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Commentary, Preservation of Florida's Agricultural Resources Through Land Use Planning

Dennis C. Dambly

PRESERVATION OF FLORIDA'S AGRICULTURAL RESOURCES THROUGH LAND USE PLANNING

Over the past few decades the population of the United States has been rapidly increasing[1] along with that of the rest of the world. It has been estimated that the world's population, presently 3.7 billion, will rise to approximately 4.7 billion within the next fifteen years.[2] Florida has been growing at a much faster rate than the nation as a whole.[3]

This population surge will necessitate a corresponding increase in agricultural production and will simultaneously intensify the need to urbanize and suburbanize the very land required to feed the surge.[4] Indicative of the latter trend is the continuing decline in farm land experienced by both the state and the nation.[5] This population-food paradox is not yet cause for concern in this country because of the increasing agricultural output per acre.[6] Nevertheless, the nation's farmlands feed substantial portions of the world's population as well as our own, agricultural exports representing one of the few commodities presently yielding a favorable trade surplus.[7]

The need for some type of land use control appears obvious in light of this continuing population growth and corresponding farmland decreases. Yet less than one-half of the counties in Florida presently have any land use controls.[8] Therefore, this note will consider the need to preserve agricultural lands and will explore land use planning as a possible tool to achieve this goal.

THE PROBLEM AND THE NEED

During the decade from 1960-1970, Florida's population grew from 4,951,560 to 6,789,443, an increase of approximately 37.1 per cent[9] — almost three times the national average.[10] This growth represented a 69.3 per cent

1. U.S. DEP'T OF COMMERCE, 1970 CENSUS OF POPULATION, Number of Inhabitants, United States Summary, table 8 [hereinafter cited as 1970 CENSUS].

2. COUNCIL ON ENVIRONMENTAL QUALITY, THIRD ANNUAL REPORT 58 (1972) [hereinafter cited as CEQ REPORT].

3. 1970 CENSUS, *supra* note 1.

4. Note, *Mandatory Dedication of Land by Land Developers*, 26 U. FLA. L. REV. 41 (1973).

5. U.S. DEP'T OF COMMERCE, 1969 CENSUS OF AGRICULTURE, vol. I, Area Reports, pt. 29, Florida Data, §1 Summary Data, table 1 [hereinafter cited as AGRICULTURAL CENSUS]. "Farmland" as defined in this census includes all land contained within the physical boundaries of a farm including cropland, woodland, and pasture. *Id.* ch. 1, vol. 2, General Report at 7.

6. CEQ REPORT, *supra* note 2, at 60. *See also* fig. 4, at 62.

7. *Can Agriculture Save the Dollar?*, FORBES, March 17, 1973, at 32.

8. Bartley, *Status and Effectiveness of Land Development Regulation in Florida Today*, in SUMMARY REPORT OF THE ENVIRONMENTAL LAND MANAGEMENT STUDY COMMITTEE'S CONFERENCE ON LAND USE at 9 (1973).

9. 1970 CENSUS, *supra* note 1, Florida Data, table 9.

10. During the sixties the United States population rose from 179,323,175 to 203,211,926, an increase of approximately 13.3%. *Id.* United States Summary, table 8.

rise in urban population and a mere 2.4 per cent increase in rural population.[11] At present, the state's population is growing at the astonishing rate of 4,300 residents per week,[12] concentrated chiefly in three of the nation's fastest growing metropolitan regions: South Florida (principally Dade County), the Tampa-St. Petersburg megalopolis, and Orlando.[13]

This population increase demonstrates the growing pressure to convert fertile farmland into subdivisions, shopping centers, apartment complexes, and condominiums. Statistics pertaining to the decrease in agriculturally productive lands compel the conclusion that the decrease is mainly attributable to the population increase.[14] Although Florida is the twelfth largest and one of the fastest growing agricultural states in the nation,[15] it lost 1,379,185 acres of farmland, approximately 4 per cent of the state's total land area, during the five-year period from 1964-1969.[16]

Although this population surge has necessarily increased the demand for food in the United States, there is as yet no problem in feeding the nation.[17] It would be impossible to calculate the acreage required to feed a human being,[18] but it has been estimated that a nation will generally need

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11. 1970 CENSUS, *supra* note 1, Florida Data, table 9. Additionally, it has been estimated that by the year 2000 the metropolitan population of the United States will increase by 145 million. Comment, *Subdivision Regulation: Requiring Dedication of Park Land or Payment of Fees as a Condition Precedent to Plat Approval*, 1961 WIS. L. REV. 310 n.1.

