

## A New Generation of Rural Land-Use Laws

By Joel S. Russell

Last month's issue of *Zoning News* discussed principles for rural zoning (sidebar). I have worked with several rural towns in New York and New England that have taken these principles seriously. They have devised workable land-use regulations that protect the character of their communities and allow needed development. Three New York towns—Washington, Hillsdale, and Reading—exemplify different approaches to implementing these principles. This issue examines their experiences.

### Washington

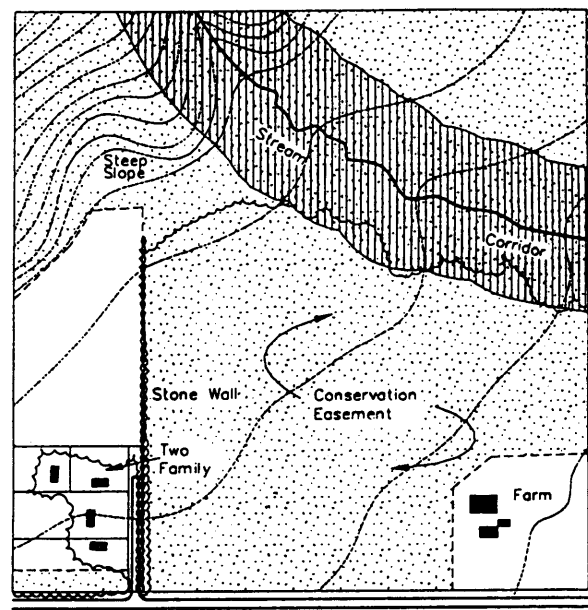
Washington is a doughnut-shaped rural town 15 miles northeast of Poughkeepsie, New York, with the village of Millbrook in the center. It is composed largely of estate farms, institutional holdings, and small-scale residential developments. For years, it has had the highest rural land values in the area because of both the prestige associated with the Millbrook address and highly restrictive zoning, which has helped maintain property values. It is one of the best examples in the region of a town that has chosen to remain rural while successfully channeling intensive development into a traditional pedestrian-oriented village, where water, sewer, transportation, schools, offices, shopping, and other services are available.

An opinion survey conducted in connection with a 1987 master plan revision showed that Washington residents clearly desire to keep the countryside undeveloped while allowing intensive development in the village of Millbrook, a separate municipality with its own complementary zoning regulations. The town's previous zoning, enacted in 1971, would have allowed cookie-cutter subdivisions of one-, two-, five-, and 10-acre lots, as well as a limited amount of strip commercial and industrial development. While more restrictive than any other in Dutchess County, this zoning law allowed a type of development that would have turned the town into an exclusive suburb of extra-large lots, destroying the rural sense of place and undermining the village's efforts to maintain a vital commercial and residential core. The town adopted a new zoning law in 1989 with assistance from a team of consultants that included a nationally known law firm, a landscape architect, and the Dutchess Land Conservancy, of which I was executive director.

**Clustering and Overlay Zones.** The new ordinance rezoned much of the land that was in five-acre zoning to 10-acre and eliminated all strip commercial zoning. Over two-thirds of the town is now zoned 10 acres per dwelling unit. More important, however, is that the new zoning law and subdivision regulations make an important distinction between lot size and density. If all of the town were to develop as 10-acre lots, the result could be disastrous. Instead, 10 acres per unit is the basic density that must be maintained in the countryside. Lots may vary greatly in size.

The planning board can require, through clustering, the protection of contiguous stretches of farmland, forests, and wetlands.

Washington's regulations set clear guidelines to determine when clustering should be required and to ensure that it accomplishes its primary goal of land preservation. Land set aside as open space must be protected by perpetual conservation easements to prevent future development. It must be a coherent piece of land, owned and managed in a way that is sensitive to its conservation value. The regulations encourage farmland to be owned and used by private farmers, rather than being placed in the cumbersome and inexperienced hands of a homeowners association. A farmer who needs to sell off a couple of lots can do this by selling lots of less than one acre while preserving enough farmland to maintain the district's overall density. In this way, the farmer will not have to sell out to a developer.

