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## COMMENTS ON REVIEW OF DANE COUNTY COMPREHENSIVE PLAN

Six years of experience of land use decision-making under the Dane County Comprehensive Plan provide the basis for general comments to be considered by the County as it reviews its Comprehensive Plan.

### GENERAL PERSPECTIVE

Staff of the Planning & Development Department graciously provided us with data on land use change applications over the past 10 years. In 2003, there were 254 applications for rezoning and 65 requests for CUPs. Those numbers remained relatively constant until the first wave of recession hit in 2007. Except for an anomalous number in 2010, rezonings have been in the range of 100 to 138 since 2006. This year, applications as of 9-1-2013 are on track to total 110.

In 1997, former County Executive Kathleen Falk set a goal of reducing rural development by 50 percent. The numbers since 2003 are down by more than the target. We suspect the reduction since 1997 is even greater.

Existing policies, principally the farmland preservation program's limitation on rural development, have already achieved a huge reduction in the pace of rural development in Dane County. The policies which caused the reduction in rural development assume that less development is beneficial. We are unaware of any studies that have demonstrated that reduced growth rate in rural Dane County has generated any benefits for either the towns or the County.

As we move forward, policy and individual land use decisions should consider the fact that changes made since 1997 have achieved the goal set by the County. Before any further restrictions on rural development are considered, there should be reliable evidence that greater restrictions are necessary and will produce benefits that exceed their costs.

## TOWN AND COUNTY ROLES

As the County has implemented its Comprehensive Plan, there have been some significant differences over individual town plans. Most differences over Town plans have been resolved by civil and informal discussions between the planners working on the plans, with involvement of the elected officials. Because Town and County officials have compromised on many issues, there have been few open disagreements about Town plans in the course of the plans' adoption. Towns have yielded on many issues and points to obtain an agreement, and would not necessarily have modified their proposals if the County were required to adopt the Town plans as proposed. But, that there has been agreement nonetheless is a credit to the towns and the County. The issue of the County's "overseer" role is unsettled at this time.

For that reason, it is necessary to state that it remains the DCTA's position that only the Town which adopted a plan has the legal authority to adopt or interpret it. We continue to believe that the County is required by statute to adopt town plans in their entirety or not at all. The County has chosen, on a small number of occasions, to refuse to adopt portions of some Town plans. We consider the County's action improper and unauthorized. We oppose continuation or modification of the Dane County Plan which purports to assert that the County has the power to approve Town comprehensive plans. There is a model worth considering which is more policy-based and deferential to towns.

Waupaca County has addressed the question of the relative roles of counties and towns in that County's 2030 Comprehensive Plan. [ <http://www.co.waupaca.wi.us/Portals/0/DeptFiles/Zoning/Waupaca%20County%20Final%20Plan.pdf> at section 9.5, pages 9-16 through 9-24. Waupaca County has thoughtfully articulated a process which explicitly seeks to respect local decisions almost all the time. The County notes that there are County services affected by local land use, such as county highways. In instances where a town decision implicates county responsibilities, the plan envisions a role for the County. Even in those instances, though, the Waupaca County process formally commits to dialog and mutual problem solving.

The towns believe that Dane County seeks to exert too great a role in what we believe to be local choices. There have been instances, for example, of the County objecting to the length of proposed driveways connected to Town roads, even though local public safety officials indicate the driveways are acceptable for fire and emergency response. To the DCTA, that is a consummately local matter. It may promote better and more harmonious decision-making to look at the Waupaca County model.

## GENERAL POLICIES VERSUS SPECIFIC PLANS

From time to time, in the context of individual land use applications, some County officials have suggested that zoning petitions or comprehensive plan amendments might be rejected because of a sentence in a portion of the County's plan or some other general concern, not articulated in what Dane County refers to as a town component plan. A few years ago, for example, a zoning petition which was consistent with the Town's Comprehensive Plan was delayed (and almost rejected) on the basis of the assertion that the rezoning was inconsistent with the rustic road designation of the road on which the parcel was located. As noted above, the

length of driveways has been cited as a basis for objecting to rezonings. It has been asserted that the County's Comprehensive Plan contains a provision which prohibits the County from approving amended Town or other plans which allow for more rural development.

There is a practical reason why the County should not rely on collateral policies in deciding land use issues. Doing so trivializes and disrespects the work and money Towns invested in preparing their Town Plans, and especially, the land use elements. If the County uses extraneous policies to override town decisions which are consistent with town land use plans, the Towns are unlikely to invest significant resources in updating their plans. If the County is an unreasonable partner, more Towns will follow the lead of Windsor and Westport, and exit County zoning through cooperative agreements.

The DCTA believes that the County should measure consistency of land use applications by reference to land use policies. Those policies, in the current Plan, are found in the adopted Town plans, which have been more or less incorporated into the County plan. We oppose use of general policies in the Comprehensive Plan as regulations to further restrict development. A specific example about which there is concern would be inclusion of language deeming hydric soils unsuitable for development.

#### SPECIFIC COMMENTS

DCTA appreciates the work invested in the plan review process by the Task Force. The Task Force has posted several summaries of the status of proposals under consideration, which are identified as a Matrix for each of the review topics. We offer some comments on a few items identified in the Land use Matrix.

101.3 – Recommendation to expedite permitting process. The County deserves credit for making efforts to streamline the review process and improve the Access Dane website. Those efforts should continue. We suggest developing a set of submittal requirements for land use proposals would continue to improve the process.

104 –Recommendation to create maximum lot sizes for land zoned out of exclusive agriculture. There are many implications posed by maximum lot sizes. The issue cannot be decided without coming to an understanding on all related questions of how splits are exercised.

Rural subdivisions. The Matrix suggests deleting language which suggests creating a zoning category for rural subdivisions. Subdivisions are a necessary element of making any TDR program successful, and to allow splits to be exercised without creating scattered site development. This goal should be retained.

Inclusionary Zoning. There is a proposal on page 2 to retain language which proposes countywide inclusionary zoning. The City of Madison's disastrous experiment with inclusionary zoning should be taken as proof that good intentions are hard to legislate. The reference to inclusionary zoning should be deleted.

## CONCLUSION

The DCTA looks forward to working with Dane County to update the Comprehensive Plan in a manner which improves the relationships between the towns and the County.

*This Memorandum was written by Attorney Mark Hazelbaker. The policies the memo relies upon reflect DCTA Board policies and actions. The analysis and recommendation are based on those policies.*

