

# SECTION F. LAND USE

## INTRODUCTION

### --PURPOSE OF REPORT--

The Land-Use Subcommittee would like to thank the Lee County Board of Supervisors for the opportunity to conduct this study for the citizens of Lee County. The six men who volunteered to serve as members of the Subcommittee represent unincorporated, as well as incorporated, areas of Lee County. Greg Dyer serves as chairman, and Dan Donovan is secretary; committeemen are Leon Ewart, Matt Green, Rick Greenfield, and Hughie Tweedy. All the members attended most, if not all, of the town meetings held throughout the county.

Initially, the Southeast Iowa Regional Planning Commission (hereafter referred to as SEIRPC) steering committee conducted a general survey. From that survey and from several town meetings, many questions about zoning and land-use controls were raised. So, with the steering committee's blessing, the Land-Use Subcommittee (mentioned above) conducted a survey that specifically addressed the issue of zoning and land-use controls. The survey questions were designed to be clear and to the point, as well as easy to understand.

The Subcommittee's survey was sent only to resident landowners in the unincorporated areas of Lee County. It was felt that citizens in the incorporated areas should not be allowed to help make policy pertaining to private property outside their jurisdiction. Surveys were mailed to 300 resident landowners whose addresses were randomly chosen by a computer; 150 responses were returned with many welcomed comments. The enormous response makes a powerful statement as to the concern of Lee County landowners toward property rights and land-use restrictions. Obviously, private property rights, land-use, and the laws governing land-use (zoning) are hot topics of conversation, and evoke much emotion now – just as they did twenty-five years ago, and as they will twenty-five years in the future.

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Sample Survey

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## LEE COUNTY LAND USE SURVEY

Lee County's Land-use subcommittee is conducting a survey concerning land use and related matters. This questionnaire will be sent ONLY to resident landowners in the unincorporated areas of Lee County. Since this study will directly affect your private property rights and the use of your land, actual property owners only will be surveyed. The results of this survey are EXTREMELY IMPORTANT. This will tell your elected officials how you want them to act on your behalf. Your questionnaire is one of 300, so your response is valuable to Lee County. Please return this survey in the enclosed envelope by August 15, 2001. If you have any questions concerning this survey, please contact Greg Dyer at Chem Gro Inc. 319-469-2611.

1. Are you in favor of zoning in the unincorporated and/or rural areas of Lee County?

\_\_\_\_\_ No                      \_\_\_\_\_ Yes

2. What do you feel should be the guiding principle to land use in Lee County?

\_\_\_\_\_ Landowners                      \_\_\_\_\_ Government Control

3. Who do you think would be the best choice for deciding land use issues?

\_\_\_\_\_ Landowners                      \_\_\_\_\_ The Government

4. What type of land use policy do you think would be best for Lee County?

\_\_\_\_\_ Landowner Initiated Decisions                      \_\_\_\_\_ Government                      Made  
Decisions

5. What types of land uses do you think the government should control?

\_\_\_\_\_ None    \_\_\_\_\_ Park and Recreation    \_\_\_\_\_ Environmental  
\_\_\_\_\_ Industrial    \_\_\_\_\_ Schools    \_\_\_\_\_ Retail Business    \_\_\_\_\_ Highways  
\_\_\_\_\_ Farming    \_\_\_\_\_ Residential

6. What types of land use decisions should be left to the landowner?

All  Retail Business  Parks and Recreation  
 Residential  Industrial  Schools  Environmental  
 Highways  Farming  None

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7. What level of bureaucratic regulation should govern land use?

None  Low  Moderate  High

8. Do you think government controlled land use would have a negative or positive impact on the county?

Negative  Positive

9. Do you think landowner based decisions have a positive impact on the county?

Yes  No

10. Are you satisfied with the land use policies the county has now?

Yes  No

11. Do you want to make the decisions for your property or do you want the county to?

Landowner  The County

12. If land is needed for economic development, as in industrial or commercial use, how would you prefer it be sought?

Bought outright by developers

Developers pay landowners for options on land for later use.

Supervisors designate your land as industrial or commercial for developers' future use.

Thank you for taking the time to answer these questions. We welcome any comments you have. Please use the back of the page if more room is needed.

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## CONCLUSIONS of SURVEY RESPONSES

1. 95% of those surveyed are against any zoning in the rural areas of Lee County.
2. 99% feel that landowners should guide land use.
3. 1% of those surveyed felt the government should have any involvement in land-use choices.
4. Almost 100% felt that landowners should be solely responsible for land-use policies.
5. A) Less than 10% felt the government should be involved in land use restrictions with respect to farming, residential, or retail business.  
B) An overwhelming majority did not feel that the government should be involved with land use in the area of industry, environment, or schools.  
C) Surprisingly, only a little over 50% believed that the government should be involved in land-use as it applies to highways and parks.
6. The purpose of land-use restrictions would be to extend the arm of government control in the area of agriculture, residential construction, retail business expansion and industrial uses. Percentage of those surveyed who felt that this should be controlled by landowners:
  - Agriculture = 98%
  - Residential = 87%
  - Retail Business = 78%
  - Industrial = 59%
7. 84% of those surveyed felt the level of government involvement in land-use should be "low to none."
8. 92% felt that increased government involvement in land-use would cause a "negative effect."
9. Less than 5% felt that landowner initiative would be negative.
10. Many of the surveys returned commented that they were unsure of the current land-use policies. We applaud and support the Board's initiative in relation to the Lee County web site. This, in and of itself, may fix many of the shortcomings related to communication between the Board and its constituent.
11. 100% wished to maintain their current control of their property.

