ROBERT M. KAMM

FRANK L. MALLARE
LARRY L. NAMEROFF
HUGH J. SCALLON
GARTH R. SEEHAWER
RICHARD D. SILBERMAN
ROBERT F. STRANGE
SAM T. SWANSEN
JOHN E. THOMAS
RICHARD L. VERKLER
NELSON H. WILD

THOMAS D. ZILAVY

FRANK J. REMINGTON
Faculty Advisor

Published in alternate months, January to July, inclusive.
Subscription price \$4.00 a year to all addresses.
Single copies \$1.00 each.

Member of the National Conference of Law Reviews
COPYRIGHT 1961 © BY THE UNIVERSITY OF WISCONSIN
ALL RIGHTS RESERVED

Published in alternate months, January to July, inclusive, at 213 W. Madison St.,
Waterloo, Wisconsin. Entered as second class matter under the act of Aug.
12, 1912. Application for re-entry made at Waterloo, Wisconsin Oct. 20, 1960

Acceptance for mailing at special rate of postage provided for in Section
1103, Act of October 2, 1917, authorized November 12, 1920.

CITE AS 1961 WIS. L. REV. 000

Legal and Illegal Methods for Controlling Community Growth on the Urban Fringe

RICHARD W. CUTLER*

CONTENTS

	Page
I. The Effect of Community Growth Upon Local Taxation.....	371
II. The Search for Ways to Control Community Growth.....	372
III. Community Objectives in Seeking to Control Growth.....	373
IV. Ordinances and Policies Seeking to Attract More Industry and Commercial Business to the Municipality.....	374
A. Zoning	374
1. The Suitableness of the Land in General.....	374
2. The Suitableness of the Stage of Community Development When Industrial Zoning Takes Place.....	375
3. The Reasonableness of Quantity of Land Set Aside for Industry	376
4. Exclusive or Noncumulative Industrial Zoning.....	377
B. Municipal Aid in Developing Industrial Parks.....	378
C. Tax Assessment Policies Favorable to Industry.....	379
D. Comprehensive Planning to Develop Municipal Services Required by Industry.....	380
V. Ordinances to Assure That Residential Development Consists of Larger Homes on Larger Lots.....	380
A. Zoning for Large Minimum Lot Sizes.....	380
B. Zoning for Homes of a Specified Minimum Size.....	382
C. Strict Building Codes.....	383

* B.A. 1938, LL.B 1941, Yale Univ.; member, Connecticut, New York and Wisconsin bars; partner, Brady, Tyrrell & Bruce, Milwaukee, Wis.; Chairman, Land Use and Zoning Committee, Metropolitan Study Commission, Milwaukee County, 1957—; member, Southeastern Wisconsin Regional Planning Commission, 1950—; Greater Milwaukee Committee, 1957—; alternate member, Milwaukee Development Group, 1961—; city attorney, Brookfield, Wis., 1954-60 (while the city nearly trebled in population); and chairman, Subcommittee of Urban Problems Committee, Wisconsin Legislative Council, which drafted Wis. Laws 1959, ch. 261, completely revising Wisconsin's city and village incorporation laws and substantially revising Wisconsin's annexation laws.

For other articles by the author in the general area discussed here, see Cutler, *Characteristics of Land Required for Incorporation or Expansion of a Municipality*, 1958 Wis. L. Rev. 6; Cutler, *Problems of Urban Growth—Can Local Government Handle Urban Growth?*, 1959 Wis. L. Rev. 5; Cutler, *Wisconsin Limits Incorporations*, 49 NAT'L CIVIC REV. 317 (1960).

The author wishes to express his appreciation to Mr. Adrian Schoone, without whose research assistance this article would not have been possible. The author also expresses his appreciation for their valuable ideas to Prof. J. H. Beuscher of the Wisconsin law faculty, Mr. Dennis O'Harrow and Mr. C. McKim Norton of the Regional Plan Association Inc. of New York, and Mr. Robert D. Sundby, former legal counsel to the League of Wisconsin Municipalities.

