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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 II

by Bob Bowman

Comprehensive planning law indicates that a **town land use plan** controls over the county plan, and arguably over any competing city or village plan. Yet, Dane County is not acceding to this quietly. Read on.

A **town** (the political unit) must have village powers in order to do a **comprehensive plan**. Here is the key statute (*emphasis is added via bold font in all quotes below*):

"66.1001 (1) (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)."

A town with village powers is limited as follows:

"60.22 **General powers and duties.** [sic] The town board: (3) **Village powers.** [sic] If authorized under s. 60.10 (2) (c), 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.**"

Now, if a county and town have agricultural preservation **zoning** (ch. 91, Stats), the statutes stipulate as follows (bold font indicated added emphasis):

"91.51 Agricultural preservation **planning** shall be undertaken in accordance with s. 59.69 and agricultural preservation **plans** shall be a component of and **consistent** with any county **development plan** prepared under s. 59.69 (3)."

"91.73(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 ..."

[Note: s. 59.69 (5) also establishes joint town-county governance]

It is thereby clear that the county has the right to initiate agricultural preservation **zoning**, in a county with a zoning ordinance, but the towns have authority over the county to **veto such zoning** collectively or singly. In a word, the joint governance of s. 59.69 is continued and **extended** by s. 91.73, by which the towns have absolute power to stop county zoning at their borders.

To pursue this issue, see s. 62.23(3), re **planning for municipalities**. Note re unincorporated areas:

"62.23(2) **Functions.** [sic] It shall be the function and duty of the commission to make and adopt a **master plan** for the physical development of the city, including any areas outside of its

boundaries that in the commission's judgment bear relation to the development of the city **provided, however**, that in any county where a regional planning department has been established, **areas outside the boundaries of a city may not** be included in the master plan without the consent of the county board of supervisors." [Dane County has a planning department]

Also, towns with village powers use 62.23 for planning, to which counties are **limited** as follows:

"59.69(3)(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.**" Sub (b) applies to master plans for **incorporated areas**, plus any extension into unincorporated area allowed by county board approval [via 62.23 (2) above].

"59.69(3)(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." [emphasis added by bold font]

Sub (e) is **unnecessary** for cities and villages, because sub (b) achieves the same thing by the words "shall include ... without change." Those words cover master plans that occur **either before or after** the development plan, and establish in both cases that the master plan prevails.

So, sub (e) is entirely superfluous **unless it refers to towns**. Moreover, even if a town previously gave consent to the county to map the town in its development plan (or comprehensive plan), sub (3) allows the town to rescind that permission by adopting a master plan. This makes sub (3) entirely consistent with 66.1001(1)(b).

In other words, with respect to comprehensive **plans**, the statutes treat towns with village powers as being municipalities, just like cities and villages. Moreover, I know of **no statutory constraint** that says otherwise, in statutes relating to towns and town boards, which statutes are the **only limitation** placed on village powers of a town, as stipulated in s. 60.22(3), quoted above.

That towns are municipalities with respect to land use **plans** is consistent with their right to prevent county regulations of land use via ss. 59.69(5), 91.73, and s 236.46. The latter **explicitly** lets each town **refuse county mapping** of its land use, and prevents the county from using a back door to assert control over a town plan. The fact that Dane County is trying to assert such back door control needs to be addressed by the towns.

More on this next issue or so.

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