

THE JANUARY 17, 2005 SESSION
OF THE
WALWORTH COUNTY BOARD OF SUPERVISOR'S
COMMITTEE OF THE WHOLE

The Walworth County Board of Supervisor's Committee of the Whole was called to order by Chairperson Lohrmann at 6:00 p.m. in the County Board Room at the Walworth County Courthouse, 100 W. Walworth Street, Elkhorn, Wisconsin.

Roll call was taken and all Supervisors were present except Supervisors Grant, Lein, Polyock, Schaefer and Wagie-Troemel who were excused.

Chair Lohrmann opened the meeting by explaining that the purpose of the meeting was to listen to representatives of the towns concerning county-wide zoning. She explained that debate or decisions on this issue will occur at a future meeting. Chair Lohrmann opened the meeting to comments from the public.

Marvin Herman, 5621 Town Hall Road, Chairman of the Town of Delavan
Mr. Herman stated that the recent report noted that the Town of Delavan leads the county in the zoning permits issued.

He said that their town was investigating the issue of opting out of county zoning and asked that the deadline be extended to at least February 28th and perhaps even later so that the towns can get the answers to their questions. Mr. Herman then asked the following questions:

1. How will we be able to use the GIS system? Is it in a form to send to us and be useful? What special skills will we need to use this system? Will the county sell us any of its expertise?
2. What will be the form of the zoning histories that we receive from the county? Will we be able to use them? Is any special equipment required?
3. If we call the county for advice in getting our zoning department up and running, will it be given and at what cost?
4. How much will be rebated to the towns for staff reductions that the county will experience? (We were told that until the county knew how many towns were opting out, the county couldn't give us a figure of what would be rebated and there may be, as a matter of county policy, nothing rebated to the towns.)
5. Will the county work with towns to certify an ag-preservation plan?

Herman said that the town and their attorney question the position on page 18 of the report regarding the fact that even if the town opts out, the county board retains zoning approval under WI Statute 60.62(3). The town believes that the resolution that the county board adopted waives this. Herman said that the towns need to know that if they opt out, it really means that they are out. He believes that it doesn't mean that the county has supervisory authority over an opted out town to continue to hold sway over town zoning decisions. Herman said that if the county didn't feel that they could accomplish this as a matter of law that perhaps they could do this as a matter

of policy so the towns that opt out would be comfortable knowing that, if they opt out, they will be in charge of their own zoning.

Herman said that if the Town of Delavan opts out, it will not be due to issues with the County Zoning staff, it will be because they want to determine their future. Herman noted that there will continue to be great pressure by developers.

Ron Fero, W7683 Sheridan Road, Chairman of the Town of Whitewater

Mr. Fero agreed with the comments of Mr. Herman and added that the county has made it difficult for the towns to make a decision at this time. He added that he had seen some minor changes in the department but he expressed concerns regarding the need for changes in staff. He said that if the town stays with county zoning that he would like the department to be more customer friendly. Mr. Fero requested that the deadline for response from the towns be extended.

Dan Kilkenny, N3616 Elm Ridge Road, Town of Darien

Mr. Kilkenny inquired whether any additional options other than those in the report had been submitted. He indicated that their Town Board had passed a resolution that was submitted to the County Board representing their town's position. The Town of Darien position was that they wanted to have time to examine the options.

Michael Cotter gave an overview of the January 14th memorandum from the DNR. The memorandum provided an opinion with regard to Attorney Richard Lehmann's Report-"The Town of Linn Approach." To give an overview of the memorandum, Cotter quoted portions of the memorandum, saying:

"...The Department strongly disagrees with the suggestion that Walworth County could "transfer Shoreland/floodplain provisions and administration from the County Ordinance to the Linn Town Ordinance." The State Legislature has clearly required county regulation of unincorporated shoreland areas in s. 50.692, Wis. Stats., and floodplains in unincorporated areas in s.87.30, Wis. Stats. "Where the power to zone is delegated to one branch of a local government, it may not be exercised by another..."

"...Even if s.66.0301, Wis. Stats., were interpreted to allow one municipality to completely transfer the "joint exercise" of its statutory duties to another municipality (which we think is an interpretation that is contrary to the plain wording of the statute), The Department takes the position that the requirements of s.59.692 and s.87.30, Wis. Stat., would still control."

Mr. Cotter said that the memo presented by the Department of Natural Resources basically says that the Town of Linn approach would not be acceptable to the DNR.

Mr. Cotter then added that there were no additional options presented by the town's attorneys. He added that Attorney William O'Connor had been privately retained and he had submitted a seventh option. Mr. Cotter said this option proposes that the towns, if they chose, could create a more restrictive zoning ordinance and enforce it, if agreed to by the County Board. Mr. Cotter expressed concern that this would add another layer of regulation.

Supervisor Hilbelink inquired what deadline date would be comfortable for the towns in their decision making process. Representatives from the Towns of Delavan and Whitewater indicated that February 28th would be acceptable.

Supervisor Morrison requested that Phil Evenson from SEWRPC be allowed to make comment on the issue. Mr. Evenson that there are a couple of items that would direct our decisions. He said that as long as there is unincorporated territory in Walworth County, the county will be in the shoreland flood plain zoning business. The county cannot delegate this responsibility.

