



WHY WOODLAND OWNERS NEED A PRESENCE IN MADISON – MY OBSERVATIONS

By Geary Searfoss*

Note from WAFO: Below is a commentary from a Charter Member of the Wisconsin Alliance of Forest Owners. In it, he provides his experiences in Wisconsin land ownership. Do you have a story to share? Email info@wiafo.org.

My first experiences: When my wife and I purchased our first woodland property back in the early 1980's, it was strictly an investment property. Yes, we liked some of the other amenities it offered, things like wildlife, aesthetics, and a place to call our own. But we were as poor as church mice, we didn't even own our own house. We borrowed all but a couple thousand to purchase the property. It had to pay the interest on the loan as well as return us something.

To reduce costs, we entered the property in the Woodland Tax Law, which eventually disappeared in favor of the Managed Forest Law. Our annual property taxes on 32 acres of pine plantation was \$12.80. That's it. \$12.80 per year! The DNR forester came out and wrote the management plan for free and there was no fee to enroll. There was also no severance tax on wood products harvested. In addition we received a federal tax break on the long term capital gain income the property generated – we were only taxed on 40% of the gain. We received the same break on our Wisconsin return.

At that time, the State of Wisconsin recognized the value of woodlands to the citizens and wood products companies of this State, as well as its importance to the tourism industry – clean water, clean air, aesthetics, and all that – and tried to make forest management a profitable endeavor. Perhaps they recognized that if management of the forests wasn't profitable the owners might just possibly convert the land to other uses.

Times have changed: I'm not saying the State doesn't still recognize the importance of forested land, but they don't appear to support it in the way they used to. Other land use activities, farming in particular, have become much more favored while forest management, it appears, has become less favored. Woodland owners just don't make good poster children when it comes time for Madison to pass out favors.

Or perhaps farmers are better organized and have high paid lobbyists. The first inkling I had that forest management was taking a back seat to farming (other than the fact that the back of our State quarter ended up with a cow head, an ear of corn and a block of cheese) was when the Legislature enacted use valuation assessment for agricultural property.

Taxes on farmland reduced: In 1995 Wisconsin Act 27 created the statutory authority for use value assessment and they entered a phase in period that ended in 1999 with full use value assessment

becoming effective on January 1, 2000 that significantly lowered taxes on 12,000,000 acres of agricultural land. Use value assessment taxes land based on its current use rather than its highest and best use.

Forested lands don't qualify: The goal of this legislation was to protect Wisconsin's farm economy and curb urban sprawl by assessing farmland based on its agricultural productivity, rather than its potential for development. Sounds good. And since I'm growing trees, an agricultural product, I figured I'd be included. But I figured wrong. Only activities included in subsector 111 Crop Production or 112 Animal Production in the North American Industry Classification System (NAICS) qualify as agricultural use. This includes many different farming activities including the growing of Christmas trees or ginseng or the growing of tree nuts as well as the gathering of maple sap, but not the growing of saw timber and pulpwood.

A more simple definition (my overly simple simplification) of a typical agricultural use is either a) stripping the land of all native vegetation followed by a major disturbance of natural soil horizons followed by the planting of non-native plants or b) some combination along with the introduction of large numbers of unnatural or non-native animals. Growing trees? Nah. Of course, governmental units still needed to raise the same amount of money as they did before use valuation.

Taxes for woods on agricultural land further reduced: Taxes on agricultural land went down but taxes on woodland and other real property, like homes, went up. Of course, many farmers weren't too happy either since their savings on their agricultural land often disappeared because of the increased taxes on woodland interspersed on their property. As a result they went back to the legislature which promptly amended the law to include "agricultural forest" which affected 2,000,000 acres. This took effect in 2005. The only catch is that to qualify as "agricultural forest" the land has to be on a parcel or contiguous to a parcel that qualifies as "agricultural land." In other words, if you weren't a farmer in the first instance, you can't have agricultural forest in the second. "Agricultural forest" is only assessed at 50% of its full value. And so, again, a shift of property taxes being paid by owners of farmland to other owners. This shift also impacted the Managed Forest Law (MFL).

Managed forest law taxes increased: Prior to April 28, 2004 MFL landowners paid a fixed amount per acre per year with taxes on closed MFL land being based upon 25% of the average taxes paid on all forested and agricultural lands. With use value now in place, keeping this same formula would have given the 3,000,000 acres of lands in the MFL a much lower, and unpalatable, tax. The MFL law was then changed to be calculated solely upon lands classified as productive forest land. As taxes went up on productive forest land, they also went up for MFL landowners. So, for land entered in 2005 or later, the "open" (open to public access) tax rates have gone from \$.79 per acre to \$2.14. "Closed" rates went from \$1.87 to \$10.68. But that is not the only cost.

