

Questions abound regarding hydric soil ordinance amendment

Kim Lamoreaux
Editor

A proposed ordinance amendment intended to avoid any building on land prone to flooding has raised some concerns among township officials and property owners.

Ordinance Amendment 9 (OA 9) to Chapter 75 of the Dane County Code of Ordinances would prohibit building on land that is deemed to have hydric soils. Chapter 75 contains ordinances regulating land divisions and subdivisions.

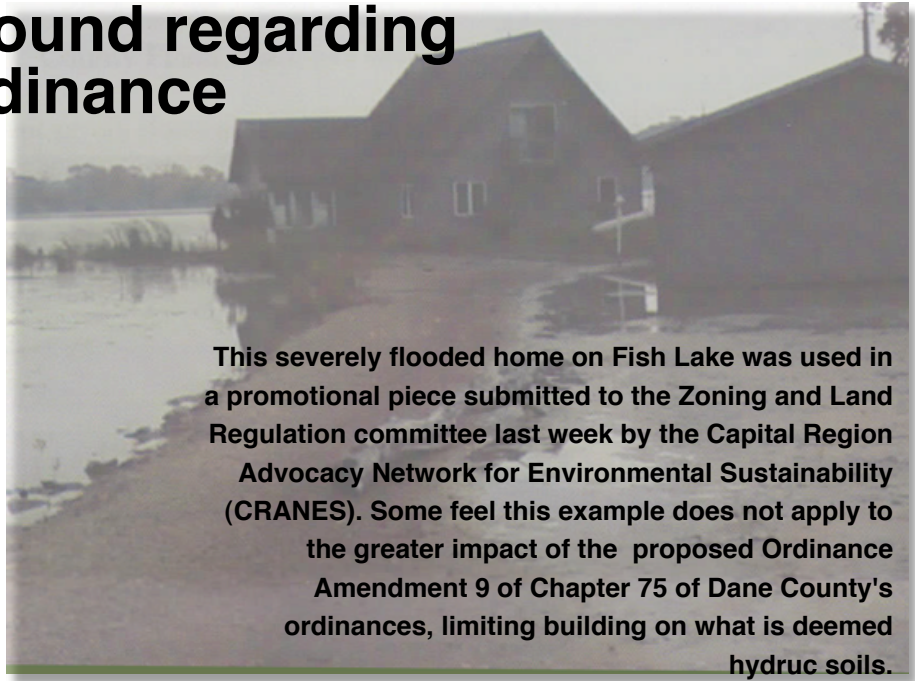
In essence, the proposed ordinance change would give authority to the Zoning and Land Regulation (ZLR) committee to deem land in Dane County townships as unsuitable for development because of any existence of hydric soils.

The amendment states, "No land should be divided or subdivided for a use which is held unsuitable by the committee for a reason of flooding or potential flooding (because of) hydric soils or other evidence of groundwater discharge." The ordinance amendment also states the land should be deemed unsuitable for development if there are hydric soils and if it is "likely to harm the health safety welfare of future residents users of the area or harmful to the community or the county."

Kevin Connors, director of the Department of Land and Water Resources, defined hydric soils for the ZLR as "It's land saturated within a foot of the surface two weeks or more out of the year sufficient to maintain anaerobic conditions." The word anaerobic is defined as "without oxygen."

The ZLR met Tuesday, Aug. 25 where the committee held a public hearing on OA 9. The majority of speakers testified against OA 9, including a number of town and DCTA officials.

Among the objections were the lack of sufficient scientific data to determine the existence of hydric soils, the lack of a clear legal definition of hydric soils, and an unevenly applied ordinance that would affect towns and not apply to cities and villages. Some are concerned such an ordinance could create added incentives for villages or cities to continue to annex more land out of township jurisdictions.



This severely flooded home on Fish Lake was used in a promotional piece submitted to the Zoning and Land Regulation committee last week by the Capital Region Advocacy Network for Environmental Sustainability (CRANES). Some feel this example does not apply to the greater impact of the proposed Ordinance Amendment 9 of Chapter 75 of Dane County's ordinances, limiting building on what is deemed hydric soils.

