

Freedom Matters

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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.

Ugly to the Max The 2002 Springdale Land Use Plan: A Political Time Bomb

by Bob Bowman

The last issue of *Freedom Matters* quoted the Gordie Boucher case to show that the Springdale land use plan and its implementation was zoning in the guise of a land division ordinance. That view is upheld by the statute governing land division, chapter 236.

Municipalities, including towns, are authorized to adopt and enforce land division ordinances by s. 236.45. The purposes of that provision are stated in its sub (1), and **in their entirety**, deal with **quality of use**; i.e., they deal with orderly layout, public safety, preventing of undue crowding of land, provision of public utilities, facilitation of further subdivision of land, all with reasonable consideration for the character of the political unit, conserving the value of buildings placed upon land, providing the best possible environment **for human habitation**, and encouraging the most **appropriate** use (i.e., the best quality of use) of land in the political unit.

Note that the above purposes **do not include** the preservation of agricultural land, open space, scenic views, etc. Such issues, **where legal**, deal with the **type of use** of the land, and hence are zoning issues. They are not **quality of use** issues.

Provision 236.45, in its sub (2), which delegates land division power, permits the prohibition of land division only where such prohibition **carries out the purposes** (i.e., **quality of use**) laid out in sub (1).

The above interpretation is confirmed by the subsequent statutory provision, s. 236.46, which provides for the county, **in conjunction with towns**, to prepare plans for the future platting of lands in the county. That is, such plans provide for **where** platting may occur, and **where not**. As soon as one deals with "where," one is dealing with the **type** of use of the land, not **quality** of use. **Type of use is zoning.**

Confirming this, s. 236.46 requires that these plans be adopted by **ordinance**, and provides for the **same county-town shared governance** of that ordinance as s. 59.69 provides for the **zoning** ordinance. Thus, s. 236.46 provides that such plans are **only in effect** in towns which adopt the county ordinance that embodies the plan, and it provides that any amendment to this ordinance **can be vetoed by the towns** which have adopted the ordinance.

What constitutes type of use versus quality of use is usually clear. If not, governments and courts must err on the side that anything smacking of type of use constitutes zoning. That's because statutes put zoning under county-town **shared governance**, but make land division ordinances **competitive**. Thus, to promote cooperation between units of government, the law must not weaken zoning ordinances by making it possible to use land division as a zoning tool. That would destroy county and town cooperation, and give unstoppable land use control to cities and villages.

Politics aside, the 2002 Springdale land use plan as implemented by its land division ordinance is an **egregious** example of zoning by land division ordinance; i.e., Springdale proposes to use its land division ordinance to prohibit development on **fully 75%** of the presently undeveloped land in the town.

If such zoning by land division were approved by the county and the courts, it would destroy the **separation and balance of civic powers** and result in political warfare between cities-villages versus towns-counties, over control of land. **It would destroy town and county governments.** We would regress to a system in which each city or village controlled rural lands as if fiefs, like the city-states of medieval times; thus, the end of the American dream.

So, the 2002 Springdale plan is a time bomb. It overturns Gordie Boucher, as would the Wood & Wood case now at the Supreme Court. **For its own survival**, the county must reject the Springdale plan.

More on this, in our next issue.

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

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