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A Case Study of Comprehensive Planning: *Dane County, Fairyland in Dairyland*

by Bob Bowman

Dane County and 14 of its municipalities obtained a state grant of near a quarter million dollars to prepare comprehensive plans under s. 66.1001, Wis. Stats., and are near the halfway point of a 4-year time line. The county plan is being aided and abetted by professional planners in the county Planning and Development Department. The other 14 municipalities are each developing their own comprehensive plans, each using their own share of the grant money.

As a preliminary step mandated by statute, the county board adopted a resolution defining the role and manner of public input in the county's planning process. Two co-equal committees were designated to direct the planning process, namely the Zoning and Natural Resources Committee (ZNR) and the Strategic Growth Management Committee (SGM). These two committees jointly established a Comprehensive Planning Steering Committee, to oversee three work groups, which we can identify simply as one group centered on Transportation, one on Housing, and one on Land Use. Those three groups encompass the nine elements mandated by statute to be included in a comprehensive plan. Each work group consists of voting members appointed by the Steering Committee, plus nonvoting members who volunteered. The three groups are acting to determine, via "consensus," the Goals and Aims for each plan element. After that is done, they will then work to determine where development will be allowed in the county, and where not.

In what sense, you may ask, is this planning an example of "fairyland." Let me count the ways. First, please know that counties constitute local arms of the state, with direct control in general only over unincorporated areas, and have only those powers granted by state statute. Cities and villages are incorporated entities which each has what is called "home rule;" that is,

they can file to set aside state statutes if those statutes are not those of "statewide" significance.

Moreover, under the famous Northwest Ordinance of the Continental Congress, land in states east of the Mississippi River was originally divided into townships each six miles square (e.g., the Dane County Town of Blue Mounds existed politically before the State of Wisconsin did). The unincorporated area in each township constitutes the political entity called a town, in Wisconsin law, and is governed by a town board. Town boards granted "village powers" by the town electors have a limited version of home rule, and all Dane County towns are in that category.

Is your head spinning yet? Well, hang on. Each incorporated area (city or village) is independent re zoning and land use plans. The county and its towns however are tied together on it. Where the county has a zoning ordinance, as in Dane County, those towns which adopt that ordinance are then governed by it, but have veto power over any amendments to it. All towns in Dane County adopted county zoning.

Still hanging on? When comprehensive planning was enacted by Wisconsin in 1999, towns were each granted the right to its own comprehensive plan, independent of the county plan. Similarly, town farmland preservation plans shall be adopted by the county, even though Dane County still pretends otherwise.

Therein lies a serious problem for the county comprehensive plan. On and after January 1, 2010, every land use decision by the county must be consistent with its comprehensive plan, by statute. However, by other **existing statutes**, certain aspects of the land use element of the county plan will only be effective in those towns that approve the county comprehensive plan, and thereafter, those towns that do approve it will have a veto over amendments to those aspects of it. Also, any comprehensive revision of the county zoning ordinance at that time opens the door for the towns to opt out of county zoning.

(continued on page 2)

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The fairyland aspect of Dane County's comprehensive planning is that many of the people in the three work groups do not understand those legal relationships and limitations, and are trying to craft county goals and aims in that bliss of ignorance. That is only their first disconnect from reality.

Another disconnect is between the statutes and the Dane County planning process. The statutes give the county the right to establish a county zoning agency, which by statute **"is authorized to act in all matters pertaining to planning and zoning."** That agency is then authorized by statute to **"direct the preparation"** of a comprehensive plan, and to adopt it and present it to the county board to adopt, or to amend and adopt.

Statute also allows county procedures additional to the prescribed ones, **so long as they do not conflict with those prescribed by statute.** Yet, for its comprehensive plan, the county has adopted a **conflicting** procedure. It acts to dilute the statutory authority of the county zoning agency to direct the planning by giving another committee eo-equal planning status with it. This compromises due process in preparing the comprehensive plan. That's not good if there is a legal challenge to the comprehensive plan, as there is only too likely to be. A committee other than the agency cannot direct the planning, to avoid conflicting with the state statutes.

All of the above, you may say, are merely legal details, mere technicalities. Wrong. Legal details represent the **rule of law.** When law no longer rules us, it's because people rule us, and that was what the American Revolution was fought to overthrow. In the tradition of the English Magna Carta, the American Constitution replaces the rule of man (i.e., the rule of kings, dictators, or even usurping judges) with the rule of law. Thus, you see that the common citizen runs a terrible risk, when we abandon the rule of law for the rule of men. We in America have gone too far down that "good intentioned" road to hell, and are best advised to head back the other way.

So, the above concerns are not "mere legalities." They are **essential** legalities. Still, that is not the only disconnect with reality in fairyland in dairy land.

An equally deep abyss can be seen in the disconnect between planning and reality. The most recalcitrant reality is that most land in Dane County is **privately owned.** However, the people who sit down to plan its use are not the ones who own it. Thus, if they decide that this is where "green space" goes, and that, where "houses" go, they are dictating

the use of land they do not own. As many see it, they are stealing private property from some people, to give to others. The use of land is the same thing as the ownership of land. We own land by owning the uses to which it may be put.

Hence, land use decisions are **economic** decisions. However, they are not merely economic decisions. They are legal decisions too. **They transform the rule of law into the rule of men.** Thereby, they are a major upheaval in the form of government in America, disguised by taking place as if the people doing it are merely attending a rather silly tea party, where we paste little colored circles on maps as if all we are doing is dispensing party favors.

And we are still not done with fairyland's disconnects from reality. I have participated in a number of the comprehensive planning sessions held so far by the county, and looked around the room at the other participants. **None I see, including myself, are competent to make the decisions that the comprehensive planning law puts at our discretion.**

By **analogy**, it is as if the law gave people the power to direct the immediate weather; i.e., to decide the short-term paths of storms (think of storms as nature's way of "developing" land). Yet, even if people could thus change the path of a storm, we have no idea how the decisions we would thereby make would impact the frequency and severity of the weather that would follow as a consequence. The factors that influence weather are too complex to be managed by the knowledge or energy we would have at our disposal. So, likewise, are land use factors too complex to be decided upon via the **incompetent** political process of comprehensive planning.

By what arrogance or hubris does the law give ignorant people the power to destroy private property rights, and dispense them as public goods? Why does the law not require us to first determine the economic consequence of destroying America's private ownership of land, which is where comprehensive planning will take us? After all, history tells us what will ultimately happen. History says that such destruction will reduce the prosperity of America to that of an impoverished Third World nation.

How do we stop it? The problem is, people at the planning table do not even see it coming. All they see is a fairyland of picturesque green space, separating storybook cities in which they live like princes and princesses. How do we wake them from that dream? Like people let to walk in their sleep, people let to plan in their sleep do so to their own ruin.