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Mr J B Van Hollen
Wisconsin Attorney General
PO Box 7857
Madison, WI 53707-7857

Dear Attorney General Van Hollen:

I am writing to you pursuant to Wis. Stat. § 59.42(1c) to request an opinion relating to the concept of "coordination" in the State of Wisconsin. Specifically, I wish to know whether or not "coordination" is a legal doctrine that can be invoked by a municipal government and, if so, what requirements it places upon other levels of government once enacted.

Oneida County is made up of 20 separate towns and the City of Rhineland. Three of the towns within Oneida County have officially adopted "coordination" and have provided notice of such to Oneida County. The towns that have adopted "coordination" have indicated to the County that they have invoked this authority pursuant to the State Constitution, State statutes, the Federal Constitution, statutes enacted by the Congress of the United States, as well as regulations issued by state and federal agencies. I have enclosed for your review a copy of the letter that has been provided by the town and the resolution that each town has adopted. I should note that I am providing a letter and resolution from only one town as it appears to me that the letter and resolution are of a form whereby the town name is changed and that letter and resolution is provided to the other government entities. I should also note that the body of this letter will spell out in more detail the parameters of what the towns believe that adoption of "coordination" enables a town to do and the additional requirements they believe that this places upon other levels of government.

Oneida County has recently contracted with North Central Wisconsin Regional Plan Commission (NCWRPC) to aid in the process of adopting a comprehensive plan for Oneida County. The Oneida County Board of Supervisors has adopted a resolution which requires that the County comprehensive plan adopt and incorporate the comprehensive plans adopted by the towns. The adoption of "coordination" appears to be a response to the County's efforts to create its comprehensive plan. The towns who

have adopted "coordination" have indicated they will not be creating their own comprehensive plans pursuant to Wis. Stat. § 66.1001 but will be creating a "coordination plan" to be adopted by the County as part of their efforts to create a County-wide comprehensive plan.

Given the adoption of "coordination" by the three towns in Oneida County, there has been some discussion amongst officials for the towns, the County and NCWRPC regarding this concept and what may or may not be required of the County in intergovernmental relations with municipalities that have adopted "coordination". The Planning & Zoning Committee for Oneida County has requested that this attorney general's opinion be sought in order to clarify these issues surrounding "coordination" here in the State of Wisconsin. Below I have set forth a series of questions along with the relevant legal research pertaining to those questions. Your guidance in these matters would be extremely helpful not only to Oneida County but to all State government offices, agencies and the local governments of the State of Wisconsin.

Thus, the issues are as follows:

1. Does the use of the word "coordination" in the Wisconsin Statutes impose any duties on Wisconsin municipalities beyond the established decision making processes already required by State statutes and administrative rules?

a. If "coordination" does impose extra duties on a municipality beyond the established decision making process, does a town need to invoke such power, what extra duties are imposed, and are those extra duties similar to the duties set forth in the Federal Land Management and Protection Act?

b. If "coordination" does impose extra duties upon a municipality beyond the established decision making process, what municipal actions need to be coordinated with the local government unit that has invoked this power?

According to the form letter that has been sent by the towns who have adopted "coordination", these towns believe that "coordination" is a power that is able to be invoked in order to "coordinate with federal, state and local governments and agencies regarding planning to benefit the citizens within its jurisdiction." The town letters go on to cite that the 10th amendment of the U.S. Constitution recognizes that a town can exercise local authority and impose and enforce local police powers. The concept of "coordination" apparently comes from the Federal Land Policy and Management Act (FLPMA). The definition of "coordination" in the FLPMA seems to be the concept upon which these towns have identified as the requirements for other municipalities once the town has enacted "coordination". The form letters sent by the towns also identifies other federal statutes such as the National Environmental Policy Act, regulations issued by the forest service, the BLM, fish and wildlife, Homeland Security and the Council on Environmental Quality as further instances confirming and detailing the meaning of "coordination" as defined by Congress in the FLPMA.

"Coordination" as that concept is put forth in the FLPMA can be found at 43 U.S.C. 1712, (C)(9). That section of the FLPMA reads as follows:

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C.A. § 460/-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those state, local and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

The FLPMA seemingly requires that any inconsistencies between federal land use and local land use plans need to be resolved to the "extent practical" and that due consideration be given to the local development plans. Further, the FLPMA requires that the local units of government are to receive early public notice in regard to the decisions by the federal government which may affect non-federal owned lands in their jurisdiction. Based upon these requirements of the FLPMA and the definition of the word "coordination", the towns in Oneida County have sought to require other local units of government to meet these same requirements by invoking "coordination".