Budgeting workshops scheduled around the state

Finance and budgeting workshops tailored for both new and seasoned town officials are scheduled this month around the state.

Early registration is considered as seven days prior to the workshop and is \$55. Later registration is \$65. The registration fee covers the cost of materials, instruction, a snack and lunch.

This year's workshops will provide basic budgeting, payroll, and accounting information. For more experienced officials, there will be a workshop on understanding the levy limit, land use issues, bidding public projects, records management, parliamentary procedure and a question and answer session.

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Contact the Dane County Towns Association

Jerry Derr, President, chair Town of
Bristol 837-3407 ghderr@verizon.net

Steve Schulz, Vice president, chair Town
of Medina 206-0657 Schulzmdn@aol.com

Directors

Pat Downing, chair Town of Perry
527-2472 downhome@tds.net

Milo Breunig, chair Town of Middleton
833-6594 info@town.middleton.wi.us

Jim Pulvermacher, supervisor, Town of
Springfield 849-5772 cthp@chorus.net

Milt Sperle, supervisor Town of Rutland
873-3078

Robert Lee, chair Town of Dane
592-3636

Julie Gau, Secretary 444-6667
dctasecretary@hotmail.com

Mark Hazelbaker, legal counsel 663-9770
mhazel@hazelbakerlaw.com

Renee Lauber, planning consultant
577-9997 reneelauber@consultant.com

Kim Lamoreaux, newsletter editor
445-7557 kimlamoreaux@gmail.com

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month.

Send any photo or copy submissions,
to kimlamoreaux@gmail.com or mail to
or drop off hard copy at Mark
Hazelbaker's office at 3555 University
Ave. Madison, WI 53705 by the second
Wednesday of the month.



From the President's Desk

Time to rein in the ordinance change du jour

Jerry Derr

In the past month or so, a number of important
amendments to our county zoning code of
ordinances have come on fast and furious.

Some have come along too fast to allow town
stakeholders to give input to the county officials
poised to pass this legislation.

While it's true the Zoning and Land Regulation
(ZLR) Committee meetings are publicly posted
for all to see, and the meetings are open to the
public, there could be better communication to
constituents, especially town officials. These
ordinance changes directly affect our property
owners, and should not come as a surprise to town
officials.

For instance, Ordinance Amendment 2 to
Chapter 75 that changes the requirements for the
need for a certified survey map in order to divide
parcels of any area, unless the parcels are
undevelopable, came on the ZLR's agenda for a
second time as OA 3, sub one and was approved.

Then it was on the agenda for the county board
two days later. It's not just a matter for town
officials, but property owners should have the
time to become educated about this change, and
come to the board committees with their questions
or raise issues regarding this amendment.

A land survey may cost \$2000-4000. If you have
to do a survey on a remaining parcel on a 200-acre
farm, that cost could triple. That's absolutely
unnecessary. Property owners need to be aware of
the impact of such an amendment before a
committee, and certainly before the county board
votes on it. Town landowners are the only
population this ordinance amendment will affect.

Supervisor Hendrick attempted to make clear at
the county board meeting that the amendment
applied to larger lots, and is not intended for
smaller lots. But the ordinance amendment does a
poor job explaining what this ordinance
amendment does. It would have to go back to the

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DCTA GENERAL MEMBER MEETING IS SEPTEMBER 16 AT WESTPORT TOWN HALL



Public Safety
Communications

911



Regional economic development and the Dane County 911 call center will be the subjects of special presentations at the Sept. 16 DCTA general member meeting, scheduled for 7 p.m. at the Westport town hall located at 5397 Mary Lake Road, Waunakee.

Representatives from Thrive, the Madison Region Economic Development Enterprise, a non-profit organization formed in 2007 focused on economic development within the eight-county region of Dane, Columbia, Dodge, Green, Iowa, Jefferson, Rock and Sauk counties.

From the President's Desk continued

original document for us to think it was acceptable. Farmers should be able to sell acres of farmland by meets and bounds description, regardless of the size, and that's been our concern from the very start.

