Reserving Lands for Street and Highway Improvements

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THIS is a report of the means of reserving lands for street and highway improvements adopted and used in Wisconsin, as prescribed today by the Wisconsin Legislature. I present this report to suggest various means of accomplishing a much-needed control over adjacent lands for the preservation of the usefulness of our highway investments and to economically reserve lands for future highway expansion.

No claim is intended to infer that our methods are the best. I do, however, take pride in the fact that Wisconsin is one of the several states that have provided the highway authorities or the local units of government with at least a portion of the desired means of solving this problem. Provision has been legislated for the control of land use and the establishment of setback lines by local units of government. The state highway commission has been authorized to control access, control platting adjacent to state trunk highways, acquire rights to restrict development, and sell excess properties with reservations to protect the highway improvement.

ZONING

The ways and means for zoning and establishing building setback lines are legislated in Wisconsin under one act as found in Section 59.97 (Stats.). Permission is given the counties to make provisions for the establishment of zoning and setback lines by ordinance and to enforce any ordinance drafted under that section. The ordinance does not become effective in any town until approved by the town board.

Any town in any county not having adopted a county zoning ordinance as provided by Section 59.97 may adopt such regulations or restrictions as to land use and determine locations of buildings with respect to adjacent highways. Thirteen towns have adopted such ordinances in Wisconsin to date.

In the case of county zoning ordinances, the whole ordinance, including the setback lines, is administered by an official designated by the county board and enforced by him through the office of the district attorney.

Where a separate highway setback ordinance is established, it is administered by the county highway commissioner by means of a system of building permits which must be applied for and issued before any building construction can be undertaken. If the proposed construction complies with the regulations established in the ordinance, the county highway commissioner issues the permit; if it does not, he must deny the permit, and if the applicant so desires, he may take the question to the board of appeals. If he is dissatisfied with the action of the board of appeals, he may take the action into court.

If the county highway commissioner finds that there is a violation of the setback ordinance, such violations are reported to the county highway committee. The ordinance provides that the highway committee in such cases shall promptly file a complaint and report the same to the district attorney. It then becomes the duty of the district attorney to prosecute such violation.

Thirteen counties have adopted complete zoning ordinances under the provisions of Chapter 59.97. However, only 106 out of a possible 244 towns in those counties have reported the adoption of the county ordinances. These 106 towns represent 8 percent of the 1,280 towns in Wisconsin, showing that just the surface has been scratched in the establishment of complete zoning since the date that statutory authority was provided in 1929 and adopted by a county for the first time in 1938.

Two additional counties, Brown and Portage, with similar ordinances being
proposed by Wood and Dodge counties, have adopted county-wide setback ordinances that are separate and apart from the county zoning ordinances. However, they are enacted under the same statutory authority as are the zoning ordinances. The general setback regulations in such ordinances are as follows:

- State trunk highways, 100 ft. from centerline
- County trunk highways, 75 ft. from centerline
- Town roads, 55 to 65 ft. from centerline

The distances increase where local situations warrant or where right-of-way widths are greater than 100 ft. Variations in setback restrictions are generally determined by the joint action of the county highway commissioner and the county highway committee with the advice and counsel of the state director of regional planning.

CONTROLLED ACCESS

The right to control the location and design of entrances to state trunk highways in order to avoid the jumble of side roads and private entrances encountered today is an important phase in modern highway design. This right has been provided by legislative authority to the Highway Commission of Wisconsin to: (1) hold a public hearing in the local courthouse, or other convenient place, to hear arguments pro and con to the proposal of declaring a portion of the rural section of the state trunk highway system, not to exceed a total of 500 miles for the state, as a controlled-access highway; (2) determine if the findings are such that an average traffic potential is in excess of 2,000 vehicles per 24-hr. day and the necessity exists in the interest of public safety, convenience, and the general welfare (the Commission may then make its finding, determination and order, specifying the character of the controls to be exercised); (3) record a copy of the order with the register of deeds, file a copy with the county clerk, and have it published in the same newspaper in which the notice of public hearing was published, after which the order shall become effective; and (4) use its police power to regulate, restrict, or prohibit access to or departure from a controlled-access highway as the commission may deem necessary or desirable.

