

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.

Errata

Freedom Matters regards factual errors in our articles as of sufficient gravity that we will list them prominently for our readers. We have two to note here.

Vol. 5, #21, midway of column 2: Jay Verhulst is Executive Director of *Taxpayers for Fair Zoning*. Issue #21 of *Freedom Matters* incorrectly called it *Citizens for Fair Zoning*. The correct name is notable, since taxpayers can include corporate bodies, etc., in addition to citizens.

Vol. 5, #23, third paragraph of column 2: the date cited as January 1, 2020 should read 2010. The correct date of 2010 is cited in the very next paragraph of #23.

Town Control of Its Land Use Map

by Bob Bowman

In issue #23, Freedom Matters cited the statutory authority of towns over their own land use map. The county map of subdivisions, streets and arterials is **not in effect** in a town unless the **town board** explicitly approves the county map, and the county is required to get the approval of the town board before it (the county) enacts such a map that includes the town.

That authority is granted to the towns in s. 236.46, Wis. Stats., and is explicitly included by reference in comprehensive planning, via s. 66.1001(3)(h). Therefore, the county, in drawing its mandatory map for future land use must get the approval of the town with respect to its map for future subdivisions. This arguably includes single lot residential land divisions, especially if the town exercises its right to adopt a land division ordinance which defines a single lot division as a subdivision.

Thus, in terms of county-town shared governance of land use (zoning), the statute treats such a map of future residential use as if it is a zoning ordinance. The town not only must approve it, for it to be in effect in the town, but the town also retains the right to veto any amendments to that map.

This represents a critical constraint on the power of the county. The trap for the town in this matter is that the statute provides no mechanism for the town to reverse an approval decision, once made and communicated to the county. That also is in parallel to the case of

a county zoning ordinance, whereby the town is trapped in the zoning ordinance once it approves it. Only a comprehensive revision of the zoning ordinance, or a repeal and reenactment of a significantly modified zoning ordinance allows the town a new approval right.

This suggests, of course, that the town ought to treat the approval of a county subdivision map as tantamount to the approval of a zoning ordinance. This suggests that the town follow the process for adopting a zoning ordinance or amending same, as given in s. 60.61 Wis. Stats., including public hearings, and class 2 notice of hearings. The statutes are not clear on these points, so the town board should err on the side of generous due process to the electors, including a referendum, even if advisory.

Another consequence of this statute (s. 236.46) is that **any** county map of future land use must go to the town board for its approval, because a county decision that future commercial or agricultural uses should go in certain areas of the town is at the same time a decision that subdivisions **not** go there. If this were not the case, then the town that did not approve the county map would not retain its control over where to put subdivisions in the town, a control that is certainly implied by the town's statutory approval right accorded it in s. 236.46.

This is of particular importance in Dane County, where the county executive is acting outside of the comprehensive planning process (with what legality it is not clear) to promote a land use agenda she calls "Attain Dane." That is a well-chosen name, because that agenda would *de facto* act to take over most of the private land holdings in Dane County. She is proposing via her office to draw maps of the county that determine where future residential development can go. This is exactly the issue controlled by s. 236.46. Thus, if a town board does not approve her map, presuming she could get the county board to move to adopt it at all, that town board would in effect nullify her map in that town.

It is not clear why any town board would sign away their right to map their town's land use, to the county or anyone else. Still, it is likely that the towns will have to fight to secure and keep this right. This is especially so in Dane County, because those who believe in the rule of an elite seem prepared to challenge any law that denies them the authority to rule. Dane County has already shown that it will fight to the last taxpayer dollar, in order for its self-anointed elite to rule the towns.

Readers' Bulletin Board. e-mail us your comments. Include your name, for publication by *Freedom Matters*

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