Another shining example of a surprise ordinance change comes with Ordinance Amendment 9 to Chapter 75. On its face, OA 9 gives the ZLR committee authority to review hydric soils on a developable parcel and determine whether it's a buildable piece of land. It's intent is to prohibit development on land with hydric soils, even though it offers no definition of what "hydric soil" is.

This is another example of an ordinance amendment that would only affect town landowners. If this is an attempt to prevent having flooded out basements, we could support that. But it takes a soil scientist/civil engineer to determine whether an area is prone to flooding. As far as I know, none of the members of the ZLR committee are scientists or civil engineers.

This means if someone wants to build a house in a township, the ZLR committee members look at a Geographic Information System (GIS) map, and deem the land buildable or not based on mapping that may or may not be accurate. Now the landowner is faced with hiring its own soil scientist/civil engineer to make a determination of suitability of the a building site. This represents more unnecessary costs to a landowner.

Dane County Public Safety Communications director John Dejung is scheduled to talk about the 911 call center. Dejung was hired in March of this year and comes from the City of Minneapolis.

You can go to the DCTA web site at www.danecotowns.org and learn more about Thrive and the 911 Communications Center prior to the meeting.

The DCTA board will also discuss the association's budget for 2010, and membership dues.

We hope to see all our town officials at the Westport town hall on Sept. 16.



I submit that if this is so important an ordinance change, it should be applied evenly to villages and cities at the same time, likely via the Capital Area Regional Planning Commission (CARPC), or the Dane County Lakes and Watershed Commission. Then we also could restrict annexation in cities and villages based on soil suitability.

The DCTA executive board met Aug. 19, and we voted to oppose OA 9 until we know more about what the problems and issues really are relevant to this ordinance change, and its specific intent.

Until then, our DCTA members are curious about the next sweeping ordinance change that might be around the corner, and if we will have time to learn of its existence, its meaning, its intent, and how it will apply to town landowners.

With the vast improvement in communication between county and town officials of the past few years, (i.e., Chapter 10 Revision) these actions could cause a set back in that improvement of county and town relations.

There have been no reports of a line formed down at the zoning office asking for these amendments, and one has to wonder if the changes are necessary to public welfare, or if these sudden proposals are the product of one or two county board members' own agendas.

The towns-county partnership regarding land use issues must work both ways on all issues or it's doomed to fail.



Another complaint was the proposed use of Geographic Information Service (GIS) maps and the age of the data they show.

Arden Sandsnes, an engineer with Royal Oak Engineering of Madison told ZLR committee members, "Across Dane County when they built the soils map, the first was in 1940's and twice since then. Our firm actually went out with six different townships to assist them when they were asked to verify the maps and the farmer would look at the town board and say where's my barn? It didn't show the barn because it was 40 years old. It was poor mapping. You have to question the information as to where did it come from and how good is it? And can you use it for the purpose intended. These maps are not good enough to do what you're trying to do."

Land surveyor and soil tester Dan Birrenkott of Birrenkott Surveying told committee members, "The tools we're using to determine hydric soils is outdated. These maps were not made for those purposes and are taken from data that was in the 60's and 70's. It is a rendering. It's not the truth of the facts of what's here."

Birrenkott added the definition of hydric soils is more complex than committee members and county officials may believe.

"A high water table can fluctuate," said Birrenkott. It's oxidation of minerals in the soils because of the presence of water. Water can fluctuate so much. We don't know if it was prehistoric. Ground water does fluctuate depending upon the type of soil. If it's a heavy clay that can keep the water from coming up, the soils up above will not show that. If you have granular material like sand where the water can move up very quick, there's very little evidence of that modeling because of the water table moving so much. There are no tools we have to indicate that. There are so many what-if's out there, we don't have a good tool to say where that water really is.

Dane County Planning and Development director Todd Violante agreed GIS coverage was more of a reference tool.

"The hydric soils coverage we have is a macro-level planning tool," said Violante. "GIS coverage is used for planning purposes and I concur it was not intended and probably should not be used for site specific design on a lot by lot basis. The accuracy simply isn't there."

