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DCTA JULY UPDATE

By Mark Hazelbaker

Adoption of Grievance Procedure By Towns

The Dane County Towns Association will be sending out a model grievance procedure for consideration by towns to comply with a mandate created by the Budget Repair Bill. During consideration of the BRB, there was criticism that abolition of collective bargaining would leave employees without remedies for unfair treatment. So, the Legislature mandated that all local units of government create an employee grievance procedure, even units that never had bargaining units.

The law does not mandate that the grievance procedure be the elaborate and expensive process which exists under union contracts. However, it does need to provide for the opportunity for employees to appeal certain employment actions. The procedure needs to be in place by October 1, 2011. We will have a draft to the towns for review by the end of August.

Farmland Preservation Revamp Moving Forward

Because of statutory changes to the Farmland Preservation Program, Dane County is updating the County's Farmland Preservation Plan. Renee Lauber of our staff has been working extensively with the County on the Plan. She and Dane County Planning and Development Department Staff member Brian Standing recently briefed the DCTA Board on the updates. We are concerned that the Plan not go beyond the scope of what is required to comply with the state law changes.

The context of farmland preservation has changed quite dramatically since it was first adopted in 1977. Originally, the Program provided vital tax relief for farmers whose land was being taxed at highest and best use. The introduction of the Use Value Tax Assessment methodology in 1996 dramatically reduced property taxes and the importance of the farmland preservation tax credits. The need to preserve farmland, of course, remains. The commitment to do so on the part of towns is, if anything, greater than it was thirty years ago.

The Dane County Towns Association Board adopted several principles to guide its discussion with the County of the new Farmland Preservation Plan. My summary of these principles (this wording has not yet approved by the Board) is as follows:

1. Town Plans

The Towns' Association believes that the policy should clearly indicate that the County, in administering farmland preservation, shall follow Town land use Plans. The County has incorporated the Town land use Plans into its comprehensive Plan. There are no separate maps or other land use elements in the County's comprehensive Plan. Accordingly, we believe that the County has no basis to do anything other than simply follow the Town Plans. It is important to us that this Plan indicates affirmatively and unequivocally that the foundation of farmland preservation planning is the excellent planning work by the Towns in Dane County. This is especially significant because over the past fifteen (15) years, the Dane County Towns have demonstrated that their commitment to farmland preservation is strong and consistent.

2. Avoid Imposing or Referencing any Development or Infrastructure Standards Other Than Those of the Individual Towns.

Towns have driveway standards, road construction standards, site plan review standards (if they choose to do so), and other local regulations. This is appropriate because the Towns are the local municipality in the unincorporated part of the County. The County is not a municipality, and has no authority to regulate infrastructure or development build-out standards.

There are a number of references in the draft Plan that appear to indicate that driveways must be placed in a fashion which meets County standards or provides for some kind of County Plan review or other issues. The County has no authority to impose any such standards, and, more importantly, has no competence to do so. The Plan must consistently reference compliance with Town standards and refrain from imposing any review or alternate standards.

3. Simplify the Plan by Moving Informational Items to Appendices.

Brian Standing, drafter of the Plan, did a commendable job in incorporating a large amount of informational material in the Plan draft. That material answers almost certainly be questions about the meaning of aspects of this complex document. Indeed, if the Plan had not been drafted with information provided, someone probably would have criticized it for failing to

identify important policies and procedures. To allow the Plan document to be more compact, we believe it would be appropriate to pull all the informational items that are meant to be supportive of the policies in separate appendices following the Plan.

4. Use a Consistent Plan Format Making it Easy to Follow.

It would be helpful if the Plan were written a format similar to that of comprehensive plans in which the material goes from general objectives to specific policies and then, to implementation strategies. This general to specific format makes it easier to identify both the spirit and the letter of the Plan, and would make for a better structure. Further, we would like the Plan to include, as an appendix, a chart which graphically summarizes the planning matrix for farmland preservation planning. This would be helpful in following the available options for Town planners and County officials dealing with farmland preservation issues.

5. Non-Farm Development Area Policies

The Plan contains a section with significant policies governing the development of non-farm areas in towns. The decision about whether an area should be planned for nonagricultural development is part of the land use element of the comprehensive plan. As noted previously, only the Towns have adopted land use plans for their areas, because the County has simply adopted the Town plans. This is an important issue because in the development of some of the comprehensive plans, County officials have objected to portions of the Town plans which, in their judgment, contain too much nonagricultural development.

This is an important issue. Counties have no authority to tell Towns how to plan for themselves, and they have no authority under the Farmland Preservation Law to regulate areas that will develop within the next fifteen (15) years. In turn, because Dane County has no land use plan of its own, the determination of whether land will develop within the next fifteen (15) years belongs to the Town, not the County. This will be an important and essential element of our position as this matter moves forward.

