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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.

Comprehensive Planning and How Dane County Violates It for Towns: Part I

by Bob Bowman

If a **county has a zoning ordinance**, then the county and its towns **jointly govern** rural land use, as upheld by the Wisconsin Supreme Court (*Quinn v Town of Dodgeville*, 1985). Yet, Dane County seeks full control.

All towns in Dane County adopted county zoning when the county board comprised town chairs, village presidents, city mayors and no county executive. The courts later converted the county board to one made up of supervisors elected from districts of equal population, but failed to give towns their statutory choice of opting out of that **comprehensively-altered** joint governance of county zoning; a change imposed by courts contrary to legislative intent, it imposed a malign inequality in place of a benign one. It let Madison voters impose urban politics on rural towns that were denied remedy via the ballot box, violating consent of the governed.

Comprehensive planning law can remedy that violation. Planning looks to the future, so each **comprehensive plan** by **statute** must specify the "location of future land use" via mandatory maps in the **Land Use element**, one of nine mandatory elements of the plan:

"The element shall also include a series of **maps that shows current land uses and future land uses** that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (d), will be provided in the future, consistent with the timetable described in par. (d), **and the general location of future land uses** by net density or other classifications." [emphasis added] [s. 66.1001(2)(b)]

See Dane County's comprehensive plan, in effect Jan. 1, 2008, at: <<http://www.daneplan.org/plan.shtml>>, a link the county website hides inside a letter. That plan has maps of Urban Service Areas (USAs) and expansions of USAs as given in city and village plans. Yet, it has **no maps** of future land use **in the towns**. Why not?

See a Mar. 27, 2007 letter from assistant county corporation counsel David Gault to the County Comprehensive Planning Steering Committee, re "Incorporating Town Plans into County Comprehensive Plan." Gault **fails to note** that a county comp plan **must have** maps of

future land uses **for each town**. The county can either **draw those maps**, or **get them from the towns**.

If the county draws them, it comes under s. 236.46 Stats., in which case, as with the zoning ordinance, **each town can opt not to come under the county plan**. As of January 1, 2010, towns thus opted out are free of county zoning and land division ordinances [s. 66.1001(3)].

So, Dane County did not go that way. Instead, it asked Gault how to **incorporate town plans** into the county plan, for both farmland preservation plans (which still exist) and comprehensive plans. The guts of Gault's reply is in his page 3 footnote, re the definition of "**municipality**" in s. 91.59(1) Stats:

"County agricultural preservation plans shall include agricultural preservation plans adopted by **municipalities** within the county if such plans comply with ss. 91.55 and 91.57." [emphasis added]

Gault (p. 3) footnotes that on March 19 he *opined* that "municipality" included towns, but 8 days later *concluded* it did not. He based the latter on s. 990.01(22):

"Municipality" includes cities and villages; it may be construed to include towns ["unless such construction would produce a result inconsistent with the manifest intent of the legislature"]; and on a definition in s. 91.01(8):

"Local governing body having jurisdiction" means the city council, village board or town board if that body has adopted a certified ordinance under subch. V; or the county board where such a city, village or town zoning ordinance is not in effect."

Hence, he says it's his *opinion* that towns are not municipalities re 91.59 because they have no authority to adopt an exclusive agricultural zoning ordinance.

Gault thus errs, since **s. 91.73 gives towns** the authority to **adopt or reject** county exclusive ag zoning:

"(3) A majority of towns ... may reject ... county exclusive agricultural use zoning ... for all towns ... by filing ... certified copies of resolutions disapproving [it] ..."

(4) ... In those towns which disapprove of the amendment the former agricultural zoning remains in effect ..."

So, Gault's March 27 opinion is invalid, **reviving** his earlier opinion that a town is a municipality re s. 91.59, and the county **has no authority** to reject the farmland preservation plan of a town. Yet, the county comp plan uses Gault's faulty March 27 advice, and thus **perversely insists** that the county can **modify** town plans.

More on this issue in the next issue or so.

Readers' Bulletin Board. e-mail us your comments. Include your name, for publication by *Freedom Matters*

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