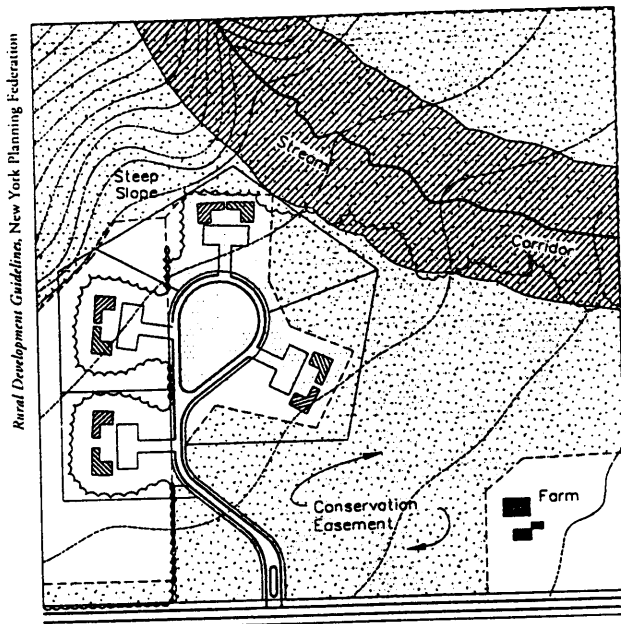


**Flexible Lot Subdivision:** *Eighty percent of this 60-acre parcel is protected by conservation easements, which include a stream corridor, hillside, and working farm field.*

The clustering technique can also be used to protect land in resource protection overlay zones such as stream corridors, lake or water supply watersheds, or unique habitats. The regulations require that development be clustered away from mapped farmland and aquifer overlay zones wherever possible. Even when subdivisions are not clustered, the planning board may require perpetual conservation easements to protect identified environmental resources as part of the subdivision process. Sometimes areas designated for preservation, such as scenic farmland, are also the best development sites. When this occurs, mandated clustering can reduce the land's value. In order to mitigate this economic impact, Washington offers a 25 percent density bonus for a cluster subdivision.

Many towns now allow clustering, and several also let the planning board mandate clustering. In practice, however, clustering has only rarely been successful in producing a pattern of development that fits well into the rural landscape. Too often, the result is just a series of scrunched-up cookie-cutter (or golf course) subdivisions with buffers around them—a modified form of sprawl. Clustering provisions must incorporate meaningful open space preservation and site design standards if they are to fulfill their promise.

**Conservation Density Subdivision.** Clustering can help prevent large developments from destroying open space resources. Incentives that encourage truly rural densities, such as conservation density subdivisions, can be even more effective. Under Washington's provisions, landowners who agree to restrict their land to one-fifth of the allowable density are allowed to use private, narrow gravel roads instead of the wide, paved roads the town normally requires. This provides an incentive for very low-density subdivision, since the cost of building town roads often forces a landowner to maximize lot count. The average lot size in many of these subdivisions is 50 acres, the same density to which many landowners have reduced their land using conservation easements. It was also the size of the typical area farm 100 years ago.



**Unacceptable Flexible Lot Plan:** Although 80 percent of the land is preserved by a conservation easement, these condominiums do not protect the most important open space of conservation value.

Any landowner who voluntarily agrees to limit density to the one-fifth level is also relieved of having to comply with other lot dimension requirements, such as minimum road frontage. Since the minimum town road frontage for a conventional subdivision is 400 feet in the 10-acre zone, allowing gravel roads with smaller frontage provides a strong incentive to avoid conventional subdivisions and their associated road costs. The

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first two large subdivisions proposed under the new zoning, covering tracts of approximately 500 acres each, were conservation density subdivisions of seven and 11 lots.

The regulations also encourage the use of rear (flag) lots on a limited basis, provided they are spaced far enough apart and are at least 150 percent of the minimum lot size in the zone. This encourages preservation of large tracts, keeps new houses away from existing roads, and discourages the construction of large-scale subdivision roads.

Several other rural New York and New England towns have adopted similar private road and flag lot provisions. These techniques discourage the conventional suburban subdivisions that would otherwise be developed. Unfortunately, many communities resist private roads because they have had bad experiences with developers who walked away from partially completed roads that were intended for dedication. These municipalities fear that a conservation density subdivision, even with a properly constituted homeowners association, would create the same problems.

**Agricultural Preservation Overlay Zones.** Washington's agricultural preservation overlay zone, in addition to requiring clustering and encouraging conservation density subdivision to protect farmland, allows farmers greater flexibility in operating their businesses than they would have under more conventional zoning. For example, farm owners may build employee housing and run farm-related businesses, such as food processing, equipment sales and service, and manure composting. This is not permitted in many towns, forcing farmers to sell to developers because they cannot house workers or run related retail businesses that enable them to make ends meet.

This zone is only a small step toward deregulating private small business in the countryside. Many farm families need to be able to run unrelated businesses on their properties as well. Family members may want to have an antique shop or car repair operation on their properties to supplement unpredictable farm income. If such businesses harm no one and are small in scale, why not permit them under careful guidelines? Allowing more freedom for small business enterprises enables rural landowners to have their constitutionally protected economically viable use without having to sell out for development. While Washington was not willing to expand the range of allowable uses in this way, Hillsdale, Reading, and many other towns have done so.