The types of control authorized by the legislature include the following rights: (1) to eliminate intersections at grade of controlled-access highways with existing highways or streets, by grade separation or service road or by closing off such roads and streets at the right-of-way boundary line of such controlled-access highway, and to divide and separate any controlled-access highway into separate roadways or lanes by raised curbnings, dividing sections, or by signs or markers, or to execute any construction necessary in the development of a controlled-access highway, including service roads or separation of grade structures; (2) to consent or approve, only if the public interest shall be served thereby, to the connection with a new public street or highway or private driveway; (3) to prohibit entrance upon or departure from or travel across controlled-access highways, or to or from abutting lands except at places designated and provided for such purposes; (4) to assume that the owners or occupants of abutting lands shall have no right or easement of access by reason of the fact that their property abuts on the controlled-access highway or for other reason, except only the controlled right of access and of light, air, or view; (5) to permit a crossing where property held under one ownership is severed by a controlled-access highway, to be used solely for travel between the severed parcels, as long as title is vested in the same owner; (6) to enter into agreements between the commission and governing bodies of a city, town, village, or the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access highways or other public ways in their respective jurisdictions; and (7) to prohibit the use of property acquired for or designated as a controlled-access highway by commercial enterprises.

Penalties for unlawful use of highways may provide for fines of not more than $100 or imprisonment for not more than 30 days, or both such fine and imprisonment.

This control was authorized by legislation in 1949, and since that time approximately 260 mi. of state trunk highways have been declared as controlled-access highways by the commission. There are only 240 mi. left to control under the
present law. The restricted limitation of 500 mi. may soon be revised to extend the length now that the trial period shows this type of control to be highly successful.

CONTROL OF PLATTING

As our state trunk-highway improvements are developed, particularly in congested areas, land platters are seizing the opportunities presented in platting outlying lands and providing the owners of homes in these plats with quick access to the central communities over the new highway. Examples can be presented to show where this land platting provides numbers of individual lots abutting on the new highway, with each lot, when developed with a house or business structure, requiring ingress and egress to the state trunk highway. These entrances cause hazardous conditions and also restrict the proper functioning of drainage ditches.

In order that such hazards and restrictions be held to a minimum, the Wisconsin legislature has provided authority for the state highway commission to approve plats that abut a state trunk highway or connecting street. In the interest of safe access from such plats, they should be made so as to be as safe as is practical under the particular circumstances. Where future highway plans affect the area, the platting should not conflict. Such an opportunity to review a plat in its preliminary stage allows a check on the width of the right of way stated on the plat and a correction if it is found to be in error. It provides an opportunity for the platter to acquaint himself with the proposed highway improvement or possible future increase in right-of-way width to provide for additional improvement of the highway facility needed for a potential increase in traffic and the chance to revamp his plat accordingly.

This means of controlling the type and design of plats adjacent to state trunk highways is essentially governed by the legislature as follows: "To promote the public safety and convenience, and in the interest of the general welfare, all land divisions shall be so designated as to provide for the safety of entrance upon and departure from the abutting highways or streets and for the preservation of the public interest and public investment in such highways and streets, insofar as such provisions shall be reasonable under the particular circumstances."

The statutes have not been construed as providing for reservation of rights-of-way for future improvement, although in a reasonable number of instances the subdivider has dedicated nominal additional width for street or highway purposes. There are also a reasonable number of instances where we have secured the subdivider's cooperation in establishing a setback line on the plat, where none is so established by local ordinance.

Primarily it is the commission's objective to minimize the number of direct accesses between the highway and the abutting platted property. This has been accomplished by having the subdivider provide a dedication for a service road along the highway or an arrangement of interior roads to serve the property and, by specific restrictions indicated on the plat, stipulate that ingress and egress between certain lots and the state trunk route is prohibited.

In general, Wisconsin has had little opposition to the administration of this law. Most platters or subdividers have been cooperative and satisfied with any restrictions or recommended revisions which have been proposed, imposed, or suggested by the commission. The surveyors and subdividers are aware of the commission's problems and the intent or purpose of the statutes.

The law is weak in one respect: a plat is not subject to approval by state agencies if the subdivision contains less than five lots. The result is that owners can subdivide the land each calendar year into four lots or less and sell them by metes and bounds description, and so circumvent the law. We have no means of knowing how far this practice may be followed throughout the state.

