

# Freedom Matters

A Weekly Newsletter

Dane County, Wisconsin

Vol. , No. 37

Friday, Sep. 20 , 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.

## Will the Town of Springdale Zone Land by a Land Division Ordinance?

by Bob Bowman

The Town of Springdale Board has proposed to **replace** its current land use plan with a 2002 land use plan, implemented via a land division ordinance. That 2002 plan is now before the Dane County board. There are several issues the board must consider.

The issue addressed here is how Springdale will implement its land use plan. Implementation is an **integral part** of a land use plan, as indicated in the Dane County Standards for Review of Town Plans, adopted by the Dane County Board as Appendix 1 of the Dane County Farmland Preservation Plan.

The Springdale 2002 plan proposes to **reduce** the allowed density of residences from one building lot per 1.2 acres to one building lot per 25 acres, or 17 acres, or 14 acres, depending on contractual agreements between the town and the landowner, implemented via deed restrictions. Springdale can only implement these reduced densities via an ordinance, but it has no authority to have its own zoning ordinance, and has not adopted the county's exclusive agricultural zoning. Rather, Springdale **plans** to implement its plan via a **land division ordinance**.

Thus, the issue is whether Springdale proposes a zoning ordinance in the **guise** of a land division ordinance. The law which speaks to that is embodied in an appellate court decision known as the Gordie Boucher case, decided in 1993.

County corporation counsel, hereinafter counsel, was asked to rule on this, and did so in two letters. In the first letter, counsel all but said that the appellate case law embodied in the Gordie Boucher decision of 1993 was overturned. To the contrary of that, counsel admitted in his second letter that there is merely a **request** before the Wisconsin Supreme Court to overturn Boucher, and unless and until that happens, he admitted that the Boucher decision is the law.

Hence, since the counsel and county are bound by law, the county board must treat the Boucher decision as being the law. The following quote from the Boucher decision (p. 54) shows its direct relevance to the Springdale land use plan, in its implementation.

"We believe that the attorney general has stated the proper test to determine [\*\*\*23] when a local regulation may be imposed under the locality's general police power or other delegated authority and when the regulation is zoning which can only exercised in conformance with the zoning enabling statutes. [\*\*272] In 76 Op. Att'y Gen. 60 (1987), the attorney general concluded that a town's Land Use Guidance System ordinance, which imposed a quota on residential building permits, was a zoning ordinance. The attorney general opined that: "The more comprehensive the ordinance, the more likely it will be characterized by a court as a zoning ordinance. Id. at 68. "[A]n ordinance [which] constitutes a pervasive regulation of, and in many instances a prohibition on the use of, land ... is a zoning ordinance ..." Id."

The "Land Use Guidance System" cited in the above quote **parallels** the scheme in the Springdale land division ordinance. Both ordinances reduce the number of building lots, one of them by refusing building permits, the other by refusing land divisions.

Thus, under the Boucher decision as law, a court would rule the Springdale Land Division ordinance to be a **zoning** ordinance. So, by approving the Springdale land use plan, Dane County approves Springdale to have a zoning ordinance: the deed restrictions implementing Springdale's land use plan are not under county control, nullifying county authority. History says the courts will likely **void** the 2002 Springdale land use plan and its land division ordinance as being illegal zoning. That would make the county liable.

**Before acting on Springdale's plan, the county needs an Attorney General's opinion.**

Other serious problems with this plan will be addressed in the next number.

**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 \*\*\*  
To subscribe or unsubscribe, e-mail to rebshar@chorus.net, or call Bob at (608) 831-6653.  
Our e-mail subscriber list is confidential. We will not sell it or reveal it.

**Back Issues of Freedom Matters are available, as e-mail.**