In a letter dated February 2, 2009 from Jay Verhulst (the individual who is apparently spearheading the efforts to have towns adopt "coordination") he lists the following as the ongoing authorities to be granted to a town after the proper adoption of "coordination":

1. Require early notification, prior to public notice, to the local government of all actions or plans of the federal or state agencies that will affect local units of government, its economy, or environment.

2. Grant an opportunity for *meaningful* input by the local government, which means input that has substance and given weight and meaning by the agency.

3. Require agencies of all levels of government to be apprised of any local government policy or plan.

4. Those agencies/governments are required to consider the local government policy or plan when working on a municipal, county, state, or federal policy or plan or management action.

5. And, most importantly, the agency or level of government is required to make all practicable effort to make their policy, plan, or action consistent with your local policy or plan.

A copy of Mr. Verhulst's letter is attached. The major proponent of "coordination" has seemingly outlined the requirements of the FLPMA as the authority that a town will be enacting or receiving after they would adopt "coordination" and provide the other local government and state government units with notice of that adoption.

The Wisconsin State Statutes have approximately 140 references to the word "coordination". The resolution that the towns have provided to Oneida County state that "Applicable provisions of the constitution, statutes and regulations of the State of Wisconsin mandating that the state, county and local units of government assigned duties relating to management, oversight and planning of use of land and natural resources coordinate with the town's governing body include, but are not limited to, § 1.13, Stats., land use planning activities, § 16.023(1)(c), Wisconsin Land Council, § 16.965, planning grants to local government units, § 16.967, Land Information Program, and § 560.04, Stats." Upon review of these listed statutes, it does appear that the word "coordination" does appear in those statutes. In Wis. Stat. § 1.13(2)(g), when referring to land use planning activities, state agencies are given the directive and goal in comprehensive planning as "Encouragement of *coordination* and cooperation among nearby units of government." In Wis. Stat. § 16.023(1)(c), the Wisconsin Land Council is to "Study areas of cooperation and *coordination* in the state's land use statutes and recommend to the governor legislation to harmonize the statutes to further the state's land use goals." A review of the other statutes that have been listed will show that the term coordinator is used in the same manner. It should be noted, however, that the statutes that were previously quoted, and the other statutes that were listed in the town resolution invoking "coordination", have no definition that would be akin to the concept of "coordination" in the FLPMA. However, the resolution does go further in its reasoning that "coordination" is required by local units of government once a town has invoked this power.

The standard form resolution also lists that the accepted definition of "coordination" that is found in standard dictionaries and common usage (without giving that definition) would require that units and agencies of federal and state government required by law to "coordinate" with the town. The towns seek to have equal status in the planning process and that plans proposed by such other units and agencies of federal and state

government be consistent with those of the town. The towns that have adopted "coordination" also believe that by invoking this power that the local government has or should be now provided equal status at the negotiation table. The Wisconsin State Statutes do provide multiple other opportunities, without "coordination", for towns to have input into other local municipality planning and policy development. The towns have the opportunity for input at various numbers of public hearings with regards to changes to the zoning ordinances pursuant to Wis. Stat. § 59.69(10), rezoning petitions, id., subdivision review pursuant to Wis. Stat. § 236.10 and through various other policies of the County such as the County 5-Year Recreational Plan or the 15-Year County Forest Comprehensive Land Use Plan.

One of the statutes that uses the term "coordination" is Wis. Stat. § 101.143(2m). Entitled "Interdepartmental Coordination", Wis. Stat. § 101.143(2m) provides that "Whenever the Department of Commerce receives a notification under sub (3)(a)(3) or the Department of Natural Resources receives a notification of petroleum product discharge, ...the department receiving the notification shall contact the other department and shall schedule a meeting of the owner or operator...and representatives of both departments." The requirement of interdepartmental coordination in the above referenced statute was litigated in the case of Mews v Wisconsin Department of Commerce, 269 Wis 2d 641 (Ct App 2004). At issue in the Mews case was whether or not the interdepartmental coordination referred to in the statutes was mandatory or directory. The court also rules that the statute was directory because "It would be unreasonable to hold that our legislature intended to mandate unnecessary meetings when agencies accomplish the objective of the statute through other means of communication." Mews at 653. The court went further to state that "If an interpretation of a statute leads to a unreasonable result, the statute should be considered directory rather than mandatory." Mews at 653-54. The court also opined that because the statute lacks any penalty for failing to follow the statutory requirement for interdepartmental coordination it is further evidence that the coordination requirement is directory and not mandatory. Id. It should be noted that this case does not directly address the meaning of the word "coordination" in isolation from the rest of the statutory requirements of Wis. Stat. § 101.143(2m). Presumably the court does not address the definition of the word "coordination" in this opinion because the statute has already set forth what action was to be undertaken by the State agencies. However, the holding in this case may be probative with regards to the requirements that could be imposed upon a local municipality because of the use of the word "coordination" in other statutes.