DEVELOPMENT RESTRICTION

The acquisition of rights to control development is possibly the most economical and favorably accepted means of reserving lands for subsequent highway use or for the protection of the investment in the present public improvement. It takes into consideration the right of an owner to use his property in any manner consistent with zoning or setback regulations, deed restrictions, and lawful use, by paying him for the loss of such privileges.
It is a right which may be acquired wherever a state is authorized to acquire "any rights or interests in land" needed for highway purposes.

Section 84.09 (1) Wisconsin Statutes reads: "The state highway commission may acquire by gift, devise, purchase or condemnation any lands for establishing, laying out, widening, enlarging, extending, constructing, reconstructing, improving, and maintaining highways, streets, and roadside parks which it is empowered to improve or maintain, or interests in lands in and about and along and leading to any or all of the same."

Where the controlled area is a fairly narrow strip and no immediate plans for improvement are contemplated by the owner, the cost of these rights varies from $1 to $1,700 per parcel, with the majority of easements costing approximately $150 per parcel.

This restriction accomplishes the following: (1) controls the location of billboards where such control is deemed necessary or advisable; (2) provides for land use not detrimental to the present and future needs of the highway facility; (3) provides for future acquisition of unimproved lands for highway purposes at a considerable saving over the cost of improved lands; and (4) provides for horizontal vision at intersections with other highways or private entrances or on the inside of curves and still allows the land to be used for lawns, pasture, or low-standing crops.

Another type of development control recently used in Wisconsin was the acquisition of scenic rights in connection with roadside control of land use on the Mississippi River National Parkway.

The commission desired to preserve, insofar as reasonably possible, the natural beauty of the roadsides and to prevent any unsightly developments that would tend to degrade the character of the project as constructed or result in danger to travel on the highway and to that end to exercise such reasonable controls over the lands within a restricted area of 350 ft. each side of the highway reference line as would be necessary to accomplish such objectives.

The conveyance of such rights by the owner includes an easement and right in perpetuity to any and all portions of real estate within said strips designated as the "restricted area" within which:

1. No building or premises shall be used and no building shall hereafter be erected or structurally altered except for one or more of the following uses: (a) single family residences or tracts of not less than 5 acres; (b) general farming, including farm buildings, except fur farms and farms operated for the disposal of garbage, rubbish, offal, or sewage; (c) telephone, telegraph, or electric lines or pipes or pipe lines or radio relay structures for the purpose of transmitting messages, heat, light, or power; (d) uses incident to any of the above permitted uses, including accessory buildings; and (e) any use existing on the premises at the time of the execution of this instrument; existing commercial and industrial uses of lands and buildings may be continued, maintained, and repaired, but may not be expanded, nor shall any structural alteration be made.

2. No dump of ashes, trash, sawdust, or any unsightly or offensive material shall be placed upon such restricted area except as is incidental to the occupation and use of the land for normal agricultural or horticultural purposes.

3. No sign, billboard, outdoor advertising structure, or advertisement of any kind shall be erected, displayed, placed, or maintained upon or within the restricted area, except one sign of not more than 8 sq. ft. in area to advertise the sale, hire, or lease of the property or the sale of any products as are produced upon the premises.

4. The conditions of this easement shall not prevent any permanent excavation or work necessary to the occupation or use of the restricted area for purposes of the permitted uses.

5. No trees or shrubs shall be removed or destroyed on the land covered by this easement, except as may be incidental to the permitted uses.

6. The grant of such easement does in no way grant the public the right to enter such area for any purpose.

ACQUISITION OF ENTIRE PROPERTIES AND THE SALE OF EXCESS

Statutory authority for the sale of excess highway right of way is found in Section 84.09 (Wis. Stats.) as follows:
After establishment, layout and completion of such improvements, the commission may convey as hereinafter provided such lands thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such lands so as to protect such public works and improvements and their environs and to preserve the view, appearance, light, air and usefulness of such public works.

