

Freedom Matters

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. We dedicate this paper to saving and preserving our freedom.

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Land Use and Comprehensive Planning in Wisconsin's Towns and Counties

by Bob Bowman

As you, our readers, have seen, Wisconsin's comprehensive planning law was inspired by international and United Nations politics, culminating in Agenda 21, a socialistic blueprint for "sustainable development." It is embodied in s. 66.1001, Wis. Stats., which mandates nine elements in a comprehensive plan, that are to fulfill 14 state goals set out in s. 1.13, Wis. Stats.

Governor Doyle asserted, in a recent veto message addressing town-county relationships, that the comprehensive planning statutes do nothing to change the relationships between towns and county. If courts agree with him, then his opinion is not bad news for towns. Yet, of all politicians, Doyle surely knows that one cannot predict courts. By that, he vetoed a law he should have signed (i.e., AB 551); that law would have put a statutory deadline on a town's right to choose not to approve its county's comprehensive plan. That aside, it is as if the Governor had read Freedom Matters, vol. 3, #28, July 18, 2004, which concluded thus:

"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."

Hence, if existing state statutes mean what they say, then January 1, 2010, towns which do not vote to approve their county's comprehensive plan will not be under county zoning. However, because judges have become capricious and arbitrary — i.e., legislative — in their "interpretation" of the law, counties will force towns to sue, to establish their above statutory right.

Assuming courts uphold the plain meaning of the statutes, a town that does not approve the county comprehensive plan thereby does not approve the county zoning ordinance. That town can then enact its own zoning ordinance, if it desires. However, by existing statutes, that ordinance is not enforceable unless the county approves it and any amendments to it. I believe courts will uphold this county power, despite a case vis-a-vis the Town of Windsor in Dane County, in which county approval was not deemed necessary.

That a town not give up its local authority to the county, regarding zoning, the town should choose to have its own zoning ordinance, crafted to preserve local zoning decisions as conditional uses (i.e., not requiring a rezone), or it should choose to have no zoning ordinance. The latter choice preserves far more local authority than adopting a zoning ordinance does, by leaving that authority in the hands of the landowners. The truth of that point can be seen, as follows.

America's founders recognized that political power flows from citizens to the government. That is, government exists only by the "consent" of the governed. That does not mean it is easy to overthrow a government, particularly one which obtains "consent" by coercion; it means only that it is possible. Thus, any theory of politics is advised to start from the premise that political power flows from people.

A simple diagram of a peoples and their government is a pyramid, with people represented by its wide end and government by its pointy end. To think of political power as flowing like water, we must draw the pyramid with its pointy end down. To draw it point up is to think of political power as flowing like hot air.

Whatever diagram one uses, regarding zoning, once the town takes away land use freedom, that power flows right through the town board's hands, and to the county. A future issue of Freedom Matters will address zoning, land division, and other legal restraints, as they affect the freedom to own land.

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

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