



April 2009

Volume 1, Issue 3

A Transfer of Development Rights re-do?

by *Kim Lamoreaux*
Editor

Dane County town officials may soon be asked to consider a second resolution supporting creation of a county ordinance regarding transfer of development rights (TDR).

Under such a transaction, owners of agricultural land over 35-acres can transfer (sell) their rights to use their land splits available on their rural

property, so they can be applied (by the buyer) elsewhere in an area already targeted for development.

The program works in conjunction with a Purchase of Development Rights (PDR) which “banks” the property rights to be used later in another area.

Some towns have considered property rights transfers by willing sellers a way to maintain farmland, especially what is still being farmed, and preserve other designated rural land for various reasons.

TDR’s consist of “sending areas” from which development rights could be transferred away from an area and recording a permanent limitation on future uses of the land.

TDR’s, in turn, involve “receiving areas” where land splits are transferred to an area where housing or development is planned.

DCTA land use consultant Renee Lauber, who formerly was a land use consultant in the Town of Dunn said she has been involved in many real estate deals having to do with a related program for Purchase of Development Rights (PDR).

“A farm with 10 splits could move them into an urban area where the landowner could get 20,” said Lauber. “There would be sending and receiving areas where farmland to be protected is sending and the receiving area is more appropriate for development. The important thing is the program is voluntary. Townships don’t have to participate if they don’t want to.”

DCTA directors to be elected at May 13 meeting

The Dane County Towns Association will elect association directors at the general membership organizational meeting at 7 p.m., Wed., May 13 at the Verona Senior Center located at 108 Paoli St. in Verona.

There will also be a presentation regarding a current topic relevant to town government.

Directors are nominated then voted upon at the biennial organization meeting on odd numbered election years. The newly elected directors subsequently vote upon the association’s president and vice president who then serve for the next two years.

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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 655-1621

Directors

Pat Downing, chair Town of Perry 527-2472

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

Harold Krantz, chair Town of Cross Plains 798-2637

Milt Sperle, supervisor Town of Rutland 873-3078

Robert Lee, chair Town of Dane

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

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

Renee Lauber, planning consultant 577-9997

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

The Dane County Towns Association newsletter is produced once per month. Deadline for submissions is the second Wednesday of each month by 5 p.m.

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

Mass Transit funding shouldn't be such a rough road

Jerry Derr
President,
Dane County Towns Association

Everyone seems to agree that our transportation system is in terrible shape. Badly deteriorated roads are everywhere.

Last fall, the State of Wisconsin had to take the embarrassing step of posting "rough road" signs on 34 miles of Interstate 94 between Madison and Milwaukee. In a state that adopted the ambitious Corridors 2020 initiative 20 years ago, this represents a big reverse.

It's more than just roads, though. Madison Metro riders took a deep hit recently when bus fares increased 33 percent. Rail lines continue to deteriorate. Air service is eroding.

Last week, I went to Washington, D.C. as part of the Wisconsin delegation to the Transportation Development Association's (TDA) federal action day. We met with Senators Feingold and Kohl, and most of our House members. They showed genuine interest in our perceptions of how the stimulus bill is working. It's to their credit that they are concerned that the huge investment they made in economic recovery is working.

Beyond the stimulus bill, though, reactions were more guarded. We shared with them our concerns that the stimulus funding may help in the short term to address large state and a few local projects, but it doesn't address the long term shortfalls in transportation funding for all types.

Representative David Obey of Wausau, who now chairs the House Appropriations Committee, expressed the problem forthrightly when he said that he would appropriate as much money as we asked for if we could identify and provide the funding source. And there's the rub.

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Wisconsin has gone backward in funding transportation by repealing the indexing of the gas tax. Now, we're looking at catch-up increases in the gas tax and still finding that inadequate to pay for the hundreds of millions of dollars of accumulated reconstruction and repair work.

Towns are especially pinched, caught between revenue limits and cost increases. Even with reductions in oil prices, the cost of road projects haven't yet fallen as much as needed.

Wisconsin's elected representatives in Washington certainly mean well and care deeply about our interests. But they answer to their constituencies too. Right now, a public infuriated about bailouts and executive bonuses is not very receptive to federal tax increases for



any reason, and certainly not so Washington can send money back to us.