Subject to the approval of the governor as herein provided, the highway commission is authorized and empowered to sell at public or private sale property of whatever nature owned by the state and under the jurisdiction of the highway commission when the commission shall determine that such property is no longer necessary for the state's use for highway purposes. The commission shall present to the governor a full and complete report of the property to be sold, the reason for the sale and the minimum price for which the same should be sold, together with an application for the governor's approval of such sale. The governor shall thereupon make such investigation as he may deem necessary and approve or disapprove such application. Upon such approval and receipt of the full purchase price, the commission shall by appropriate deed or other instrument transfer the property to the purchaser. The funds derived from such sale shall be deposited in the appropriate highway fund, and the expense incurred by the commission in connection with the sale shall be paid from such fund.

A declaration of excess property may result from two conditions: (1) where the purchase of the original right-of-way included an area which could either be held for public purposes or determined as no longer needed and (2) where adjacent, old right-of-way is automatically retained by statutory provision as a portion of the new right-of-way and an adjacent owner offers to purchase a portion not needed for the improvement.

The procedure necessary for the sale of excess property is long and cumbersome. To demonstrate, the steps are as follows:

1. Either an offer is received from one or more individuals or the sale is proposed by the commission.
2. An investigation is made by the division office or the landscape engineer to determine whether or not the parcel should be retained for highway or park purposes or is needed by the Maintenance Department for material or equipment storage.
3. A preliminary report from the division office is presented for informal approval by the commission, and if the proposed sale is in the best interests of the public, the division office is so notified.
4. If the interest in the parcel, as held by the state, is an easement, the rights held can be transferred only to the underlying fee owner, but if a fee title is held by the public, the transfer may be made to any successful purchaser; this determines whether the sale is to be private or public.

5. In Wisconsin, the majority of its rights-of-way are held by the local county highway committee in the name of the county, in trust for the state.

Therefore the next step is to transfer title to the state according to Sec. 84.09 (3) (b): "Any property of whatever nature acquired in the name of the county pursuant to this section or any predecessor shall be conveyed to the state without charge by the county highway committee and county clerk in the name of the county when so ordered by the commission." This is accomplished by a formal order being issued by the commission and a certified copy forwarded to both the county highway committee and the county clerk advising them that a representative of the division office will present, in person, a quitclaim deed for execution within a few days.

6. A quitclaim deed describing the parcel originally acquired in the name of the county is prepared in the main office and is forwarded to the division right-of-way engineer with a copy of the commission's order. He is requested to attend to the execution by proper county officials and supervise its acknowledgement and completion, after which it is to be forwarded to the main office for acceptance by the commission.

7. Upon receipt of the executed deed the following action is taken at a formal meeting of the commission: (a) approve and accept the deed from the county; (b) determine that a specified portion of the property is no longer necessary for the state's use for highway purposes; (c) declare that such portion is excess property and subject to sale pursuant to statutory provisions; (d) state that a full and complete report of the portion to be sold and the reason for the sale, together with an application for approval, shall be submitted to the governor. (e) determine the minimum price of the parcel; and (f) determine what restrictions and conditions shall be incorporated in the deed to the successful purchaser.

8. The accepted quitclaim deed from the county is returned to the division office for recording with the local register of deeds, and the recorded instrument is then filed in the main office.
9. A letter is prepared and sent to the governor to comply with the statutory requirements and the above described action taken by the commission.

10. Upon receipt of the governor's approval to the sale, the division right-of-way engineer is notified to proceed with the sale. If it is to be private, the remaining steps are simple. A quitclaim deed to the purchaser is executed by the commission and offered upon receipt of payment in full. The transaction is thereupon completed. If the sale is to be public, additional steps are required.

11. A determination is made as to the type of sale, either by sealed bids or auction. If sealed bids are to be received, the sale is advertised, and at the time and place designated the bids are opened and read publically and the results reported to the commission, who accepts or rejects the highest bid.

12. If the sale is to be conducted by auction, the services of an auctioneer are contracted. The date of the sale is determined, advertisements are placed in local newspapers, and terms for the sale are determined.

13. The bidder offering the highest price above the minimum established price is the successful purchaser.

14. A quitclaim deed is executed by the commission to the purchaser, describing the parcel and stating the restriction and conditions to the transfer. Such restrictions may deal with the use of the land, prohibiting structures, fences or billboards, or use for commercial purposes. Restrictions might include the right of the grantor to control vehicular access to the highway or the right to restrict further development of the area. All restrictions or reservations are determined such as to protect the improvement and its environs and "to preserve the view, appearance, light, air and usefulness of such public works."