12. 98% believed that land should be obtained by contracts between buyer and seller or bought outright. Less than 2% believed Supervisor intervention would be beneficial.

## LAND USE COMMITTEE SURVEY COMMENTS

[Note: all comments are typed as written, except for corrections in spelling, typing out abbreviations, deleting of expletives, and separating different clauses with commas. The comments were not altered for grammar or sentence structure.]

1. - #107

Survey is too vague. When you're talking government, do you mean city, county, or what? I think this survey is just going to raise more questions rather than answer any. My opinion: if you own it -it's yours to do with what your want. If I wanted regulations, I would have purchased property in city limits.

2. - #191

We feel there is already too much control by the government. We do not need them to control our land also. This is supposed to be a free country, and by controlling our land they are taking another freedom away from the American public. Let us pray our children will have just a little taste of the freedoms we knew years ago.

3. - #151

A major reason for moving to the rural area from Keokuk was to have the freedom of doing what I wanted to do with my land and home, without the expense and hassles of building permits, zoning laws, etc., etc. Should the 'bureaucratic regulations' become more restrictive in this area, I would no doubt move, probably to another state. Yours truly, #151.

4. - #3

The wording in these questions is very slanted. I think this indicates that the survey is designed to have a specific outcome. That being said I've answered truthfully.

5. - #218

The reason I prefer the country living is just because of no zoning. I have purchased land, and I don't think a governing body should have control. The government is trying to control every aspect of our lives, whether it be transportation, to raising food on the farm. Give it back to the People.

6. - #138

I have a bitter taste in my mouth with government running over my land helter skelter, making a highway through it from one end to the other with lots of point rows and dividing the farm, and then closing down the country road so we have to drive with all our farm machinery 3 3/4 miles to get to the other half of the farm. They don't know a thing about how a farm operates and could care less, and our supervisors aren't any better.

7. - #140

I think the landowner should have total say in his property unless he/she has proven to be irresponsible. Then help from the local government should be there if needed. But only then & only for support, not a dictatorship. And we all know once government is involved, they usually overkill and screw up!

8. - #24

All government officials should resign. Government should be run by 'elected' volunteers. Then they would be responsible for their actions.

9. - #154

We are losing our freedoms. If government makes the decisions for our property, it should be our choice to sell what land we want to -not be told by some 'official.'

10. - #62

Let the taxpayer make his own decisions, (they) don't need help from anyone else.

11. - #276

(Referring to Question #10) I'm not sure what land use policies the county has now. I do know Lee County decisions of land, etc. should be left up to successful businessmen or women that includes farmers.

12. - #153

It depends on what kind of development. Government should not be able to force people to accept developments that will ruin or cause hardship on the people without their voice being heard, and the government should have the right to keep an eye on developments that cause hazards to ruin a community, therefore both parties need to work together and not let either one destroy the other. I think primary residents should be able to have a large voice in their own property unless it is causing problems for others such as trash, unkept property, or poorly built homes, etc.

13. - #108

I am not in favor of giving up an individual's rights to politicians. Politicians do not want land use policies to keep things the same, they want land use plans so they can change things at their discretion. This puts more power in their hands and lessens individual freedoms.

14. - #100

The people who buy and pay for the land should have every 'right' and all exclusive 'rights' to anything and everything pertaining to the land they bought and paid for. The government should have 'no' rights whatsoever. To my and our land -they have too much control of things that are none of their business already!!! My property, my money, my life, my decisions! They can (expletive deleted)!!! Anyone in agreement with any zoning -should go back to town where they **belong!!!**

15. - #196

We need some blacktopping done in south Lee County. Not big road constructions, just blacktop.

16. - #45

(Referring to Question #10) Am not aware of the policies so can't answer honestly at this time. If the Policies now benefit us then my answer is "Yes, satisfied." It is rare that decisions by any government group benefit the majority of folks. It usually just benefits those that can fill their own pockets with \$.

17. - #282

I think most farmers have enough sense to know what is best for their land.

18. - #163

I believe that our supervisors have knowledge that is not available to the ordinary landowner. There is a time for a get-together, with sharing and not half-truths or sly presentations. I believe that the county supervisors are making one terrible mistake on the scatter out theory for the needy persons in Lee County. Of course I am no expert, and have little of the so-called social services knowledge that is causing present changes. There are a few places where governmental control would be very desirable, such as places where non-serviceable vehicles have accumulated. But if that is controlled where does it stop?

A smelly hog lot.

A noisy repair shop.

Persons testing out race cars for pre-race reasons,

Time seems to change everything that could bother us, and cause us to want county supervisors, or others ruling our every move. And I believe the county officials have just about all they need to care for at the present time.

19. - #74

I think landowners should have the ultimate right in what they should be able to do with it. I don't think the government should be allowed to come in and tell landowners that they can do this yet not another; quality farm ground and land should not be zoned.