It's not like money from Washington is free anyway. It comes with many conditions and limitations when it comes at all. And it ultimately comes from us. The government is, after all, nothing more than the sum of our individual efforts. If we can't find the willingness to fund essential services here in Wisconsin, we shouldn't expect our leaders in Washington to find it for us.

I will continue to work through the TDA, Wisconsin Towns Association and other groups to push for the necessary funding of infrastructure. If we can't maintain a sound transportation system, including mass transit and senior transportation, our economic strength will continue to deteriorate.



CARPC and the 'hard reality of politics'

Kim Lamoreaux
Editor

The Village of Mazomanie's attempt to expand its urban service area may be the landmark case that defines the scope of the Capital Area Regional Planning Commission (CARPC).

CARPC is the replacement agency for the former Dane County Regional Planning Commission and is charged with reviewing applications from municipalities to expand their USA's or the extension of sewer lines to areas within the city or village's limits that don't already have those services.

But the Wisconsin Department of Natural Resources (DNR) has the final say on such

applications as the agency that oversees water quality standards.

According to DNR officials, the pleadings of environmentalists who don't live anywhere near Mazomanie, the commission's doubts that the village would carry through with its storm water mitigation proposals, and the lack of an intergovernmental agreement with the adjacent Town of Mazomanie aren't enough to deny an expansion of a village urban service area application.

But those were among the reasons the commission's ending vote on the extension of village sewer lines failed in a 7-4 vote last September. DNR water division administrator

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Todd Ambs admonished the commission for denying Mazomanie's application based on all those other factors, leaving water quality matters somewhat in the background.

Ambs states to the commission in a letter last month, "The (DNR) is concerned that Chapter NR 121 of the Wisconsin Administrative Code does not support the CARPC denial of the (sewer expansion) request. Many of (the) factors raised by commission members are important land use issues and the CARPC should make recommendations to communities to address them. However, these issues are not a basis for denial of an amendment to a water quality management plan. In reconsidering the Mazomanie amendment request, the commission should focus on water quality impacts as the primary basis for a decision."

Because of Amb's admonishment, Mazomanie village officials appeared hopeful. But on April 14 after an update from village attorney Tim Fenner, no one is sure what the CARPC will do when they re-address the village's USA application.

"There were a lot of e-mails going back and forth," said Fenner at the Mazomanie village board meeting of April 14. "My optimism is not as big as it was last week. We seem to be getting back

to issues that have nothing to do with water quality. Frankly, it's pure politics. We're now just dealing with the hard realities of politics."

Unlike many annexations of town land to a city or village, no intergovernmental agreement was struck with the town, nor even attempted. The Town of Mazomanie stood mute, not approving or disapproving with any formal

"...if we get the Town of Mazomanie to support us, the towns association will then withdraw the opposition."

Tim Fenner,
Mazomanie village attorney

vote.

In fact, it was just last week the village and town boards met jointly for the first time and had any real discussion on the development.

The meeting was the first formal outreach to the town board, and the CARPC's next step in scrutiny was likely driving it.

"As part of the politics of this," Fenner told the village board, "the towns association has suggested to me if we get the Town of Mazomanie to support us then the towns association will then withdraw the opposition. The three town representatives on the (CARPC) would help us and give

us the super majority we need. That's the way to play politics is to get their support. Whatever influence you have with the town of Mazomanie, have them to adopt a resolution in support."

While legally there isn't much the town can do about the annexation, the only access to the proposed subdivision of about 240 homes on 188 acres is Hudson Road. That is expected to remain a town road, while the water and sewer lines to the new development go under it, and portions will eventually need new curb and gutter.

Town residents aren't happy, and they have many questions about the sewer line route that goes way around "the barn" to avoid meeting up with the Black Earth Creek.

As an annexation by unanimous approval, or one for which the property owner applied and was approved by more than two thirds of the village board, the town has no grounds to contest the annexation.

That is set forth legislatively, and re-affirmed by the State Appellate Court in the case of the Town of Merrimac versus the Village of Merrimac.

