

(Reformatted October, 2000, from the League background information for Land Use Units September-October, 1991)

## ADVENTURES IN NEVERNEVER LAND-USE

Let us imagine that you and a Russian guest one summer day are exploring the countryside by car, slowly wandering along narrow county lanes. You turn the corner and come upon a vast green forest spreading along for miles. A distance beyond the corner next to the road is a sign that proclaims in large red letters, "Welcome Trespassers." Your Russian friend laughs. Intrigued, you park on the siding, and with your friend walk into the trees. You see an arrow above a path and follow it. Far into the woods you come upon a square plot of ground marked with orange surveyor's flags and a sign that says, "For Sale."

For sale? You pause. What a wonderful place to build a house! You look more closely at the sign, and at the bottom is some kind of code which reads, "From 6<sup>th</sup> Principal Meridian and Baseline: NE 1/4 of SW 1/4 of SE 1/4 of S 1/2 of E 1/2 of S 21, T 12 S, R 19 E, 2.5 acres, more or less." Acres? It must be some kind of measurement, you think. Your Russian friend sees the numbers and looks alarmed. He glances nervously to the side. Nothing but cool, green shade.

You write down the code and phone number shown, then you both make your way back the third of a mile to where the car is parked. Determined to locate this plot on a map, but also frustrated that you can't answer the questions of your friend, you head for the nearest town, and, after a cooling drink, to the library.

In a very large book that the librarian locates for you labeled "*A History of the Rectangular Survey System of the U.S.*" By C. Albert White, this is what you find:

After the American Revolution, the newly-formed government of the United States needed to consolidate its claims to the lands which the states had ceded to it and at the same time bring in money to pay its enormous war debt. The young government decided to answer both problems by selling these ceded lands to the people. A better land system was needed, however, than what had been used in most of the colonies. Much strife over land had occurred through the colonial years. Overlapping claims, gaps between boundaries, and fraudulent and incorrect ownership records had created violent disputes. In Massachusetts, however, things had gone more smoothly. Compared to other colonies, their land system was the best. Massachusetts town companies surveyed all lands first and recorded the measurements on a map (called a plat). They used a rectangular system of surveying (dividing land into squares) based on the accurate locations of longitudinal and latitudinal (N-S, E-W) divisions. After sale or transfer of land, ownership titles were carefully recorded in an official place.

The Massachusetts method of surveying and recording (with modifications) was adopted by the U.S. Continental Congress<sup>1</sup> and incorporated into the first Land Ordinance of 1785. The Ordinance of 1787 provided for territorial governments. These two ordinances established the basic methods and governmental mechanism for surveying and disposing of all Federal lands in the Northwest Territories (from the Ohio Valley to the Mississippi and north to Canada). This land system continued to apply to most of the land purchased or acquired on the remainder of the continent by the government of the United States.

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<sup>1</sup> Officially named the "Congress of the Confederation," this was the temporary government set up by the Articles of Confederation that existed from 1781 to 1789. It was replaced in 1789 under the United States Constitution by our current legislative Congress.

These were the years of critical choices. Before the Land Ordinance was passed, Alexander Hamilton, fearing chaos, had advocated selling large tracts to land companies and wealthy holders. Thomas Jefferson, envisaging a nation of independent farmers, advocated selling smaller tracts directly to individual citizens. At first there was compromise, but ultimately Jefferson prevailed.

The adopted system, which provided for the basic land divisions of the western territories, created contiguous townships of 36 square miles each, six miles on a side, that could be divided into 36 sections of one square mile each, or 640 acres per section. Permanent markers were fixed and recorded so that fractional divisions could easily be measured for smaller holdings. In each new territory a central monument was placed accurately on a meridian as the zero point, from which all other measurements were made, outward from that point to the west and to the east, and from this zero E-W baseline, to the north and to the south, placing markers every six miles. This method resulted in land description that is unique for every parcel of land in the U.S., and thereby avoided confusion. In combination with the land offices set up for recording titles of deeds, the system allowed for quick and accurate transfers of land.

