

# Freedom Matters

A News & Opinion Paper

Dane County, Wisconsin

Preserving Property Rights

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Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

## A Comprehensive Plan is What?

by Bob Bowman

**In Wisconsin, is a comprehensive plan merely an advisory guideline, or is it as binding as a law?** This question is relevant because, by statute, a comprehensive plan **must** be adopted by an ordinance.

*Does it matter whether a comprehensive plan is passed as an ordinance, or is simply referenced by an ordinance?* A citizen in Vernon County asked a state legislator that question, and got the following reply from Ryan Gruber, Research Assistant, Office of Rep. Sheryl Albers (April 1, 2005). Ryan asked that question of Mark Patronsky, an attorney with the Wisconsin Legislative Council, who deals with land use and local government questions, and relayed the following response from Attorney Patronsky:

**"No, it does not. Any plan referred to by an ordinance but not spelled out within the ordinance is still binding."**

There are likely to be many surprised counties, cities, villages, towns, and citizens, when they find that their comprehensive plans are **binding**, by being passed by ordinance. There are a number of consequences of that.

One consequence is that comprehensive plans cannot be left too vague. Local officials may be tempted to do so, in order to give themselves discretionary latitude in enforcing the plans. However, courts are known to throw out laws for being vague. Even worse, courts are known to put their own twist on laws that are left too vague, with results in the case before the court that the local elected body or its electorate may not like.

The **text** of comprehensive plans is required to state goals, objectives or policies to be achieved by the plan. Local officials may feel that this gives them the same latitude they have had under plans adopted as resolutions. But, a mandated part of every comprehensive plan is a **geographic map** that shows current land use, and an overlay of it that shows future land use.

By that, and if the comprehensive plan is binding, then each and every landowner must be able to look at that map and determine without ambiguity what future use his or her land is designated for. That is because the map, as part of the plan, is binding. **That means every landowner needs to be involved in the planning.**

Indeed, state statute **requires** it. See 66.1001(4)(a) which says in its entirety:

"The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services, and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative, or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments. *The written procedures shall describe the methods the governing body of a local governmental unit will use to distribute proposed, alternative, or amended elements of a comprehensive plan to owners of property, or to persons who have a leasehold interest in property pursuant to which the persons may extract nonmetallic mineral resources in or on property, in which the allowable use or intensity of use of the property is changed by the comprehensive plan.*" [Italics added]

The italicized part, specifying **landowners** and including owners of mineral extraction rights, became law on May 6, 2004. I believe any existing plan that did not **ensure** involvement of **every** landowner must be redone before January 1, 2010, or risk lawsuits over it.

Moreover, one of the 14 local comprehensive planning goals set by Wisconsin statute protects property rights. It requires those rights to be "balanced" against community interests (i.e., the common good).

This pre-shadows "Measure 37" which was passed into law by 61% of the electorate in the state of Oregon in the election of November 2004. Measure 37 requires any Oregon government that by regulatory law reduces by any amount the property value of a landowner to either pay the owner for that dollar amount of loss or waive the restrictive law on their property, upon application by the landowner for that remedy. Regulations preventing harm as defined in current law are exempted from such compensation. See *Freedom Matters*, vol. 5, #1, for the text of that law.

Therefore, by present Wisconsin law, I submit that a comprehensive plan's **required map** denoting future land use will have to designate it unambiguously for each and every parcel of land. Remember, passed by an ordinance, a comprehensive plan is **binding**.

It has always amazed me that all levels of elected government, through their representative associations, **gave away** their discretionary enforcement of land use plans. Once landowners are notified and aroused over the possible loss of billions of dollars of value that such plans may cost them, local governments may hear about this in a very determined way. They did in Oregon.

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