That case, now a year old, re-affirms that a non-contiguous annexation of land, or even the failure of the village to pay the town the statutorily mandated five year's worth of property taxes when annexing land, are not a basis to declare an annexation by unanimous approval (by the

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property owner) as invalid.

The appellate court's decision states, "We conclude that Wisconsin Statute 66.0217(11)(c) bars a town from contesting in court a particular type of annexation, namely, a 'direct annexation by unanimous approval' under (statute) 66.0217(2). Consequently, we need not address the merits of the town's attack on the validity of the annexation, specifically, whether the annexation is void because the annexed property is not contiguous with village property and because the town failed to comply with the property tax set-off requirement."

One CARPC commissioner, Harold Krantz, based his no vote on the lack of an intergovernmental agreement.

Again, said the DNR, that's not a reason to deny sewer service extension. But Ambs tells the CARPC commissioners that's no reason to deny such an application, calling it a "non-water quality concern" that has more to do with land use.

Ambs also took exception with commissioners'

expressed concerns that the village would not maintain the proposed storm water mitigation plans presented to the CARPC to review.

Commissioner Kristine Euclid said at the time of her vote, "All we have to do is look at the levies in New Orleans. I'm sure the people who built those levies all thought they were going to work also."

But Ambs responded in his letter, "The department shares this concern about proper maintenance, but this factor alone is not a sufficient basis for denial of the associated (Faga) development. If the CARPC were to apply this rationale and insist on complete assurance for all projects, the commission would recommend denial of nearly every proposed amendment or sewer expansion."



Open government, ethics and legislation on agenda for workshops for new and continuing officials in May

A workshop for new and continuing town officials sponsored by the Wisconsin Towns Association and UW Extension's Local Government Center is planned for this spring in numerous locations.

Workshop topics include powers and duties of town officials, Open Meetings Law, conducting effective meetings, land use law, road maintenance and construction and road safety, ethics and conflicts of interest, performance measurement, and a state legislative and budget update.

The Madison area workshop is May 5 at the East Side Club at 3735 Monona Drive.

Another workshop is planned in Mineral Point on May 28 at the Quality Inn at 1345 Business Park Road.

If registering seven days in advance the fee is

\$55. Registration forms can be downloaded via the Wisconsin Towns Association web site at www.wisctowns.com, or by calling The WTA at (715) 526-3157, or faxing the form to (715) 524-3917.

Other locations throughout the month of May are the Best Western Midway Hotel in Brookfield May 7, the Holiday Inn in Stevens Point on May 20 and the Cranberry Country Lodge in Tomah on May 27.

TDR redo *continued from page 1*

Time is somewhat of the essence because if towns are to consider TDR programs, they will need to include such programs as part of their comprehensive plans. Many towns already have their plans in place, but may have to amend them by Jan. 1, 2010 with TDR programs.

Town officials who were on boards back in 2007 might remember the first time the county board passed a TDR ordinance. However, utilizing their veto power, Dane County towns as a group narrowly voted the measure down 19-12.

Some were perplexed over the outcome of the towns' vote. The DCTA had worked out an agreement with the county board at the time. While being reviewed by the towns for approval, a small group of opponents raised questions about the ordinance which led a few towns to oppose it. The DCTA did not agree with the points raised by the opponents then, and believes the ordinance remains a good option for towns to use to preserve farmland.

But at the DCTA membership meeting on April 15, 13 association members in attendance voted unanimously to ask the county board to bring the measure back.

County board chair Scott McDonell, who worked on the original ordinance draft in 2007, said he favored bringing another TDR ordinance back for consideration.

According to board rules, a measure cannot be re-introduced until a year passes. That year passed several months ago.

"I'd be willing to try again," said McDonell. "What was frustrating the last time is I had addressed all the issues and more just kept cropping up. It would be good to find a way of not wasting everybody's time again. We could all sit down and see what the issues still are, or just pass (the ordinance) again. It doesn't take effect until the towns pass it."

DCTA president Jerry Derr, who is also chairman of the Town of Bristol, one of the towns that ultimately voted against the first measure, said the time is right to bring back a proposed TDR

ordinance.

