

TOWN CONSIDERATIONS FOR STAYING IN OR OPTING OUT OF DANE COUNTY ZONING



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Background and Purpose

The state legislation allowing Dane County towns – and *only* Dane County towns – to opt out of county zoning (Act 178), was recently passed by the legislature and signed into law by Governor Walker on February 29, 2016.

Towns will now have the ability to opt out of county zoning beginning in 2017, and again in future 3 year intervals (e.g., 2020, 2023, 2026, etc.).

Planning and Development staff have followed this legislation closely over the past several months and have identified numerous unresolved issues as to how the law will affect the future of land use planning and regulation in Dane County.

The department believes the existing county zoning framework works well for both towns and the county. Judging from our discussions with town leaders, and the fact that 10 towns actively opposed the opt-out legislation, it is clear that many towns feel the same way.

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The purpose of this bulletin is to provide some background information and a list of key questions and considerations for Towns regarding whether or not to opt out of county zoning.

Planning and Development staff is available to meet with communities should they like to explore this issue in more detail. Please call 267-2536, or send an email to allan@countyofdane.com to arrange a meeting.

A sampling of unresolved issues and questions with town opt-out legislation

- How will towns pay for the cost of planning, zoning, and land division administration?
- Will town property tax payers see an increase in taxes?
- Will applicants for zoning permits pay higher fees?
- Can a private sector consultant provide direct customer service on a daily basis, or are services going to be compromised?
- What impact will opting out have on relationships with neighboring towns, cities, and villages?
- What impact will towns opting out have on the county's ability to provide planning and zoning services to towns that remain with county zoning?

