

Freedom Matters

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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.

Freedom under Attack on the Kickapoo

by Bob Bowman

The township of Kickapoo is 36 square miles of Wisconsin countryside named for the Kickapoo River that winds quietly through its hills. At its annual meeting in April 2005, about 110 town electors out of 525 residents were in attendance and rescinded the town board's village powers, by a vote of some 80 to 30. The problem? The town board intended to impose a zoning ordinance and a comprehensive plan on town residents not yet subject to such restrictions and not wanting to be.

One concerned resident, at his own expense, had circulated copies of the proposed 26 page zoning ordinance to town residents. Many residents were alarmed by what they read in that document. They came to the annual meeting and by rescinding village powers, acted to stop the board from adopting those restrictions.

Without village powers, a town board cannot legally develop or adopt a comprehensive plan, nor can it adopt a corresponding zoning ordinance. The town board could adopt a zoning ordinance via town powers (per s. 60.61, Wis Stats), but only after **FIRST** giving the county a year to adopt a county-wide zoning ordinance.

What's a town board to do? This one invited a Towns Association lawyer and "Education Director" to come tell them the "truth" about zoning and comprehensive planning, thus to undo what one town plan commissioner called a "duping" of town electors by those opposed to planning and zoning. Yet, the opposition gave the electors the actual zoning code being proposed for adoption. How could that "dupe" them? Nor were they duped about being able to stop that zoning ordinance by rescinding village powers. Welcome to another dose of disinformation from planning enthusiasts who shade the truth to get their way. Riding to their call for help came a veteran "happy warrior" of politics, an avid advocate of planning, Tom Harnish. His first words were to introduce himself as a "small d" democrat.

On May 2, a chill spring night, Harnish held forth before some 70 attendees in a large comfy low-ceilinged auditorium in the Readstown Advancement Building on the banks of the Kickapoo. He began by citing types of people who would oppose planning or zoning, and a scruffy lot they were by his listing. These were people who wanted to site toxic waste dumps, junk yards, dirty

dancing taverns, or other scare-monger monstrosities. However, when attendees let Harnish know they had lived their lives without zoning and knew he was giving them a con job, he became more rational and admitted that the town people could get along without zoning. He even pulled back so far as to admit that people of good intentions could rightly oppose zoning.

Plan huggers harken. Harnish firmly dispelled one "myth" that planning proponents had pushed (or maybe said as a lie). Plan proponents had insisted that the town was **compelled** to have a comprehensive plan by January 1, 2010. Harnish said no. He said that nothing would change after January 1, 2010 if the Town of Kickapoo did not have such a plan. Well, he was a bit overboard in that assertion. Still, it is true that if the town electors do not want its government to exercise land use controls, then the town needs no comprehensive plan nor implementing laws. Of course, that is not a full answer.

More specifically, as Harnish noted, a county cannot impose a zoning ordinance on a town without the express approval of the town board. Harnish also warned that if the county adopts a zoning ordinance and a town board approves it, the town is stuck in it. County zoning is like a roach motel. Towns go in but cannot get back out if the county won't let them.

Harnish failed to note that the county might impose its comprehensive plan via other laws, like its land division ordinance. He did not cite one protection a town has that blocks the county. The statutes, in s. 236.46, prevents the county from imposing a map of areas in which it will disallow subdivisions. By statute, unless the town board expressly votes to approve such a county map, it is **not** in effect in the town. What this means if the town has county zoning the statute does not say.

Finally, Harnish agreed that comprehensive plans are serious things. They **control** future decisions on changes in land use. Thus, not only are comprehensive plans as rigid as stone, but by statute (s. 66.1001), they can only be altered by the same "public-input" process that generated them. Hence, the town can no longer adapt to the unexpected. By law, plans "plan" ahead 20 years. That's farther than anyone can see, so a town will always be revising them. Thus, such plans are false security. As Ben Franklin said, in essence: "Those who exchange liberty for security will soon find that they have neither." The Soviet Union proved him right; in 70 years, its comprehensive planning killed it.

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