12. ROCKEFELLER BROTHERS FUND, TASK FORCE REPORT, THE USE OF LAND: A CITIZENS' POLICY GUIDE TO URBAN GROWTH 36 (1973) [hereinafter cited as TASK FORCE REPORT].

13. *Id.* at 37. There are 550 new residents settling in Dade County alone each week. *Id.*

14. This can most easily be demonstrated by considering the losses of farmland in the three fastest growing metropolitan areas of the state, see text accompanying note 13 *supra*, during the period from 1964-1969. During this period Dade County consumed 37,709 acres of former farmland, AGRICULTURAL CENSUS, *supra* note 5, §2 County Data at 105, a decrease of 32.4% of formerly available farmland, to support a population that increased by 35.6% during the sixties. 1970 CENSUS, *supra* note 1, Florida Data, table 9. In the same time period, Orange County required the use of 135,997 acres of farmland. AGRICULTURAL CENSUS, *supra* note 5, §2 County Data at 369, a decrease of 35.5%, to support a population growth of 30.5%, 1970 CENSUS, *supra* note 1, Florida Data, table 9. Lastly, Hillsborough and Pinellas Counties utilized 394,478 acres, AGRICULTURAL CENSUS, *supra* note 5, §2 County Data at 225, and 27,100 acres, *id.* at 401, of farmland respectively, representing losses of 51.5% and 56.0%, to support populations that increased by 23.2%, 1970 CENSUS, supra note 1, Florida Data, table 9, and 39.4%. *Id.* The relatively small numerical decline in farm acreage in Pinellas County is attributed to prior urbanization. It should be pointed out that rural counties have not experienced agricultural land losses like those of the urban counties. For example, the farmland in Glades County increased almost three-fold from 1964-1969. AGRICULTURAL CENSUS, *supra* note 5, §2 County Data at 169.

15. Gainesville (Fla.) Sun, Feb. 1, 1974, §D at 1, col. 1. Agriculture is a $10 billion business in Florida and generates about one-third of the jobs in the state. *Id.*

16. AGRICULTURAL CENSUS, *supra* note 5. Florida's total farmland peaked at 18,161,675 acres in 1954; since then it has steadily decreased, reaching 14,031,998 acres in 1969. *Id.* During the five-year period from 1964-1969, the United States lost 46,841,000 acres of farmland. *Id.* vol. 2, General Report, ch. 2, table 12.

17. Food reserves, however, are at the lowest point in the past 20-30 years. Gainesville (Fla.) Sun, Feb. 1, 1974, §D at 1, col. 1.

18. The amount of land required will depend upon the type of food desired. It obviously takes more acreage to feed steak rather than rice to a person.

one acre of fertile farmland per capita to be agriculturally self-sufficient.[19] Judged by this standard, the United States should be self-sufficient for a few more years. In 1970 the nation had over one billion acres[20] of farmland to support a population of 203 million.[21] Even if immigration were terminated and couples limited themselves to two children, however, it would take seventy years for the nation's population to level off, and the population would increase by one-third during that period.[22] Therefore, an adequate reserve of fertile agricultural land must be set aside to feed future generations.

Our nation's farmlands are important not only in feeding the American people but also in helping to feed the rest of the world. The United States produces a sufficient amount of surplus crops each year to export large quantities of food to less agriculturally fertile nations. During fiscal year 1973, United States agricultural exports totaled $12.9 billion,[23] a sixty per cent increase over the previous year. It has been estimated that they could reach as high as $18 billion in the near future.[24] The 1973 figure represents a net trade surplus of $3.3 billion, which largely offsets the nation's $4.2 billion trade deficit in oil.[25] With recent increases in the prices of both Middle East and South American oil[26] and the threat of future price increases,[27] the balance of trade deficit, $6.8 billion in fiscal 1972[28], must necessarily increase unless United States agriculture can continue to pick up the slack.