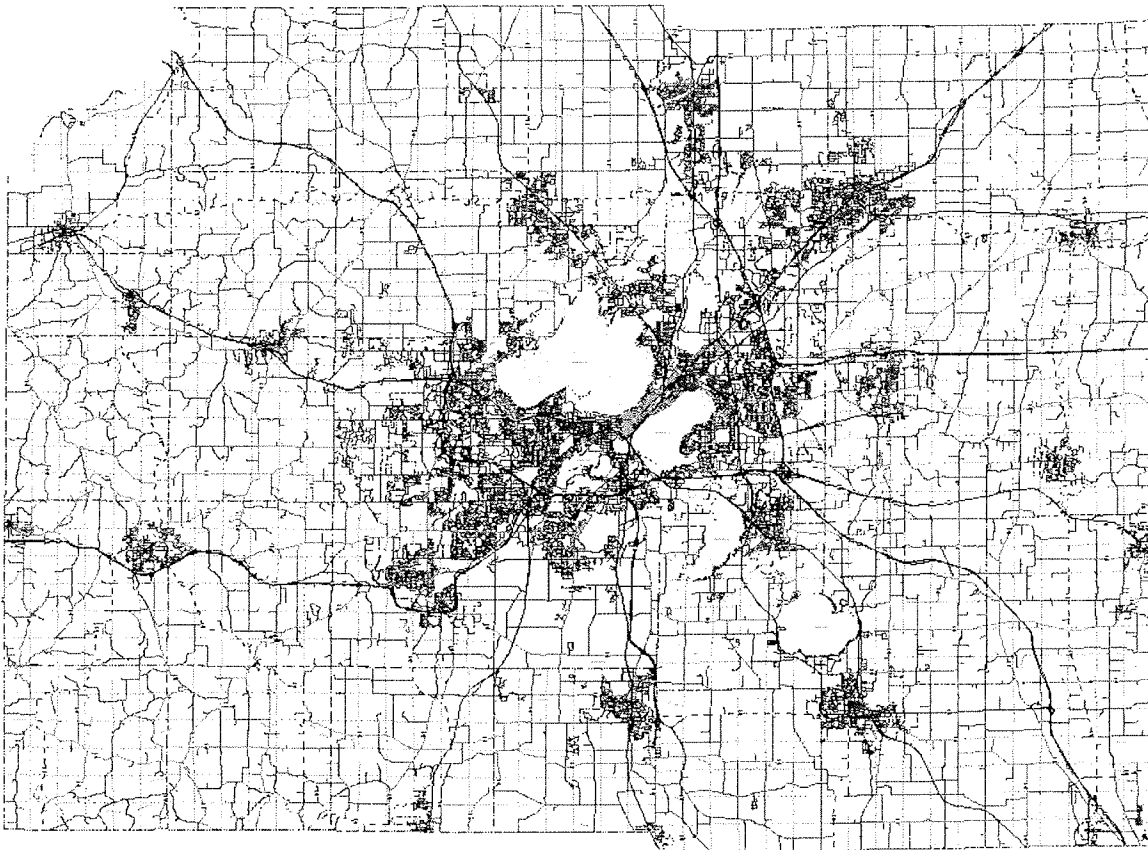
Considerations

The following observations illustrate the Planning and Development Department's position on the opt-out legislation and the value of the existing county planning and zoning framework.

The county has long assisted towns in facilitating responsible rural growth while preserving farmland and the rural character town residents cherish. Because of the economy of scale at which it operates, the county is able to provide a wide range of products and services to towns in an efficient, cost effective, and responsive manner.

Towns that choose to opt out will need to replicate many of those products and services at considerable cost. County staff are responsive to the needs of the towns, as evidenced by the many longstanding relationships we've developed with town officials and residents.

Dane County communities face many future challenges, both individually and collectively. These challenges will require a regional perspective, and that we work together in cooperation if we are to protect the wonderful quality of life we now enjoy.



Taking Stock of the Town/County Land Use Partnership

Supporters of the opt-out legislation claim that the county opposes rural growth and is preventing towns from growing their tax base through development.

If this were true, one would expect to discover a high rate of zoning petitions and land divisions being denied by the county. However, fewer than 1 percent of zoning petitions – less than 1 out of every 100 – have been denied by the county over the past 6 years.

Over that same time period, 680 Certified Surveys and 18 subdivision plats consisting of 2,056 lots were approved in towns, with an average of 219 permits / year issued for new single family home construction.

Ultimately, it is the adopted land use policies contained in town comprehensive plans govern the amount, type, and location of potential future development.

In addition to referring to town plans for detailed land use policies, the county comprehensive plan explicitly acknowledges that higher density development is perfectly appropriate where towns plan for it (see *Regional Planning Framework, Policies & Programs*, pages 82-83, Dane County Comprehensive Plan).

The towns of Albion, Bristol, Middleton, Springfield, Roxbury, Verona, and Vienna (and others) all identify residential development areas in their plans where higher density development

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is allowed. Residential and commercial subdivisions have been approved in the towns that plan for it with little opposition or interference by the county.

At the same time, 28 of the county's 33 towns participate in the state farmland preservation program. The majority of towns place a high value on limiting growth to a very low density in agricultural areas, and directing higher density development to defined areas (if at all), and this is reflected in the policies of the adopted plans.

Towns have the freedom to plan for their communities as they see fit. Under the existing system, towns also have the backing of county staff across multiple departments to assist them in developing, administering and implementing those plans. Towns that opt out of county zoning will have to contract for those services in the private sector at considerable expense.

Land Use Coordination is at Risk

There are numerous laws and permitting processes related to zoning under the purview of other county and state agencies that are coordinated through the Dane County Planning and Development Department. Detaching county zoning administration from these processes will result in less coordinated, more confusing, and inefficient processes for the public.

Examples of such laws and processes include, but are not limited to: sanitary permits; shoreland/floodplain/wetland regulation and permits; non-metallic mine reclamation; Wisconsin Farmland Preservation Tax Credit Program requirements; land division/subdivision review; and countywide rural address assignments.

How will development in opt-out towns be coordinated with applicable county regulations?

The opt-out legislation has the potential to create numerous rippling and unforeseen complications and inefficiencies in numerous development review processes for all stakeholders, but particularly for farmers and rural property owners and their agents. All of these functions and processes have been integrated and coordinated for decades at the county level.

