



WSSFC 2022

Substantive Track – Session 4

Can They Do That? The Myth of “Sancity of Land Ownership”

Carol Krigbaum, Liz Tobolt

About the Presenter...

Carol E. Krigbaum, Krigbaum Law LLC, Milwaukee.

Liz Tobolt, Liz Tobolt Law LLC, Hartland.



Can They Do That?

The Myth of the "Sanctity of Land Ownership"



Carol E. Krigbaum
Krigbaum Law, LLC
Whitefish Bay, WI
ckrigbaum@krigbaumlaw.com



Liz Tobolt
Liz Tobolt Law, LLC
Hartland, WI
liz@liztoboltlaw.com

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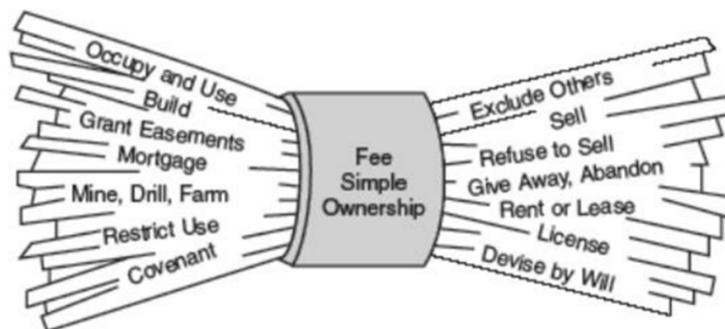
Sanctity of Property Ownership: “A Man’s Home is his Castle”

“The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter - all his force dares not cross the threshold of the ruined tenement!”

-William Pitt the Elder, 1763



The Bundle of Rights



Benjamin N. Cardozo

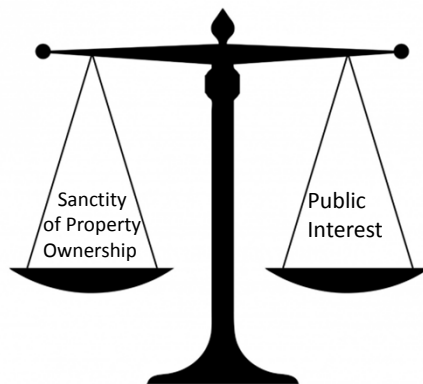
(●●●●●●●●●●)

“The bundle of power and privileges to which we give the name of ownership is not constant through the ages. The faggots must be put together and rebound from time to time”

The Paradoxes of Legal Science
Greenwood Press Publishers
1928



Government Interference with Private Property The Balancing Act



Crowley v. Knapp

94 Wis.2d 421, 228 N.W.2d 815 (Wis. 1980)

This court consistently holds that public policy favors the free and unrestricted use of property. Accordingly, restrictions contained in deeds and in zoning ordinances must be strictly construed to favor unencumbered and free use of property.....A provision either in a zoning ordinance or in a deed restriction which purports to operate in derogation of the free use of property must be expressed in clear, unambiguous [unambiguous], and peremptory terms.

A Stick:
Right to Occupy and Use

Municipal Zoning Laws

- Authority found under Police Power
- Since 1920s
- Principal planning tools for local government
- Division into Districts

Municipal Zoning Laws

- Cities (Wis. Stat. Ch. 62)
- Villages (Wis. Stat. Ch. 61)
 - Extraterritorial Zoning Power promotes cohesive land use in adjoining areas
- Towns (Wis. Stat. Ch. 60 Towns)

Municipal Zoning Laws

- Differ from one municipality to another

[Ordinances & Municipal Codes - Wisconsin State Law Library \(wilawlibrary.gov\)](http://wilawlibrary.gov)

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WI Ordinances & Codes

Researchers often need to turn to ordinances to find local laws. Municipal and county governments pass ordinances on a variety of topics, including administrative procedures, standards of conduct, and zoning.

Wisconsin Statute 66.0103 authorizes a local government to prepare a code of some or all of its general ordinances. While individual ordinances and sometimes a code of ordinances are available for public inspection at the local county clerk, corporation counsel, or public library, nearly half of Wisconsin's municipalities and counties have made some or all of their ordinances available online. Do you know of a city, town, village, or county that we're missing? Let us know! We're constantly updating this list to keep it current.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

A

- Abbotford: City
- Adams County
- Adams: Town
- Addison: Town
- Adel: Village
- Albany: Town