Although this is a long drawn out process, it provides ample time to consider all angles of the transaction and avoids the simpler real-estate deal which might otherwise be made on the spur of the moment to a private party in exchange for needed lands he owns, or because his offer appeared reasonable at the time and which might be considered as an unwise deal where the commission might be subject to criticism.

We have been financially successful in most of our public sales, especially those conducted by auction. As an example, we encountered a problem in our negotiations for a right-of-way on relocation where a 300-ft. strip ran diagonally through two adjacent farms and required moving or purchasing the entire set of buildings on one of the farms. Parcel 17 contained the buildings and Parcel 16 was land only.

An appraisal of the land and damages was obtained in the amount of $25,334 for both parcels, which included the cost of 26.16 acres, 415 rods of new fencing, moving seven buildings, replacing a well and two concrete silos, and severance damages.

The owners of both parcels refused to sell the strips needed for the right-of-way. Refusal to deal by contract would normally have required the condemnation of the parcels and possible subsequent court appeals. It was realized that the cost might reasonably have been determined by a jury to result in payment of an amount approximating the value of the entire farm of 100 acres in the case of Parcel 17. The severance damage to 10 acres by Parcel 16 to a 60-acre farm, might be determined by a jury to be much higher than the appraisal.

It was therefore decided to appraise the value of the 100-acre tract and that portion of the 60-acre tract included in Parcel 16 and severed by it. The total value of the 120.42 acres, including seven buildings, was determined to be $34,750. Settlements were obtained from the owners for this amount.

We subsequently sold the buildings and the excess lands, consisting of 93.25 acres, by public auction and grossed $12,750. Instead of the right-of-way costing $25,334 as originally appraised, it cost $22,000 or a saving of $3,334 not considering the auctioneer's fees and advertising, the sum of which amounted to approximately $334. A net saving of $3,000 was therefore realized.

In another case on the same project, by expending $28,250 for 116 acres, including a house and barn, we received $20,984 from an auction sale of the buildings and 80.05 acres of excess area, making the cost of our 34.95 acres of right-of-way to be $7,266 or $207 per acre. Although no appraisal was attempted for the right-of-way parcel, our records show that adjacent parcels were appraised at $300 per acre for land only and that by adding cost of fencing, severance and proximity damages, as well as damages due to reduction in size
of farm, the appraisal might have reached a figure of $400 or more per acre. We conclude, therefore, that in this case we realize a saving of at least $7,000. In fact, the excess parcels were sold as follows:

- 5.3 acres at $380 per acre
- 39.5 acres at $335 per acre
- 35.25 acres at $137 per acre
- 80.05 acres at $250 per acre, or $43 more than the per-acre cost of the portion retained for highway right-of-way.

These reported ways of reserving lands for street and highway improvements as used in Wisconsin are not faultless but, nevertheless, have been used successfully. Any revision of the present laws would need to be scrutinized carefully before it is recommended for passage. Quite often a legislator or group of enthusiastic promoters is able to introduce for passage, ridiculous laws that would be difficult to observe or enforce, such as the time a law was proposed in a state that the value of $ \pi $ should be the simple amount of "3" instead of "3.1416"; or the time that Wisconsin went all out and passed a law in commemoration of its war heroes by ordering that there shall be established within 50 yr. a Silent Cross Memorial Highway consisting of a north-and-south highway through the state intersecting with an east-and-west highway to form a cross. The cost of the proposed beautification of the crossed highways with controlled land use, restriction of style of architecture for the buildings, and other impractical provisions is in many ways not tied to highway needs or existing patterns of traffic.

The language of any statute is the important factor in the success or failure of providing ways to resolve present-day highway problems and to avoid possible interpretation by the courts as to be unconstitutional, unusable, or contrary to original intent.

**COMMENT ON FIGURES**

Figure 1 shows the state of Wisconsin with a cross-hatched area near the top. This area is almost entirely for the development of forestry or for recreational use. The law affecting this area was the first zoning law legislated in Wisconsin dealing in land use for large areas of the state.

Figure 2 shows the areas affected by the type of ordinance in which complete zoning and setback lines are established for agricultural and industrial use by the counties and shall become effective within a town only when the ordinances are adopted by such town. This figure shows 106 towns comprising 8 percent of the total number of towns in the state. The areas cross-hatched show the towns that have adopted the complete zoning and setback restrictions, and the blank areas within the same counties show the towns that have not adopted the ordinances to date.

