

Freedom Matters

A Weekly Newsletter

Dane County, Wisconsin

Vol. 2, No. 10

Friday, March 8, 2002

We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. Yet, when a legislature is in session, no one's life, liberty or property is safe. It's the curse of a democracy. That's why we have a republic instead. *Freedom Matters* dedicates itself to the fight to restore our republic. Most of the press and courts fail to do so. They've forgotten that freedom matters.

Is Springdale, Its Planning Commission and Its Town Board Creating Its Own Nightmare?

by Bob Bowman & Mike Byrne

Monday night, March 11, SPRINGDALE PLAN COMMISSION AND TOWN BOARD DECIDE Land Use Plan & Land Division Ordinance!

The proposed documents are strange, even grotesque. The words are rhapsodic, but the ideas bad. The town proposes to use a subdivision ordinance as a zoning ordinance. If they do, it risks embroiling the town, the town board and its advisory attorneys as defendants in lawsuits that could bankrupt them.

Springdale might learn from the Town of Perry, which is fighting lawsuits over similar land use issues, and lost the first lawsuit. Perry may well lose them all, to a plaintiff asking millions of dollars in damages.

The Land Use Plan (Feb. 21)

This plan is NOT ready for adoption.

1. IT CITES NO STATUTORY AUTHORITY

Note: It has to be a master plan (s. 62.23 Wis. Stats).

2. VIOLATION OF STATUTE.

A master plan is adopted by the Plan Commission, not by the Town Board. See s. 62.23(2) & (3)(b), to wit: **"The adoption of the plan or any part, amendment, or addition, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the ... [town] plan commission ... and a copy ... shall be certified to the ... [town board]."**

3. WHAT ABOUT THE COUNTY?

A master plan has no legal standing without the consent of the county [s. 62.23(2)]. The Town of Burke needed **11 years** to get their master plan approved by the county. Springdale's 1981 master plan was approved by the county. Its 1997 plan was not.

4. INCOMPLETE DETAILS

The Feb. 21 plan says it is an **amendment** of the current land use plan (page 4, top of page). Which plan, the 1981 plan or the 1997 plan? How does it integrate into that current plan; i.e., what parts of that current plan are replaced, deleted, altered, etc.? Where are the updated data? ... Without answers to those issues, this "amendment" is not ready for approval.

5. EXISTING COURT RULINGS MAY MAKE THIS PROPOSAL ILLEGAL

The Feb. 21 amendment uses a subdivision ordinance to **limit the number of residential lots** a landowner can create. It sets up three density options of increasingly strict regulation, and from which the landowner can choose (i.e., a residential density of 1 lot per 25 acres, or 1 per 17 acres, or 1 per 14 acres).

This **directly challenges** a Wisconsin Court of Appeals decision (*Gordie Boucher v City of Madison*, 1993), which said that an ordinance setting a quota on residential building permits was a zoning ordinance, and that a subdivision ordinance could not be used to control the use to which the lots may be put, and that both types of control require a zoning ordinance enacted as required by the zoning enabling act.

The Land Division Ordinance (Feb. 21)

This ordinance (page 13) says the town can deny the division and sale of land by denying the CSM, in order to **control the use** to which the land is put. That flies in the face of the *Gordie Boucher* case law.

This ordinance (page 17) implements the density options of the 2/21 land use plan. That flies in the face of the *Gordie Boucher* case law, since density units constitute **land use** controls, not quality of use.

This ordinance proposes an **overreaching land use power** by which the town can reach inside every residential lot to preserve non-residential land use, even to the extent of preserving particular trees, bushes, etc. **This is zoning, and makes the town the virtual owner of the property.** (cont. p. 2)

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

*** Published by Freedom Matters, Inc., Cross Plains, WI. 53528, Michael Byrne, Editor***
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If the town can do this on new lots, it can do it on old lots, and no one's property is their own.

RED FLAG the Siting of Structures. This ordinance proposes that the town can designate "**building envelopes**" to constrain where the buildings can be placed, thus to preserve "agricultural" land or other types of land use. This is a zoning power, masquerading as quality of use.

Why, in a residential subdivision, would the quality of the residential development include the preservation of "agricultural" land amid the houses? Does the town say that plowed fields, tractors and farm animals placed between the houses *improve the quality* of the residential living? Give us a break. This is bald-faced land use control, not quality of use.

RED FLAG the cluster development (page 25), in which 75% of the subdivision shall be deed restricted to maintain it as contiguous agricultural space or open space. This is zoning with vengeance. It makes the landowner **deed over** the designated property rights **on almost all** of the land (75% of it), without receiving just compensation for it.

RED FLAG the excessive exaction. The town owns maybe 0.5 acres of park land or open space. It has not required prior residents to provide such amenities. Now, it proposes a huge **exaction** on a few landowners to provide out of their pockets what no one else in the town is asked to pay for.

If preserving open space, environmental features, etc. is for **the common good**, then **everyone** should pay for it. **The town should buy it** from the subdivider at its appraised value, so that every home is taxed equally to pay for it.

Analysis

Consider a landowner who converts 100 acres to residential development under current law in Springdale. Realistically, 100 acres on average might yield about 30 lots of 2.5 acres each, and the balance of the land (25 acres) would be dedicated to streets, recreation, open space, flood control, etc. At \$100,000 per lot, that would be \$3 million.

Under the Feb 21 option #1, the landowner could create only 4 lots, which if 19 acres each (75:4) might bring in about \$0.6 million.

Under option #2, 6 lots could be created, and if clustered at 4 acres each (25:6), with 75 acres deed restricted, as threatened by the ordinance, this might bring \$0.6 million.

Under option #3, 7 lots could be created, and if 3.6 acres each (25:7) with 75 acres deed restricted, this might bring in \$0.7 million.

This is an anti-development ordinance

Options #2 and #3 impose such costly regulations that the landowner would lose to choose them. Springdale's 2/21 proposal **forces** the landowner to go with option #1. It **confiscates** 80% of the development value of the land from the landowner.

Thus, the ordinance **confiscates** maybe \$360 million dollars from landowners holding developable land. It does it so that the rest of Springdale can enjoy the open space owned by those landowners.

THESE ARE BALL PARK FIGURES, BUT THEY PAINT THE PICTURE. THIS IS WHOLESALE LAND CONFISCATION!

This land use plan and ordinance is a return to a feudal land tenure, with the town board lording it as the baron.

Is that what we want in America?

Questions One Can Ask

How great is the greed of those who have moved to Springdale for residential purposes? How much of other people's land do they think they own?

How much disrespect for the law does the plan commission and board have? Statutes and case law are clear. The plan commission, not the board, adopts the master plan. The town has no authority to adopt a zoning ordinance. An ordinance that limits the number of residential lots, or determines the use of land, is a zoning ordinance. A land division ordinance cannot be used as a zoning ordinance.

Why then is the town proposing to adopt a land use plan and a land division ordinance which appear to violate these legal restrictions?

In light of s. 946.12(2) Wis. Stats., which makes it a felony to act knowingly in excess of their legal authority, what personal liability do the town officers or employees bear in this matter?

Will they beg that they were only following the advice of the town attorneys?

If the town attorneys say the Feb. 21 plan and ordinance is defensible, do they merely mean they can keep themselves out of liability?

Will the town, its board, its officers and its attorneys, be sued? Like Perry has been sued? If it adopts and enforces these proposals, it will find out.

March 11 may or may not resolve these questions. If not, a court may.