Discussions on Future of County Radio System Funding

As the result of approval of the interoperable radio system by communities representing far more than seventy percent (70%) of the population of the County, that system is being designed and built. Every fire district, EMS district, police department, and other emergency service will have no realistic alternative but to sign onto that system when it goes operational in 2013. The system will be a major improvement in the quality of emergency radio communications.

Thanks to rebidding the project and the City of Madison's decision to finance a significant part of the project itself, the bill for County taxpayers went from \$30 million to only \$15 million. However, the system will have to be maintained, at an annual expense that will be

borne by local units of government. That cost will be \$183,000 in 2012, \$226,000 in 2013 and \$569,000 in 2013.

The County has made it clear it will not pay more than its share of these costs. That leaves two ways to recover these costs. One alternative would be to allocate the costs to the fire districts, emergency medical districts, and the like. If that is done, the districts will, of course, pass those costs on to their constituent municipalities. In other words, the cities, towns and villages will wind up paying it. A simpler and more direct approach has been tentatively approved by the governing board working on implementation of the radio system. Under that proposal, the maintenance cost will be allocated among by all of the sixty-one (61) municipalities in Dane County and the County itself. The County will pay a significant share. The City of Madison will maintain its own radios, which reduce the volume of traffic and needed equipment for the County system. The remaining communities will pay assessments that range from \$17,781 (Sun Prairie) to a low of \$99 (City of Edgerton, which has five (5) people in Dane County). The assessments for the towns will be an average of just under \$2,000, with a range from \$413 for Blooming Grove to \$4,229 for Dunn. The formula is based on a fifty-fifty (50-50) blended of population and equalized value.

Of course, no one in the Towns Association is happy about paying these assessments. We wanted the County to pay this cost, but we lost that battle. Now the question is on to implementation. We will be communicating with you further as the matter moves forward.

CARPC Continues to Concern County, Local Leaders

A series of memos have been flying around lately concerning funding of and the future of the CARPC. This issue's impact on Towns is significant: sewer service expansions usually mean annexation. For that reason, it is an important matter, one which we have followed closely. With the comments flying around, DCTA Jerry Derr felt it appropriate to ask me, as DCTA's legal counsel, to reiterate a few important legal points that have been lost in the discussion. That memorandum follows:

MEMORANDUM

To: Capital Area Regional Planning Commission Budget & Personnel Panel

From: Mark Hazelbaker, Legal Counsel, Dane County Towns Association

Date: June 28, 2011

Re: The BPP's Role In The Budget And Future of the CARPC

Recently, there has been considerable commentary about the CARPC's future from County officials and others. The retiring County Executive indicated she wished to dissolve the Commission. The new Executive has called for modifying the agency to coordinate its work with other planning agencies. Budget planning for 2011 is about to start. As we begin these discussions and processes, please remember several points.

1. The County Executive, former or present, cannot dissolve the CARPC. Under the statute, only the Governor, acting on resolutions adopted by a majority of the 61 municipalities in Dane County, may do so. See section 66.0309 (15), Wis. Stats. The DCTA knows how hard it is to dissolve RPCs. Dissolution isn't going to happen quickly or lightly.
2. Dane County does not set the RPCs budget or levy. The RPC is not a county agency. The CARPC sets its levy and budget with approval of the BPP. The levy request is certified to the County Clerk. If the County Board finds the proposed charges unreasonable, it can take the matter to arbitration or court. See, sec. 66.0309 (14) (b) and (d), Wis. Stats. The RPC certainly should listen to the County's concerns about budget needs. But the County cannot impose a levy on the RPC.
3. The BPP was set up to act as a senate-like check on the power of the unelected Commission with respect to two issues – adoption of the annual budget and appointment of the executive director. The BPP was not created with any policy making role and is not an executive committee. It troubles me to read in emails that members of the Commission and others are referring to the BPP as the “four horsemen.” I don't know which role the various BPP members are to play in an apocalypse, but I hope we don't find out.

Several people from various stakeholder groups spent a great deal of time attempting to formulate a different way to deal with sewer service expansion issues in Dane County. We studied the problem all the way back to where we started. The RPC statute remains the most viable means to address regional issues available today or likely to be available. We need to make this Commission work.

This memo reflects my legal opinions. The policy positions have been discussed with and approved by DCTA President Jerry Derr.

The material above was drafted by Mark Hazelbaker based on DCTA positions. The material was reviewed by President Derr, but does not necessarily represent the views of individual members of the DCTA Board.