Figure 3 shows the towns that have adopted zoning and setback lines without county ordinances. Several of these are located in Rock, Waukesha, and Ozaukee Counties, with one in the western part of the state in the southwest corner of Trempealeau County.

Figure 4 shows two counties, Brown and Dodge, where setback restrictions have been established without zoning ordinances. There are two more counties that are proposing similar ordinances. The reason for this partial restriction of land use is possibly that the counties themselves thought they could get legislation of that type of ordinance passed and with a "foot in the door" they would eventually be able to pass ordinances for complete zoning.

Figure 5 shows a typical sign placed along our controlled-access highways to warn subsequent real estate purchasers.
that permission for entrances must be obtained from the local division office of the highway commission. This kind of notice works out fairly well, much better than by newspaper publication alone.

Figure 6 shows a typical plat that has been submitted to the highway commission for approval. If the state trunk highway ran north and south instead of east and west, as in this case, the commission would have returned the plat to the owner with a request that the lots adjacent to the state trunk highway be revamped to avoid entrances at every lot from the highway or that a service road area be provided on his own property parallel to the highway. The commission would not accept a plat of this type unless provisions were made for the recommended revisions.

In this example, however, the state trunk highway is actually an east and west highway on Mt. Washington Street at the south end of the plat, and because there are three lots in the plat adjoining the highway, a note has been added which reads, "There shall be no vehicular in-

Figure 2.

Figure 3.

Figure 4.

gress and egress from Lot 1, Block 1, and Lots 1 and 9, Block 3, to Washington Street (S.T.H. 60) as shown on this plat as approved by the State Highway Commission on December 29, 1952."

You will notice there is no indication that the plat has been recorded, because the recording follows approval of the various public agencies, and in this case, the plat still requires approval by the Village of Grafton.

Figure 7 is an example of an attorney's effort to prepare a restricted development right instrument of conveyance. You will find the types of restrictions listed in the paper of "Development Restrictions." I can hardly blame an owner for not signing it when there is such a lengthy paper of fine print. It takes about a half hour to read it. I regret we haven't a simple instrument for the conveyance of restricted development rights, but when the attorney
presented his first rough draft it was four pages long. A subsequent conference, with the help of fine print, reduced it to one page.

Figure 5.

Figure 8 is one that shows an example of excess right of way. We encountered a problem in our negotiations for a right of way on relocation where a 300-ft. strip would run diagonally through two adjacent farms and required moving or purchasing the entire set of buildings on one of the farms. One farm is numbered Parcel 17 and was owned by Stanley Brzozowsky. He owned two 40-acre tracts and an adjoining triangular 20 acres for a total of 100 acres. Parcel 16 was owned by Reinhold Zessin, and his farm consisted of the remaining triangular 20 acres adjacent to Parcel 17, and a 40-acre tract, for a total of 60 acres. The outlet from both farm buildings was by private road between the two triangular 20-acre tracts.

By taking a 300-ft. strip of these farms on a diagonal we would, of course, damage both farms considerably. In the case of Parcel 17, the strip included all the buildings, but Parcel 16 was land only. It was necessary in the first place to appraise the value of this strip for each parcel and determine the damages to the remaining lands. An appraisal for both parcels was obtained in the amount of $25,334, which included the cost of 26.16 acres, 415 rods of new fence, moving seven buildings, replacing a well and two concrete silos, and of course, severance damages.

The owners of both parcels refused to sell the strips for that figure. Refusal to deal by contract would normally have required condemnation of both parcels and

Figure 6.
DEVELOPMENT RESTRICTION EASEMENT

THIS INDEMNITY made on the... day of... 19... between

W. FORM NO. III
DEVBLDMNT USTRICTION KASSMXNT

Whereas, the FIRST PARTIES are the owners in fee simple of certain real estate which is near to or adjacent to a certain highway now known as..., which real estate is located in County, Wisconsin, and is more particularly described as follows:

NOW THEREFORE, it is considered by the SECOND PARTY to the FIRST PARTIES, paid by the SECOND PARTY to the FIRST PARTIES, for the covenants and agreements set forth in this instrument, that certain real estate, described as above, be forever restricted from the use of the right of way of such highway clause in said real estate, which portion is hereby designated as the "restricted area".

which portion is hereby designated as "restricted area," provided, however, that there may be grown upon said "restricted area", on or within the area here described, any of the following:

The FIRST PARTIES, for themselves, their heirs, executors, administrators, grantees, successors, and assigns, to hereby agree and consent to the following: First, as long as the ground insured hereby granted is used for said highway purposes, any and all uses, structures, or improvements which in the opinion of the Second Party may be necessary or proper for the purpose of said highway; and that the said to be free and exempt of all incumbrances whatsoever, except as herein given.