According to another book you find, "*The Land System in the United States*" by Marion Clawson, this rectangular survey and record system was the principal reason for our country's phenomenal growth, allowing us to become initially a nation of small farmers, which in turn created the roots for a strong democratic tradition in the new territories. Wow! We might have become a nation of wealthy lords and poor tenants if Alexander Hamilton had prevailed!

"So that's how the West was won," smiles your Russian friend. "I've been reading your Constitution. Those Amendments. The 5<sup>th</sup> one says no one can deprive you of your property without some kind of 'process' that's owed you, and the government can't take away your property without paying you for it. Then there's this 14<sup>th</sup> Amendment that says even the States have to follow that also and only pass laws that treat everyone equally. How do you get everything to fit together and everything to work right in your cities and towns if most of the land is owned by millions of people and not by the government, and the government is so limited by your Constitution?"

You can't answer that. You don't know. But you're really more interested in the lot in the woods, so you go to the courthouse in the county seat. The Register of Deeds helps you locate the property description based on the code you give her. You see that it has been sold and resold by dozens of people for many years. Why has no one built on it? She suggests you go to the City-County Planning Department.

The planner is a very obliging young woman, eager to answer questions. "We know that lot very well. Someone asks about it almost once a month. Now that people know they should come here first, they have stopped buying and selling it. No one can build on it. It's land-locked. There's no road to it and no way to get one to it. No access."

She continues. "And besides that, there is no water on the property and even if someone were to haul water to it, there would be no sewerage, not even on-lot, because there is solid rock close to the surface which would prevent installing the lateral field system for a septic tank, and the county health regulations don't permit holding tanks."

Your Russian friend is puzzled. "I thought your engineers could do anything. Why doesn't your government build a road to this lot and install water lines and sewer lines? I could see many houses in the country on our way back. Why not here?"

The planner breathes deeply and says, smiling slightly, "The county has a zoning ordinance that

regulates what uses people can place on their land. This is in the middle of an area zoned for agricultural use. First, it would have to be rezoned because the lot is too small for residential use in this district. It would be difficult to get a zoning change because it is not in a designated urban growth area and is too far from the city to be annexed. The city doesn't normally furnish sewer and water outside of the city limits. The county is not the agency that furnishes water to rural areas. That is sponsored by an agency of the Federal Government as a rural water district, independent of local government. The reason you see so much scattered growth in the rest of the county is that those areas are furnished with rural water districts and the farm roads give access. In this country every family has a car. Sometimes two or three." The planner stops smiling. "People can live anywhere. Everywhere. The rural water districts were meant for farmers, but what actually happened is that city people moved out. It's causing lots of problems.

"As for 'your' road, no one who owns land around it will dedicate a right of way from the county road to that lot, or give easement to the owner for a driveway. In any event, the county would not maintain it. That would be up to the township, and they have a very tight budget.

"I'm sorry to appear negative, but it's less expensive per person to provide urban-type services when people live in cities than when they're widely scattered in rural areas. We're working on a rural development policy plan which we hope will help direct growth away from the agricultural areas and help solve some of the problems you see now. Would you like to see it?"

Your Russian friend now is even more puzzled. "I can see you have problems, but I would expect that, with your freedom and democracy. But zoning? That sounds like regulations. Planning? I thought only Russia did planning."

You are surprised at what happens next. The planner goes to a bookshelf and brings back a pile of manuals. She thrusts these upon your Russian friend and says, "You are so obviously interested in how we regulate land use here that I'm giving you these to read.

"The first is the Comprehensive Plan for the city. The Land Use Guide Map is fuzzy because this is a policy plan which states what our goals, objectives, and policies for the city are, instead of outlining them precisely on the map. This is a guide for using these other two land use control laws, the Zoning Ordinance and the Subdivision Regulations. Of the two, the Subdivision Regulations are possibly more important because they control the design of land division into smaller parcels for building and determine where there will be streets, and, by their width, how much traffic the streets can carry. These regulations provide for dedication of land for other uses too, besides streets, such as parks and school sites, and require easements for utilities and storm drainage when the city engineer says they're needed. The land owner maps all this on a "plat." We try to use these regulations in a way that will fit the different uses into a workable system. And anyone subdividing land has to guarantee that the building lots will have a connection to a sewer line, water, paved streets, and other improvements so that the lots can be built on. This guarantee has to be made before the plat is recorded and the lots can be sold."