I have also enclosed for your review a copy of a June 8, 2009 letter from the Wisconsin DNR to one of the towns that has invoked "coordination". This letter is in regards to that town's request to have DNR Secretary Matt Frank's attendance at a town meeting to discuss shoreland protection standards that town officials believed to be required under "coordination". This letter was drafted by Michael A Lutz at the Bureau of Legal Services. As you will read, the State DNR has reached the conclusion that "The coordination authority you propose to invoke to require Secretary Franks attendance at a meeting has no grounding in Wisconsin state law." Attorney Lutz also indicates to

these towns that "All other federal statutes and regulations to which you refer, have authority over federal government, not state government." Therefore, "coordination" and Secretary Franks attendance at a town meeting is not required. The legal reasoning behind the DNR's position is further explained by attorney Lutz statement that "Wisconsin statutes do mention the word coordination several times; however, it usually occurs in the context of input and consultation between state and local governments, not a mandate allowing local governments to invoke power prior to and separate from the established decision making process. ...with the rule making procedures already in place including multiple public notices and opportunities for hearing, the State of Wisconsin receives such "coordination" to the extent prescribed under its rule making authority pursuant to Wis. Stat. § 227.11." The DNR also cites public policy as a reason for Secretary Franks non-attendance at the town board meeting by referencing the practical difficulty that would be imposed should any official be required to meet individually with all towns that might request it on the many issues that each and every state agency manages. I am unaware if any other State agencies have been approached with this concept of coordination by the towns.

If towns are able to adopt "coordination" and invoke authority to the extent that they believe is allowed in their letter and resolution, the County and other municipalities would need guidance on what issues would need to be coordinated with the local government that has adopted this power. As stated above, the idea of coordination is seemingly a response to the comprehensive planning that the County has undertaken pursuant to Wis. Stat. § 66.1001. It is unclear, however, how this may affect other areas of local government. Examples of this would be as follows:

1. Would the County forestry department have to coordinate with a local government before conducting timber sales or tree cutting in a town that has adopted "coordination"?

2. Would a county highway department or the state department of transportation be required to coordinate any road work, culvert replacements or mowing operations that would be done in a town that has adopted "coordination"?

3. Would the planning & zoning department of a local unit of government have to coordinate with the town on any ordinance changes or rezones, or more importantly, would a board of adjustment, a quasi-judicial entity, have to coordinate any variance decisions that they may make prior to issuing a variance?

4. Would the sheriff, a separate constitutional officer, be required to coordinate any outdoor recreation patrols, such as boat, ATV or snowmobile, in a town that has adopted "coordination", or be required to coordinate any changes in the operations of the sheriff's department patrol units if such change may have an effect on a town that has adopted coordination?

5. If a county or local government committee was to make a policy decision or adopt an ordinance that may effect the operations of another local unit of government, would "coordination" be required prior to that policy being enacted? (This would seemingly place a large burden on Oneida County as committees of the county board of supervisors are the policy making body for the departments that they oversee and to require each and every policy decision that may affect a town to be coordinated with a town could become an extreme logistical burden upon how Oneida County would be able to conduct its affairs.)

There are most likely many other areas that the towns may require a county to coordinate prior to any formal decision making can be completed that have not been contemplated above. If there were such a decision made that a town felt should have been coordinated, what possible recourse would a town have regarding those decisions and what exposure may a local unit of government be facing if they fail to coordinate after being provided notice from a town of the adoption of "coordination". While it seems that the proponents of "coordination" have certainly laid out in a succinct fashion what authority and power they believe they are to be granted and allowed to exercise after the adoption of "coordination", there are a lot of questions to be resolved with regards to the implications of "coordination" not being acted upon another local unit of government in their decision making process.

It seems that a unified position throughout the State would be a great benefit in helping other State agencies and local units of government make a determination as to how to proceed once another local unit of government has invoked "coordination" and provided notice of such to the units of government they seek to have coordination with.

If "coordination" is found to be a viable power to be invoked by a town, the County would have questions regarding the implications for comprehensive planning.

2. If "coordination" is a power that can be invoked by a municipality, can that power be used to create a "coordination plan" instead of a comprehensive plan for that town as specified in Wis. Stat. § 66.1001? If a "coordination" plan can be adopted, does a town lose or gain any particular privileges with a "coordination" plan?