20. - #220

Thank you!

21. - #187

The less government the better.

22. - #19

I am strongly against the zoning of rural Lee County. I bought my house in the county for the freedom, and feel if this happens then that will be taken from me.

23. - #17

Land should never be taken against landowners wishes.

24. - #136

Comments were not legible.

25. - #85

A survey such as this seems to be loaded to get the answers desired. I do like to have a 'say' in use of my land, but also feel many areas of control need to be handled by the government.

26. - #183

If nuisance issues arise in county there should be method to resolve said issues, for example trash dumping.

27. - #175

I think we should work together on land use. Some things the government should have input on, and some it should not. Power and responsibility should in most cases remain with the landowner.

28. - #234

When the county needs work done it should hire people within the county.

29. - #283

Our rural neighbors in Henderson County, Illinois. All have seal coated roads. Also in all of Illinois and Missouri. You have a hard time finding a gravel road. Iowa is typically behind the times.

30. - #124

I don't believe in government control. I do believe we are somehow going to have to get agricultural land zoned, so our young farmers can get started without having to compete with land developers. There is not way farm income can compete! If it is zoned agricultural then farmers would have a prayer!

31. - #134

I live in an unincorporated area in northern Lee County, and I would be very angry to see zoning in these areas.

32. - #165

Pertained to county roads.

33. - #165

Thanks.

34. - #211

If a land use plan is adopted there should be a bipartisan committee to oversee the plan.

35. - #204

I think, let landowners take care of their own property. If government can tell us what to do, then why are we called landowners?

16. - #29

The landowners and supervisors should design zoning.

37. - #106

Zoning is a scary word to many. As a landowner one should have a right to make decisions with that ownership, yet those decisions should be within reason or maybe certain limits. Pollution, water or air, is major concern for the common good of all. Good common sense should, and did for years, take care of most problems. Today that quality or virtue seems to be absent in many of our younger generation and in many of our politicians, so I am reluctant to give authority to anyone without proven record of good common sense.

38. - #120

We do not want zoning in the county.

39. -#216

A few people in government should not be allowed to control the lives of all the people in our county.

40. - #212

I am surprised you should even ask a question like #11! (Referring to: 'Do you want to make the decisions for your property or do you want the county to?')

41. - #12

The two entities need to work together. It would be nice to have car junkyards regulated and out of sight. The county should or could have an overall policy in the best interest of the general public.

42. - #35

We live in the county because we want to not because we have to. If we wanted to live in the city we would. If things change and the county becomes the city we'll move, simple as that.

43. - #169

We oppose supervisors designating land for industrial or commercial development. It is important to have land use plans to help locate future development, but these plans and sites need approval of surrounding neighbors and landowners.

44. - #20

These landowners in north Lee County are always wanting everything. They've got best roads and bridges. Best land where tiles will work, but do not pay their share of taxes. I need a little help. I guess we will have to work on the state representatives and senators.

45. - #256

Zoning is the way to avoid conflicts that arise from divergent land uses occurring next to one another. Zoning eliminates public nuisances (noise, air, water, environmental). It also contributes to planned development rather than haphazard activities that future generations must deal with. It does not preclude most current (legal) activities or uses, but provides methods for 'grandfathering' preexisting uses. On the other hand, incompatible uses are eliminated only if such activities experience full or partial destruction due to specific acts (fire, wind, etc.). People learn/know the rules, then can make informed decisions (e.g.) Do I want to move/live outside of town where a pre-existing hog confinement is within the area or nearby? I am a former land use planner and understand fully the anxiety and fear people have about the 'government' telling them what to do about/with their property. Unfortunately, some people do not make good decisions and are not responsible land stewards. Zoning laws do not need to be strongly restrictive, but can focus on areas that seems to cause the most trouble, i.e., those that have a large number of variance requests, those that end up in court, etc.

## LAND-USE SUBCOMMITTEE RECOMMENDATIONS

From information gathered at town meetings, surveys, and many conversations with Lee County residents, this Subcommittee unanimously recommends that under no circumstances should this study be considered a platform upon which zoning and land-use controls can be implemented.

It is also strongly recommended that land-use planning and zoning commissions not be established in Lee County.

According to this Subcommittee's survey, there is overwhelming opposition to county zoning by resident landowners in the unincorporated areas of Lee County. The members of this Subcommittee concur in the opinion that the Supervisors should consider this report a mandate rather than a mere recommendation.

During the course of this study, Subcommittee members spoke to many state, county, and city officials, as well as regional planning commission members. These public servants were asked if they knew of any studies that had been done concerning the negative impact to landowners when zoning and land-use controls were imposed; not one study could be cited. This Subcommittee recommends that when decisions of this magnitude are proposed, all aspects of such proposals be explored thoroughly: both the negative as well as the positive. If zoning and land-use restrictions are imposed, it appears easy for officials to change the rules. This is often referred to as the "slippery slope" theory. If regulations are imposed, we quickly slide downhill into a thick morass of rapidly changing layers of restrictions.