Dane County's Economy of Scale

In addition to being efficient, coordination of land use processes at the county level is also cost effective. The county has the resources and staff to administer, implement, and enforce multiple land use regulations for all towns in the county, creating an economy of scale.

Towns that choose to opt out of county zoning may not be prepared for the full financial impact of such a decision, and property owners could face a decrease in services and increase in fees for rural development review under a town-only system.

The legal costs of prosecuting or defending just one significant zoning enforcement action are substantial.

Costs of many general services including zoning or planning advice over the phone or in-person, attendance at town meetings, mapping assistance, etc., are not currently charged to the towns or to individual property owners. County staff provide thousands of hours per year for these types of

services, every hour of which would be charged at a premium if sought in the private sector.

Consistent and timely zoning enforcement is a fundamental service that town officials and residents depend upon to protect property values and community character.

Yet the cost of Dane County zoning enforcement is almost wholly uncompensated: The county responds to over 600 zoning violations in any given year, all of which are addressed in some fashion, and virtually none of which result in any offsetting revenues to recoup the costs of this work.

With the resources and staff necessary to provide a wide range of services, the current framework is the most cost-effective system for the towns, Dane County, and the taxpayers.

Economy of scale: Any saving in costs that results from an increase in the scale of an operation.

County Land Use Services: More than Meets the Eye

Below is a sampling of the wide array of services Dane County staff provide to towns. While many of these services are available to towns from private sector providers, existing county services come at little or no cost to the towns or town residents. With the county serving all 33 towns, those services are delivered in a far more effective and efficient manner than may be provided by private sector firms due to the shared economy of scale that currently exists.

In addition, the county's career civil servants have developed personal relationships with town officials and residents over many years, along with the "institutional memory" that has proven very useful in anticipating and resolving issues that arise.



County Land Use Services Include...

Zoning & Land Division:

- enforces county regulations and applicable provisions of State Statutes and Administrative Code;
- provides accurate and consistent zoning information to the public;
- eliminates unnecessary litigation through early identification of potential zoning violations;
- inspects and monitors properties for compliance with ordinances, and conducts enforcement actions;
- provides information to citizens, attorneys, surveyors, and public officials on land use regulations;
- investigates complaints, processes and reviews zoning map and text amendments;
- staffs Board of Adjustment for variances and appeals of zoning code interpretation;
- maintains official zoning maps, permitting systems, and historical records;
- collaborates with owners, agents, and elected officials to address issues with development proposals;
- attends town meetings as needed to discuss pending zoning actions;
- issues rural addresses, determinations of nonconforming structures/uses, waterway navigability;
- reviews Certified Survey Maps and plats for technical accuracy, code compliance, and design standards;
- conducts detailed title research to determine legal status of historic parcels

Planning:

- conducts research, administers planning programs, and provides planning assistance to towns, county decision-makers, other departments, and the general public;
- prepares, administers, and implements comprehensive plans;
- reviews development proposals for consistency with town and other applicable plans and ordinances;
- prepares density study reports to assess development potential, consistent with town plans;
- ensures Farmland Preservation, Shoreland, Wetland and Floodplain ordinances meet current federal and state standards, and maintaining eligibility for tax credits, flood insurance and other programs/benefits
- drafts and distributes informational products explaining various land regulations and processes
- responds to property owner/realtor/developer/town official questions before, during, and after development proposals are submitted;
- prepares resolutions, ordinance amendments, and other legal documentation (e.g., deed restrictions);
- provides mapping and GIS services and analyses to town government at little or no cost;
- coordinates with other units of government on a wide array of issues (shared services, cooperative planning / boundary agreements, extra-territorial plat review, shoreland zoning, erosion control / stormwater permitting, highway access permitting, private on-site wastewater treatment permitting, etc.)

Weighing the Costs of Opting Out of County Zoning

The county budgets approximately \$1.2 million dollars annually for the majority of current planning and zoning administrative services listed on the previous page. All Dane County municipalities, including cities and villages, currently share in the cost of providing county land use services. The county tax levy is roughly supported 80 percent by the cities and villages, and 20 percent by the towns, yet towns are receiving almost all of the direct benefits from county planning and zoning services.

