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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 our republic.

## How Towns May Use Comprehensive Planning Law to Reduce County Domination of Land Use

by Bob Bowman

Quoted below (*with emphasis added*) are Wisconsin statutes on town/county roles in comprehensive planning.

"66.1001(3) ACTIONS, PROCEDURES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS.

Beginning on January 1, 2010, *if a local governmental unit engages in any of the following actions*, those actions shall be consistent with that local governmental unit's comprehensive plan:

- (a) Official mapping ... under s. 62.23 (6).
- (b) ... subdivision regulation under s. 236.45 or **236.46**.
- (c) **County** zoning ordinances ... under s. 59.69.
- (d) City or village zoning ordinances ... under s. 62.23 (7).
- (e) **Town** zoning ordinances ... under s. 60.61 or 60.62.
- (f) Zoning of shorelands ... under s. 59.692, 61.351 or 62.231."

Next, see 66.1001(2)(h), which states details of the land use element of a comprehensive plan. *In its single most critical part*, it reads as follows (underlining added):

"The [land use] element **SHALL** also *include* a series of *maps that shows* [sic] current ... and *future land uses* ..."

*A map of future land use is ESSENTIAL to a comprehensive plan; i.e., no comprehensive plan can exist without it.* Such a map *is addressed in 236.46 (cited above; copied below)*. It says that each town has approval over whether its town map of future land use can be put into the county comprehensive plan. ***Without the town map, the county comprehensive plan cannot apply in that town.***

"236.46(a) *The county planning agency may prepare plans*, in such units as it may determine, *for the future platting of lands within the county*, but without the limits of any municipality, or for the future location of streets or highways or parkways, and the extension or widening of existing streets and highways. ***Before completion of these plans, the county planning agency SHALL fix the time and place it will bear all persons who desire to be heard upon the proposed plans, and SHALL give notice of that hearing as required below for the passage of the ordinance by the county board. After these hearings the county planning agency SHALL certify the plans to the county board, who may, after having submitted the same to the town boards of the several towns in which the lands are located and obtained the approval of the town boards, adopt by ordinance the proposed plans for future platting or for street or highway or parkway location in towns which may have approved the same, and upon approval of those towns may amend the ordinance.*** Before the ordinance or any amendments to the ordinance are adopted by the county board, notice **SHALL** be given by publication of a class 2 notice, under ch. 985, of a hearing at which all persons interested shall be given an opportunity to be heard at a time and place to be specified in the notice. ***The ordinance with any amendments as may be made SHALL govern the platting of all lands within the area to which it applies.***"

Next below is the **reasoning, i.e., the logic**, whereby the above-quoted statutes provide for towns to opt out of county zoning and land division, come Jan. 1, 2010.

First, I see no reasonable way for courts to deny the towns the disapproval process that s. 236.46 here grants to them. ***It is exactly the same*** as that which ***well-established law*** gives the town over the county zoning ordinance itself pursuant to s. 59.69; i.e., s. 236.46 treats a county plan of future land use just like s. 59.69 treats a county zoning ordinance, vis-a-vis the towns.

Furthermore, the legislature ***clearly intended*** that the above mapping process apply in all aspects ***to comprehensive planning***, because it says so in s. 66.1001(3) of the comprehensive planning statute itself: i.e., point (b) therein says that county action must be consistent with its map under 236.46; thus, 66.1001 ***explicitly applies*** s. 236.46 to comprehensive plans. The cited statutory provisions thereby ***mandate*** that if a town does not approve its map being in the county comprehensive plan, then the county ***cannot map nor take land division or zoning actions*** in that town after Jan. 1, 2010.

In effect, this mandate provides towns ***a way to opt out*** of county zoning and land division regulation. All the town has to do is ***not to give approval*** for the county to put the town's future land use map in the county comprehensive plan. What could be simpler?

If a town that thus opts out then wants to enforce its own land division and zoning ordinances, it must have its own comprehensive plan. Thus, a town in ***a county without a county zoning ordinance*** enacts its own zoning ordinance under s. 60.61, and is free of county influence. A town in ***a county that has a county zoning ordinance*** can only enact its own zoning ordinance pursuant to s. 60.62, Wis. Stats. Via that provision, the roles of town and county are reversed from what holds if the county zoning ordinance governed in the town.

Under s. 60.62, a wise town will design its zoning ordinance so that local land use decisions are made via ***conditional uses***, because the county would have no say in such administrative (quasi-judicial) decisions. So, the way to achieve town control on local land use issues is for the town zoning ordinance to establish multi-use zoning districts (e.g., "general agriculture"), with most uses being conditional, minimizing rezoning requests. Thus, most land would be ***working land***, by ***ordinance***, reducing conflicts with purely residential use.

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