The FIRST PARTIES, for themselves, their heirs, executors, administrators, grantees, successors, and assigns, do hereby agree and consent that at any time, the Second Party may make improvements, extensions, or additions to the said highway purposes, and the same shall be necessary for the use and enjoyment of the Second Party; and that the said to be used for said highway purposes hereinafter described. The same shall be done by the Second Party, in a manner which will not interfere with the use and enjoyment of the property hereby granted. And

being the owner..., and holder..., of... certain... Item(s) described as follows:

Figure 7.
possible subsequent court appeals. It was realized that the cost might reasonably have been determined by a jury to result in payment of an amount approximating the value of the entire farm of 100 acres, in the case of Parcel 17. The severance damages to ten acres by Parcel 16 to a 60-acre tract might be determined by a jury to be much higher than the original appraisal.

Bear in mind that Zessin would have a smaller area to farm and that Brzozowsky would have to move his seven buildings to the northeast and work the larger part of the remaining property by constantly crossing a super highway with his equipment. So, not being assured of what a jury might award in either case, we decided to appraise the entire farm of 100 acres and that part of the Zessin property included in a line southwesterly of the 300-ft. strip. The total value of the 120.42 acres, including seven buildings, was appraised at $34,750. Settlements were obtained from the then satisfied owners for this amount.

We subsequently sold the buildings and the excess lands, consisting of 93.25 acres, by public auction. The bidders were warned that due to the highway having controlled-access regulations, the purchasers would have no direct access to the highway, except that if the westerly tract was land locked, we would permit one entrance. We advised that at no time, and under no conditions, would we permit a crossover between the separate tracts on each side of the highway.

We realized a gross receipt of $12,750. So, instead of the right-of-way costing $25,334, as originally appraised, it cost $22,000, or a saving of $3,334.

I have another example of a similar sale reported in my paper where a saving of at least $7,000 was realized by purchasing a piece of property including 116 acres with a house and barn.

CONCLUDING REMARKS

Now in conclusion, these ways and means of reserving lands for street and highway improvements as used in Wisconsin are not faultless, but nevertheless they have been used successfully. Any revision of the present laws of our state needs to be scrutinized carefully before it is recommended for passage. Quite often a legislator or group of enthusiastic promoters is able to
introduce for passage ridiculous laws that would be difficult to observe and enforce. Wisconsin, mind you, went all out and passed a law in commemoration of its war heroes by ordering that there shall be established within 50 yr. a Silent Cross Memorial Highway, consisting of a north and south highway through the state, intersecting with an east and west highway to form a cross. By the language of the statutes, it appeared that the highway should be so designed and the adjacent property so zoned as to use that someone from the heavens, or on his way to Mars or the moon would look down on Wisconsin and see a beautiful cross imposed on the landscape. It was idealistic. One can't blame the legislature for honoring their heroes in some manner, but the cost of such a proposed beautification of the crossed highways with controlled land use, the restriction of the style of architecture for the buildings, and other impractical provisions is in many ways not tied to highway needs or existing patterns of traffic.

The language of any statute is the important factor in the success or failure of providing ways to resolve present day highway problems and to avoid possible interpretation by the courts as to be unconstitutional, unusable, or contrary to original intent. Thank you.

DISCUSSION

MR. MOSER. In the case of restricted development rights, do you prohibit the erection of fencing around the restricted areas?

MR. SAWTELLE. In many cases we prohibit the erection of fences around such areas. We will allow fencing on the owner's side of the area if such area is extending into the normal or adjacent right of way, but where the area is beyond and adjacent to the right-of-way, we allow a fence on the right-of-way line bordering the area reserved or acquired for highway use. Any buildings located on the restricted development area at the time of right-of-way acquisition are restricted to their present use and shape. We do the same thing you do in restricting improvements on such structures. Barns located on the restricted areas serving their purposes today are allowed to remain until no longer needed or used without major repairs, then they are removed and the site becomes a part of the highway right of way automatically.