"The time is right with the discussion taking place at the state level with the Working Lands initiative," said Derr. "We should revisit this and iron out some of the problems and concerns we had with the past proposal and move forward with that concept. There continues to be some interest from a number of our towns in this type of the a program and we should move forward with the concept."

"This ordinance is completely optional for each town," said Derr. "If a town is against TDR, the town does not have to use the option in its comprehensive plan. For those towns that do want to make TDR available, we think this ordinance is a worthwhile tool."

McDonell added that under the original ordinance passed by the county board "there's no county control over it, but it protects towns and gives them administration help. I think somehow that fact got lost the last time."

The Town of Springfield was among the 19 towns that voted against the county board's original TDR ordinance. But more recently, the town board formed a subcommittee that has spent months reviewing the TDR and PDR programs, although the board has yet to take any formal action.

Springfield town chair Don Hoffman said his board will continue to study the program, but couldn't say whether there would be support for the vote at the county level.

"One of the main issues was there was a two-acre maximum size on a lot restricting it to two acres. It was a way to make sure there were less houses," said Hoffman. "That's why Springfield voted against it. Our whole goal is to move the houses from the good land to a more suitable location. You have to have some incentives and make it affordable for people."

The Town of Cross Plains also voted the ordinance down. But since then, there is only one remaining member of that three-person board. This past election day that board grew to five members, and residents voted in a new town chair,

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replacing Krantz who had chaired the board for about 10 years.

The Town of Cross Plains plan commission is currently in the process of updating their comprehensive plan. New Town of Cross Plains chairman Greg Hyer has been on the plan commission since earlier this year. He said a number of commission members attended the Town of Springfield's informational meetings regarding TDR's.

But he couldn't predict how his town board might vote on a new TDR ordinance.

"I'd want to look at county ordinance and see what it says," said Hyer. "The concept has some merit and what I saw in Springfield addressed the concerns some have about it. Hyer said the town's current draft of its new comprehensive plan addresses TDR, but the plan is still a work in progress.

"I personally think it's a good idea to take a look at the TDR piece when we get the more basic elements in place with the plan. It's not clear to me on the plan commission whether every body is in favor of taking a look at TDR. It wasn't that every body was against it, it was just that we don't have a plan yet."

Burning questions about fireworks

1. Are fireworks legal in Wisconsin?

Only sparklers and snakes are legal to possess and use in Wisconsin **without a permit as a licensed fireworks exhibitor**. That statement is surprising considering the many large fireworks stores which line the highways in Wisconsin year round, and the many stands set up to sell fireworks around July 4th. It is, however, absolutely correct. Fireworks have never been legalized in Wisconsin. Around 1990, for some obscure reason, the State of Wisconsin decided to stop enforcing fireworks laws and allow vendors to sell them openly. Vendors are supposed to sell only to adults from out of state or persons with fireworks permits. Clearly, that doesn't happen. Fireworks are routinely sold to Wisconsin residents.

2. Why do Towns issue permits for something that is illegal?

State statutes require vendors selling fireworks "for use outside Wisconsin," to have a permit from the local community in which they are selling the fireworks. Vendors, therefore, routinely approach towns (and cities and villages) asking for permits.

There seem to be two points of view about permits. One, shared by many fire departments, emergency room personnel and others who are

concerned about safety, is that fireworks are dangerous and should be banned. The second is that fireworks regulations are paternalistic over-reactions to what is almost always harmless fun.

Towns tend to fall on one side of this divide, and adopt ordinances either prohibiting fireworks, or issuing permits for roadside stands that sell them.

3. What should a Town do if it wishes to issue permits?

The Town should have an ordinance in place to regulate issuance of permits, charge a fee for the work involved in issuing the permit, and establishing safety requirements. The ordinance should require the vendor to have liability insurance which names the Town as an additional insured.

4. How does the Town enforce fireworks ordinances?

The Town constable, if you have one, can enforce an ordinance. If you do not, we suggest informing the Sheriff's Department of the ordinance you have in place. Don't expect the Sheriff's Department to deal with every firecracker going off, but if you have a major safety issue presented, they may respond.



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