

Fellow county surveyors,

I have a situation that may affect land division regulation in all counties of WI.

We had a court case regarding land divisions and zoning in Dane County. We are considering an appeal to the decision. The appeal decision would become case law and would affect all, so please let me know if you have concerns about Dane County moving forward with an appeal. The county will need to file the appeal in the very near future so please respond at your earliest convenience.

First off, Dane County's land division ordinance requires any division of land that creates a lot or remnant of 35 acres or less (net of r/w) must be done by CSM or Plat. Seems fairly straight forward right. I am certain that some of you will have no local land division ordinance and some will have a much smaller acreage threshold. In both the land division ordinance and the zoning ordinance there is language that states that a subdivision or land division occurs when a division of land of less than 35 acres is divided from the lands under contiguous ownership of land divider.

In this case, we had an individual transfer lands by deed from owner to a trust. They transferred 3 pieces to the trust creating a kind of a checkerboard of the farm. These 3 parcels are not contiguous and one of them is a land locked $\frac{1}{4}$ (not illegal, but ill advised). One of the parcels transferred was 20 acres and it cut off a remnant of the farm from the remainder, that is also roughly 20 acres. Our zoning office contacted them and let them know that this constituted an illegal land division per Dane County Ordinance and that they would need to go through a re-zone and a 2 Lot CSM to rectify the situation. They contested that and we went to court.

Case summary: The county (plaintiff) argued that the deed separated lands under contiguous ownership of less than 35 acres, and the zoning of said lands was for ag land over 35 acres and needed to be rectified. The ownership was by one deed containing multiple aliquot parts and fractional descriptions. The defendant argued that per chapter 66.10015 (copied below), the county cannot combine the **parcels** and argued that because the chain of title showed that the pieces transferred to the trust were previously acquired as separate parcels. They were in fact acquired separately in 1949 and 1955 respectively, by previous owner. All of these lands were transferred to the defendant in 2000 by a single deed with multiple aliquot parts equaling approximately 160 acres. We have a plat of survey on file showing the entire boundary of the farm. According to our Corp Counsel, there is no case law on whether a single deed with multiple parts described constitutes a singular property or merges the parcels into one ownership or not (logic be damned apparently). **The circuit judge ruled "The definition of a "parcel" in sec. 75.06(9) of the Dane County Ordinances unlawfully combines or merges lots for the purpose of regulating the conveyance of the lands, in violation of Wis. Stats. Sec. 66.10015(4). Section 75.06(9) is invalid as contrary to the plain language of sec. 66.10015(4).** So, basically ruling for the defendant and saying that the county cannot consider all of the contiguous lands as one ownership parcel for land division purposes.

My opinion is that 66.10015 is intended to prevent the merging of legally created lots, lots being the key word. In my opinion, a lot is created by CSM or Plat, not described parcels in a deed or tax parcels. That is where I believe the judge got it very wrong. This is of course my opinion and apparently has absolutely no legal standing.

With this ruling, I believe we would need to track all historical parcel transfers until combined in a Lot of a plat or CSM, and likely enforce setbacks to them as they would be deemed legal parcels of record even when owned in conjunction with other parcels. That would be a nightmare for tracking and zoning enforcement.

66.10015 (4) MERGING. Notwithstanding the authority granted under ss. 59.69, 60.61, 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

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