The Subcommittee further recommends that the citizens of Lee County continue to use their private property as they have done in the past. This is guaranteed in the Constitution of the United States of America. Amendment Five states in part, "No person shall be deprived of life liberty, or property without due process of law; nor shall private property be taken for public use without just compensation." Amendment Fourteen states in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The fourteenth Amendment has been broadened by judicial interpretation to become an important weapon in the continuing defense of the civil rights and individual liberties of all Americans. Its due process clause is generally regarded as protecting all rights guaranteed in the Bill of Rights from state invasion.

After concluding the survey, examining the respondents' comments, and deliberating the consequences associated with a proposed change in the county's current statutes, this subcommittee cannot endorse any movement toward land-use restrictions that would forfeit the liberties and freedoms outlined in Iowa 's state and federal constitutions. It is this Subcommittee's recommendation that any and all political inquiries into land-use restriction for any purpose, at the present time or in the future, should be defiantly opposed.

## LAND USE SUBCOMMITTEE MEMBERS' COMMENTS

The Lee County Supervisors contracted with SEIRPC to help facilitate a comprehensive study, including land-use controls. This Subcommittee questions to what extent the county officials researched the rural residents' needs or wants before taking these steps.

The Land-Use Subcommittee feels that zoning and land-use controls are a thinly disguised attempt by governmental officials and special interest groups to control the citizens. This effort is in total opposition to the U.S. Constitution (Amendments Five and Fourteen), and to the concept of free enterprise.

The Comprehensive Plan has been presented to the citizens of Lee County as being both a way to spur sorely needed economic growth in the county while minimizing the use of land, that some consider to be annoying or detrimental, for the ultimate greater good of the county. This, they say, will be done by designating land-use within a certain area or zone and managing that use according to the parameters laid out by the Comprehensive Plan. Neither claim is true.

The designating of land-use under the parameters outlined by a Comprehensive Plan will not spur economic growth for two reasons. First, the Comprehensive Plan is not a plan as is commonly understood, i.e. something that provides a roadmap to a certain goal. It is only a generalized document that outlines broad categories that the county is interested in monitoring and affecting, and gives approximate goals pertaining to those areas, but no specific recommendations. It is simply not detailed enough to provide anyone looking at it with enough information to make decisions, and there is no possible way to use the Plan as a blueprint for drawing businesses to the county and creating jobs. In reality, the main function that can be demonstrated pertains to the legal arena; it serves to clear the necessary legal hurdle for a county to designate land use, i.e. zone. In other words, before it can zone, the county must adopt a basic outline and goals for what they will be zoning. However, this is not an economic strategy, and to promote the Comprehensive Plan as such is inaccurate.

Second, since adopting a Comprehensive Plan in the legal and practical sense would be only to clear the way for county zoning, the real issue in terms of economic activity is the claim that land-use will bring economic activity in the form of jobs, businesses, and skilled labor to the county. The Subcommittee can see no connection between economic growth and designating land-use. This can be demonstrated aptly, as we all are aware of areas designated for commercial use that have sat undeveloped for years in Lee County, while at the same time businesses have come to the county in areas that are not zoned. Obviously, other factors are involved that draw businesses to the area than simply designating land usable for commercial purpose.

To actually bring economic activity to our area, what is needed is an economic strategy to provide the actual blueprint to drawing businesses to the county. As a general rule, this will involve two "free market" type of incentives, either promoting the assets and benefits of the county to the prospective business, or demonstrating that the county offers a lower relative cost of doing business vs. other locales, in order to entice

businesses to come to our county to set up shop. These incentives and advantages once identified are then presented in a promotional package offered to businesses in a way that differentiates us from other jurisdictions, as mentioned in the preceding paragraph. Neither the Comprehensive Plan nor zoning can do that.

Furthermore, in terms of the issue of land use for economic activity, any zoning that will come from the Comprehensive Plan will designate all land use, not just commercial ones, and therefore affects all uses of land, not just economic. If one of the goals of the county is simply to bring economic growth to our locale, it follows then that it is not necessary to have blanket control by the county government over every acre in the county. To generate economic activity only requires the county to target its efforts to specific areas. Generally, this is considered to be: transportation, schools, parks, and heavy industry (due to noise, traffic, and emissions issues). Roads and parks are generally handled by the federal and state governments, and to a lesser extent by the county; schools and heavy industry are generally handled by the county and cities, and to a lesser extent the State. In terms of land-use for these categories, none require zoning to achieve the goal of excluding land-use to one type. Any desire by local and state governments to obtain needed property for this purpose can be satisfied simply by buying the particular ground needed on the open market from a willing seller, either directly through a third party, or through options taken out on the land. All other economic (and non-economic) issues of land-use can be handled within the current legal framework laid down by state and federal governments, and left unzoned by the county.

In fact, it is in this regard that zoning can be harmful to economic activity. Since zoning designates an area to one type of land-use only, all other uses are excluded. As a result, economic activity is choked in those areas where it is not allowed, thereby limiting the amount of activity that can occur within it on a county-wide basis. This hurts small businesses, and home-based small businesses, in particular. It suppresses the entrepreneurial creativity of the citizens, limits the tax base, and hurts us competitively with other locales that don't have zoning in terms of drawing businesses and skilled labor. Some will attempt to diffuse this fact by saying that the county would be "willing to work" with people who desire to start businesses in non-commercially zoned areas, but in reality that promise would be no guarantee of doing so, and in fact is wide open to abuse and corruption. Because of the total power the zoning board would have over land use, such incentives can be used as a carrot or stick, and leaves the county open to ambitious people with a predetermined ignorant, corrupt, or even radical agenda that is completely irrelevant or hostile to what is best for the county.