Just one controversial quarry, communication tower, development proposal, or zoning violation can take hundreds of hours of staff time across multiple departments over a period of months, and 10s of thousands of dollars in costs to resolve.

Towns that choose to opt out of county zoning will be solely responsible for the cost of providing most of those services through permit fees and tax revenue.

This includes legal staff in the Corporation Counsel's office, Information Management staff that maintain the county website and geographic data, capital costs to cover licenses for various software products, hardware, fuel & maintenance costs of vehicles, as well as other overhead costs.

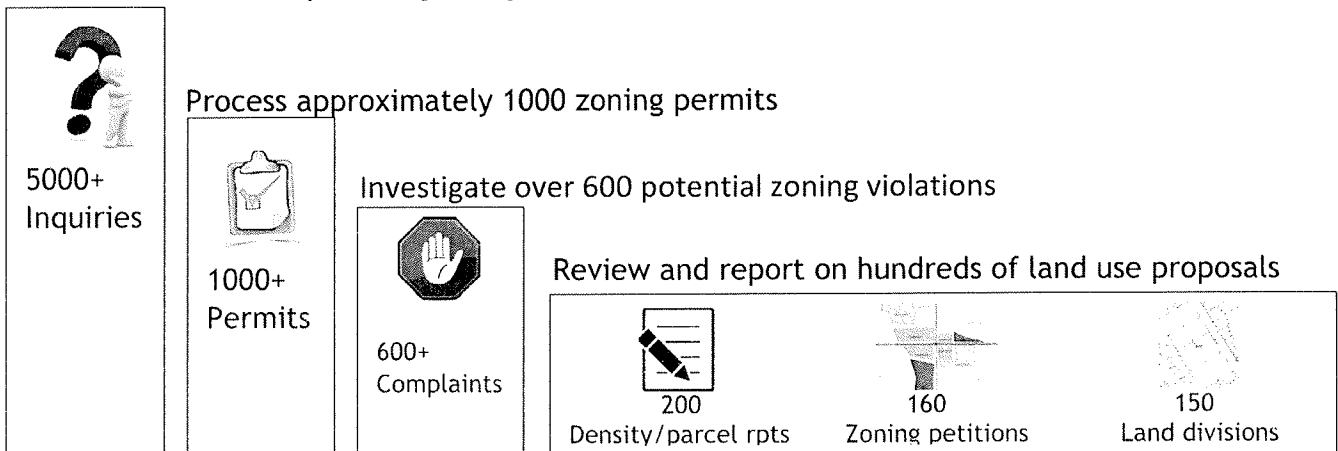


It's important to note that there are other costs involved with zoning administration not reflected in the department's budget, such as personnel and capital costs from other departments involved.

The current system ensures that those costs are shared broadly by county taxpayers in the form of professional staff that provide a wide array of services for the salaries they receive.

Every year, county staff...

Field thousands of inquiries regarding land use requirements



County Zoning – Next Steps

Numerous updates to the county ordinance have been made over the years, including many updates prioritized by the towns through the Chapter 10 Task Force.

From a small lot exclusive agriculture zoning category (A-4), to development of a Planned Unit Development District, to granting towns disapproval authority over Conditional Use Permits, the process resulted in over a dozen significant changes to the code.



More recently, the county board responded to concerns about rural representation on the zoning committee by amending its rules to require that a majority of the 5 member committee represent rural areas under county zoning.

Dane county will be undertaking a comprehensive revision of the zoning code over the next 18 months.

Perhaps even more significantly, the April 2014 elections saw a complete change in the county board leadership. Over the past two years there have been very few substantive issues raised at the county level with land use proposals approved by the towns.

By now you are likely aware that the county will be undertaking a comprehensive revision of the zoning code over the next 18 months.