In addition to its food production value and its economic value as an export producer, farmland also serves an ecological function as the crops grown thereon produce large quantities of oxygen during photosynthesis.[29] While it is probable that the oceans produce most of the earth's oxygen,[30] ocean flora are a far less efficient source of oxygen than the plant life found on dry land.[31] For example, an acre of ocean is only 3.5 per cent as efficient in oxygen production as an acre of corn and only 7.0 per cent as efficient as an acre of wheat.[32]

It should also be remembered that those structures that replace farms—

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19. R. WAGNER, ENVIRONMENT AND MAN, 433 (1971).
20. AGRICULTURAL CENSUS, *supra* note 5, vol. 2, General Report, ch. 2, table 12.
21. 1970 CENSUS, *supra* note 1.
22. CEQ REPORT, *supra* note 2, at 57.
23. Wall Street Journal, Oct. 9, 1973, at 1, col. 6.
24. FORBES, *supra* note 7, at 32.
25. *Id.*
26. Gainesville (Fla.) Sun, Dec. 31, 1973, §B at 1, cols. 1-2. For a discussion of the relationship between price increases and the actual cost of oil, see The National Observer, Jan. 5, 1974, at 3, col. 3.
27. Gainesville (Fla.) Sun, Dec. 24, 1973, §A at 12, col. 4.
28. FORBES, *supra* note 7.
29. Heichel, *Plants, Oxygen, and People,* FRONTIERS IN PLANT SCIENCE Fall 1971, at 6.
30. *Id.* It is estimated that between 33 and 75% of the world's oxygen supply is produced by the oceans, which cover 70% of the earth's surface. *Id.*
31. *Id.*
32. *Id.* table 2. To put this in a more practical light, it takes 17 square meters of corn, 36 square meters of wheat, and 400 square meters of ocean to supply the daily oxygen requirement of one adult. *Id.* table 3.

homes, factories, et cetera — consume tremendous amounts of oxygen daily,[33] resulting in decreased supply and increased demand. For example, a 500 megawatt, steam-driven electrical generator consumes 3.6 million times more oxygen than the average man; an oil-fired home furnace consumes forty-six times as much.[34] Moreover, as the world's oceans become more polluted the production of oxygen by farmland and forest will assume greater importance.[35]

In summary, agricultural land is an invaluable natural resource in terms of food and oxygen production and international economic health. Considering the importance of these functions and the fact that farmland is quite unlikely ever to return to agricultural production once it is paved, suburbanized, or otherwise destroyed,[36] it becomes apparent that preservation is essential. Governmental entities should therefore insure that this resource, like its counterpart wetlands,[37] will be preserved for future generations so they may enjoy the same benefits from it that we presently do.

THE CONSTITUTIONALITY OF LAND USE PRESERVATION FOR AGRICULTURAL PRESERVATION

The Florida constitutional provision that "no person shall be deprived of life, liberty, or property without due process of law,"[38] is substantially the same prohibition as is contained in the United States Constitution.[39] Thus, any discussion of land use controls aimed at agricultural preservation must necessarily consider the length to which such controls may go before a court will find them to be an unconstitutional taking requiring compensation.[40]

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33. *Id.* table 1.

34. *Id.*

35. *Id.* at 6, 7.

36. Wershow, *Agricultural Zoning in Florida—Its Implications and Problems,* 13 U. FLA. L. REV. 479, 491 (1960).

37. Wetlands have new been recognized as a highly productive natural resource, Binder, *Taking Versus Reasonable Regulation: A Reappraisal in Light of Regional Planning and Wetlands,* 25 U. FLA. L. REV. 1, 18-25 (1972), and many states have enacted laws for their protection. See CAL. GOV'T CODE §§66600-61 (West Supp. 1973); CONN. GEN. STAT. ANN. §§22a-28 to -45 (Supp. 1973); GA. CODE ANN. §§45-136 to -147 (Supp. 1972); ME. REV. STAT. ANN. tit. 12, §§4701-09 (Supp. 1972); MASS. ANN. LAWS ch. 130, §§27A, 105 (Supp. 1972); N.H. REV. STAT. ANN. §§483-A:1 to :4 (Supp. 1972); N.J. STAT. ANN. §§13:9A-1 to -10 (Supp. 1972); N.S. GEN. STAT. §§113-229, 230 (Supp. 1971); R.I. Gen. Laws Ann. §§2-1-13 to -24 (Supp. 1972); VA. CODE ANN. §§62.1-13.1 to -13.20 (Supp. 1972); WASH. REV. CODE ANN. §§90.58.010-.930 (Supp. 1972). There are at present 2 bills before the Florida Legislature calling for wetlands protection. For a discussion of the similarity between wetlands and farmlands, *see* note 74 *infra.*

