

Freedom Matters

A Weekly Newsletter

Dane County, Wisconsin

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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.

Town Boards That Violate Law

by Bob Bowman

Perry, now in lawsuits over zoning, is not the only town that seems to be zoning in ways prohibited by law. Why? There is no land use need so great that its achievement justifies violating the law.

Can towns zone? That depends. Dane County has a county zoning ordinance, so here the controlling statute on town zoning is s. 60.62. It mandates three conditions that a town board must fulfill to adopt a legal zoning ordinance. **The town board must:**

- (1) get town electors to grant it village powers,
- (2) get town electors to authorize it to adopt a zoning ordinance, and
- (3) get the county board to approve the town zoning ordinance and all amendments thereto.

So, even with village powers, a town board cannot exercise zoning authority without the further approval of the town electors and county board.

Those mandates are expressly buttressed by another statute, s. 60.22(3), which says:

"The town board: [i]f authorized under s. 60.10(2)(c), may exercise powers relating to villages and conferred on village boards under ch. 61, *except those powers which conflict with statutes relating to towns and town boards.*" [emphasis added]

Thus, 60.22(3) denies the town board any use of village powers for the purposes of land use control, unless done as mandated under 60.62.

Can general police powers be used to control land use? No. The Wisconsin Supreme Court has ruled that any ordinance which exercises a pervasive control of land use is a zoning ordinance, and must be adopted via the process for same. Thus, the Court refused to let the City of Madison use denial of approval of a Certified Survey Map (i.e., a land division ordinance) as a way for it to prevent Gordie Bouchet from siting an automobile dealership on a particular parcel of land.

That decision bodes ill for a town board that tries to control land use via a **subdivision ordinance** adopted pursuant to ch. 236 of the statutes.

Yet, the **Springdale board** is flirting with doing just that, in its present draft of a proposed revision of its land use plan. If it adopts that plan and the implementing ordinances, and tries to enforce them, it will likely be sued, and lose big.

That decision also bodes ill for a town board that sites buildings (a zoning power) via a building ordinance adopted pursuant to the state uniform dwelling code. The **Perry Board** is now spending big bucks fighting a law suit because it did that.

Also, if a driveway ordinance is used by a town board to control location of a driveway beyond the public right-of-way, it is in effect locating the house. That is a zoning power, and a pervasive one, because it could be used to deny the use of a particular parcel for residential use. Yet, some town boards use driveway ordinances just that way. Those town boards are risking big losses in law suits.

Also, historic preservation ordinances that control land use are zoning ordinances. Town boards can only adopt them legally via s. 60.62 Stats.

What constitutes a separate legal lot? This also gets abused by town boards. As noted by an Attorney General's Opinion (#1-77), state statute 236.02(8) provides that a lot cannot consist of separate parcels which are not susceptible to integration into a single unit of land. Hence, a parcel divided by a public right of way or a navigable stream, is thereby divided into separate and legal lots. This is state law, and prevails over town or county ordinances.

What happens if town boards refuse to treat such parcels as two separate, legal lots? Dane county recently got sued over such a refusal, and lost.

Some elected officials are utterly arrogant in violating the law, in pursuit of their political agenda, gambling that even in the rare case they are sued, courts will change the law for them. Some judges do corrupt the law by legislating from the bench. Worse yet are **voters who pay no heed**, and lose their rights, freedoms and tax dollars while asleep.

Freedom Matters invites its readers to inform it if towns, or the county, may be misbehaving as above. Government injustice must be stopped. Sometimes moral persuasion or the glare of publicity may do the job. Where necessary, though, we need to find the means to bring lawsuits to bear.

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

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