More fees and limitations on using MFL lands passed: Owners now have to pay a consulting forester to develop the plan. Just to apply would cost me over 3.5 times what I paid in taxes and fees for the whole fifteen years I was in the Woodland Tax Law. In addition, the MFL program required that when you harvest timber, a yield tax must also be paid.

There's more. Then along came an amendment to the law that was buried in the state budget that prevented landowners from leasing their MFL land for recreational purposes. We thought we had a

contract. The State said no. It was simply an agreement and that allows the State to be free to make changes throughout the length of the program without landowner agreement!

How do taxes under MFL compare: In 2018, taxes on qualified agricultural land averaged \$3 per acre. Want to pasture your woods? Well, if you do, you'll pay only \$1 per acre!

Taxes on Agricultural Forest, taxed at 50% of fair value, averaged \$25 per acre. Just plain forestland (no MFL or use valuation) averaged \$40 per acre, ranging from \$10 per acre in parts of northern Wisconsin to over \$200 per acre in some SE Wisconsin towns. Keep in mind to get the tax break under use valuation there is no yield tax, no application fee, no requirement to have a management plan, no multiple year enrollment period, and virtually no withdrawal tax.

More inequities- Capital Gain Taxes: Other actions by the Wisconsin Legislature have continued to favor "farming" over growing trees. As an example, back in 2009 the net long-term capital gain exclusion was reduced from 60% to 30%. Another way of looking at the change is that the taxable portion of long-term capital gains increased from 40% to 70% - that is, unless you're selling farm assets. In that case, the exclusion remained at 60%. As you may have guessed, growing trees is not farming for this provision. And if you are selling to a related party (by blood, marriage, or adoption within the 3rd degree of kinship) you can exclude the long-term gain on the sale of farm assets entirely from your Wisconsin return.

Manufacturing and Agricultural Tax Credit: Beginning January 1, 2013 there was a new provision added that was called the Wisconsin Manufacturing and Agriculture Credit. The maximum effective tax rate on "eligible qualified production activities income" is a mere 0.4%. Many who qualify for the credit will pay no Wisconsin income tax at all on income from those activities. "Agriculture property" is, of course, referring to lands that have been classified as agricultural by assessors under use-value assessment. This, again, doesn't include forest land that isn't "agricultural forest." There was hope it could be changed when the proposed 2015-2017 state budget included Productive Forest land as being eligible for this credit. Could it be possible? Well, almost, but nope again. When presented with the bill, then Governor Walker vetoed this provision saying, "He believed an error was made and it was not the Administration's intent to recognize timber as an agricultural crop." And so, it seems apparent to the author that Wisconsin lawmakers aren't nearly as concerned about protecting the State's forest land from urban sprawl as they are about protecting farmland from the same. Clearly it's not very profitable to grow timber compared to other, more intensive, uses of our lands.

Growing trees as a business is difficult: Considering the high capital requirements of making an investment in timberland, the very long term nature of the investment, and the increasing risk associated with exotic insect and disease pests not to mention the increasing risk of damaging weather events as our climate warms; coupled with the importance that the forest products industry has to the region's economy, you would think the State would do more, not less, to encourage its citizens to make an investment in forest management.

IS THERE HOPE? Maybe. While the Wisconsin Woodland Owners Association and other non-profits offered "educational" support they could not compete with organizations that had paid professional lobbyists, lobbyists who had regular access to state representatives. As one lobbyist opined, "Wisconsin woodland owners are not at the table, they're on the table."

Recognizing the need for a lobbying organization, several WWOA members took the initiative to form a new organization, one that allowed them to have a lobbying presence in our state capitol. The Wisconsin Alliance of Forest Owners (WAFO) was born in 2011, thanks to many woodland owners who volunteered their time and offered the financial support needed to get it started.

While WAFO is a small grass roots organization, it already has had a major impact on getting laws changed, most importantly getting the Managed Forest Law updated to make it more attractive to landowners.

Work is still needed to achieve more equity with other agricultural uses, but at least there is hope. We need to continue and expand our efforts to get our message across to our state representatives and regulatory officials.

*Geary is a WAFO Charter Member, a forester and a retired Certified Public Accountant specializing in forest tax matters.