You nod, remembering the land-locked lot.

She continues, "The Zoning Ordinance provides what we call "districts" for different uses, and by that I mean industrial, commercial, residential, agricultural, and their sub-districts. All land in the city is covered by one or another of these districts. If you want to use your land for something its district doesn't permit, you have to get the law amended to put a different district on your land. Otherwise, you can do anything with your land not prohibited by law. But each use has different requirements, for such things as spacing and building height and bulk. We know this, and have written standards that apply to all land within each particular district. These standards automatically do certain things: they keep space between

buildings for light, air, and fire protection, and set back buildings a certain distance from streets. We call these spaces “yards.” We measure them from the building to the lot line. We have upper limits on building height, the number of dwellings permitted in any given area, called “density,” also minimum lot sizes you need for each building or use, and other requirements. This is what we call ‘conventional’ zoning. These standards let builders and landowners know what to expect, because, as you said earlier, our Constitution says the laws should be enforced equally. It prevents people like me from being arbitrary and telling one person one thing and another something else. We have to be consistent.”

And then with a broad grin, she hands your friend one last manual. “This is the Capital Improvements Program for next year and the Capital Improvements Plan up to 1997. So you see, we do plan. Of all the positive things the city does to direct growth, providing capital improvements is the most important. The city provides extensions of water mains, sewer lines, paving on major streets--we call improvements like these ‘infrastructure’--and provides police stations, fire stations, water and sewer treatment plants, parks, maintenance, and so on. These improvements are on city-owned land. Where and when these are built determines where and when people can live and work on private land in the area.”

You glance at your Russian friend. He is listening intently.

The Planner continues, “And the Capital Improvements Plan must conform to the Comprehensive Plan, or the City Commission, our governing body, and the Planning Commission have to consider each improvement as a special case and approve it separately. The Planning Commission advises the City Commission as to whether proposed improvements conform to the Comprehensive Plan or not. So you see, we really are serious about planning. This process may seem tedious, but it lets us spend our money more wisely and set priorities, rather than do things in a knee-jerk, I mean, ad hoc fashion.

“I know that I’m repeating myself, but I want to say again for emphasis that the Zoning Ordinance and Subdivision Regulations regulate growth. These ordinances are essentially negative in that we, the city employees and governing body, don’t initiate the action that these laws regulate. The private citizens initiate the action. The developers initiate the action by wanting to use their land a certain way or subdivide it to sell or build. The city exercises its police power by telling the citizen what she cannot do with her land once she initiates action. We have to be certain we are justified in how we regulate and what we regulate--that there is a cause-effect reason to back us up based on past experience or research, for example. In other words, we can intervene by regulating only in cases where harm will be done to the city or to private citizens. But “what is one man’s blessing is another man’s curse.” So it’s a balancing act that we do, because someone is always affected in one way or another. And these ordinances have to follow the same process in order to be adopted or amended as do other laws that affect our rights, including proper notice be given, public hearings, a chance to appeal the decision to an appeals board or by access to the courts--the works. What the Constitution calls ‘due process,’ as you saw in the 5<sup>th</sup> Amendment. The Comprehensive Plan is different because it isn’t a law, but it also has a proper adoption procedure that must be followed.

“With many of the Capital Improvements, but not all, the City takes the initiative. That is why I say it is a positive control to direct growth. And, of course, that is why it is so necessary for us to have a Capital Improvements planning process, not just to calculate our needs to keep up with our population, but also to be aware of the potential effects of the improvements we propose. The Planning Commission holds several public hearings after official notices have been published. At the first hearing people can speak out if they will be affected by any of the improvement proposals or if they support or object to something. With the changes in the State laws coming up in January, the status of all plans may change. We shall see.”

The planner glances at her watch. “By the way, I’m on my way to explain all this to the League of Women Voters. Would you like to come along?”

By this time you are numb, but curious. “Are you game?” you ask your Russian friend. He nods, wipes his brow, and off you go.

On the way, you think of the lot in the woods. And you wonder: Isn’t just leaving it alone also a kind of land use?

(Betty Lichtwardt, September, 1991)