D. Requirement of a Garage on Every Lot.....	384
E. Aesthetic Control Over the Design and Layout of New Residences	384
VI. Ordinances Requiring New Residential Construction to Contribute a Larger Share of the Cost of Public Improvements Which Are Made Necessary by the Construction.....	385
A. Subdivision Control Ordinances Requiring the Developer to Install at His Expense Public Improvements Which Are in the Street or On Site.....	386
B. Subdivision Control Ordinances Requiring Dedication of Land for Parks and Public Spaces.....	387
C. Payment in Cash Toward Cost of Parks, Public Sites, School Sites, etc.....	390
D. Negotiated Dedication of Land or Payments in Cash as a Condition of Plat Approval but Not as Part of an Ordinance.....	392
VII. Policies Seeking to Channel Residential Growth So That It Is (a) Slowed Down or (b) Located More Logically in Terms of the Expense and Feasibility of Providing Community Services, Especially Sewer and Water.....	392
A. Control by Limiting the Number of Building Permits.....	393
1. By a Quantitative Quota.....	393
2. By Imposing a Large Fee for Building Permits.....	393
3. By Imposing a Moratorium on the Issuance of Building Permits	393
B. Controls by Buying up Property.....	394
1. By the Purchase of Land in Fee Simple.....	394
2. By the Purchase of Development Rights.....	394
C. Lower Assessment for Farm or Vacant Land.....	395
D. Tax Abatement for Vacant Land.....	395
E. Zoning to Inhibit Development in Special Areas or for a Period of Time.....	396
1. Zoning for Semipublic or Recreational Use.....	396
2. Zoning Against Development for a Period of Time.....	396
a. Insincere Zoning of Entire Municipality for Agricultural or Large Minimum Lot Size Use.....	396
b. Zoning in Stages.....	397
c. Zoning the Urban Services Area.....	397
F. Zoning for Cluster Subdivision or Planned Residential Development	398
G. Prohibition of Subdividing Unless School Facilities Are Adequate	398
H. Requirement That Land Not Be Subdivided Until Local Sanitary Sewer Is Available.....	401
VIII. Conclusion	402

I. THE EFFECT OF COMMUNITY GROWTH UPON LOCAL TAXATION

Since 1945 the decentralization of America's metropolitan areas has been proceeding at a rapid pace, which shows no sign of slackening in the early 1960's.¹ The net movement of vast numbers of

¹The rapid and unplanned growth in the suburbs has been caused by many factors, which have been fully discussed in other articles. In short summary, they are the decentralization of population in our metropolitan centers brought about by such subcauses as the expanded use of the automobile, the post World War II FHA credit for building homes, and the new leisure time which has been made available to people by advances in industry. Other factors which have led to the urban sprawl are the desire of many young couples to live on a larger plot of land and to escape the drab, ugly city neighborhoods. Also, there is the post World War II baby boom which has necessitated a rapid increase in

persons to the suburbs has changed the face of the countryside near our cities. Shopping centers, brand-new residential subdivisions, and new one story factories are strewn across land which was recently vacant. Schools, roads, sewer and water systems, and many other costly improvements had to be built in these new areas.² The revolutionary shifts in population have, together with other causes, skyrocketed the expenditures of local government, both in the central cities and the new communities on their outskirts. For example, between 1950 and 1960 municipal and school budgets in the city of Milwaukee doubled, whereas those in Milwaukee county suburbs tripled.³ The rapid rise in municipal budgets does not mean that metropolitan areas have caught up with the demand for services. If anything, local governments have tended to fall behind in their need for new expressways and sewer and water systems, because they could not be built or financed fast enough to keep up with the rapid moves in population.

II. THE SEARCH FOR WAYS TO CONTROL COMMUNITY GROWTH

From one seacoast to the other, individual municipalities have sought ways and means of controlling the rate and nature of their growth. A few municipalities carefully planned and controlled their growth both effectively and legally. Many communities, acting in desperate haste because of the growing crisis in municipal finance, have adopted measures which they assumed would be effective in controlling growth. However, these measures often proved ineffective or illegal, or both.

Many techniques are so new that their effectiveness and legality remain unproven. Typically, a municipality believes that growth can be controlled by one approach, such as by zoning or subdivision control. Professional land use planners know that a multi-pronged approach would be more likely both to accomplish the desired result and to be upheld in court. However, many of the key decisions along the urban fringe are made, in Wisconsin at least, without professional planning advice or even against it. This article will present a general survey of the comparative legality of many major methods for controlling community growth. If a municipality

dwelling units above that of previous years.

² The Southern California Research Council estimated that each family moving into the Greater Los Angeles area in 1958 would, in the following twelve years, require the expenditure of \$10,200 for the construction of expressways and roads and \$3,090 for all other facilities. PAMONA COLLEGE, *THE COST OF METROPOLITAN GROWTH*, (1958).

³ 48 *Citizens' Governmental Research Bureau, Inc. Bull.*, Report No. 7, Oct. 29, 1960.