Related Topics

- Legal Assistance

Journals & Legal Databases

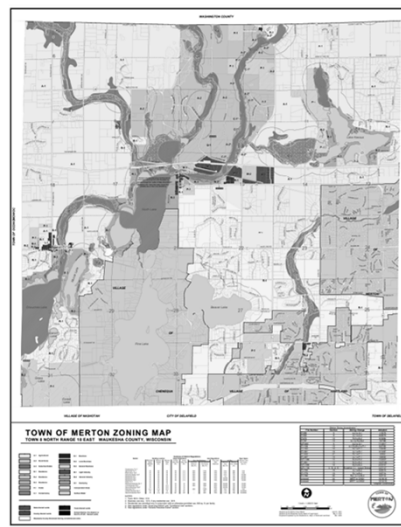
- HeinOnline

Learning Center

- Hiring a Lawyer
- Finding Forms

Ask a Question

Municipal Zoning Laws



Municipal Zoning Laws

Permitted Uses

Conditional Uses

Some: Expressly Prohibited Uses

Hot Zoning Topics: AFFORDABLE WORKFORCE HOUSING



Section 66.1001(2)(b) Wis. Stats.

As part of a comprehensive plan, local government units shall provide...

- * a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs,
- * policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and
- * policies and programs to maintain or rehabilitate the local governmental unit's existing housing stock.

Reasons for Shortages

- Existing Zoning regulations interfere with new development of affordable housing:
 - a. minimum lot sizes
 - b. Requirements for high end building materials (i.e. cedar shingles)
 - c. Single family zoning classifications
- Longstanding belief that allowing apartments, condominiums and smaller houses will depress property values, increase crime, overburden schools and increase traffic in a neighborhood.
- Wisconsin REALTORS® Association Special Report:
https://www.veda-wi.org/PDF/2019/Housing%20wra_special_report_falling_behind_2019%20SP%20090419.pdf

- <https://youtu.be/pzZgJZMXNEc>



Hot Zoning Topics: Short Term Rentals



Section 66.1014 Wis. Stats.

(2) (a) Subject to par. (d), a political subdivision ***may not enact or enforce*** an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer.

(b) If a political subdivision has in effect on September 23, 2017, an ordinance that is inconsistent with par. (a) or (d), the ordinance does not apply and may not be enforced.

Municipality Balancing Act



Economic
Impact on
the
Community



Fair Housing
concerns



ADA
compliance
&
regulations



Liability
issues re:
hosting
platforms

The Creativity of Political Subdivisions

Room tax: over and above state sales tax.

Inspections: annually

Rental Fees: sec. 66.0628(2) Wis. Stats.

Limited to Owner Occupied properties

Permits

Monitoring

Registration of rental agreements

Lockboxes

Hot Zoning Topics: Back Yard Chicken Farming

Back yard Chicken Farming

<https://youtu.be/ptnfo1W1OMo>



Hot Zoning Topics: Event Barns

Event Barns

<https://youtu.be/y7GCz-MgRgw>



Hot Topic: Eminent Domain

- Kelo vs. New London, 545 U.S. 469 (2005). There's a movie 😊
- <https://youtu.be/dkoZZdwqdnc>
- FoxxConn: Jensen, et al vs. Village of Mount Pleasant, et al, Case No. 18 CV 46 (US District Court, Eastern District of Wisconsin)
- I-43 Expansion in Milwaukee, Ozaukee County

Subdivision and Condominium Restrictions

<https://youtu.be/4IRBosxw-YU>



Subdivision and Condominium Restrictions

- Private Restrictions placed on Real Estate by Subdivision Organization
- Restrictions on use often designed to further protect a type of lifestyle and property value
- Homeowner automatically becomes a member
 - Impact property owner rights



Condominium Laws (Wis. Stat. 703) 2004

- Required List of Condominium Disclosure Materials
- Gives the buyer the right to review and object within 5 days
- Creation of third party paperwork managers charging fees
- Proliferated the understanding of condominiums as a form of ownership

2021 Modifications

- Limit on fees for providing documents
- Deadline for providing a payoff
- Plain language Executive Summary

HOA Laws (Wis. Stat. 710.18) *New as of January 1, 2023*

- More transparency to property owners
- Statutory Framework for the operation of a HOA
- Does not limit how HOAs can restrict land use
- Requires written notice of HOA meetings in up to 5 ways
- Requires recording and now posting of the CC&Rs on HOA website
- Ten day limit on production of payoff
- Possible problems with law?
 - Usually volunteer positions
 - When treasurer is out of town-ten day window

Condominium Laws (Wis. Stat. §703) 2004

- Required List of Condominium Disclosure Materials
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- Proliferated the understanding of condominiums as a form of ownership

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Wisconsin Easement Law

- *TJ Auto LLC v. Mr. Twist Holdings LLC*, 2014 WI APP 81
- Clean up old easements
- New law (March 2022) applies only to recorded access easements
- Law protects the freedom to contract
- Access easements recorded on or after January 1, 1960 run in perpetuity (Wis. Stat. 893.33(6m) 2 and 3).

Thank you!