38. FLA. CONST. art. I, §9.

39. U.S. CONST. amend. XIV, §1, provides that no state shall "deprive any person of life, liberty, or property, without due process of law . . . ."

40. For a complete analysis of the constitutionality of land use regulations, see F. BOSSELMAN, D. CALLIES, J. BANTA, THE TAKING ISSUE (1973).

Federal Law

Since the landmark decision in *Pennsylvania Coal Co. v. Mahon*[41] courts have recognized that the difference between an unconstitutional taking and a valid exercise of the police power is one of degree, depending on the facts of each case. "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."[42] The *Pennsylvania Coal* case also announced the "diminution in value" test, which plagued courts for many years. Under this test, compensation must be paid to a landowner if a regulation reduces the value of his land to too great an extent.[43]

In 1926 the Supreme Court in *Village of Euclid v. Ambler Realty Co.*[44] announced the "fairly debatable" rule, which accords zoning regulations presumptive validity, stating: "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."[45] Because the *Euclid* Court upheld a regulation that resulted in a seventy-five per cent reduction in value of the affected property,[46] the case also cast doubt upon the continued validity of the "diminution in value" test.

In a more recent decision, *Goldblatt v. Hempstead*,[47] the Supreme Court adopted a three-pronged test for assessing the validity of zoning ordinances, requiring that: (1) the interest of the public generally, as distinguished from that of a particular class, require such interference; (2) the means be reasonably necessary for the accomplishment of the purpose; and (3) the means do not unduly oppress individuals.[48] The Court also laid to rest the diminution in value test, stating that "[a]lthough a comparison of values before and after is relevant . . . it is by no means conclusive."[49] The Court added that an otherwise valid ordinance is not rendered unconstitutional merely because it deprives the property of its most beneficial use.[50] These last two factors will be extremely important in upholding proposed agricultural land regulations because the major pressures on these lands will stem from their increased value for use as apartment complexes, industrial complexes, and the like.

41. 260 U.S. 393 (1922).
42. *Id.* at 415.
43. *Id.* at 413. "One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act." *Id.*
44. 272 U.S. 365 (1926).
45. *Id.* at 388.
46. *Id.* at 384.
47. 369 U.S. 590 (1962).
48. *Id.* at 594, 595.
49. *Id.* at 594.
50. *Id.* at 592.

Florida Law

Following *Euclid*[51] Florida courts adopted the fairly debatable test and gave presumptive validity to all zoning ordinances.[52] For example, the supreme court in *State* ex rel. *Helseth v. DuBose*[53] stated that zoning ordinances should not be set aside unless they are arbitrary and unreasonable and bear no substantial relationship to the public health, morals, safety, or welfare.[54] By 1934 the court recognized that "[t]he doctrine that comprehensive zoning is within the constitutional scope of the police power is now well established."[55]

Based on the previous discussion of the food, oxygen, and export production functions of farmland, it is apparent that the relation between zoning ordinances of other land use regulations aimed at agricultural preservation and the general welfare of the state is at least "fairly debatable." They should, therefore, be upheld against any challenge based on such ground.

Major critics of agricultural land use controls, however, are likely to allege that regulation deprives the owner of the beneficial use of his property. The general rule is that for such an attack to be successful, it must be proved that the ordinance either deprives the owner of all uses of the property or the only reasonable use to which the property is adapted.[56] In *City of Miami v. Walker*[57] the Third District Court of Appeal applied the above rule to uphold an ordinance that prohibited the erection of a filling station within 750 feet of another filling station, the court stating that the best use of the property does not have to be allowed.[58] Similarly, in *Neubauer v. Town of Surfside*[59] the same general rule, combined with the presumptive validity given zoning ordinances,[60] was utilized to uphold an ordinance that reduced the value of property by between 120,000 and 165,000 dollars. The ordinance limited the property to use for multifamily or hotel units when the most profitable use would have been a gasoline service station.[61] The case also

51. 272 U.S. 365 (1926).

