

Mark B. Hazelbaker

Hazelbaker & Associates, S.C.

Attorneys at Law

Sheryl K. Albers
Kevin M. C. Johnson

Elaine Wilson,
Office Manager

3555 University Avenue, Madison, WI 53705
608-663-9770 Fax 608-204-9631

MEMORANDUM

TO: Prioritized Revision Task Force

FROM: Mark Hazelbaker

DATE: November 12, 2007

RE: Dane County Zoning Ordinance

The Dane County Towns Association is pleased that the Task Force will be commencing work on making long-needed revisions to Chapter 10. We are grateful for the chance, now and during the Committee's efforts, to present input. We offer some comments reflecting the Association's view of what needs to be included in a new ordinance in order for the Association to recommend that the towns support it. These comments are based on a discussion of the DCTA's Board of Directors last week.

Zoning is a Regulatory Tool, Not a Planning Instrument

In offering these suggestions, the DCTA wishes to note that zoning ordinances are regulatory tools designed to implement a vision for a community's future. The vision is created by a comprehensive plan. This revision process will fail if proposals made are attacked as either "pro development" or "anti development." For example, one of our concerns is that there should be a planned development ordinance. There are those, of course, who think that there should be little or no development in the towns. It would be tempting for such individuals to attack any such proposal as facilitating development. If this happens, this study will go nowhere.

Under the Comprehensive Planning Law, zoning is supposed to be consistent with the plan. The existing zones are so dated that they are simply not consistent with 21st century development practices. For this process to succeed, we need to focus on the regulatory purposes involved here and leave the planning issues to the planning process.

Specific Areas That Need to be Dealt With

1. Management of “splits” and residential development in the exclusive agricultural zone.

The existing exclusive ag zoning ordinance allows new residences to be created by approval of a “farm plan.” Additionally, it has long been a practice in the County that, under most town plans, a residence may be created by splitting off a small parcel at a ratio of one residence per 35 acres. This system has created significant burdens of recordkeeping on the part of the County and the town. It does not necessarily afford either town or County with sufficient input into the location of the residences created.

We think that Dane County should consider adopting a Agricultural Plan Development District similar to one recently adopted by Sauk County; and a Transfer of Development Rights Program. Coupled with conservancy subdivision design, this may provide a better alternative to the current system. The current system encourages proliferation of residences in an unplanned, scattered fashion which intersperses residential structures among permanent farmland. Additionally, the system mixes apples and oranges in that we are consistently using recorded deed restrictions to implement zoning ordinance provisions.

We think it would be better if the County ordinance provided for a zoning classification pertinent to land whose splits have been used up. The splits would be accounted for in adoption of an agricultural development plan. The farm parcel would then be zoned only for agricultural uses. That would avoid the need for recorded deed restrictions or notices.

Our vision is a zoning structure under which communities can target development in places where it most appropriately belongs in the County, and at densities that are more efficient uses of the land. Dane County ordinances which purported to bar use of innovative on-site wastewater treatment systems have been rendered unenforceable by state rule change (COMM 83.03(5)). With new flexibility, more dense rural subdivision patterns are possible using alternative septic systems. These should be pursued.

2. Protection of open space other than farmland.

Years ago, the Ag-1 exclusive zone was applied in a blanket fashion to encompass preservation of everything non-commercial or non-residential. That was a useful way to protect open space at the time. But, we think that attention might need to be given to whether forest and other conservancy lands need different kinds of zoning protections than agricultural uses.

3. Commercial zones.

The existing commercial zones are extremely broad. Very few towns are willing to rezone land to commercial unless there is an accompanying deed restriction which limits the exercise of the rights under the ordinance to assure that the land use does not precipitously change. We think that the work previously done by the Strategic Growth

Management Committee might be revived and fine tuned to give us a set of commercial zones that allow for targeting classes of commercial development which will not require restrictions.

4. Conservancy subdivision provisions.

The zoning ordinance should create an explicit provision for a conservancy-type subdivision, with provisions calculated to create an incentive for splits to be exercised in a fashion that has less impact on the land. Placing these incentives in the zoning ordinance avoids the problems with questions about the County's ability to adopt road standards and other infrastructure requirements under the Rogers case.

