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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 our republic.

Wisconsin's Comprehensive Planning Is Like Children Playing with Fire in a Lumber Mill

by Bob Bowman

The last issue of Freedom Matters quoted state statutes which require each county, in preparing its comprehensive plan under s. 66.1001, to carry out the prescriptions in s. 236.46; to wit, each county must map where future development is to go in each town in the county. Before a county can enact such maps, it must ask for and get the approval of each town board to do so. If a town board does not approve the inclusion of its town map, the county comprehensive plan will likely not apply to or be enforceable in that town.

That consequence is a very profound one, because it allows a town to free itself not only of its county's zoning ordinance, but also of the county's land division ordinance. State statutes allow a town to adopt its own ordinances of that ilk, subject to specified conditions.

Apparently, Sauk County tried to trick its towns into granting the above map approval. It is of interest to know what process other counties have used for this.

The above provides one example of how towns and counties play with fire when they set out to enact comprehensive plans. Counties that do not get town map approvals may not have an enforceable plan in towns that did not approve inclusion of their map, and towns that vote such approval carelessly may later wish they could get the control back that they thus gave away.

At least, this resolves the problem of whether the comprehensive plan of the county or of the town prevails in a town. The town gets to decide that issue by whether it lets the county put its town map in the county plan. This town right is embodied in existing statute (s. 236.46). That provision treats a map of land use as a *de facto* zoning ordinance, akin to s. 59.69(5), by which latter law towns have a long-standing judicially-recognized right to decide whether to come under the county ordinance.

As another example of playing with fire, Dane County went through an extensive public participation exercise on its comprehensive plan without addressing the 14 state goals for local comprehensive plans [s. 1.13(2), Wis. Stats.]. Courts will likely rule adversely on a plan that failed to get public input on how to address those 14 goals stipulated by statute.

This mistake of failing to address the 14 goals specified by statute is a common one. Local governments that were the earliest in adopting comprehensive plans tended to be driven by activists for central command and control, for many of whom the **economic** goals of the state are anathema, and are hence to be ignored. Also, the legislature did not place the goals in s. 66.1001, the statutory section that is titled as comprehensive planning, and so the goals are easy to miss or ignore, especially by commissioners lacking in law.

Another procedural error is that of failing to notify landowners and mineral-extraction lease-holders at each stage of preparation of a comprehensive plan. This notification cannot wait for full-blown draft proposals of the plan or its elements, because the statute makes it crystal clear that public participation is to occur throughout the entire planning process, not just after the plan is all but finalized. Ignoring this requirement of notifying property owners is surely playing with fire. It became effective in May of 2004, thus allowing sufficient time for plans enacted before then to be made compliant by being redone prior to the deadline of January 1, 2010.

As serious as are the above issues, they pale by comparison to the historically known consequences of a state-controlled economic system. The problem is that Wisconsin's comprehensive planning law, new and untried by our state, amounts to economic planning by citizens who have very little idea of the economic consequences of what they are doing. Indeed, most citizens are not even aware that there are economic consequences, and ones of very major and serious proportions.

Economics, the "dismal" science, addresses the best use of limited resources. The most efficient use of resources is via the free market. The economist F. A. Hayek noted that the knowledge for efficient use of resources is distributed across all members of society, and is only available by the free and independent actions of all those members; i.e., our plans must give all people the freedom to act by their knowledge. Adam Smith, father of the free market, called it the "invisible hand." Modern thinking sees it as like a "distributed computer."

Thus, free market plans are the only way to maintain our economic well-being. Acting otherwise has doomed every collectivist nation to date. So, comprehensive planning is every bit as dangerous as playing with fire.

– To be continued. –

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