52. For recent cases applying the "fairly debatable" test, see City of Miami Beach v. Lachman, 71 So. 2d 148 (Fla. 1954); McCormick v. City of Pensacola, 216 So. 2d 785 (1st D.C.A. Fla. 1968).

53. 99 Fla. 812, 128 So. 4 (1930).

54. *Id.* at 816, 128 So. at 6.

55. State *ex rel.* Landis v. Valz, 117 Fla. 311, 320, 157 So. 651, 655 (1934).

56. *See, e.g.*, Forde v. City of Miami Beach, 146 Fla. 676, 681, 1 So. 2d 642, 645 (1941); State *ex rel.* Taylor v. City of Jacksonville, 101 Fla. 1241, 1245, 133 So. 114, 116 (1931); Ocean Villa Apartments v. City of Fort Lauderdale, 70 So. 2d 901, 902 (Fla. 1954).

57. 169 So. 2d 842 (3d D.C.A. Fla. 1964).

58. *Id.* at 843.

59. 181 So. 2d 707 (3d D.C.A. Fla. 1966).

60. For application of the presumptive validity principle, see City of Miami Beach v. First Trust Co., 45 So. 2d 681, 683 (Fla. 1949); City of Punta Gorda v. Morningstar, 110 So. 2d 449, 451 (2d D.C.A. Fla. 1959).

61. 181 So. 2d at 1709. Evidence was offered that the value of the property as zoned was between $50,000 and $80,000, while if zoned for a service station its worth would have been between $200,000 and $225,000. *Id.*

laid to rest any notions that the diminution in value test may be alive and well in Florida.[62]

Certainly an attack based upon a claim that a regulation limiting fertile farmland to agricultural uses would deprive its owner of all beneficial use of the property must fail. Agricultural use of such land is beneficial, even though the land may have greater economic value if rezoned for other purposes.

A more difficult problem will arise if agricultural land use regulations are adopted but later revised, causing a particular section of farmland to become in effect an island in a sea of commercial use. In this area Florida courts have been more willing to sustain attacks upon the validity of zoning ordinances. As the Florida supreme court stated in *City of Miami Beach v. First Trust Co.*:[63] "Changed conditions may justify or command a revision of zoning restrictions."[64] In this case the court considered the validity of a zoning ordinance as applied to the Firestone estate. The ordinance restricted the property to uses similar to that for which it was presently being used and thereby fixed its value at 400,000 dollars. If rezoned to allow construction of apartments and hotels, the property would have been worth approximately 1,750,000 dollars. On the basis of the presumptive validity principle and the fairly debatable test, the court initially upheld the ordinance.[65] On rehearing, however, the court reversed its decision,[66] concluding that the uses had changed, conditions in the area were substantially different, and no one would be injured if the property were rezoned, since rezoning would not upset the general land use plan.[67]

Two subsequent decisions by the Third District Court of Appeal adopted the *First Trust* position.[68] Both involved situations in which property originally zoned for residential purposes had subsequently been engulfed by commercially zoned and operated properties. In both cases the court held the zoning regulations unreasonable, stating in one that courts are justified in striking down zoning classifications where they are so unreasonable as to constitute a taking of property.[69]

The foregoing discussion is not meant to convey the impression that land

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62. The present rule was stated in City of Miami v. Zorovich, 195 So. 2d 31, 36 (3d D.C.A. Fla. 1967): "A zoning ordinance is not invalid merely because it prevents the owner from using the property in the manner which is economically most advantageous." *See also* Polk Enterprises, Inc. v. City of Lakeland, 143 So. 2d 917, 919 (2d D.C.A. Fla. 1962); City of Clearwater v. College Properties, Inc., 239 So. 2d 515, 517 (2d D.C.A. Fla. 1970).