MR. LEVIN. Are there any other questions? Could you give us rough idea of how many plats have been submitted to your commission for review on your control of platting authority? Are there a lot of them, or just a few?

MR. SAWTELLE. I do not have the information as to the number of these plats that we have received since the statutory authority was effective, but they come in quite often. Almost daily.

MR. LEVIN. In other words, it is not just a single section of highway that is affected by this approval.

MR. SAWTELLE. No, it covers the whole state highway system.

MR. LEVIN. Outside of incorporated areas where there is no other opportunity for reviewing plats by a public board, the commission apparently must approve all plats adjoining state trunk highways?

MR. SAWTELLE. Yes, outside of Milwaukee County and those areas that have a county planning board or department of their own, we are at present not too sure about Milwaukee County, since there is some thought that we have a right to review plats in the City of Milwaukee and Milwaukee County, but there is an unanswered question of the interpretation of the law. We have so far not reviewed any Milwaukee County plats.

MR. LEVIN. Now, there you have a type of control that doesn't cost the public a nickel, there is not a dollar of state highway funds that goes into that except maybe for an administrator of the program.

MR. SAWTELLE. The administration of this activity is handled by our plan engineer, as an added task, since the work does not require the service of an additional employee.

MR. LEVIN. Do you get a look at it? Your traffic engineer reviews it?

MR. SAWTELLE. No, neither the right-of-way department nor the traffic department examines such plats. The plan engineer submits the plat to the highway commission, with his recommendations and the commission in its review may not accept his recommendation, but on the other hand, they might. It is up to the commission itself to act on each submittal and approve or disapprove the proposal.

MR. LEVIN. There is one other ob-
servation I would like to make with your indulgence, and you are a very patient audience. Mr. Sawtelle said it costs about $100 or $150 for protection for which you get nothing. I just wondered if we shouldn't look at that. I know you didn't mean it quite like that, and I am not interpreting that lightly, I wonder if its the same kind of protection that the insurance people provide. You insure your house against loss by fire on the theory that in case something happens the risk of a $10,000, $15,000, or $20,000 house would be spread over a large number of people. Now if your house does not burn down the $10 or $15 that you pay annually for that fire insurance is wasted perhaps, but as you well pointed out, instead of paying $5,000 or $10,000 a structure, you just pay $100 or $150 as insurance premium. I think that is a very sound way of looking at it, isn't it, that it's a protection.

MR. SAWTELLE. Yes, but you can spend too much for such insurance, and for the type or interest you obtain I am inclined to agree with Mr. Moser that perhaps if you get to a point of paying almost the value of the land, you might as well get fee title in the first place. The same thing is happening to us in our acquisition of easements. We pay the price of fee title yet have only the right to use the property for highway use and the underlying fee holder can continue to benefit from the use of the land as long as such use does not interfere with the rights of the easement. We are gradually acquiring the fee, but it takes time to put that plan into effect.

MR. LEVIN. Incidentally, when you go back, you already have the rights of development, now when you go back, you shouldn't pay the full market value. You should pay the full market value minus the rights of development so that theoretically the total you should pay for the rights, plus the total you pay when you acquire land, should not exceed the market value. I am talking about theory. The theory in other words, whether practically it works out that way, obviously it didn't in Mr. Moser's state, but in principal when you go back to acquire, what you are doing is acquiring, whatever you are acquiring minus the right of development, and that frequently is a valuable right. In fact, the more valuable it is, the more you pay for it, the less you should pay for it when you go back and acquire the right, isn't that so, at least in theory?

MR. SAWTELLE. In theory only, but an element of benefits derived from the highway improvement at the time of acquiring the restricted development rights enhances the market value of the property such that a subsequent purchase of fee title or an easement requires an additional expenditure which might often equal the original cost of the development rights, therefore, we practically get nothing for the initial investment or for the insurance you mention, and it appears that it might be more economical in the long run to buy the easement or fee at the first opportunity, in cases where planning proposes eventual acquisition of additional rights in the not too distant future.