## Hillsdale

Hillsdale, in the Berkshire foothills of Columbia County, has taken the next step toward use deregulation in rural areas, allowing far greater flexibility of uses than conventional zoning permits. It is less densely populated than Washington, with only a small hamlet as its town center. Its population is more diverse, including many who grew up locally as well as retirees, commuters, and weekenders from New York City. Hillsdale still has several dairy farms, as well as some horse and other livestock operations, crop farms, and a few estate properties.

Under a new zoning law adopted in 1995, Hillsdale's planning board also has the authority to mandate clustering (called flexible lot subdivision), but at a density of three acres per unit with 80 percent of the land protected as open space. Relatively low development pressure makes it unlikely that the town will actually build out at that density for the foreseeable future. The law includes illustrated rural development guidelines.

Hillsdale is more typical than Washington of rural towns in the Northeast. It is composed primarily of people of modest

means, earning a living locally or commuting to jobs in the region. The characteristic rural attitude—"nobody can tell me what to do with my land"—is stronger. For locals, the flexibility to run small businesses out of their home properties is critical. Under its previous zoning, many such businesses were illegal. Hillsdale now allows a wide variety of business uses in its rural district. Small-scale home occupations are allowed by right. For more intrusive businesses, the landowner must go through a permitting and site plan review process to show the proposed use will not negatively affect neighbors. The process has one tier for large-scale projects, which undergo a thorough and comprehensive review, and an easier and quicker one for small projects.

Allowing home-based businesses enables people with young children to work at home, reduces automobile commuting, and adds economic value to rural land. If these home-based businesses become more successful, they normally would be forced to relocate to commercial zones. Hillsdale allows them to expand where they are, as long as their expansion can meet compatibility criteria. This solution is often preferable to forcing such businesses into single-use office developments, industrial parks, or commercial strips.

Other towns with which I have worked have also instituted flexible use regulations in their rural areas, often coupled with

limits on the footprint size of buildings. They can allow a small well-screened auto body shop, but keep out Wal-Mart. They also have restricted commercial uses along highways to protect downtown business districts, while encouraging higher densities and mixed uses in their village centers.

When Hillsdale was considering how to channel growth into its hamlets, hamlet residents complained that they did not want all the new development "dumped" in their neighborhoods. They envisioned new development looking like the suburban sprawl and strip development that the previous zoning had mandated. To respond to that concern, illustrated design guidelines for hamlet development were added to the new zoning law. These guidelines follow many new urbanist principles and are intended to ensure that what is built in the hamlet or village will reinforce, rather than detract from, the community's historic character. (Three volumes illustrate the clustering and conservation density principles discussed above. All were reviewed in "Zoning Reports," March.)

When the owner of the small supermarket fronting on the main street in the town center wanted to expand it (under the old zoning), he faced the obstacle of needing variances because the building could not comply with the suburban strip commercial requirements. The existing building would have

## Rural Zoning Principles

*In the last issue of Zoning News, I examined the need for new models of rural zoning and suggested some directions for reform. These can be summarized in the following principles:*

1. Impact is more important than use. Rural land-use regulations should permit a wide variety of uses with impact criteria to assist a review board in determining whether to allow a use in a particular location. This maintains the rural tradition that landowners have flexibility in land use as long as they do not negatively affect their neighbors or the community.
2. Density is more important than lot size. Although low densities are appropriate outside settlement centers, large minimum lot sizes consume the landscape faster than small lots. Therefore, land-use controls should separate density from lot size, allowing very small lots as long as overall density guidelines are maintained. This is usually done through some form of clustering.
3. Design is more important than density. The impact of development and its profitability for the landowner are not simply a "numbers game." Attractive, well-planned low-density development may be more profitable than high density, especially in rural areas. Well-planned compact village developments fit in better with historic town character than low-density sprawl. Open space protection and good site design are often more important than density to both the landowner's bottom line and a town's attractiveness.
4. The countryside should remain largely undeveloped, but not by destroying the land's economic value. With a choice of uses, landowners can make a living on their land without having to sell it for residential development. Regulations should provide several options that combine protection of open space with compatible development, including mixed housing types, mixed uses, and density incentives. In some markets, transfer or purchase of development rights may be needed to compensate rural landowners for density reductions on their land.
5. Development should generally be concentrated in and near existing or new village centers, following the traditional pattern and layout of hamlets and villages. Significantly higher densities should be allowed within these limited areas, provided that public water and sewer services are available.
6. Development should satisfy illustrated design standards that maintain local community character. When everything was built by local builders using local materials, towns had a special look and feel. That distinctiveness of place is gradually being lost to a standardized form of development found throughout suburban America. Illustrated design standards for streets, lot layout, site plans, and buildings maintain the traditional small-town feeling.
7. Review boards need written criteria that enable them to say yes to what fits into the community and no to what does not, while conditioning approvals to ensure that standards are implemented. Instead of applying rigid use and bulk requirements, review boards should have both clear design standards and flexibility to work with applicants and neighbors to come up with plans that fit the town. They also should have sufficient authority and resources to ensure that plans are properly implemented.
8. Small-scale projects need less complicated review than large-scale ones. Elaborate review is necessary for large complex projects, but there is no need to subject three-lot subdivisions or small shops to the same process. However, even small-scale development should satisfy design standards.
9. Land-use regulations should be simple enough to understand, but adequate to fulfill their objectives. They should be clear, flexible, and understandable. They should be strict on important design principles but flexible on use regulations, while imposing on landowners the minimum burden necessary to achieve community goals. Illustrations should show the development patterns and options allowed.