63. 45 So. 2d 681 (Fla. 1949).

64. *Id.* at 684.

65. *Id.*

66. *Id.* at 689.

67. *Id.* at 688. There was also an indication that the property had not been rezoned because the city intended to purchase it for a park. *Id.*

68. Manilow v. City of Miami Beach, 213 So. 2d 589 (3d D.C.A. Fla. 1968); Kugel v. City of Miami Beach, 206 So. 2d 282 (3d D.C.A. Fla.), *cert. denied*, 212 So. 2d 899 (Fla. 1968), *cert. denied*, 393 U.S. 1021 (1964).

69. 206 So. 2d at 284.

adjacent to agricultural land cannot initially be zoned differently and more profitably without affecting the validity of the agricultural zoning for, as the state supreme court recognized, the line must be drawn somewhere.[70] It therefore seems that an effective plea of changed conditions can be prevented if regulating bodies adhere to their original plans as much as possible and consider any revisions in light of their effects on the over-all scheme.

Two recent decisions from other jurisdictions may play an important role in future contests concerning validity of land use controls in Florida. In the first of these cases, *Potomac Sand & Gravel Co. v. Governor of Maryland*,[71] the issue was whether the owner of property containing wetlands could be constitutionally prohibited from dredging and removing sand and gravel from his property.[72] The court in upholding the law stated that the regulation was:

> [A] legitimate exercise of the police power by the Legislature to regulate and restrain a particular use, that would be inconsistent with or injurious to the rights of the public, of property within the control of the State. Such regulation and restraint is not an unconstitutional taking of private property for public use without just compensation.[73]

The court further concluded that the protection and preservation of exhaustible natural resources was a valid subject for the exercise of the state's police power.[74] Adoption of this rationale in Florida would be an obvious boon to attempts at agricultural preservation.

Probably the most far-reaching decision favoring land use controls is another wetlands preservation case, *Just v. Marinette County*.[75] The question raised was whether an owner of wetlands could be constitutionally prohibited from filling in his land to make it suitable for commercial use.[76] Using language that would vastly increase any governmental body's power to regulate land use, the court stated:

> An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others. The exercise of the police power in zoning must be reason-

70. Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 484, 3 So. 2d 364, 366 (1941).

71. 266 Md. 358, 293 A.2d 241, *cert. denied*, 409 U.S. 1640 (1972).

72. *Id.* at 361, 293 A.2d at 243.

73. *Id.* at 367, 293 A.2d at 246. The land being dredged was within state wetlands, which are defined as "lands under the navigable waters of the state below the mean high tide, which are affected by the regular rise and fall of the tide." *Id.* at 361-62, 293 A.2d at 243.

74. *Id.* at 371, 293 A.2d at 251. The analogy between wetlands and farmlands as exhaustible natural resources is compelling. Wetlands are the breeding and feeding grounds of tremendous amounts of sea life. Once they are dredged, filled, or otherwise despoiled, they are not easily reclaimed. Farmlands produce the nation's food supply, and once they are urbanized they also are not easily reclaimed.

75. 56 Wis. 2d 7, 201 N.W.2d 761 (1972).

76. *Id.* at 14, 201 N.W.2d at 767. "Wetlands" are defined in the Wisconsin act as: "Areas where ground water is at or near the surface much of the year or where any segment of plant cover is deemed . . . aquatic." *Id.* at 12, 201 N.W.2d at 766.

> able and we think it is not an unreasonable exercise of that power to prevent harm to public rights by limiting the use of private property to its natural uses.[77]

The court used this reasoning to uphold the questioned regulation, thereby preventing destruction of the wetlands involved.[78]

The potential importance of *Just* becomes evident when considered in light of a recent Florida decision. In *Hillsborough County Environmental Protection Commission v. Frandorson Properties*[79] the court suggested that the state had power to prevent a landowner from destroying a mangrove area on his property, citing *Just* as support.[80]

In summary, present Florida law pertaining to land use controls appears to present no barrier to enactment of effective regulations designed to preserve the fertile, agriculturally productive resources of the state. Such controls would meet the fairly debatable test of public interest, would not deprive an owner of all beneficial use of his land, and if carefully enforced would withstand a plea of changed conditions. Finally, if the *Just* rationale is adopted by the courts of Florida, such regulations would appear to be not only constitutional but also quite appropriate.

