

Freedom Matters

A Weekly Newsletter

Dane County, Wisconsin

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We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. Yet, when a legislature is in session, no one's life, liberty or property is safe. It's the curse of a democracy. That's why we have a republic instead. *Freedom Matters* dedicates itself to the fight to restore our republic. Most of the press and courts fail to do so. They've forgotten that freedom matters.

Town-County Shared Governance of Land Use: Relationship to Comprehensive Plans

by Bob Bowman

This analysis examines the role of Wisconsin's new comprehensive planning law. That law leaves in place prior town-county shared governance of land use. Hence, the statutes still provide that a county zoning ordinance and a county platting plan ordinance are only effective in towns whose board approves such ordinances. Also, a county is still required to include in the county farmland preservation plan the farmland preservation plan of any of its towns, if the town plan complies with the content mandated by statute. Hence, the issue examined here is the relationship of county comprehensive plans to the town-county shared-governance laws on zoning, platting, and farmland preservation.

First, consider the statute that mandates the land use element of a comprehensive plan.

66.1001(2)(h) Land-use element. A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property. ... [It] 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 ... 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.

To meet these requirements for mapping land use, the maps must in effect show current and future zoning districts, the latter as overlays of current ones (i.e., the type of re-zones to be allowed, and where). This element also includes farmland preservation plans and land division platting plans; the latter two issues are documented in statutes quoted later below.

Consider next how a county comprehensive plan is prepared and adopted.

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 ..., a master plan that is adopted or amended under s. 62.23 (2) or (3).

Note that a county comprehensive plan is prepared under 59.69(2) or (3), but not adopted under those subsections. That's because those subsections provide only for adoption by **resolution**, and a critical change in planning law is that a comprehensive plan must be adopted by **ordinance**. That change is stipulated in 66.1001(4)(c):

66.1001(4)(c) No comprehensive plan that is recommended for adoption or amendment under par. (b) may take effect until the local governmental unit enacts an ordinance that adopts the plan or amendment. The local governmental unit may not enact an ordinance under this paragraph unless the comprehensive plan contains all of the elements specified in sub. (2). ... An ordinance ... enacted under this paragraph, and the plan to which it relates, shall be filed with at least all of the entities specified under par. (b).

However, 66.1001(4)(c) merely specifies that the plan must be adopted by ordinance. It does not specify the adoption process. That is left for other relevant statutes to specify. Thus, one goes to other statutes to get the directives governing public notice and public hearings. Likewise, since a county comprehensive plan is in part a county zoning ordinance, then that part comes under town-county shared governance adoption of zoning ordinances, which is specified in 59.69(5). In that subsection, the following applies:

59.69(5)(c) A county ordinance enacted under this section shall not be effective in any town until it has been approved by the town board. ...

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Parallel to that, consider county platting plans. Both the land use element and the transportation element of a comprehensive plan include planning that is governed by s. 236.46:

236.46 County plans. (1) (a) 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. ... [It] shall certify the plans to the county board, who may, after having submitted the same to the town boards of the several towns in which the lands are located and obtained the approval of the town boards, adopt by ordinance the proposed plans for future platting or for street or highway or parkway location 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."

The comprehensive planning law does not make any change in the applicability of the above land division law. By that law, any county plan adopted by ordinance and which includes plans for subdivisions, streets, highways, parkways, etc., vis-a-vis location, widening, or extension, etc., is subject to the approval of the town board before it can be effective in that town.

Now consider Farmland preservation planning. It is mandated to be a part of the land use element of a comprehensive plan and to be subject to town-county shared governance:

91.51 Purpose. ... 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).

91.59(1) 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.

Thus, in 91.59(1), the county plan is required to include town farmland preservation plans, if the town plan contains policy statements and land use maps re 91.55, and if the town plan provides for implementation of the policies re 91.57. That is why the Dane County Farmland Preservation Plan was prepared by having the towns do

their plans first, then adopting county language that was consistent with all the town plans.

The enacting of a comprehensive plan by ordinance is in ch. 66, Municipal Law, since it applies to all municipalities. Clearly, that does not negate the rights of towns given in other statutes. Town farmland preservation plans must still be included intact in the county comprehensive plan (91.59). Also, towns must approve the county comprehensive plan for its platting plans to be effective in the town (236.46). Finally, as a matter of statutory consistency, the county comprehensive plan can hardly adopt zoning districts by ordinance, as it must under 66.1001(2)(h), without that ordinance thereby coming under the approval and veto rights of town boards relative to the enacting and amending of zoning ordinances stipulated in 59.69. Note that the statutes give towns the same approval and veto rights for **both** a zoning ordinance and a platting plan ordinance.

Further support of the above analysis can be seen in the comprehensive plan element dealing with intergovernmental cooperation.

66.1001(2)(g) Intergovernmental cooperation element. A compilation of objectives, policies, goals, maps and programs for joint planning and decision making with other jurisdictions, including school districts and adjacent local governmental units ... The element shall incorporate any plans or agreements to which the local governmental unit is a party ... [and] shall identify existing or potential conflicts between the local governmental unit and other governmental units ... and describe processes to resolve such conflicts.

Town-county shared governance of zoning is a long-standing case of intergovernmental cooperation, and a law intent on fostering cooperation cannot have intended to weaken or repeal statutes that mandate such shared governance.

Conclusion. Comprehensive planning was integrated into prior law, neither effecting changes between units of government, or intending to. Hence, that integration, as shown above, means that a **county comprehensive plan** is only effective in towns whose boards have approved it, which town boards then have the right to veto amendments to it. To conclude otherwise would nullify long-standing rights and statutes, as well as the new statutes which give each town the right to have its own comprehensive plan.