PROGRAM OUTLINE

Agricultural Lands and Agricultural Use Regulation

(1) The Issue

- All U.S. States either exempt most forms of production agricultural use from land control regulations, or give substantial leeway in regulating agricultural use
- The central question is why do they do this? Mostly likely:

A. State zoning enabling legislation began to appear to in the early 1920's – it was strictly urban and not conceived as rural
B. Way too many rural legislators – it is OK to put regulation in the city, but not in the rural areas
C. Remember that there are 32+ million people living on farms in 1926 – probably the all time high
D. Judicial review of broad agricultural exemption began early and often in the 1930s as counties were granted planning and zoning power

(2) Stages of regulatory development

- 1930 – 40's what constitutes a valid agricultural use – are all things rural exempt? See for instance Chudnov v Board of Appeals of Town of Bloomfield, Conn, 113 Conn, 49, 1931 – does agricultural mean only farming?
- 1950's Disney and the American Dairy Association – Americans discover agriculture and 100's of counties adopt zoning – urban sprawl brings grief to the farm.
- 1970's Americans discover that farmers and ranchers feed them and that their lettuce comes from Yuma, AZ – not Old McDonalds farm.
    - Agriculture zoning laws began to be popularized in 100s of U.S counties during the 1970s. They are a simple, yet effective techniques to preserve prime farmland – or any farm land in general.
    - At its most basic, agriculture zoning requires very large minimum lot sizes to construct a nonfarm residence – typically 40 – 80 acres. Most rural zoning ordinances limit the type and nature of the use that can locate in the agriculture district. The permitted uses are called EFUs – or exclusive farms uses

- 1980's – the era of nuisance exemption, right-to-farm, LESA and product diversification. The National Agricultural Lands Study – the loss of 3 million acres per year of agricultural land conversion – 1981
    - Right to farm laws have been passed by all the states to grant farmers a basic "right to farm" These laws are not a complete freedom from nuisance suit. Farmers must operate in a legal and reasonable manner and often cannot expand their operations
    - Some states impose certain restrictions on nuisance suits. Spur Industries v Del Webb 108 Ariz 178 1972. Retirees in Sun City, AZ were faced with very strong odor of cow manure form a feed lot. The judge ordered the feedot to close but required Del Webb to pay for the cost of relocation.
- The New Millennium – The rural folk fell to fighting over what is agriculture and what is not – some example include C.A.F.Os, farmers markets, agri-tourism, farm wineries.

(3) Examples of state enabling agricultural exemption
- Exclusive agricultural use – Idaho
- Production agriculture – New York
- An agricultural purpose/of canaries and greyhounds - Kansas
- Agricultural enterprise or farming – Connecticut
- Devoted to agriculture use –Wisconsin
- General agricultural purpose – Arizona
- Perhaps many of the statutes are vague for good reason?

(4) Some interesting cases – all from the central states.

A. Blauvelt v Leavenworth County, 227 Kan. 110, 1980
- Blauvelts purchase a tract of land in Leavenworth County, KS with the intention of starting a small farming operation.
- The building permit was denied for several reasons – including setback regulations
- The Baluvelts bought an action claiming that a "farm house" served an agricultural purpose under KSA 19-2913 which says, in part, "that no determination nor rule nor regulation shall be held to apply to the use of land for agricultural purposes, nor for the erection of buildings thereon so long as such buildings are used for an agricultural purpose and not otherwise.

- Leavenworth County maintained that “a house in which a farmer resides is residential, does not serve an agricultural purpose, and therefore is not exempted from county zoning regulations” – while other structures such as barns and silos are exempted.
- The Kansas Supreme Court ruled in favor of the Blauvelts noting that thousands of Kansas farm family would be shocked to learn that their homes were not a part of the agricultural operation.

B. Fields v Anderson Cattle Company 193 Kan 558 1964
   - Actually a nuisance case brought by the Fields against Anderson Cattle Co., owner of a feedlot because of odor.
   - The county zoning ordinance classifies a feed lot as a commercial use – not an agricultural use and this would have an impact on Anderson Cattle related to the impact of damages.
   - The Kansas Supreme Court notes that ”whether the owner of livestock fattens cattle for market in the pasture of the Flint Hills, or in feed lots …, the preparation for market continues as an agricultural pursuit.”
   - No such thing as a commercial cow or an industrial cow.

C. Premium Standard Farms v Lincoln Twsp. of Putnam County, MO 946 S.W. 2d 234, 1997
   - Standard Farms proposes to erect 96 hog barns and 12 waste lagoons consisting of one lagoon and 8 barns per site – that is a lot of hog manure.
   - Lincoln Township finds that some lagoons would be within the 1 mile setback from the nearest off-site residence imposed by the township zoning ordinance. The township also requires a surety bond of $750,000 for each lagoon for closure.
   - The Missouri statute cited by Standard Farms is in plain language - the zoning power “shall not be exercised so as to impose regulations or to require permits with respect to the erection, maintenance, repair, alteration or extension of farm buildings or farm structures.”
   - The Missouri Supreme Court held that the livestock lagoons and finishing buildings, even though part of a corporate structure and CAFO, are farm buildings within the meaning of the Missouri agricultural exemption.
   - Missouri legislature does change some environmental laws and Willie Nelson comes to town for song and dance.

D. Bormann and McGuire v Bd. Of Supervisors of Kossuth County, Iowa 584 N.W. 2d 309, 1998.
    - The Board of Supervisors can declare an “agricultural designation area” – in this case it was 960 acres with several owners involved.
    - An agricultural area designation triggers certain benefits; among them is immunity from nuisance suits for bona fide agricultural uses.
    - The Bormanns and the McGuires (the neighbors) contend that “the approval with the attendant nuisance immunity results in a taking of private property without the payment of just compensation in violation of federal and state constitutional provisions.”
    - The Iowa Supreme Court rules that there is a real property right in the form of an easement that is at stake here. They note: “Thus, the nuisance immunity creates an easement in the property affected by the nuisance in favor of the applicants' land. This is because the immunity allows the applicants to do acts on their own land which, were it not for the easement, would constitute a nuisance. For example, in their farming operations the applicants would be allowed to generate "offensive smells" on their property which without the easement would permit affected property owners to sue the applicants for nuisances.”
    - In conclusion, the court found that the nuisance immunity constituted a “taking” of property without just compensation.

John Keller is a professor of Regional and Community Planning at Kansas State University, where he teaches planning law, rural planning and development, and comprehensive planning practice. With his co-authors he has three editions of The Small Town Planning Handbook by Planners Press. He is also the co-author of Rural Planning and Development in the United States by Guilford Press. He is a member of the American Planning Association and a Fellow of the American Institute of Certified Planners.