Mr. Evenson said that the second issue is that a choice will have to be made. If towns truly want town independence from county zoning, then it is all or nothing. Either all towns will have to opt out of county zoning or they all need to remain in. You cannot get true independence unless all of the towns opt out of county zoning. He said that Washington County eliminated their county zoning ordinance approximately 15 years ago. The costs of zoning then shift from the county taxpayer to the town taxpayer. He added that Ozaukee County has never had county zoning. Mr. Evenson said that the primary issue is that planning and zoning be done well, in the best interest of the towns and county.

Supervisor Russell observed that she felt that it's cheaper for the county to provide this service than have multiple municipalities have the staff and equipment needed to do the same job.

Russell stated that she has served on the committee and that if the town and county don't agree on the status of a rezone, then the rezone does not go through. Russell recommended extending the deadline to give towns as much information as possible on which to base their decision.

Supervisor Guido distributed a report that indicated that there were numerous counties that allow towns to provide their own zoning services. Guido inquired whether towns team up to share expenses involved in the zoning work. Mr. Evenson responded that it is quite common for towns to jointly employ consultants to assist them with the zoning work. Mr. Evenson said that in counties where there is no county-wide zoning ordinance when towns adopt zoning, they do not require the county's ratification of their zoning district changes or zoning ordinance change.

Wayne Redenius, W8411 Turtle Lake Road, Delavan, Chairman of the Town of Richmond
Mr. Redenius stated that some of the problems that the towns have had with county zoning have been resolved and some have not. He said that the town wants to have the major say as to what development goes on in their municipality. The February Smart Growth is a major factor in their decision making process.

Jim C. Simons, N6292 Paradise Drive, Chairman of the Town of Spring Prairie
Mr. Simons compared his experiences with the Columbia County zoning department to his experience with Walworth County. He said that his experience in Columbia County is far superior to what they have experienced in Walworth County. Simons stressed the importance of communication between the county and towns.

Simons said it is important for the county to talk to the towns in reasonable fashion and that it is not a good idea for the county to dictate. He said that the county needs to govern with consent, just like the towns need to govern with consent. The Town of Spring Prairie voted to stay with county zoning. Simons said he doesn't think that there is any way the towns can do the job more economically. Simons said this is a solvable problem and that the ball is in our court to solve the problems. Simons said the easy answer is to throw out county zoning, but he does not feel this is the right answer.

Joe Kopecky, E3127 MacLean Road, Chairman of the Town of Geneva

Mr. Kopecky indicated that the time frame is unworkable and that June 1st would be a better date. He said that he doesn't believe it will cost them more to provide the zoning service. He added that he believes that we could contact our legislators to change the law regarding shoreland zoning. He added that right now there are not many vehicles to allow the towns to take over shoreland zoning. He said that they wanted greater control and currently the only control they have is over rezones. They have no control over variances except in an advisory role. He said that the Town of Geneva has got to find a way to have greater control. Town of Geneva has not made a decision regarding county-wide zoning.

County Administrator Bretl indicated that this will be discussed at the County Board meeting in February. He said that policy decisions could also be discussed at that meeting.

Mr. Fero inquired whether the county will continue meetings with the towns and whether they will continue changes which were discussed in previous meetings. He said that this would help in the Town of Whitewater's decision making.

It was noted that of the sixteen towns in Walworth County all are represented at this meeting except the Towns of East Troy, Lafayette, Linn, Lyons and Troy.

Supervisor Burwell said she had previously worked for the Town of Delavan and while she was with the Town of Delavan the former Operations Manager used to conduct regular meetings with the zoning director on a monthly basis, and she felt that many problems were resolved via this communication. Burwell indicated that communication is the key and that the county is paying the price for not listening for many years.

Charles Papcke, Town of Sugar Creek, said that their town chairman has had regular meetings with the zoning staff, and they are not experiencing the same cooperation problems experienced by other towns.

Marvin Herman, Town of Delavan, said that he understands that legally a town does not have any say in the variance procedure. He said that he had sent correspondence to the Board of Adjustment asking that the town be able to make recommendations regarding variances. He expressed concern that the Board of Adjustment does not want input from the towns.

Ron Fero said he felt that the Board of Adjustment is condescending and stated that 99% of the time you will be turned down by that body. Chairperson Lohrmann added that the Board of Adjustment was invited to attend one of the workshops, but they refused to come.

Supervisor Ketchpaw asked Phil Evenson, when there is county zoning and a Board of Adjustment, are they typically hard rulers? Evenson said that in the law the Board of Adjustment is supposed to grant relief where there is a hardship. Evenson said this gets into a gray area. They are there to independently judge whether the applicant has a true hardship and is therefore deserving of relief.

On motion by Supervisor Ketchpaw, seconded by Supervisor Morrison, the Committee of the Whole adjourned at 7:10 p.m.

Kimberly S. Bushey
County Clerk

STATE OF WISCONSIN)
)SS
COUNTY OF WALWORTH)

I, Kimberly S. Bushey, County Clerk in and for the County aforesaid, do hereby certify that the foregoing is a true and correct copy of the proceedings of the County Board of Supervisor's Committee of the Whole for the January 17, 2005 meeting.

(These minutes are not final until approved by the County Board at the next regularly scheduled County Board meeting.)