



OFFICE OF THE CORPORATION COUNSEL

December 3, 2019

Sup. Jerry Bollig
Chair, Zoning & Land Regulation Committee
Dane County Board of Supervisors
Rm. 106, City-County Building
Madison, WI 53703

RE: Fees In Lieu of Land Dedication for Parks

Dear Supervisor Bollig:

You have requested an opinion as to whether the county may require fees in lieu of land dedication for public recreation as a condition of plat approval pursuant to Dane County Code of Ordinances (DCO) §75.11. In my opinion, imposition of such a fee is inconsistent with state statute. The legislature has specifically prohibited counties from imposing such fees. A municipality or town may impose such a fee under its plat approval authority if they meet certain statutory requirements.

The Dane County Subdivision Ordinance currently provides in DCO §75.11 as follows:

75.11 DEDICATION OF LANDS FOR PUBLIC RECREATION WITHIN RESIDENTIAL PLATS. (1) *Dedication as a condition of plat approval.* The

committee shall require the dedication of land or monies in lieu of land for public recreation purposes as follows:

(a) The subdivider shall designate on every new preliminary plat of a residential subdivision, an area of land suitable for park or playground purposes, and shall dedicate said land to the public where the town agrees to accept the land. The amount of land to be provided shall be at least 1,750 square feet of land for each proposed residential dwelling unit within the plat. However, the total amount of land dedicated for public purposes or otherwise provided for meeting the objections of sections 75.10 and 75.11 need not exceed one-third (1/3) of the total (gross) area of the plat.

(b) Where the town agrees to accept money for park or recreation purposes in lieu of land, the specific amount of money shall be set as a general standard by the respective town board, but in no case should the minimum amount be less than

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the last official equalized value of the required public land area (1,750 square feet of land for each proposed residential dwelling unit within the plat).

Sub (1) requires the committee to require a dedication of land for public recreation, or fees in lieu thereof, as a condition of every plat approval.

Counties are a creature of the legislature and have only those powers that are conferred by statute, either expressly or by clear implication. *State ex rel. Teunas v. County of Kenosha*, 142 Wis.2d 498, 504 (1988); *County of Milwaukee v. Williams*, 301 Wis.2d 134, 146-47 (2007). The legislature has specifically withdrawn from counties the authority to require a fee as a condition of plat approval for acquisition or improvement of lands, including parks. Wis. Stat. §236.45(6)(am) specifically states:

Notwithstanding subs. (1) and (2) (ac), a municipality, town, or county may not, as a condition of approval under this chapter, impose any fees or other charges to fund the acquisition or improvement of land, infrastructure, or other real or personal property, except that a municipality or town may impose a fee or other charge to fund the acquisition or initial improvement of land for public parks if the fee or other charge imposed under a subdivision ordinance enacted or amended in accordance with the procedures under s. 66.0617(3) to (5) and meets the requirements under s. 66.0617 (6) to (10).

This language clearly prohibits municipalities (cities and villages), towns and counties from imposing a fee or other charge “to fund the acquisition or improvement of land” or infrastructure as a condition of plat approval. It then expressly creates an exemption for municipalities and towns to impose a fee to fund the acquisition or improvement of parks if they comply with Wis. Stats. §66.0617 (3) to (10), which among other things requires a needs assessment. This exemption specifically excludes counties. Under the principle of statutory construction *expressio unius est exclusio alterius* “the enumeration of specific alternatives in a statute is evidence of legislative intent that any alternative not specifically enumerated is to be excluded.” *C.A.K. v. State*, 154 Wis.2d 612,621, 453 N.W.2d 897 (1990). My conclusion therefore is that the legislature did not intend to grant counties the authority to impose a fee to acquire or improve parks.

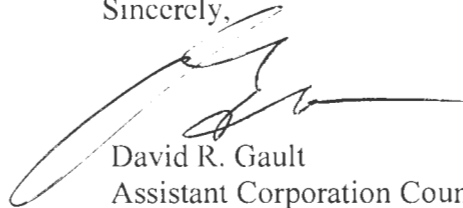
It is my recommendation that the county board considering amending or repealing DCO §75.11. Clearly, the county does not have authority to impose a fee for parks as a condition of plat approval. The county can require a dedication of land to the town for such purpose, but some towns do not want a park dedication. However, it may make sense to simply repeal §75.11 in its entirety and let towns require a park dedication or a fee in their discretion.

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In conclusion it is my opinion that DCO §75.11 conflicts with and is preempted by Wis. Stat. §236.45(6)(am). The committee does not have authority to impose a fee in lieu of a land dedication for parks as a condition of plat approval.

Please contact me if I can provide additional assistance regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Gault", with a long horizontal flourish extending to the right.

David R. Gault
Assistant Corporation Counsel