Kevin Connors, director of Land and Water Resources agreed the ordinance amendment as written needed more documented guidance.

"There really needs to be some guidance document to accompany this ordinance amendment as we go forward," Connors told ZLR members. "Hydric soils you can grade them manipulate them and keep them from being saturated, but it takes an extra effort to prevent problems from occurring. It's really a limitation

TDR proposal moving forward

After two successful workshops in June and July, DCTA planning consultant Renee Lauber said last week the proposal for a county-wide Transfer of Development Rights (TDR) program is moving forward.

Lauber said many town officials' comments were incorporated into a sort of "wish list" for the formation of an ordinance language proposal that would set the stage for what the county board may ultimately vote upon.

The county board could take up a TDR proposal within the next month or two, which will likely be referred to county board subcommittees like Zoning and Land Regulation.

There is a lot of good TDR reference material on our DCTA web site at www.danecotowns.org.

Any town officials who have additional comments, suggestions, or questions regarding a TDR ordinance, please contact Lauber at 577-9997 or e-mail her at reneelauber@consultant.com.

you can manipulate to prevent water in the basements."

To some who testified before the committee, however, the ordinance represented a possible fix to events far worse than water in a basement.

Hans Noeldner of Oregon who served on Orgon's village board for years told committee members, "We're sort of a poster child for flooding problems. We had to condemn six homes and remove them. A number of years further (back) three homes had to be removed in our village at considerable expense. Hydric soils are not applicable in certain areas where we developed, but caused problems in other areas. Major development occurred on west side of village and all the engineering was done and all the rules were followed. Everything was supposed to work. We still had big problems. This got really expensive where I live. Designing to the 100-year flood plain doesn't work anymore."

However, Noeldner told committee members the ordinance should be applied evenly to towns as well as the incorporated areas.

"Work on this (ordinance)," said Noeldner, "and make sure it's not unfairly applied to townships versus villages."

That seems to be one of the main concerns of DCTA officials who voted last month to oppose OA 9. Some of those reasons are spelled out in DCTA president Jerry Derr's column this month.

Chapter 75 regulation land divisions and subdivisions does not statutorily need the county's towns' approval, unlike Chapter 10, the zoning ordinances.

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DCTA looks for clarification on Ordinance Amendment 2 proposal for CSM requirements

Kim Lamoreaux
Editor

An ordinance amendment regarding newly proposed requirements for obtaining a Certified Survey Map (CSM) is expected to come back to the Zoning and Land Regulation (ZLR) committee after it was re-referred by the Dane County Board of Supervisors in July.

However, the ZLR committee has yet to discuss Ordinance Amendment 2 since the re-referral by the county board. The committee voted 3-1 in June to postpone indefinitely the first amendment, but it was brought back to the committee with a substitute amendment proposal that passed July 14. It went before the county board just two days later with a notation on the board's agenda that the vote would be on indefinite postponement.

Instead, the board made the re-referral back to the ZLR committee in a close 17-14 vote, and it is now pending an opinion by the county's corporate counsel.

DCTA members have concerns about the proposed amendment based on its uncertainties about what size parcel could be sold with or without the requirement of a CSM.

Another concern is whether the amendment would lead to the county having the authority to block land transfers that under current law are immune from such a review.

The ordinance was amended to define a land division as "less than five lots, parcels or building sites unless the new lots or parcels are land not available for development defined (as) ... more than 35 acres in area, (and) is restricted exclusively to agricultural or conservation use pursuant to the zoning ordinance, Chapter 10. If such parcel is subsequently rezoned for development the requirement of a plat or CSM shall apply at the time of such rezoning."

The explanation accompanying the original ordinance amendment states, "This amendment provides that parcels that are less than 35 acres are exempt from the requirements for a subdivision plat or certified survey map if the land is not available for development as defined by the ordinance."

The new explanation accompanying the substitute ordinance amendment states instead, "This amendment provides that parcels that are more than 35 acres are exempt from the requirements for a subdivision plat or certified survey map if the land is not available for development as defined by the ordinance."