5. Planned Unit Development District.

Nine years ago, the County and the towns came close to reaching agreement on implementing a Planned Unit Development District. The issue then was whether or not planned development districts would be available in land which is not served by public sewer. We will continue to reject any limitation on Planned Unit Development Districts which limits them to sewer areas. The PDD tool has so much utility that it should be employed broadly. As we noted in our introduction, the issue is not making more land developable, but rather, making sure that we do a good job of implementing the vision which is included in the comprehensive plan. That is not pro development, it is pro community.

The current land development system we have embodies two levels of government making at least six decisions before a major development is approved. Land must be rezoned before the ultimate design and build-out of the land can be reviewed. Rather than take that on faith, we would rather have a system in which the entire vision for a proposal can be managed in one process, which is what a PDD does.

6. The LC-1 Zone.

The current zoning ordinance has a useful provision allowing limited commercial uses. We think that the concept involved in LC zoning is useful as rural areas change and farms consolidate. We believe that there are going to be surplus farm buildings that can be made available for use by small business. Provided that there is sufficient buffer between these properties and surrounding residences, and the uses are not a potential nuisance, we think that the categories allowed in the LC zoning might be broadened.

7. RH-1 Classifications.

The RH district is an important element of rural communities which allow people to keep animals without having agricultural land. The primary use of RH zoning has been for keeping horses. We note, however, that the definition of animal unit in the ordinance includes cows, hogs, sheep, goats, poultry, mules, and rabbits. We think that we should re-examine how this district is used. Some of the animals enumerated have high impact on the neighborhood, and conceivably should be limited to agricultural operations. Other animals that are not listed in the zone might be added. We note, for

example, that there are now hobbyists who keep miniature horses. These horses have been bred down to the size of large dogs, and are house broken. This may be an issue that requires addressing.

8. Senior Housing.

Under current zoning codes, it is possible to rezone property to create multi-family housing. In practice, towns have very little multi-family housing. This is partly a combination of a lack of desire on the part of towns to do so, and partly a conviction on the part of towns that the County will not let the towns have such development. We are beginning to hear concerns expressed in towns that there are few options for towns to undertake aging and place services. We would like a zoning classification created that allows the construction of housing and related facilities targeted at persons age 55 and older. The district would need to include the possibility of on-site meal and health services.

9. Signs.

Although subchapter 2 of Chapter 10 is not as high a priority as the other, the sign ordinance also needs to be updated. If the committee is inclined to explore that issue, we would be glad to come up with some points on that score.

We look forward to working with the Committee and thank you for your attention to this memorandum.

Procedural Issues

As someone who makes no claim at all to having invented to “fast track” zoning system, I applaud whoever did come up with it for trying to move the process along. But we can do more.

Zoning Proposals

Too many people and proposals come to the County lacking important information needed to answer questions raised by County staff or Committee members. Too often, town approval has not been received.

The Town of Springfield spent a great deal of effort and money to develop a system which is designed to put applicants on notice, up front, of the information they need to seek various approvals. The Town has a set schedule of application dates and meetings so that applicants know when their proposals will be heard.

We should be able to create a consistent system of applications and submittal requirements. Such a system would mesh town and County review and schedules to assure that people have complete submissions which are ready for review when they are before the Zoning Committee.

Comprehensive Plans

The Ordinance should create a framework for handling the process of incorporating the relevant portions of town comprehensive plans into the County Farmland Plan, and deal with the issue of whether the Town plans need to be included in the County plan. The process should create a concept plan review stage in which the towns and the county meet early in the process of plan review to discuss goals and objectives. That way, potential issues can be discussed before money has been expended on plans and positions have hardened.

The process should also provide timelines so that review moves along expeditiously.

Conclusion

The DCTA must represent the interests of 34 diverse towns in the revision process. Some of the towns want no growth, or as little as possible. Some have significant ambitions. That is not what this process is about. This process is about giving all towns and the county a way to implement plans efficiently and predictably.

MBH:emw

Cc: Dane County Towns and Officials
DCTA Board Members
Executive Kathleen Falk
County Board Chairperson McDonnell

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