Even if that corruption could be avoided, that still leaves the basic downfall of zoning in terms of economic activity. By restricting economic activity through zoning, the economic makeup of the county will reflect the ideas of a narrow few who sit on a zoning board, instead of a diverse makeup based on the ideas and creativity of the entire population. That not only limits creativity, but multiplies the risk of failure if bad decisions are made. This fact is self-evident: no one person or group of persons can possibly have the depth of knowledge to know how to make decisions for every type of business in every type of field. Therefore, no zoning board could adequately make the necessary land-use decisions for the whole county. The Subcommittee feels that the best avenue for economic growth is that if the county needs land to be designated for a certain use, purchase it on the open market, and leave land-use decisions up to the property owner

within the limits of the law. Historically, the best results are found when decisions are left with able, trained, experienced, and knowledgeable citizens, rather than bureaucrats ruling on areas in which they have no expertise.

Finally, zoning opens the door to layer upon layer of bureaucracy, with all the associated fees, permits, penalties, regulations, paperwork, and hoop-jumping that comes with it. As was stated earlier, one of the ways to create economic growth is to provide a low-cost environment to do business. By adding all the above-mentioned bureaucratic hurdles, it adds to the cost of doing business, making the county less attractive compared to other locales. In today's competitive world, rural counties such as Lee cannot afford to create high barriers that drive away businesses and jobs.

By remaining free of zoning and land-use controls, the Subcommittee members are confident Lee County has a distinct advantage over other counties that are so restricted. The Subcommittee members agree that the best system for economic development is the free enterprise system. (See survey question 12.) Zoning lowers property values by limiting its uses. Growth and prosperity in the regulated area will be limited. Zoning and land-use controls eliminate all property buyers, except for a potential buyer interested in the one government-approved use. If the Lee County Board of Supervisors adds additional unnecessary (land-use) rules and regulations, an unfavorable economic atmosphere will be created that could deter industrial growth or start-up. It should be noted that Lee County is unique in that it is bordered by counties from other states (Missouri and Illinois) who have very limited building codes along with no land-use restrictions. This has led to the enticement out of Lee County of at least one successful taxpaying local industry.

Zoning and land-use controls are not an inevitable result of progress. These governmental controls are an experiment in centralized control that has failed, often with devastating consequences.

Also, zoning will not protect the citizens of Lee County from "problem land owners." Throwing aside that the term itself is very subjective, to say that zoning will stop undesirable uses of the land is not accurate. Zoning regulations, unlike laws enacted in our legislatures, are not passed by elected bodies of representatives and then codified into the existing law. They can easily be changed on a case by case basis with variances and exceptions, leaving them wide open to lobbyists and anyone able to influence the zoning board into making the change. Again, an apt example of this can be seen in any zoned city in Lee County; it is obvious that zoning does not prevent problem landowners, nor maintain what the zone was designated as.

The numbers does not justify using "problem landowners" as justification for zoning. Rarely in a county are more than five percent of the landowners considered to be at the level of what would be considered a nuisance. Generally, the worst damage they can do would be to affect the property of those bordering them. A zoning board, however, can mess up an entire county with the majority vote of a board that is usually less than ten people in number. The Subcommittee thinks it is unfair for 95 percent of the people to be punished and controlled for the five percent who are the problem, and we believe that the legal structure as it exists is adequate to deal with hazardous or nuisance landowner actions.

If the county needs to designate an area for one particular use, it can do so by various means on the open market. First, developers and other investors can supply capital along with or instead of the county for buying and improving land to meet the specifications for that particular purpose (for example, building an industrial park). Not only would this defray the expense of buying and developing property, but it may enable the county to achieve a return on its investment and help its financial position, yet give the management details over to experienced and qualified people.

Secondly, it could take out options on a particular property. The county would contract with a landowner of a particular property to have the option to buy his property should he/she choose to sell it within an agreed-to period of time. This would make the county first in line for the property should the seller want to dispose of it.

If the county supervisors want to have land designated for a particular use, the best way to do that is through a willing seller. By getting title to the land through compensation of the fair value of the property from the seller, the county would earn the right to control how it is used. This is a better option than zoning, which gives control of the property to the county, but makes the owner bear the burden of taxes, upkeep, maintenance, and all other costs. Since the actual amount of property the county needs to control is minimal anyway, this more targeted, free market approach to land acquisition and use would be better suited to both the needs of the county and the will of the citizens.

A land-use plan would empower the government with an extension of the regulatory power they already have in the areas of highways (DOT), schools, parks (DNR), and environmental controls (EPA). These entities would then exercise control into the areas of agriculture, residential construction, retail business and industrial development in the unincorporated areas of Lee County.