Present Options and Future Possibilities

Several options are presently open to counties and municipalities, through which the preservation of agricultural lands can be encouraged or compelled. The Florida constitution provides that agricultural land *may be* assessed for tax purposes based solely on its use value as agricultural land.[81] The state legislature has exercised this constitutional prerogative by enacting the Green Belt Law.[82] Under this law county tax assessors *must* classify all land within the county as either agricultural or nonagricultural.[83] Any landowner has a right to appeal the assessor's classification.[84] If classified as agricultural, land must be assessed solely on the basis of its value for agricultural use.[85]

Unfortunately, this tax break offers nothing more than an incentive to preserve such land[86] — that is, it *permits* but does not *compel* continued use

77. *Id.* at 17, 201 N.W.2d at 768.

78. *Id.*

79. 283 So. 2d 65 (2d D.C.A. Fla. 1973).

80. *Id.* at 68 (dictum).

81. Fla. Const. art. VII, §4(a) provides: "Agricultural land . . . may be classified by general law and assessed solely on the basis of character or use."

82. Fla. Stat. §193.461 (1973). For discussion of the history of this statute, see Wershow, *Agricultural Zoning in Florida — Its Implications and Problems,* 13 U. Fla. L. Rev. 479 (1960); Wershow, *Ad Valorem Assessments in Florida — Whither Now?,* 18 U. Fla. L. Rev. 9 (1965); Wershow, *Recent Developments in Ad Valorem Taxation,* 20 U. Fla. L. Rev. 1 (1967); Wershow, *Ad Valorem Assessment in Florida — The Demand for a Viable Solution,* 25 U. Fla. L. Rev. 49 (1972).

83. Fla. Stat. §193.461(1) (1973).

84. *Id.* §193.461(2).

85. *Id.* §193.461(6)(a).

86. At present it is probably a necessary incentive for were it not for this preferential

of land for agriculture. Nothing prohibits the farmer from taking advantage of this incentive and later yielding to the pressures of growth by accepting a lucrative offer. Like a reed before a flood, tax incentives alone are inadequate to stem the population inundation threatening Florida's farmlands.[87]

In addition to preferential tax treatment, an indirect means of preservation, the state legislature has also made it possible for counties and municipalities to enact ordinances designed to preserve agricultural land if they so desire.[88] County commissioners have the power to "[*p*]*repare and enforce* comprehensive plans for the development of the county"[89] and to "[*e*]*stablish,* coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public."[90] Counties, therefore, have the power to insure planned growth that will not proceed at the expense of the fertile land needed to support the growth. Counties, however, are not required to enact comprehensive plans and, unfortunately, fewer than one-half of Florida counties have chosen to utilize this tool.[91] For example, in Flagler County, which in 1970 had a population of 4,500,[92] a development corporation is planning a 750,000 person community, but authorities are taking no action, believing few people will ever move there.[93]

Thus, there exists an incentive to landowners to continue using their property for agriculture, and there are laws allowing county governments to plan or zone to preserve such land. Neither the tax incentive nor the county prerogative, however, is mandatory. Therefore, they are at best mildly effective means of preserving agricultural land. Legislation is needed that would compel counties to exercise these dormant powers in a rational, comprehensive manner so that the fertile lands of Florida will be available to feed future citizens. The time for such a law is now — before a real crisis occurs. It must be remembered that planning is a vaccination, not an antidote. To be effective it must be employed to prevent a problem, not to cure one.

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assessment some agricultural land might have too high an assessed value to make it profitable to continue farming it. It is noteworthy, however, that in this very situation in which the incentive would be most necessary, the statute provides that the land may be reclassified as nonagricultural if it stands in the way of timely and orderly growth. *Id.* §193.461(4)(b).

87. For an opinion on the effectiveness of this law in preserving agricultural land, *see* Commentary, *Florida Greenbelts: Preservation of Public and Private Interests,* 27 U. FLA. L. REV. 142 (1975).

