

Freedom Matters

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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 Zoning in a County with County Zoning

by Bob Bowman

Consider the case for Dane County. All towns have adopted the Dane County zoning ordinance, and unless the county does a comprehensive revision of it, which the county is avoiding, the towns cannot get out of county zoning. However, come January 1, 2010, when all county land use decisions have to be consistent with its comprehensive plan, that comprehensive plan will not be in effect in towns which have not adopted it. Therefore, the county zoning ordinance also will not be in effect in those towns, because the county will not be able to enforce its land use ordinances if its comprehensive plan is not in effect.

Each of those towns is thereby out of county zoning, and if it wants zoning, is free to adopt its own zoning ordinance, provided its electors have given it village powers, and if its electors have authorized it to enact a town zoning ordinance. At that point, the only remaining hurdle is to get the county board to approve that town zoning ordinance, and any subsequent amendments thereto (including rezoning). See s. 60.62 Wis. Stats.

A straightforward reading of state statutes is what is asserted above. However, it is a given that Dane County will contest it in court, and since our court system is corrupted as regards the constitutional separation of powers, one never knows what decision our courts will render. The Wisconsin Supreme Court earlier this year legislated with regard to land use laws, asserting a finding that does violence to the statutory construction of those laws. This was its infamous ruling allowing cities to control land use by land division decisions.

[The origin of this corruption of our courts is a topic in itself. It will be reviewed in a future issue. It is likely that we will have to reconstruct our courts, to discipline them.]

What follows is based on the presumption that the courts will follow the statutes instead of creating new law, and thus, will sustain the above positions. The issue then becomes the role of the county in relationship to a town zoning ordinance.

The county zoning ordinance will die on January 1, 2010, in those towns which have not adopted the county comprehensive plan (given the above straightforward reading of the statutes). Therefore, for any such town that does not want to be without zoning for an interim following that date, that town has to have enacted its town zoning ordinance and gotten it approved by the county board prior to January 1, 2010. Thus, that town ordinance will become effective immediately upon the lapse of the county ordinance.

I predict that Dane County will approve any zoning ordinance a town adopts, rather than see that town have no zoning

at all. However, there is no guarantee of this, and a town may want to have preparations in place in the event that the county leaves it without zoning. Doing without zoning might lead a town to find that other processes replace zoning more than well enough. That likelihood so frightens the county that it probably ensures county approval of a town's zoning ordinance.

Since the county also has the right of approval for all amendments to the town zoning ordinance, the town needs to craft its ordinance so as to minimize the county's involvement in it. After all, the reason for town zoning is to keep the county out of it.

How to keep the county out? Answer: craft the zoning ordinance so as to minimize rezoning. This can be done by creating a few multi-use districts, each with at least one permitted use and one or more conditional uses. Conditional uses are quasi-judicial (administrative) decisions that do not require rezoning, and hence do not require amending the zoning ordinance. The town zoning ordinance would simply provide that the town board make all conditional use and variance decisions.

A town has to be reasonable in this approach. For example, to make the town all one zoning district, and every different use in it a conditional use, would likely be struck down at once by the courts. However, as few as four zoning districts (agricultural, retail, commercial/mining, and residential), would likely be defensible. Thereby, the county, with its more regional concerns, would only be involved when there was a change in major use. That seems imminently sensible; indeed, the way it should be.

One drawback to town zoning is that it is more susceptible to unwarranted political pressures and hence, to "mob rule," than is county zoning. To protect from that, the town zoning ordinance needs to specify a careful, quasi-judicial process for granting conditional uses that ensures to the maximum extent possible the equal treatment of all petitioners who seek conditional uses. There is nothing more corrupting than cronyism in the administration of government power. Such cronyism even invades county zoning decisions, and often brazenly so, in my observations. In particular, the opponents of rural development tend to vote for exceptions for their political allies.

The trouble with government control of land use, vs private control, is that political forces tend to make bad decisions, compared to free enterprise. That, too, is a topic in itself.

Two property rights web sites:

<http://www.fairnessinlaw.org/>
<http://www.takebackwisconsin.com/>

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