Since the recent terrorist attacks on this great country, the government has asked U.S. military personnel to risk the ultimate sacrifice to protect American liberties and to assure that people in foreign countries be accorded the same freedoms. As the world moves towards freedom and prosperity, this Subcommittee maintains that we should not take a step backwards by imposing land-use policies in the form of zoning. We should not grant the local government any powers which have the potential of being abused.

The citizens, through this survey, have made it clear that they do not want to see zoning enacted, and we believe that the county supervisors doing so would mean political suicide. The Land-Use Subcommittee hopes the county officials will listen -not only to our recommendations, but to the will of the citizens - and not enact county wide zoning.

## CONCLUSION

Zoning and land-use regulations effectively shift control of private property to government officials (zoning boards, planning commissions, and other special interest groups). Instead of citizens being free to use their property as they think best, zoning makes the assumption that any use is prohibited unless proven otherwise. A permit is needed for most land uses. Instead of actually owning the land, the owner has only the right to pay rent on it in the form of property taxes. He legally owns the property, but for practical purposes, if he cannot use his property as he sees fit, it is not really his.

Modern zoning laws presume that no citizen has a right to control his own land, but that every citizen has a right to control his neighbor's.

The United States was founded on the principles of individual freedom, free markets, private property, and limited government. When the government is involved in the issue of land-use, it should be to protect -not destroy- the inherent and inalienable rights of its citizens.

Perhaps the motto of this great State of Iowa says it best. The words, which are proudly displayed, on our State Flag proclaim: "Our liberties we prize and our rights we will maintain." Lee County should do no less.

## EXTRA-TERRITORIAL ZONING

Extra-territorial zoning by incorporated cities is outlined in the Iowa code, Title IX, Chapter 414, Section 23.<sup>1</sup> In terms of the county, the Iowa legislature has not given the county authority in the extra-territorial zoning process, with one exception: if the county is currently zoned or should become zoned in the future. Although laws have been proposed to allow citizens within the proposed area to have recourse against extra-territorial zoning, as of this writing they have not been passed.<sup>2</sup> The one other possible collaboration is addressed by the law would be to contract a non-binding 28E agreement between the city and county and have the county advise the city on the zoning implementation process. Therefore the Land Use subcommittee believes that there are no specific policy recommendations that can be made to the county, other

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### <sup>1</sup> 414.23 Extending beyond city limits.

The powers granted by this chapter may be extended by ordinance by any city to the unincorporated area up to two miles beyond the limits of such city, except for those areas within a county where a county zoning ordinance exists. The ordinance shall describe in general terms the area to be included. The exemption from regulation granted by section 335.2 to property used for agricultural purposes shall apply to such unincorporated area. If the limits of any such city are at any place less than four miles distant from the limits of any other city which has extended or thereafter extends its zoning jurisdiction under this section, then at such time the powers herein granted shall extend to a line equidistant between the limits of said cities.

A municipality, during the time its zoning jurisdiction is extended under this section, shall increase the size of its planning and zoning commission and its board of adjustment each by two members. The additional members shall be residents of the area outside the city limits over which the zoning jurisdiction is extended. They shall be appointed by the board of supervisors of the county in which such extended area is located and for the same terms of office and have the same rights, privileges, and duties as other members of each of said bodies.

Property owners affected by such zoning regulations shall have the same rights of hearing, protest, and appeal as those within the municipality exercising this power.

Whenever a county in which this power is being exercised by a municipality adopts a county zoning ordinance the power exercised by the municipality and the specific regulations and districts hereunder shall be terminated within three months of the establishment of the administrative authority for county zoning, or at such date as mutually agreed upon by the municipality and county.

<sup>2</sup> . As of the date of this report: HR 2185, Phil Wise, D - Keokuk has been introduced in the Iowa legislature.

than that as the issue of county zoning has been discussed previously in this report, the committee does not believe that county zoning should be presented to the citizens as a 'lesser of two evils' to extra-territorial zoning.

There is a need to give a review to the extra-territorial zoning issue in detail because of the reality that it has been placed into the code by the Iowa legislature and is (strictly in a legal sense) a legitimate instrument that can be used by cities. That use will at the same time have a profound effect on land use of citizens' property in the unincorporated areas under county jurisdiction, which falls within the scope of this report. Due to a the lack of county supervision written into 414.23, the citizens in extraterritorial areas are given little recourse in the matter, and we wish to provide information and recommendations to citizens in the future who may fall within a proposed area of extra-territorial zoning. An extra-territorial zoning initiative has been proposed only by the city of Keokuk, but we believe the conclusions drawn from an analysis of the initiative can be applied in general. The following analysis is drawn from the following documents: Keokuk Comprehensive Development Plan, October 1999, Extraterritorial Zoning Study, January 2001, Report to the O.K. (Outside Keokuk) Committee, July 14, 2000, ISU Retail Trade Analysis, Spring 2000, as well as the experience and knowledge of the subcommittee members.