88. Municipalities under the home rule provision of the constitution, FLA. CONST. art. VII, §2(b), and the Municipal Home Rule Powers Act, Fla. Laws 1973, ch. 129, *to be codified as* FLA. STAT. §166, have the power to regulate land use. It is unlikely, however, that municipalities will contain much prime agricultural land within their boundaries.

89. FLA. STAT. §125.01(g) (1973) (emphasis added).

90. *Id.* §125.01(h) (emphasis added).

91. Bartley, *supra* note 8, at 9.

92. 1970 CENSUS, *supra* note 1, Florida Data, table 9.

93. TASK FORCE REPORT, *supra* note 12, at 36.

A Proposal for the Future

The Environmental Land Management Study Committee (ELMSC) is presently sponsoring a comprehensive planning act in the state legislature.[94] If this legislation is adopted, *all counties* will be required to prepare and adopt[95] a comprehensive land use plan within three years of the effective date of the act.[96] If a county did not prepare and adopt such a plan, the state land planning agency would prepare a plan for that county,[97] and an administrative commission would have the authority to adopt the plan for the county.[98] The act would require that several elements, such as industrial growth and traffic circulation, be included within the comprehensive plan and would provide for the inclusion of several optional elements if desired.[99] An agricultural development plan must be included.[100]

After adoption of a comprehensive plan, all future development within the county would have to be in accordance with it.[101] Additionally, before a "specific amendment"[102] to the plan could be approved, the act would require due public notice and the concurrence of a majority of the governing body.[103] For all other amendments, the same procedure required for adoption of the original plan would have to be followed.[104] This procedure would require public hearings.[105]

Adoption of this farsighted legislation would be a tremendous step in the right direction. It would guarantee that someone will plan for the agricultural future of each county in the state,[106] and the amendment provisions would help forestall successful pleas of changed conditions.[107] Passage of the act, however, would not in itself effectuate rational preservation of the state's fertile agricultural land. This can be accomplished only if the officials

94. The proposal has been presented to the Florida Legislature, passed by the house by a vote of 86-37, but has not yet been passed by the senate. If passed, the law will be known as the Local Government Comprehensive Planning Act of 1974. Fla. H.R. 2884, §1 (Reg. Sess. 1974). All references in notes 95-106 *infra* to H.R. 2884 are to the 1974 bill, which failed to get senate approval. The bill has been reintroduced in 1975 as Fla. H.R. 92, Fla. S. 53 (Rev. Sess. 1975).

95. *Id.* §4(2).

96. The effective date of the act as proposed would be Oct. 1, 1974. *Id.* §25. Therefore, plans would be required by Oct. 1, 1977. *Id.* §4(2).

97. *Id.* §4(6).

98. *Id.*

99. *Id.* §8. Other elements that must be considered include recreation and open spaces, housing, sewerage and water, and, for cities with populations over 50,000, mass transit.

100. *Id.* §8(6)(a).

101. *Id.* §14(1).

102. "[A] specific amendment is one which proposes to change a use in the land use element of the adopted comprehensive plan, or proposes to change residential density on a parcel or parcels of land where such parcel or parcels of land comprise less than 5 percent of the land area of the jurisdiction involved." *Id.* §12.

103. *Id.*

104. *Id.*

105. *Id.* §11(1)(a).

106. *Id.* §8(6)(a).

107. *See* text accompanying notes 63-70 *supra.*

responsible for the planning process realize the importance of agricultural lands to the economic and ecological well-being of the state and nation and take the necessary steps to insure the preservation of this land for the future.

CONCLUSION

Florida's agriculturally productive land is an important and potentially exhaustible natural resource. It is extremely important to both the domestic and foreign economic well-being of the nation, and will become increasingly crucial to the nation's ecological well-being as man continues to pollute the world's oceans. While there is presently no crisis because of the current abundance of fertile land, continued unplanned growth could result in future problems. Therefore, preservation of this resource should be a top governmental priority.

Existing Florida laws could be used to accomplish this preservation, and case law indicates that the constitutionality of regulations aimed at such preservation is assured. Since the majority of the counties in Florida have chosen to let these laws lie dormant, it is recommended that the legislature adopt the comprehensive planning act of the ELMSC and that counties utilize the act to insure the agricultural future of Florida.

DENNIS C. DAMBLY