been torn down and a new one built behind a large parking lot. The frustrations of trying to work with the old zoning had nearly forced the owner to move the market out of the village center and onto a commercial strip. The new zoning allowed the building to remain in the hamlet along the sidewalk with parking to the side and behind. It also required design improvements such as windows along the street, a traditional roofline, and an articulated facade.

Thus, Hillsdale was able to get what it wanted: compatible growth in the town center, flexible uses in the countryside, and protection of rural open space.

## Reading

Reading is a very rural town on Seneca Lake, in New York's Finger Lakes region. It has never had zoning because of its citizens' strong belief in landowners' rights. Yet many townspeople are concerned about the possibility of inappropriate development adversely affecting the lake, their rural way of life, and the beauty of the town's setting.

In the course of an intensive three-day citizen planning charrette held in 1993, it became clear that Reading needed some form of land-use regulation, although not necessarily zoning. As a result, I developed a 15-page land-use law that has no zones and few use or bulk regulations. Instead, it regulates land according to a three-tier permit system. The least intrusive uses, such as one- and two-family houses and very small-scale businesses, are allowed by right. Large-scale and intrusive uses and those occurring within a lakeshore protection area require a special permit, involving a thorough review following specified criteria. Development proposals falling between these two categories undergo an intermediate level of streamlined site plan review. Additional criteria are included for signs, stormwater control, lake protection, resource extraction, and other issues townspeople felt were important.

The Reading law is so flexible that it does not need variance provisions. It relies more on common sense than on the rigid rules typically found in zoning ordinances. To avoid illegal delegation of legislative power or the arbitrary exercise of administrative powers, it contains standards and criteria and the requirement of written findings to support board decisions. These criteria require the exercise of judgment without conferring unfettered discretion.

Reading's unusual approach would not be allowed in many states with narrowly drawn enabling legislation. New York's generous home rule powers permit local municipalities to diverge from conventional land-use regulation and break some

of the arbitrary confines imposed by the state zoning enabling act. This flexibility (which can be misused) has helped make it possible to devise land-use regulations that truly meet the needs of different types of rural communities.

## Meeting Rural Needs

Washington, Hillsdale, and Reading have reinvented rural land-use regulation in different ways, tailored to the circumstances of each community. All are substantially different from conventional zoning. Washington's approach may work in similar metropolitan fringe communities that have adopted a land stewardship ethic and tend to attract wealthier residents. Hillsdale's emphasis on use and dimensional flexibility, supplemented by new urbanist design standards, may be appropriate for more typical rural communities that have an economically diverse population

with differing values about land. Reading's minimalist approach may be workable for very rural communities that would otherwise have little or no land-use regulation at all.

Zoning designed for a rural community's special needs sends a clear signal to prospective developers of the countryside and offers significant leverage in shaping development. Smart developers realize that protecting the rural qualities that attract buyers will make

## Resources

Washington's zoning law and subdivision regulations are available from the Town Clerk, Town of Washington, P.O. Box 667, Millbrook, NY 12545, (914) 677-3419. The three-volume set of design standards adapted from the Hillsdale zoning law are available from the New York Planning Federation, 488 Broadway, Suite 313, Albany, NY 12207.

their developments more valuable. If towns and counties rewrite the invitation to suburban sprawl development in their current zoning ordinances, developers might then bring in plans that give the community what it wants, rather than continuing the development wars described in last month's issue of *Zoning News*.

Much of the United States still has landscapes and natural areas well worth preserving. These places can be maintained for future generations by avoiding the mistakes that have resulted from applying suburban blueprints to the rural countryside. Rural municipalities can create the future they envision in their master plans rather than the one inexorably charted for them by conventional zoning laws. The key ingredient is well-crafted land-use laws that produce the desired results and that are grounded in the distinctive culture and values of each rural community.

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## Call for Information

*Zoning News* is seeking information for a future issue on regulations and review procedures communities have used in dealing with proposals for multiplex theaters, namely those movie theater complexes that involve anywhere from 10 to 20 screens or more in a single facility. Send information to: Fay Dolnick, APA, 122 S. Michigan Ave., Suite 1600, Chicago, IL 60603; faxed materials to 312-786-6700.