As stated above, the town's adoption of "coordination" is seemingly a response to the County's efforts to create and implement County-wide a comprehensive plan pursuant to Wis. Stat. § 66.1001. While towns are not technically required to have a comprehensive plan, Oneida County has hired NCWRPC to assist those towns in the County that apparently do not have a comprehensive plan to create one for adoption as part of the County-wide comprehensive plan. The towns that have adopted "coordination" are seeking to now adopt a "coordination" plan as opposed to a comprehensive plan for inclusion in the County's comprehensive planning efforts.

In the February 2, 2009 letter drafted by Jay Verhulst he is asking that a town use the "coordination" method of land use planning as an alternative to comprehensive planning as outlined in the Wisconsin State Statutes. That letter also contains an attachment which is entitled "Adoption and Implementation of Coordination". In that attachment the following are listed as the steps required to adopt a "coordination plan":

1. Review and adopt a resolution of coordination.
2. Using draft format create and send letters of notice to all adjoining municipalities, the county, state and federal departments and agencies.
3. Set up planning committee/commission and the necessary educational workshops to fully understand the implications and abilities of the coordination process.

4. Submit any draft or adopted plan you may already have for review to be certain there is no conflicting language that would negate coordination.
5. Engage a planning consultant to guide your committee/commission in the planning process.
6. Utilize existing resources such as county mapping, university extension to include the necessary components for your plan.
7. Review the elements of Wis. Stat. § 66.1001 and reference the nine elements therein for inclusion in your plan.
8. Submit completed draft for review and recommendations before adoption.

The creation and adoption of a "coordination" plan as opposed to a comprehensive plan again relies upon the town's ability to invoke "coordination" and the authority believed to be garnered by doing such. The letter from Mr. Verhulst does state that "After extensive study of the issues, it has been determined that a coordination plan can be created that offers compliance of the goals of that statute with strong emphasis on intergovernmental relations while maintaining local control." Mr. Verhulst letter also indicates that the consistency requirement of "coordination" is what makes the "coordination" plan and process a viable alternative. It is his opinion that "coordination" means that other levels of government must make every practical effort to ensure that their action, policy or plan is consistent with that of the local government that has enacted "coordination".

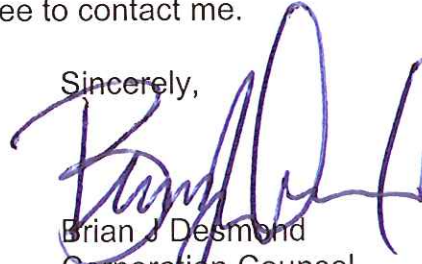
However, Wis. Stat. § 66.1001(3) states that beginning on January 1, 2010 counties are required to take actions that are consistent with a local government units comprehensive plan. The actions that would need to be consistent with a local government units plan would include additional mapping or amendments to said maps, subdivision regulations, county zoning ordinances, city or village zoning ordinances, town zoning ordinances and the zoning of shorelands or wetlands. Wis. Stat. § 66.1001(3)(g-q). Given that on January 1, 2010 certain actions are already required to be consistent with a local government units comprehensive plan, it seems that the "coordination" plan and the concept behind it has already been mandated by the State legislature at least in the narrow area of comprehensive planning. It is unclear, however, as to whether or not the "coordination" plan meets statutory requirements for comprehensive planning if a "coordination" plan is adopted, as opposed to a comprehensive plan, what the implications for a town may be. Of concern for Oneida County is whether or not the comprehensive plan that NCWRPC is developing for Oneida County will be deemed legal come January 1, 2010 if it incorporates these "coordination plans" that the three towns here in Oneida County are developing. Seemingly the adoption of a "coordination plan" can and will have lasting effects and ramifications on towns, counties and the State government if they are found to be a viable alternative to comprehensive planning. Again, Oneida County seeks to have an Attorney General's opinion on this matter in order to have consistency throughout the State and local governments and how to approach and to implement and work with towns that have use "coordination" land planning as an alternative to comprehensive planning pursuant to Wis. Stat. § 66.1001.

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In summary, Oneida County is asking for an Attorney General's opinion on whether or not "coordination" is a separate and distinct power that can be invoked by a local unit of government, what effects the adoption of "coordination" may have on intergovernmental relations with the local unit of government that has adopted such power and whether or not a "coordination plan" meets the legal standards for comprehensive planning pursuant to Wis. Stat. § 66.1001. I would like to thank you in advance for your time and attention to this matter. If you have any questions or concerns with regards to this request for an opinion, please feel free to contact me.

Sincerely,



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BJD/sg

Enclosures

H:Shari/Zoning/VanHollen.letter.opinion.town.coordination

cc: Mr Andrew P Smith
Mr Karl Jennrich
Mr Scott Holewinski
Mr Larry Greschner