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Comprehensive Planning: a Collision of Laws, Courts and the Constitution

by Bob Bowman

Comprehensive planning was enacted into our state statutes in 1999, and arguably is unconstitutional; i.e., unlawful in its effects. A test of that can only come about if comprehensive planning is implemented.

Meanwhile, an integral part of comprehensive planning are the 14 state goals for local planning [see s. 1.13(2) Wis. Stats]. Goal #12 is: "*Balancing individual property rights with community interests and goals.*"

That goal is not as vague as it might seem. The word "balance" sets up an equation, comparing a right half to a left half, with a suitable equality sign put between them. So, what variable expresses the right half; i.e., "community interests and goals"? My answer is: "prosperity." Some may wish to qualify that as "sustainable prosperity," but that nuance does not change the argument. The nuance that **does** change the argument is that "prosperity" must count both the benefits and the costs to the community resulting from the exercise of the property rights; hence, the variable properly becomes that of "net prosperity."

Now, what variable expresses "property rights" (i.e., the left half of the equation). That is easy, because planning only comes into play if **change** is proposed. Hence, property rights translates into the variable of **development**; more precisely, **freedom of development**. The statute makes it a freedom issue by calling it "individual property rights." Thus, goal #12 means that private property owners are to be free to exercise their right to develop if its costs to the community do not exceed the prosperity it brings to the community. Thus, goal #12 rules in favor of net prosperity.

So there you have the economic meaning of balancing property rights with community interests and goals. I submit that only a woeful minority of people would favor a meaning that **diminished** net prosperity.

However, there is more to property rights than development or prosperity. Wisconsin's allodial property rights, by which government **owns no part** of the property, says constitutionally that taking any one of those property rights **requires** just compensation. That requires payment for its full worth. Moreover, the word "just" also means that the landowner shall not be denied any gain in worth accrued to their property. All tax payers must share the burden equally.

Thus, by goal #12 (balancing "property rights with community interests and goals"), if a property owner, **for community reasons** aside from harm, is refused the right to a development that he/she seeks, then the state at that point owes that property owner a compensation equal to the just worth of the denied development right. Such is demanded by the fifth amendment to the federal constitution, and also by the 14th amendment (i.e., the equal protection of the laws). It would be an **unequal** application of the laws, to tax only one party for a cost that all should bear.

Thus, a comprehensive plan fails to meet state statutes if it fails to address the 14 state goals for local comprehensive plans. It therefore fails to be a valid or enforceable plan if it does not resolve how to meet state goal #12, to balance private property rights with community interests and goals. That state goal must be met within constitutional constraints, especially providing: (1) just compensation for any property right taken for public use (or for public non-use, if you will), and (2) equal protection of the laws.

Thus, constitutional criteria cut across the equation embodied in goal #12 above. In other words, the net prosperity must be accomplished while honoring the constitutional constraints on government, which means that the comprehensive plan must protect all civil rights, including private property rights. Another view of this is embodied in restraint of trade. If the state chooses to restrain trade, it must compensate those who thereby lose their property rights.

Let us force the state to honor these civil rights.

Property rights web sites: < <http://www.fairnessinlaw.org/> >
< <http://www.takebackwisconsin.com/> >
<<http://www.PropertyRightsResearch.org>>

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