



LAND
STEWARDSHIP
PROJECT

LSP Myth Buster #34

An ongoing Land
Stewardship Project
series on ag myths
and ways of
deflating them.

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Myth: Townships don't have the resources to control development.

Fact:

Surprise and intimidation can be powerful tools when backers of major development seek to build a large facility in a small, rural township. For a town board used to dealing with mundane issues like how basic road maintenance should be undertaken, to be suddenly confronted with a proposal for a large-scale industrialized livestock operation, garbage burner or frac sand mining/processing facility can be daunting.

The assumption, which is cultivated by proposers of major developments as well as some state policy makers, is often that townships have little or no control over where these developments are placed. Another popular myth is that even if a township does have the legal authority to control the placement of development, the expense and time required to exercise that right is beyond the means of most townships. To top it off, there is often a mistaken belief that townships which try to control development through planning and zoning will have their decisions overturned in court.

The fact is, in Minnesota townships have extensive rights when it comes to developing planning and zoning, and the courts have repeatedly backed those rights. In the mid-1960s, the Minnesota Legislature passed a statute giving municipalities the powers and a uniform procedure for controlling the future development of land. In the mid-1980s, the Minnesota Legislature included townships in the definition of "municipality," thereby giving townships the same zoning authority as cities.

Minnesota townships can put in planning and zoning ordinances that are just as or more restrictive (but not less restrictive) as the county's rules. However, there are limits to what the planning and zoning can address. For example, they can establish parameters on where a large-scale feedlot can be located in relation to other types of land use and prohibit feedlots over a certain size. But a township does not have the authority to establish controls on the amount of waste generated by large-scale feedlots in that township. The Minnesota Pollution Control Agency has exclusive control over regulating pollution in the state, but issues around land use such as property values and quality of life can be addressed by the township. That leaves a lot of room for strong local controls.

Moratoriums on development

Minnesota statutes also allow townships to adopt interim ordinances/moratoriums, which are a way of temporarily freezing major development while the town board conducts the research needed to develop a well thought-out comprehensive plan that allows for the kind of development that fits the character of the township. Interim ordinances are a key element for developing good planning and zoning in a township because many townships are not prompted to do such planning until faced with a development project of unprecedented size and scope. In effect, interim ordinances protect the planning process.

The key role interim ordinances play in developing a good

comprehensive plan have made them a target of major developers, factory farm promoters and other opponents of strong local government. That's not surprising: the more time a local unit of government has to think about the community's future, the less likely it will put in place weak rules that allow development projects that have major negative impacts far down the road.

Anti-local control forces have tried to undermine the power of townships to impose interim ordinances in a number of ways. One strategy is to simply use the legislative process to weaken this power. This strategy was tried yet again during the 2012 session of the Minnesota Legislature, but the Land Stewardship Project and its allies were successful in keeping local control strong.

Another method that can be nearly as effective is to develop a mythology around the difficulty of creating, and eventually defending, a comprehensive plan. The fact is rural townships all over Minnesota and even the country have successfully developed comprehensive plans, often after utilizing interim ordinances to give them the time.

Courts support it

In Minnesota and in other states that allow for township level zoning, courts have repeatedly sided with local governments over disputes surrounding interim ordinances and comprehensive plans. Each case is different, but in general courts support the right of local governments to control the placement of development as long as meetings are open and well-documented and ordinances are not put in place that discriminate against one specific development project.

It's important to note that although a township may be prompted by one particular proposal to put in place an interim ordinance, it cannot use that interim ordinance, or a subsequent comprehensive plan, to target a single project.

A good Internet search will turn up resources and examples for getting started on a comprehensive plan. Of course, it's critical that townships consult the services of an attorney and a planning expert, which do cost money. One Minnesota local government expert who has helped numerous townships develop comprehensive plans estimates that such an ordinance can be drafted for less than \$2,500, and it costs \$100 to \$150 annually to administer it. Considering what's at stake—the very future of a township—it seems like a small price to pay.

→ More Information

• *When a Factory Farm Comes to Town: Protecting Your Township from Unwanted Development* provides guidance on using the Minnesota Interim Ordinance and other tools in the state's Municipal Planning law. It can be downloaded at http://landstewardshipproject.org/repository/1/37/township_manual06.pdf.

Free paper copies are available by contacting LSP's Bobby King at 612-722-6377 or bking@landstewardshipproject.org.