To begin, a history of the issue in Lee County is necessary. The Keokuk extra-territorial initiative was first stated in the 1999 update of the city Comprehensive Plan. According to the Plan, the objective of zoning outside the city limits of Keokuk was to 'enhance the orderly development during the planning period and compatible land uses through the policies when voluntary annexation is not possible.'<sup>3</sup> The 1999 plan was a marked deviation from earlier Comprehensive Plans; it was much more policy-oriented rather than technical-oriented as earlier plans were.<sup>4</sup> It focused on growth and development, making population, commercial and industrial development assumptions that would extrapolate into extraterritorial zoning and annexation of the adjacent areas immediately outside the city. From this came an Extraterritorial Zoning Study. The plan was composed of six steps: Background, Interest Group Participation, Policy Development, Extraterritorial Zoning, Implementation Procedures, and Model Plan. That study included forming a Steering Committee and public meetings to get citizen input on the process of Implementation Procedures and creating a Model Plan for other cities in the county and state. Due to the strong opposition that was expressed by those in the extraterritorial area, a two-year moratorium was imposed by the city on the implementation of zoning in those areas. Implementation did not occur and no Model Plan was completed. The interim report completed in January 2001 summarizes the events.

The whole issue of extraterritorial zoning for Keokuk or any city was claimed to revolve around managing the city's growth. It was thought that by controlling land use in areas immediately adjoining the corporate limits, that various disputes could be avoided that might arise from incompatible uses of land between two adjacent property owners. This would achieve 'smart' or 'orderly' growth, and to preserve targeted areas of future growth from unwanted current growth at a time when voluntary annexation is not

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<sup>3</sup>. p. 3 -19

<sup>4</sup>. Report to the Outside Keokuk (OK) Committee, July 14, 2000.

financially or politically feasible.<sup>5</sup> Boiled down to its core principle, extraterritorial zoning was a way to control land use in the unincorporated areas without the expense of annexation and the provision of services as compensation within the corporate limits. As these adjacent areas became 'filled in,' voluntary annexation would be pursued.

The zoning structure was to revolve around the use of non-traditional zoning classifications that would be distinct from incorporated zoning classifications to have zoning areas 'specifically tailored to the issues which are applicable for extraterritorial zoning.' The need for regulation in extraterritorial areas is much lower than in incorporated areas and revolved around land use, therefore the need to establish mutually exclusive districts of zoning classifications. The main goal was the preservation of future development areas rather than regulating existing commercial and residential activity within the extraterritorial area. The Extraterritorial Zoning Study recognized that due to the fact that preservation of areas for future development was the central concern, there were potential advantages to targeting extraterritorial zoning only to those areas that were deemed crucial to the city's economic interest.<sup>6</sup> The policy that commercial and industrial development would be kept within the city limits, the entire two mile area was deemed by the city to be necessary to include in the zoning initiative and given use classifications even though there was negligible commercial economic interest. Eight Zoning Administration Alternatives were presented involving various levels of County and citizen participation in the zoning process.

The rationale the city provides for using extra-territorial zoning is based on a projection of land development needs up to the year 2020.<sup>7</sup> These assumed needs are based on a set of four assumptions:

**1. That the City has stemmed its population loss.**

2. The City has a significant need to preserve the existing Main Street district while expanding commercial development on North Main Street.
3. The City has a sound industrial manufacturing base.
4. The housing stock needs rehabilitation and preservation, while at the same time new housing is needed.

From these assumptions the Comprehensive Plan was structured to present what the City called a 'balanced' view between both preservation and growth.<sup>8</sup> From this came a series of short term to long- term priorities and priority actions:

1. Improving existing housing and building new housing;
2. Finishing the existing Main Street reconstruction project and funding future Main Street corridor expansion;
3. Promoting development in existing incorporated areas such as along Johnson Street;

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<sup>5</sup> . Keokuk Comprehensive Development Plan, October 1999, p. 3 - 19

<sup>6</sup> . p. 22.

<sup>7</sup> . Comprehensive Development Plan, October 1999, p. 4 - 1

<sup>8</sup> Comprehensive Development Plan p. 2 - 2

4. Maintaining and expanding the existing manufacturing base by improving transportation and utility access such as construction of rail access to Kindustry Park;
5. Find additional land for expansion for development of a business or industrial park;
6. Improving municipal services through an expanded tax base as well as fixing existing infrastructure such as sewers and streets;
7. Zoning in the extraterritorial area to facilitate future growth.

The reality of the assumptions made above can best be described by the following. The 2000 census confirmed that Keokuk continued to lose population in the 1990s, with 11,427 residents in 2000 versus 12,451 in 1990. This loss of approximately 1,000 residents per decade continues the trend that has existed since 1960. See table below.

#### **Keokuk Population 1960 - 2000**

1960 - 16,316  
1970 - 14,631  
1980 - 13,536  
1990 - 12,451  
2000 - 11,427

The manufacturing base has eroded in a more dramatic fashion, with recent losses or layoffs at Ferro-Sil, Elkem/Midwest Carbide, Smurfit-Stone, and others. The retail base across the state has not only lost businesses, but is making less income adjusted for inflation than the base year 1976.<sup>9</sup> In addition, median income in Lee County is less than it was in 1980 adjusted for inflation, and though specific information could not be found, Keokuk likely mirrors that number.

