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Preserving Property Rights

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Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

City, Village and Town Comprehensive Plans Prevail Over the County Plan

by Bob Bowman

In vol. 7, #1, *Freedom Matters* argued that Wisconsin statutes allow each town board to decide if the county comprehensive plan can control land use in their town. The key statutory provision is s. 236.46(a). It is cited in s. 66.1001(3) and mandated in s. 66.1001(2)(h) of the comprehensive planning statute. It reads as follows:

"The county planning agency may prepare plans ... for the future platting of lands within the county ... or for the future location of streets or highways or parkways, and the extension or widening of existing streets and highways. ... [and] shall certify the plans to the county board, who may, after having ... obtained the approval of the town boards, adopt by ordinance the proposed plans ... in towns which may have approved the same, and upon approval of those towns may amend the ordinance. ... The ordinance ... shall govern the platting of all lands within the area to which it applies."

Note that this provision exactly parallels the town-county zoning power in s. 59.69(5). Thus, town boards have the same control over the county land use plan map as they have over the county zoning ordinance.

For further statutes governing land use plans, turn to chapter 59 on **county government**, and to its section 69, on planning and zoning powers, and under that, to subsection 3, on planning powers. There, in sub subsections (a), (b) and (e) are the following restrictions:

"(a) The county zoning agency may direct the preparation of a county development plan ... for ... development of the unincorporated territory within the county and ... incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county's development plan. The plan may be adopted ... and may be amended by the board and endorsed by the governing bodies of incorporated jurisdictions included in the plan. ... Beginning on January 1, 2010, if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2)."

"(b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change."

"(e) A master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such action occurs before the adoption of a development plan."

The three provisions immediately above are related to comprehensive planning by the following statute:

"66.1001 Comprehensive planning.

(1) In this section:

(a) "Comprehensive plan" means:

1. For a county, a development plan that is prepared or amended under s. 59.69 (2) or (3).
2. For a city or a village, or for a town that exercises village powers under s. 60.22 (3), a master plan that is adopted or amended under s. 62.23 (2) or (3)."

Together, these provisions **mandate** that master plans and official maps prevail over a county development plan *whether enacted before or after it*.

Note in s. 66.1001(1)(a) that the comprehensive plans (i.e., master plans) of cities, villages and towns with village powers have **equal statutory status**. This agrees with the powers granted to towns in 236.46(a) (cited above) compared to the powers granted to cities and villages in 59.69(3)(a), cited second above; i. e., *all three entities have a similar right to refuse to let the county plan the development in their respective jurisdictions*.

That right to exclude county planning fits hand in glove with the stipulation in s. 59.69(3)(e) that any master plan or official map controls in unincorporated areas to which it applies. Thus, a master plan overrides any prior approval that allowed a county to plan for the area. *In other words, enacting a master plan is a statutory way out of any prior action to let the county plan for the development.*

Moreover, since any town with village powers can do a master plan as stipulated in s. 66.1001(1)(a), that means that the **sole limitation** stated in s. 60.22(3) **does not exist** to prevent it, to wit:

- 3) If authorized under s. 60.10 (2) (c), [a town board] may exercise powers relating to villages and conferred on village boards under ch. 61, except those powers which conflict with statutes relating to towns and town boards.

Thus: s. 59.69(3)(e) includes towns with village powers.

Moreover, all this is consistent with the straightforward interpretation that s. 91.59 **mandates** that the county be governed in its land use decisions by the farmland preservation plan of the respective town.

It is fitting that town boards and towns associations assert and defend town powers inherent in the statutes.

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