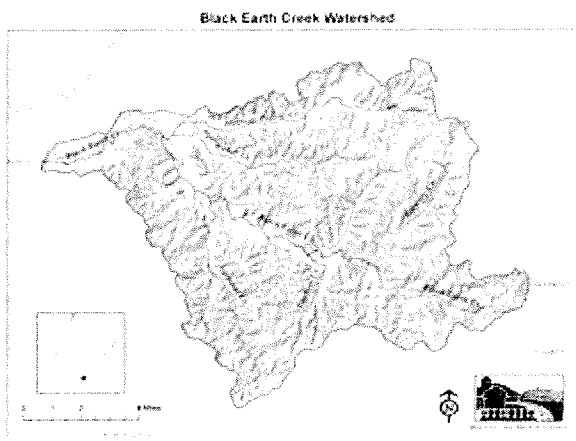
The rewrite will be overseen by a subcommittee including representatives from towns and other stakeholder groups, with a goal to accomplish the rewrite by September of 2017. The process will be fair and open, with numerous and varied opportunities for town input.

The Value of a Regional View

Watersheds, forests, prairies, roads, school, fire, and EMS districts... these natural and man-made features and systems require a regional perspective to match their regional boundaries.

Dane County covers 1,200 square miles and contains 61 units of local government. A single town is typically 36 square miles. Countywide planning and zoning promotes continuity in the land use pattern across a larger land area and enables a concerted response to matters that transcend town jurisdictional boundaries.

It also fosters predictability for property owners, developers, and the public in terms of process, timing, cost, outcome, policy development, decision making, etc. Creating an environment where land use decisions can be made completely in isolation, wholly separate from the larger county context, is unreasoned and shortsighted.



What impact will opting out have on relationships with neighboring towns, cities, and villages and how our county grows as a region?

Impact on Intergovernmental Relations

In various forms, DCTA has argued that the opt out legislation is about town "survival." They believe that the bill will provide towns the ability to offer expanded development opportunities to property owners who may otherwise annex into a city or village.

However, it's important to note that the opt out legislation made no changes to the authority of cities and villages to engage in extraterritorial plat review and/or zoning. In addition, most of the urbanizing towns have already entered into cooperative planning or extra-territorial zoning agreements with their neighboring cities and villages.

Will cities and villages now be more inclined to use their annexation and extraterritorial authorities, unaffected by the new legislation, to protect their peripheral interests?

Given the opposition expressed by the Dane County Cities & Villages Association, the proposed legislation represents a course of action that is more likely to exacerbate existing tensions between towns and cities and villages, and may very well spur more annexation activity by cities and villages as they seek to secure their peripheral interests.

Shared Services/Shared Solutions

Towns and counties have a lot in common and there are many benefits to shared involvement and authority over a variety of issues, including zoning and land use.

There is good reason that state law provides for county zoning: as noted above, there is an economy of scale and cost efficiency created by the organization and delivery of certain public goods and services at the county level.



Law enforcement, emergency management, public safety communications, highway and transportation network, parks system, human services, land and water conservation and management, etc. are just a few examples.

Undoubtedly these public goods and services could be provided individually by each town, city, and village. But, it doesn't always make sense to do so.

The current town/county planning and zoning framework works well. If there is a major problem with the statutory framework that's been in place for decades, then a statewide solution should have been openly discussed rather than singling out one county.



Working Together Works Better

The current zoning framework requires both the towns and county to make land use decisions jointly. Land use decisions can have far reaching consequences on the landscape and the character of our communities. Mutual respect, understanding, and cooperation are needed now more than ever if we are to protect and enhance the things that make our communities wonderful places to live, work, and raise families.

Just as the whole is greater than the sum of its parts, there is value added by involvement of both towns and Dane County as partners in the planning and zoning process as it exists now.

There are inherent 'checks and balances' built into a joint town-county planning and zoning framework that lessen the potential for abuses of power at any single level of government. The process outcome is better by both jurisdictions being involved, often prompting compromises that better serve the public good.

If and when there are instances of disagreement between town and county officials, the solution is not to revise the statutes in a way that benefits one unit of government over another. The solution is to work cooperatively for a resolution that respects the rights and interests of each.