County board supervisor and ZLR committee member John Hendrick said at the July county board meeting the original ordinance amendment and its subsequent substitute were identical except for the explanation regarding 35 acres or more.

"On the definition of lot," said Hendrick, "we were going to cross out 35 acres or less because this applies to large lots. Substitute one is those two provisions restored. Staff wanted those provisions. It's clear this applies to large lots and is not

"Farmers should be able to sell acres as farmland regardless of the size, and that's been our concern from the very start."

- Mark Hazelbaker
DCTA legal counsel

an exemption for small lots."

DCTA president Jerry Derr expressed his own concern over the speed with which OA 2's substitute amendment passed the ZLR committee and landed on the county board's agenda.

"I'm not sure that is the way we should forward major substitutes on an amendment that's on the (county board) agenda for postponement," Derr told the board in July. "If there was a major proposal to amend this, the thing to do would be to say 'let's go back to the towns and see what they say about this because this is a major change. We could inform our members and property owners who I'm sure didn't have a clue about this.'"

DCTA legal counsel Mark Hazelbaker told the county board the ordinance amendment needed better clarification and asked that it be referred back to the ZLR committee.

"If the effect (of OA 2) were to provide that parcels less than 35 acres were exempt from the requirements for a CSM, the language contained in the ordinance and substitute lead one through a rather elaborate and confusing trail through the subdivision ordinance (Chapter 75), Chapter 236 and other provisions of law. The real significant impact of the ordinance amendment is it requires a CSM to convey a parcel of any size, not just one 35 acres in area or less. The original purpose of allowing the conveyance of parcels of 35 acres or less without a CSM is a sensible one."

Hazelbaker said, at first, the DCTA board of directors supported OA 2 because the original amendment appeared to not require a CSM if a landowner was selling land as farmland or as vacant land.

"If the concern is about people buying large tracts of land that aren't subject to review and turning them in to McMansions or residences in the country," said Hazelbaker, "that's a horse of a different color than a farmer selling acreage without having to go through a CSM review. That's a serious concern. Farmers should be able to sell acres as farmland regardless of the size and that's been our concern from the very start."

County board supervisor Gerald Jensen (District 31-Oregon) and ZLR committee member, was the supervisor who moved to re-refer OA 2 back to the ZLR committee in July.

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Derr, along with other DCTA and town officials believe a hydric soils ordinance amendment should be evenly applied to incorporated areas, and not just towns.

Derr appealed to the ZLR members to form an ad hoc group to study the issues brought on by such a sweeping ordinance amendment, similar to the Chapter Ten Ordinance Revision Task Force.

“Our opposition is because we need to have a better explanation of where we are with this ordinance amendment,” Derr told the ZLR committee. “We should be bringing this discussion in front of the group of people that will have the discussion that we’re trying to have here now. Some of the cities and villages are built on hydric soils. I would hope you could move this to some form of study group.”

Jim Pulvermacher, a supervisor in the Town of Springfield told the ZLR committee, “We should be able to sit down as a group of individuals—the county and the towns—and come up with a good idea. Nobody I know is in favor of putting houses on hydric soils. Half of Madison is built on hydric soils. The last sentence in this (amendment) just kills me: ‘Likely to harm the health, safety, and welfare of future residents and users of the area, or harmful to the community or the county.’” We might as well ask for world peace and that rabbits don’t get eaten. We have to create something that’s useable. We out here in the towns are going to have to live with this stuff that gets created. The (Dane County) Towns Association is extending an arm. You want to come up with a good idea, we’re willing to sit down and work with you.”

DCTA legal counsel Mark Hazelbaker told the committee, “Let’s amend the Urban Service Area (USA) development criteria with the Capital Area Regional Planning Commission (CARPC) to stop cities and villages from

(developing on hydric soils). There is already enough land in the USA’s to allow many cities and villages to develop for 20 or 30 years. We’re not saying don’t do this. If you don’t address this you’ll find even greater sprawl consequences because people who want to live in the country will do what many others have done. They’ll move to Green, Iowa, Columbia and Sauk counties.”

