



A Limited Liability Company

Attorney Mark B Hazelbaker
Circuit Court Commissioner
Direct Line: 608.662.2300
Direct Email: mh@kasieta.com

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Comments On The Dane County Comprehensive Revision Zoning Ordinance

Dane County is moving to complete work on the first comprehensive revision of its zoning ordinance, adopted originally in 1938. More work needs to be done, and significant issues remain. But, County zoning staff (especially Brian Standing) and members of the working group deserve commendations for the effort they put in to improve the functionality and clarity of the County's zoning ordinance. The result is an ordinance which provides clearer and more competent zoning regulations. It was long overdue.

The policies of the ordinance, though, raise different issues. The policies are controlled by County elected officials, as it should be. Genuine policy differences exist as to some aspects of the proposal. Commenting on the issues posed is not meant to be criticism of the effort this ordinance represents. Further, these comments reflect my viewpoint, not necessarily that of the DCTA Board.

1. The Ordinance Does Not Remedy The Structural Imbalance In County Zoning

The County continues to reject making any real change in the power relationship between the towns and the County. In 2014, the DCTA urged the County Board to do that by changing from a zoning committee to a zoning commission which would include town board members. The County Board noted, correctly, that under state law, a Commission would be appointed by the County Executive. That made the proposal unacceptable to the County Board. DCTA offered to seek a change in state legislation to allow the County Board chair to appoint the zoning commission. Such a change is still possible. Towns which elect to remain in the County ordinance deserve a great voice in their future development. A zoning commission which has town representatives would do much to improve county zoning decisions.

The Wisconsin Towns Association has, for decades, supported state legislation allowing towns to withdraw from County zoning, precisely because of this power imbalance. The County can take reasonable actions to improve the balance of power in zoning, if it chooses to do so. This comprehensive revision represents a great opportunity to do so.

2. The Ordinance Should Commit to Supporting The Future Existence of Towns

Two of Dane County's 35 original towns are gone. Three more will be within a few years. County officials have spoken repeatedly of zoning and planning as a county-town partnership. The least that a partner should expect is a commitment to the partners' continued existence. How could Dane County show that to the towns?

The new ordinance contains a statement of purpose at Section 10.001. That section lists many important purposes. It should include two more:

- (o) to promote creation of employment opportunities;
- (p) to support the continued existence of strong and economically viable towns as vital communities of Dane County.

If the County is not willing to indicate that it is committed to creation of jobs or the survival of towns, that is a powerful statement. The proposal is a minimal commitment to a balanced community. The rural areas of Dane County need jobs too, jobs which support rural communities and their economy.

3. The Ordinance Should Continue A-1 Zoning

Under the current ordinance, four towns do not have exclusive agricultural zoning (Bristol, Burke, Middleton, and Springdale). The general zoning district in those towns is A-1. A-1 zoning allows one residence per acre. Because residential uses are permitted in A-1, Bristol and Middleton have been able to offer landowners a competitive alternative to annexation. If this ordinance is adopted as written, that could change.

The omission will not immediately affect Bristol, which has decided to withdraw from the County ordinance. And, Burke will be merged into Madison. But if the proposal is not changed, Middleton and Springdale will be forced to choose between zoning large tracts of land to a residential classification, or, taking away hundreds if not thousands of development rights. Rezoning land to residential will preserve its development rights, but is inconsistent with interim-term farming of the land. Middleton and Springdale have used their comprehensive plan and land division ordinance to manage the timing and nature of development, and can continue to do so without taking away future development potential. But if the zoning does not accommodate the status quo, the result will be a huge loss of property rights.

4. The New Ordinance Needs Updated Sign Regulations.

County staff had not been able to prepare the sign ordinance when the main portion of the ordinance was released for review. Sign regulations must balance aesthetic concerns with the need for communicating ideas and commercial messages. There is a need for signage in towns.

County staff indicated they will be working on these regulations. I am willing to assist them if requested.

5. There Must Be A Narrower Definition of the Key Term “Consistent.”

Under Wisconsin law, zoning is supposed to be consistent with the comprehensive plan. The proposed ordinance contains a definition of the term “consistent with” which is overbroad. The definition would allow the County to review zoning amendments on the basis of just about any provisions of comp plans. The breadth of the language would allow the County to rely on miscellany in comp plans to reject a proposal which is consistent with the land use element of a town plan. The DCTA has long argued that town plans should be given controlling weight in land use decisions. The ordinance should be structured to do so.

6. The Ordinance Should Address Short Term Rentals.

The ordinance contains a definition of “incidental room rental” in (73) of the definitions section. That definition and the ordinance should include language which allows regulation of short term rentals, such as are facilitated by AirBnB and other websites. Most ordinances around the country seem to draw the line at renting rooms for 30 days or less. Stays of longer than 30 days are considered a landlord-tenant relationship; stays shorter than 30 days are considered a hotel-like use.

AirBnB and related websites have become controversial in many communities because it appears that they take housing out of the regular housing market. Short term rentals also can, if not regulated, impact neighborhoods adversely. The ordinance should contain tools to allow regulation of short term rentals.

7. Proposed Hamlet Zones Should Validate Existing Structures and Uses

County staff appear to have independently arrived at the same idea that the DCTA included in DCTA’s zoning ordinance – there should be a classification providing a zoning framework for the small hamlet communities around Dane County. Communities such as Ashton Corners, Marxville, Utica, Pine Bluff and Riley have existing buildings and parcels which do not meet existing setbacks, lot coverage or use regulations. In order to help these communities move forward, it is appropriate to create special zoning which recognizes the existing development in these hamlets. Section 10.261 (2), Hamlet Residential Zoning should be modified so that existing multi-family residences and mixed-use buildings are a permitted use. The same comment applies to Hamlet Mixed Use zoning.

8. The Ordinance Needs Charts Illustrating Setbacks and Other Dimensional Requirements.

The DCTA ordinance contains charts which present setbacks and dimensional requirements. These make the ordinance easier to use. The County ordinance needs these tools as well. Staff has indicated they hope to include them.

9. Miscellany.

Other comments have been shared with County staff. As the draft progresses, there may be more. The process can yet result in a new ordinance that improves Dane County by providing us with better land use regulations.

The comprehensive revision is a major improvement over the existing ordinance from a technical standpoint. It can be further improved from both a technical and a governance standpoint.

Very truly yours,

KASIETA LEGAL GROUP, LLC

A handwritten signature in blue ink, appearing to read "Mark B. Hazelbaker", with a long horizontal flourish extending to the right.

Mark B. Hazelbaker