The subcommittee feels that the focus for the city has shifted from this 'balanced' view to one that is more immediate and more concentrated on preservation and expansion of corporate limits, like expansion of Kindustry Park and development along the Highway 61 bypass corridor. The longer-term goal of zoning the extraterritorial areas is unrealistic and an overreach by the city, and the city needs to concentrate on development within the city limits until those areas are fully developed and contributing to the tax base. If land is then needed beyond that point, it should be acquired through either voluntary annexation, or through the outright purchase of property from a willing seller either alone or as a consortium with investors and developers. Until the city can demonstrate good stewardship with the assets it has, it should not worry about looking to control those areas outside its bounds.

Though the City of Fort Madison has not formally proposed extraterritorial zoning, the bypass being built around the City within the next few years may create a pocket of land suitable for development from the northern city limits to the highway, and to a smaller degree west of the city limits, it will likely be an issue at some point. The situation for Fort Madison is no different than that of Keokuk. It has also experienced a steady loss of jobs and population since the '60s, (see table below) and at this time has developable land within its city limits.

#### **Fort Madison Population**

1960 -

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<sup>9</sup>. ISU Retail Trade Analysis, Spring 2000.

1970 -  
1980 - 13,520  
1990 - 11,618  
2000 - 10,715

If the Keokuk initiative is a blueprint for all similar initiatives, what extraterritorial zoning amounts to is a tool to give cities cheap and easy access to undeveloped land in perpetuity at the expense of citizen landowners in the zoned area. This can be easily deduced from the Extraterritorial Zoning Study. The city makes it quite clear that this is the case, not only in its Implementation Procedures. It wants to limit and/or exclude economic activity by citizens and businesses in these areas until the city feels that it is in its best interest to allow it. This argument is further supported in that proposed regulations in the newly zoned areas were to be limited strictly to land use alone as stated in Policy Statement 8. We find it arrogant and overbearing to presume to limit activity of property owners in an area beyond the city's jurisdiction without any sort of financial interest in the property. Extraterritorial zoning takes away the right paid for by the landowner for personal or economic use and gives that right to the city with no compensation financially or in the form of services offered. We seriously question a methodology in which a municipality designates whatever area of land allowed within the law as under its economic control and restricts all economic activity on that land, though it has acquired no title or claim to it through some form of compensation, for the purpose of its own economic gain at some point in the future. This intent is made clear on page 2-14 of the Keokuk Comprehensive Plan: 'The goal of the extraterritorial zoning power would be to preserve the areas identified in the long range land use plan for development compatible with the city's long term plan.' In its exposed form, this is bureaucratic embezzlement and stifles growth in the name of potential.

Since the area zoned is outside the city limits, if a city chooses one or more areas to let commercial or residential development to occur, the city is not required to provide municipal services to those areas as it would if the area is annexed. The provision of any services would fall to the county, yet it would have to meet those financial obligations without any control over what those obligations might be. This would benefit the city at the county's expense, and ultimately the county residents would be picking up the tab. This relationship would be maintained in perpetuity until the area became incorporated by either annexation or forming a new municipality. There is also the conflict that it would create with existing county ordinances. Though the Extraterritorial Zoning Study expressed the intent of the City not to operate in this manner, the bottom line is that there are no real restrictions to stop them from doing so. Legally, the State legislature has left the door wide open for abuse.

It is claimed on page six of the Extraterritorial Zoning Study that one of the reasons for zoning the extraterritorial areas of Keokuk is to provide protection to property owners from inconsistent land uses due to development. The subcommittee rejects this argument based on the same reasoning used earlier in discussing county zoning. Zoning does not provide a steadfast protection against those annoyances that some fear from their neighbors in exchange for the loss of property rights. Practically any zoned city in the United States is testament to that. Anyone with the money and political influence can and most likely will get the variances they want to use the property differently than what is it zoned. Zoning may offer less protection as it is often cheaper to influence bureaucrats than to avoid harassment and lawsuits from adjoining neighbors. It also

provides a springboard for involuntary annexation and lowers property values, particularly a property that is prime commercial development ground and is zoned residential or agricultural.

There appears to be little benefit to be derived from extraterritorial zoning, and no social, economic, or political sense to impose it on a citizenry that is fundamentally opposed to it. The county should discourage it, not only for the citizens' sake, but also for the sake of the county's financial integrity. We also recommend that the County support initiatives at the State level to give counties exclusive oversight of the extraterritorial process.

We also feel that the best course of action, for citizens who are in an area a municipality is proposing to extraterritorially zone is for them to band together, organize, and educate one another to make themselves heard loud and clear at both city and county meetings as well as local newspapers, radio, television, the Internet, and through published printed material such as pamphlets, flyers, posters, etc. We summarize these concepts in an Action Plan should citizens find extraterritorial zoning being suggested for their area:

- A. Create as much publicity on the plan as possible, reveal all pertinent aspects of the plan, and reveal the city's intent for doing so.
- B. Make the city provide public justification for zoning in its meetings.
- C. Have discussions with city, county, and state representatives determining their positions and why.
- D. Hold non-city sponsored citizen meetings with elected official in attendance to answer direct questions from the citizens.
- E. Use any forms of media and legal recourse possible to educate those concerned. Make sure to study the pertaining law and how it is applied.

Ultimately we hope that extraterritorial zoning will be avoided by the cities. If not, we hope that the citizens will stand up and be heard, and that ultimately municipal growth will be handled most fair to those living in extraterritorial areas.