Hazelbaker released a memorandum in late July pointing out the improved relationship between county and town officials, particularly with the last few years of the work of the Chapter 10 Task Force.

However, Hazelbaker points out that changes to Chapter 75 do not require towns’ approval.

“Revisions to the subdivision ordinance do not require town assent,” writes Hazelbaker, “and are not subject to town veto. That does not make it right. These ordinance amendments are a dictate imposing significant policies on the towns and town residents. Towns have the wisdom to adopt local subdivision regulations which protect lands and resources.”

Hazelbaker told the ZLR committee, “What we need to do is build a relationship of trust and regulation that works, and is focused on areas where development can work. We can go to a Transfer of Development Rights (TDR program) and have a market for those development rights and then we will automatically not develop the rest of the land.”

Along with other speakers at the ZLR hearing, Hazelbaker told the committee the term hydric soils needs to be defined.

“Not only does it not have a clear definition (in the ordinance amendment), it has no definition,” said Hazelbaker. “Almost every soil in Wisconsin has been saturated with water at some point during its formation. We had a little thing called the ice age 10,000 years ago when the glacier melted and retreated.”



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Jensen, too, objected to the speed at which the ordinance amendment went from the ZLR committee to the county board.

“When (ordinance amendment 2) substitute one came out on Friday,” said Jensen, “and I received it on Monday, then we were to act on it Tuesday night, that’s light speed as far as government work goes.”

He additionally noted how Planning and Development Department staff members raised “red flags” regarding the implications of the ordinance amendment and cautioned the ZLR committee about going forward with it. He read out loud from the ZLR committee meeting minutes from July:

“There is confusion in the public due to the title description, specifically, they think the (ordinance) change will make more land divisions exempt from the CSM process, but in actuality, the change would increase the need for CSM’s,” said Jensen as he read from the ZLR minutes.

Jensen told the board he had consulted with a number of attorneys on his own regarding the impact of OA 2. He said

some of those conclusions regarding the ordinance change were complex and could eliminate land splits that property owners have coming to them under current law.

Jensen quoted one attorney as responding with, “I think there should be a study done as to how many more CSM’s this will generate. This will be especially burdensome in those towns that do not have exclusive ag. Those being Bristol, Burk, Middleton and Springdale. If a farmer sells five acres off 100 acres to a child for a house, he’s got to do a CSM on the other 95 acres at considerable cost.”

It remains to be seen if the ZLR will re-consider OA 2 at a September meeting. Remember to check www.danecotowns.org for updates. Updates to ordinance amendments can also be found at the Dane County Planning and Development Department web site at www.countyofdane.com/plandev.



The series of workshops is a cooperative effort with the Wisconsin Towns Association, the League of Wisconsin Municipalities, the Wisconsin Department of Revenue, the Internal Revenue Service and County UW-Extension offices.

A registration form is available for printing on our web site at www.danecotowns.org.

Locations

Thurs., Sept. 10 Johnson Creek: Comfort Suites, 725 Paradise Lane, Exit 267 off I-94 towards Johnson Creek.

Tues, Sept. 15 Cable: Lakewoods Resort - 21540 CTH M. 8 miles east of Cable on CTH M.

Wed. Sept. 16 Minocqua: Waters of Minocqua - 8116 Hwy 51 S.

Thurs., Sept. 17 Wabeno: Indian Springs Lodge - 670 Hwy 32 N. Between Wabeno and Carter.

Tues., Sept. 22 Eau Claire: Sleep Inn & Suites - 5872 33rd Ave. Corner of Hwy 29 and Hwy T.

Wed., Sept. 23 Stevens Point: Ramada Stevens Point - 1501 North Point Dr. From I-39, take Exit 161 south on US-51-BR to North Point Dr.

Thurs., Sept. 24 DePere: SC Grand Banquet Conf Ctr. - 1250 Mid Valley Rd. From US-41 exit at Main Street (Exit #163) to west frontage road.

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The Dane County Towns Association
3555 University Ave.
Madison, WI 53705